

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

Under Sections 11 (1), 11(4) and 11B (1) of the Securities and Exchange Board of India Act, 1992 read with Section 12A of the Securities Contracts (Regulation) Act, 1956

In Re: Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, Securities Contracts (Regulation) Rules, 1957 and Listing Agreement

In the matter of Atlas Jewellery India Limited

In respect of:

Sl. No.	Name	PAN
1	Atlas Jewellery India Limited	AAACG5890R
2	Mathukkara Moothedath Ramachandran	ALDPR4859A
3	Atlas Jewellery Private Limited	AAGCA8260K
4	M/s. Al Juraina Precious Metals & Bullions FZE	AALCA9215F
5	M/s. Al Layyah General Trading FZE	AALCA9217H
6	M/s. Al Mareija Precious Metal and Bullions FZE	AALCA9216G
7	M/s. Mankool General Trading FZE	AAICM7748N

BACKGROUND

1. Atlas Jewellery India Limited (“**Target Company / AJIL**”) was originally incorporated as a private limited company under the Companies Act, 1956 under the name and style as M/s GEE EL Woollens Private Limited vide certificate of incorporation dated May 31, 1989 issued by the Registrar of Companies Jaipur, Rajasthan. Subsequently it was converted into a public limited company vide a fresh certificate dated June 15, 1993 under the name of GEE EL Woollens Ltd. Further the name of company changed from GEE EL Woollens Ltd to its current name i.e Atlas

Jewellery India Limited vide a fresh certificate dated August 30, 2013 issued by the Registrar of Companies, National Capital Territory of Delhi and Haryana. The Target Company belongs to Atlas Group. Atlas Group is a conglomerate having more than 49 jewellery outlets across Gulf region and India apart from having other business establishments in various sectors like construction, real estate, advertising, hospitality, entertainment etc. The shares of the Target Company are listed at BSE Limited.

2. A draft offer document dated June 26, 2014 for an open offer for acquisition of 2,61,70,180 equity shares of face value Rs. 10/- each, representing 26% of the total equity/voting share capital of the Target Company was filed by Merchant Banker, D&A Financial Services (P) Limited ("**MB**") on behalf of Mr. M M Ramachandran ("**MMR**") along with M/s. Atlas Jewellery Pvt. Ltd. ("**AJPL**") in terms of regulation 3 (1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**Takeover Regulations**").
3. On a perusal of the draft open offer letter, it was observed that preferential allotment of shares was made by the Target Company to four Dubai based companies viz. Al Juraina Precious Metals & Bullions (19.06%) ("**AL Juraina**"), Al Layyah General Trading (24.06) ("**AL Layyah**"), Al Mareiha Precious Metal and Bullions (24.66%) ("**Al Mareiha**") and Mankool General Trading (23.90%) ("**Mankool**") on January 15, 2014. The shares issued under the preferential allotment constituted 4,64,49,333 equity shares representing 91.70% of the total post allotment share capital.
4. Pursuant to the aforesaid observation, an examination was carried out by SEBI *inter alia* to determine whether the aforesaid four Dubai based companies were acting as PACs and to ascertain whether there were any possible violations of provisions of Securities and Exchange Board of India Act, 1992 ("**SEBI Act**"), Securities Contracts (Regulation) Rules, 1957 ("**SCRR**") and Takeover Regulations at the time of the acquisition of shares by the four Dubai based companies and by MMR in the Target Company.

SHOW CAUSE NOTICE

5. Consequent to the completion of examination, a common Show Cause Notice (“SCN”) dated January 13, 2017 was issued to the Target Company, MMR, AJPL and the four Dubai based companies (collectively referred to as “**Noticees**”) in the extant matter.
6. The allegations as set out in the SCN were as follows:
 - 6.1. MMR and AJPL together held 3.23% of the voting share capital of the Target Company. The Board of Directors of the Target Company in the meeting held on June 9, 2014, proposed that a preferential allotment of 5,00,00,000 equity shares be made to MMR at Rs. 20/- per share representing 49.67% of the post preferential share capital.
 - 6.2. Pursuant to this event, which triggered the open offer obligation under regulation 3(1) of Takeover Regulations, the open offer was being made to acquire 26% of the voting share capital under the open offer. Pursuant to the proposed preferential allotment and instant open offer, the holding of the MMR and AJPL would go up from 3.23% to 77.30% of the paid up equity share capital of the Target Company. The objective of the offer was substantial acquisition of shares in the Target Company.
 - 6.3. The date of public announcement was June 9, 2014. MMR had proposed in the offer to acquire 26% of the fully paid up equity share capital at a price of Rs. 21/- per share payable in cash.
 - 6.4. MMR did not hold any equity shares in the Target Company as on the date of Public Announcement. MMR belongs to the Promoter Group of the Target Company.
 - 6.5. AJPL was also part of the Promoter Group of the Target Company and held 3.23% of the total paid-up share capital of the Target Company as on the date of public announcement. MMR is the Promoter of and in control of AJPL, holding 99.9% of share capital in AJPL.
 - 6.6. The maximum amount of funds required to make payment of consideration of the offer price for the shares tendered in the offer (assuming full acceptances)

would have been Rs. 54,95,73,780/- (maximum consideration). MMR deposited a sum of Rs. 14,00,00,000/- in the escrow account opened with Axis Bank Ltd.

6.7. With respect to the preferential allotment made to the four Dubai based companies, it was observed that since the shares acquired by the aforesaid companies did not cause their individual shareholding to exceed 25% of the share capital of the Target Company, individually, the four Dubai based companies did not trigger regulation 3(1) of Takeover Regulations.

6.8. Four separate but similar agreements were executed among the Target Company, Promoters and the four Dubai based companies. The agreement, in its clauses 7.1 and 7.2 states that *"the investors are making a financial investment in the Company and that they will never interfere into the management of the company nor will they ask for any supervision over the affairs of the Company"*. It further states that the *"investors will have no right to appoint or nominate the directors of the Company and that the company shall continue to be managed by its present directorship composition as the Board of Directors of the Company thinks fit."* By virtue of the Agreements, four Dubai based companies did not trigger regulation 4 of Takeover Regulations.

6.9. The following similarities are observed among the four Dubai based companies:

6.9.1. The 4 companies were all registered at Sharjah Airport International Free Zone as Free Zone Establishments having one shareholder and one Director.

6.9.2. The 4 companies were incorporated within a span of 13 days between June 10, 2013 and June 23, 2013.

6.9.3. Identical tri-partite agreements were entered into with the Target Company and the Promoter of the Target Company agreeing not to exercise control over the Target Company.

6.9.4. All the four entities are in the similar line of business (trading in jewellery in Dubai).

6.9.5. The Memorandum and Articles of Association of these 4 entities are identical in nature.

6.9.6. One Auditor has certified financial statements of these 4 entities.

- 6.9.7. Investment in shares of the Target Company form a major chunk of the assets of the companies, the details of which are given below:
- 6.9.7.1. Al Juraina Precious Metals & Bullions - 77.89%
 - 6.9.7.2. Al Layyah General Trading - 81.95%
 - 6.9.7.3. Al Mareiha Precious Metal and Bullions - 81.83%
 - 6.9.7.4. Mankool General Trading - 83.75%
- 6.9.8. The profit earned by each of these entities for the year ending March 31, 2014 is exceptionally high, almost equaling their net worth at the beginning of the reporting period. Even while clocking such supernormal profits, the foreign companies decided on investing in the Target Company, a company whose operations had just commenced under the new brand of Atlas and at a time when the company was incurring losses (net loss for F.Y. 2013).
- 6.9.9. The 4 companies had voted in the same manner for all the resolutions passed in the AGM held on July 8, 2014. However, it may also be noted that all other shareholders including the promoters had voted in favour for all resolutions passed in that particular AGM. No other shareholders' meeting had been called between the date of allotment i.e. January 15, 2014 and September 15, 2014.
- 6.10. The excess share application money was received by the Target Company from Al Layyah to the tune of Rs. 4.32 crore at the time of preferential allotment in January 15, 2014. It was informed by the MB that the excess share application money was paid by Al Layyah by mistake and was duly refunded on April 17, 2014. However, had shares been allotted for the excess share application amount received, the shareholding of Al Layyah in the Target Company would have exceeded 25%, triggering regulation 3(1) of Takeover Regulations. The allotment was adjusted in a way so that no company would trigger open offer regulation under the Takeover Regulations.
- 6.11. It was observed that the income of the Target Company from operations has suddenly risen from nil in the financial year 2012-13 to Rs. 72.96 crore in the financial year 2013-14. On the asset side of the Target Company, out of Rs.

75.21 crore of total assets, a major chunk is under the head “trade receivables” (Rs. 72.26 crore). Further, Rs. 72.26 crore of trade receivables was due from only one company - Satwa Precious Metals and Bullion Trading, the same company which was also supposed to be allotted shares on a preferential basis along with the four Dubai based companies. In the financial year 2013-14, the Target Company had conducted 99% of its business with Satwa Precious Metals and Bullion Trading (Rs.72.26 crore out of Rs.72.96 crore). Also, it is the only trade receivable in the balance sheet of the Target Company.

6.12. Based on the bank account statements of the four Dubai based companies, following observations are made:

6.12.1. The four Dubai based companies were incorporated within a span of 13 days between June 10, 2013 and June 23, 2013. They all are registered at Sharjah Airport International Free Zone (SAIF Zone) with 1,50,000 (AED) capital as single owner entities.

6.13. The transactions in the bank accounts of the four entities shows that:

6.13.1. There are several entries in the books of each of the entities for fund transfers only among themselves and one other entity Satwa Precious Metals and Bullion Trading’

6.13.2. Any credit to the account from another entity is followed by cash withdrawal either the same day or next day and any cash deposit in the account is either transferred to any one of the remaining 4 entities or is withdrawn the same or next day. Thus, at all points of time, the available balance in each of these accounts is kept at a very minimal level.

6.13.3. Same individuals (Jamsheer with ID no. 784198661879761, Mankool with ID no. 1014744639701 etc.) are operating the aforesaid bank accounts. This is confirmed from the fact that apart from same name, for every withdrawal transaction the individual has provided an ID, and these identification details are found to be the same for a particular individual across bank accounts. Details of the same is enclosed as annexure 2 in the SCN

6.13.4. The balance available in each of the accounts at the time of transfer of funds for subscribing to preferential issue was examined. At the time of

transfer of funds amounting to AED 2,756,250 by Al Mareiha (on December 28, 2013 to Target Company) the total available balance in the account of said entity was AED 2,777,275. Out of the said balance, an amount equivalent to AED 2,756,000 was received from Mankool. Similarly, at the time of transfer of funds amounting to AED 1,104,000 by Al Layyah (on January 4, 2014 to Target Company) the total available balance in the account of said entity was AED 1,124,825. Out of the said balance, an amount equivalent to AED 60,000 was received from Mankool.

- 6.14. From the investment agreement entered with SAIF Zone Authority it is noted that in two cases (Al Juraina and Al Mareija), the address of the investor in the investment agreement is stated as Atlas Jewellery LLC and the contact number (04-2254235) provided is of one of the stores of Atlas Jewellery in UAE. Further, in one case (Al Mareija) the domain name (Faizal@atlasera.com) stated with an email id is Atlasera.com which is the website of Atlas Group with its founder being the Acquirer.
- 6.15. From the bank account opening forms of the four entities the following are observed:
- 6.15.1. The four individuals (Surjith Poyil – Al Juraina, Jamsheer Narikuni – Al Layya, Sankara Pillai – Mankool and Faizal Koppath – Al Mareija) who are also shown as owners of the four entities are ex-employees of Atlas Jewellery.
- 6.15.2. In two cases of Al Juraina and Al Layya, in the additional remarks column of the form, reference has been drawn to the ownership details of other entity i.e. in the form of Al Juraina reference has been w.r.t to ownership of Al Layyah and vice-versa.
- 6.15.3. In two cases i.e., Al Mareija and Mankool in the customer contact information, the telephone number (+97142254235) provided is of Atlas Jewellery store and in two cases i.e., Al Mareija and Al Layyah, the domain name of email ids is Atlasera.com
- 6.15.4. In two cases i.e., Mankool and Al Layya, where the individuals have submitted their salary statements for showing proof of funds while opening

the accounts, it is noted that the salary received of AED 2400 and AED 3800 (approx.) is from previous employer or payment from client (in one case client being Atlas Jewellery, LLC, Dubai).

- 6.16. It is alleged from the above facts and observations that the aforesaid four Dubai based entities were related to each other and to the Promoter of AJPL. By virtue of being related to each other and the Promoter, it is alleged that the entities are merely fronts created by the Promoters and can be considered to be PACs in terms of regulation 2(1)(q)(1) of Takeover Regulations while investing in Target Company.
- 6.17. The shareholding in the Target Company of Promoters and PACs being the four Dubai based companies, increased post the preferential allotment made on January 15, 2014 from 38.9% (December 2013) to 91.7%. Thus, the aforesaid four Dubai based entities along with Promoter (AJPL) are under obligation to make an open offer under regulation 3(2) read with regulation 13(1) of the Takeover Regulations. However, these four Dubai based entities along with the Promoter failed to make public announcement to make open offer for acquiring shares of the Target Company. Therefore, it is alleged that they have violated the provisions of regulation 3(2) read with regulation 13(1) of the Takeover Regulations.
- 6.18. In addition to above, in view of the news articles regarding sentencing of acquirer MMR in cheque bouncing case, MB was advised to provide disclosure in terms of Para 6.2.9 of format for letter of offer under Takeover Regulations, which requires that MB is satisfied about the ability of the acquirer to implement the offer. MB has informed that it has not received updated net-worth certificate from MMR despite repeated reminders.
- 6.19. MMR being 99.9% shareholder of AJPL, is also a PAC. The said action of MMR and AJPL of not being able to provide the certificate regarding their ability to meet the financial obligations is in violation regulation 25(1) read with regulation 25 (5) of Takeover Regulations. Thus, it is alleged that MMR and AJPL have violated regulation 25(1) read with regulation 25 (5) of Takeover Regulations, 2011.

- 6.20. In addition to the above, the preferential allotment that took place on January 15, 2014, to four Dubai based entities which raised the shareholding in the Target Company of these four Dubai based entities from 0% to 91.7% i.e., more than 75% and thus, public shareholding in the Target Company fell below twenty 25%. In terms of Rule 19A(2) of SCRR read with clause 40A of Listing Agreement, where the public shareholding in a listed company falls below 25%, at any time, such company shall bring the public shareholding to 25% within a maximum period of 12 months from the date of such fall in the manner specified by SEBI. The above acquisition resulted in the alleged violation of Rule 19A(2) of SCRR read with Section 21 of Securities Contracts (Regulation) Act, 1956 (“**SCRA**”) read with clause 40A of Listing Agreement.
- 6.21. Further, the Target Company is in violation of clause 35 of Listing Agreement read with Section 21 of SCRA for incorrect disclosure of shareholding for 8 quarters ended March, June, September and December 2014, March, June, September and December 2015.
- 6.22. Regulation 72(1)(c) of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (“**ICDR Regulations**”), prescribes that a listed issuer may make a preferential issue of securities, if the issuer is in compliance with the conditions for continuous listing of equity shares as specified in the listing agreement with the recognized stock exchange. In June 2014, when the Board of the Target Company approved preferential allotment to MMR, based on facts stated above, the Promoter shareholding of the company was beyond 75%. It may be noted here that as per Letter of Offer, in June, 2014 the Board of the Target Company comprised of 4 Directors, 2 of which included MMR and his spouse. Hence, by making the said preferential issue, it is alleged that the Target Company has violated regulation 72(1)(c) of ICDR Regulations.
- 6.23. Moreover, MMR had concealed the relationship of the four Dubai based entities with Atlas Jewellery LLC, Dubai, which in turn is related to MMR. MMR was aware of these four Dubai based entities being PACs and the owners of these four Dubai based entities being the ex-employees of Atlas Jewellery LLC. This act of MMR is allegedly in violation of regulation 3(d) of SEBI (Prohibition of

Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (“**PFUTP Regulations**”). Thus, MMR has been alleged to have violated regulation 3(d) of PFUTP Regulations.

7. Thus, based on the above, the Noticees were advised to show cause as to why suitable directions in terms of Section 11B of SEBI Act read with regulation 32 of Takeover Regulations should not be initiated against them for the aforesaid alleged violations.

REPLY and HEARING

8. In response to the SCN, the Target Company vide its letter dated April 28, 2017 *inter alia* submitted as follows:

- 8.1. The company after complying with all the applicable rules has duly allotted shares to the four Dubai based companies and the excess share application money has also been refunded to the allottees.

- 8.2. As per records available with the company, an investment agreement was entered with Satwa Precious Metals & Bullions Trading wherein they had agreed to subscribe to 15,100,000 equity shares of the company. Since the share application money was not received from the said entity, the planned preferential allotment did not go through.

- 8.3. Further, the company had to commence retail operations in India and was in the process of setting up retail showrooms in India. In the interim, it had undertaken exports on a principal to principal basis with Satwa Precious Metals & Bullions Trading totaling Rs. 72.76 crore in the financial year 2013-14. The entire export proceeds were received within the contracted time in the financial year 2014 - 15.

9. MMR and AJPL vide letter dated May 3, 2017 submitted the reply dated July 27, 2015 which was earlier submitted to SEBI, for consideration in the extant proceedings. Further, MMR informed that he is under detention in UAE and has a travel ban which prevents him from leaving UAE. The submissions made by MMR vide his letter dated July 27, 2015 are as follows:

- 9.1. MMR wanted to open jewellery showrooms in India but he did not have the funds. He was assured by a representative of Abu Dhabi Sovereign Fund that

they would be willing to provide equity funding to the tune of US \$ 350 million, only if he has a listed company. His advisors in India identified GEE EL Woollens Ltd. which had an authorised capital of Rs. 4.98 crore and paid up capital of Rs. 4.20 crore. He initially in a phased manner acquired control of the Target Company through his group company, AJPL starting from December 2012 to May, 2013. He acquired 38.91% of shareholding of the Target Company along with complete management control, through open offer.

- 9.2. His immediate strategy was to make the Target Company operational. However, he was unable to immediately arrange his own funds. Therefore, he tapped 10-15 financial investors from the Gems & Jewellery Industry in Dubai of which 5 showed interest to come in as purely financial investors.
- 9.3. Commonality of business would bound to happen as only people from the business background would be in a position to evaluate the proposal and provide the necessary funds at short notice.
- 9.4. As regards common memorandum and articles and investment agreement, it is submitted that MoA and AoA are standardized in SFZ. As regards the investment agreement, as they have been drafted by his advisor, they would all mirror each other.
- 9.5. With respect to fall in his holding from 38.91% to 3.23% following is submitted:
 - 9.5.1. He did not have necessary funds at that point of time and hence, he was only keen on taking financial investors who had no inclination in running the business in India.
 - 9.5.2. Further, to mitigate his risk, he did not seek any domestic finance which would have been less cumbersome and easier than the FDI.
 - 9.5.3. If indeed the four Dubai based companies were PACs with him, he would have had no reason to bring in Rs. 100 crore and lock another Rs. 14 crore in the escrow account and also take on further liability of Rs 42 crore when the four Dubai based companies along with AJPL controlled 94.93% of the share capital. There was no need to make further investment of Rs 156 crore.
 - 9.5.4. He also had the advantage of a one year lock in period to gain management control and therefore as a Promoter he took a risk. It paid off as he managed

- to gain full control (51.30%) of the company within a short span of 6 months.
- 9.6. The investees had only come because of his track record as a successful business man and a key member of the Gems & Jewellery Group in Dubai, established over 4 decades.
10. Noticees were granted an opportunity of hearing vide hearing notice dated November 16, 2017, to appear on January 4, 2018. In response to the hearing notice, MMR and AJPL through their authorised representative Fox Mandal & Associates, (“AR”) requested to adjourn the scheduled hearing as the Noticees have filed settlement application. The Target Company vide its email dated confirmed its attendance for the scheduled hearing.
11. Mr. Chandan Mahapatra, Company Secretary, Ms. Reena Jian, Independent Director and Ms. Khushboo Verma, Assistant CS appeared for the Target Company on the day of scheduled hearing. The Target Company submitted as follows:
- 11.1. Mr. Chandan Mahapatra referred to the letter submitted by MMR and submitted that there is no connection with the four Dubai based companies and the said companies invested in the Target Company only for financial interest.
- 11.2. Shareholding pattern was filed as per the information available with the company and are being managed by Independent Directors.
- 11.3. The company is compliant with continuous listing norms.
- 11.4. The company was advised to make submission with respect to the tripartite investment agreement among AJIL, AJPL and the four Dubai based companies bearing MMR’s signature showing that the company was aware of the connection among MMR, AJPL and the four Dubai based companies as the companies acts through its Directors, Managers and KMP.
- 11.5. The Target Company at the time of hearing was advised to submit the following:
- 11.5.1. Salaries / benefits to the four Dubai based companies’ owners vis-à-vis other employees along with bank statement in support thereof.
- 11.5.2. Response regarding Annexure – 3 (showing control and connection).
- 11.5.3. Annual Report and accounts for quarter ending September 30, 2017.
- 11.5.4. Bank account statement showing credit from Satwa Precious Metals &

Bullions Trading.

11.5.5. Fresh Board resolution authorizing making of submissions in the hearing.
12. At the time of hearing, the Target Company also submitted written submissions dated January 4, 2018, wherein *inter alia*, it made the following submissions:

12.1. MMR has stated that he has chosen the four investees based on following criteria:

12.1.1. The investees do not have interest in taking over management/ operational control of the company;

12.1.2. The investees should only be purely financial investors with the only motive being to gain financial benefits from the share value appreciations and dividends;

12.1.3. The investees are from the trade itself as they understand the dynamics of the business and therefore would not be impatient to sell out at short notice.

12.1.4. The investees have full belief in MMR's ability and capability to make a success of the business.

12.1.5. The investment agreements signed between the parties establishes these aspects. It is specifically stated therein that that they will never interfere into the management of the company, nor will they ask for any supervision over the affairs of the company. It was also agreed by these investees that they will have no right to appoint or nominate the directors of the company and that the company shall continue to be managed by its directorship composition as Board of Directors of the company.

12.2. The Target Company is being operating its day-to-day activities in accordance with the decisions of independent Board of Directors and the four investees are not playing any role in the same. In these circumstances, there is nothing on record available with Target Company to show that these four investees have acted in concert for acquisition of shareholding and there was no scope for Target Company to reach such conclusion.

12.3. Moreover, Takeover Regulations does not envisage under any of its provision that the Target Company can determine relationship between investors. Rather, it is for the investors to make relevant disclosures regarding

relationship among themselves, if any.

12.4. The shareholding format prescribed under the Listing Agreement divides the shareholding information under two categories/ groups, viz., "Promoter and Promoter Group" and "Public Shareholding" and the Target Company has neither the mandate nor the liberty to change the information to be provided under the said categories on its own accord. The shareholding data is provided based on records available with the Target Company/ RTA and making *suo moto* changes would not only be violative of SEBI Regulations but also the Companies Act and rules thereunder.

12.5. The allegation that MMR and the four Dubai Entities are presumably PACs, came to the knowledge of the Target Company only on the receipt of the SCN. Further, the SCN has observed that MMR and the four investees are acting in concert. However, SEBI is yet to take a final decision on it post show cause proceedings. Therefore, till such a finding is arrived, alleging against the Target Company that it should have clubbed the shareholding of MMR and AJPL (who have made an open offer) and shareholding of four investees while making disclosures under clause 35 of the Listing Agreement is not appropriate. It is submitted that the said issue whether MMR and the four investees have acted in concert is still to be determined by SEBI under the said SCN.

12.6. The Target Company has been fully compliant with the provisions contained in the Listing Agreement. Under clause 24(a) the Target Company was required to make an application to the Stock Exchange for the listing of the new equity shares issued to acquirer under preferential allotment route under Chapter VII of ICDR Regulations, the same was done. Under clause 35 of the Listing Agreement the Target Company was required to file details of shareholding which it had duly done. Thus, the Target Company submits that it has not violated the provisions of clause 35 of the Listing Agreement read with Section 21 of SCRA with regard to disclosures related shareholding pattern for the said 8 quarter of 2014 and 2015. Holding the Target Company liable for incorrect disclosures based on the observations in the SCN, before final determinations of issues raised therein, is legally untenable.

- 12.7. Target Company apprehends that if SEBI concludes its investigation under the SCN and holds the four investees and Promoters (including AJPL) as Promoter Group and PACs, then only 2.55% of the total paid-capital of the Target Company shall be held with public. It is understood that the draft letter of offer dated June 23, 2014, filed by Promoter and AJPL is due for clearance of SEBI. In this background, any open offer under the draft letter of offer dated June 23, 2014, would de facto render the Target Company as unlisted which is against the interest of small shareholders and other stakeholders of the Target Company.
13. It was submitted by the Target Company at the time of the hearing that it has not received annexures to the SCN. As directed at the time of hearing, the Target Company was provided the annexures to the SCN vide email dated January 4, 2018. Further, the Target Company was advised to submit the information / document as sought at the time of hearing on or before March 15, 2018.
14. The Target company vide its letter dated January 10, 2018, while acknowledging the receipt of email dated January 4, 2018, requested for a copy of SCN in its entirety along with its annexures and all other documents relied / referred upon at the time of hearing. The Target Company was provided with a copy of SCN again along with all the annexures vide letter dated January 29, 2018.
15. The four Dubai based entities who had failed to appear for the hearing scheduled on January 4, 2018, were granted another opportunity of hearing on March 14, 2018 while the adjournment request of MMR and AJPL was acceded to and they were also granted an opportunity of hearing on March 14, 2018. The hearing notice for the four Dubai based entities scheduling the hearing on March 14, 2018 was published in an English newspaper, Gulf Today on March 3, 2018 and in a vernacular language newspaper, Al Khaleej on March 3, 2018, circulated in UAE.
16. On the day of the scheduled hearing, only MMR and AJPL appeared through their AR and submitted as follows:
- 16.1. MMR had acquired around 38% in GEE El Woollens Ltd. in 2013 through AJPL and triggered open offer.
- 16.2. The four Dubai based companies invested in the Target Company in January 2014 and by June 2014, MMR invested 100 crore to own the company

through preferential allotment.

16.3. By placing reliance on the judgment of Hon'ble Supreme Court of India in the matter of *Daiichi Sankyo*, it is submitted that there is no common objective or purpose for acquiring control in the Target Company.

16.4. SEBI in SCN proceedings may not seek further evidence / document from the Noticees.

16.5. Shareholders have not been impacted as the shares of the Target Company are still traded at a good price.

16.6. The Noticees have not received the annexures to the SCN.

16.7. The Noticees have filed a settlement application.

16.8. The AR was advised to submit the following information / documents on or before April 14, 2018:

16.8.1. Whether the owners of the four Dubai based companies were ex-employees of Atlas Jewellery?

16.8.2. The Bank A/c opening form and other documents referred to in Annexure – 3, Atlas Jewellery Group address / other details is shown as contact details of the four Dubai based companies and its owners. The Noticees may provide their comments for the same.

16.8.3. Regarding Settlement amount shown in the Bank A/c opening form, the Noticees were advised to submit details of normal payments and settlement proceeds made to the four ex-employees of the Dubai based companies vis-à-vis other employees and to furnish bank A/c statements showing the payment made for such salary and settlement benefits (for a period of 2 years).

16.8.4. The AR was authorised to provide original authorization along with power of attorney in favour of Mrs. Indira Ramachandran by AJPL and the Acquirer.

17. The Target Company post hearing, submitted its reply vide its letter dated March 15, 2018 as follows:

17.1. On a perusal of the annexures provided, it is noted that documents are incomplete, not in sequence and illegible. In this circumstance, the Target

Company find it difficult to comprehend the documents and provide a proper response.

17.2. The key purpose for entering into a tripartite agreement is as follows:

17.2.1. Target Company's main purpose was to raise funds for its operational viability.

17.2.2. Promoter / MMR was looking to raise funds from foreign investors for the Target Company as well as pave the way for raising further foreign funds to the tune of US\$ 350 million.

17.2.3. Promoter / MMR attempt to restrict any possibility of takeover of the Target Company as post the preferential allotment his holding in the Target Company would come down to mere 2.02% from 38.91%.

17.2.4. Confirmation of the four Dubai based companies that they could only be coming as "Financial Investors", clause 7.1 of the Agreement and not in any other capacity and their gains would be restricted to capital appreciation and dividends and they would have no say in the management or control in the affairs of the company.

17.3. Hence, there was never any common objective or purpose pursuant to the agreement as contemplated under regulation 2(1)(q) of Takeover Regulations.

17.4. If MMR and the four Dubai based companies were acting under a common objective or purpose of acquisition of shares or voting rights or exercising control over the Target Company as provided under regulation 2(1)(q) of the Takeover Regulations, then-

17.4.1. There would have been no occasion to enter into the said tripartite agreement and that too individually with each of them since this agreement does nothing to enhance or diminish this common intent, if any, but creates an illusion of PAC, which obviously none of them would want, if they were indeed so.

17.4.2. This agreement itself proves that there was no PAC and parties to it were entering only to protect their personal and un-related interests.

17.4.3. MMR through AJPL was already having majority control over the Target Company so there was no commercial or other exigency to execute such the

said agreement nor to accept equity and invite un-necessary regulatory glare.

17.4.4. The interests being distinct among the parties is also borne out by the fact that the Dubai investors did not vote against a subsequent proposal wherein MMR applied for 5 crore equity shares in the company in July, 2014. This clearly proves that their role was restricted to that of a financial investor and make financial gains thereby and be burdened with running the company on their own accord or in association with the Promoter or Promoter Group.

17.5. With respect to Target Company and AJPL as parties to the Agreement, it is submitted as follows:

17.5.1. Firstly, AJPL being a confirming party is proof enough that the agreement was a purely commercial agreement with each party being distinct, having un-related objectives to participate and driven by their own and distinct agenda.

17.5.2. Secondly, the agreement on behalf of the Target Company was not signed by MMR but by the Company Secretary of the Target Company. This clearly indicates that as far as the agreement goes, the rights and interest of the Target Company is distinct from that of MMR and the other signatories. Hence, he is not representing Target Company interest in the agreement and vice versa.

17.5.3. Thirdly the role of the Target Company in the agreement is only to ensure that the preferential allotment process is conducted as per the provisions of law and nothing more or less.

17.5.4. Most importantly by not allowing MMR to represent the interests of the Target Company, the company had erected a chinese wall between itself and MMR by firstly ensuring that he did not represent the interest of the company and secondly having AJPL as the confirming party and thereby binding MMR into ensuring that there is due compliance of regulatory requirements as far as the preferential allotment process goes.

17.5.5. All the above clearly indicate that the parties to the agreement and more especially the Promoter and AJPL on one hand and the four Dubai based

companies on the other hand were not PAC as defined under regulation 2 (1) (q) of the Takeover Regulations.

- 17.6. If the Promoter and the four Dubai based companies were PACs, then there was no need for the Promoter to pay a premium for the purchase at Rs. 10 per share as compared to only Rs. 4 per share paid by the four Dubai investees, a premium of nearly 250% within a span of less than six months for a company which is yet to start its commercial operations. The fact that he paid Rs. 100 crore, deposited Rs 14 crore in an escrow account and the fact that he paid premium to purchase shares, shows that the driving reason could only be his need to take control of Target Company and not leave anything to chance or to fully depend on a mere tripartite agreement. This speaks for itself and clearly and un-ambiguously throws light on the relationship between MMR and the four Dubai based companies as being in the opposite side of the table as far as control, objective and acquisition or exercising control over Target Company is concerned.
- 17.7. After issuance of the SCN, SEBI is seeking for further documents from the delinquent themselves. It is humbly submitted that in accordance with established principles of law, SEBI cannot collect or rely on any document after issuance of SCN.
- 17.8. The present board of the company are independent and has no knowledge or information regarding the companies with which the four investees were employees including Atlas Jewellery LLC, mentioned in the SCN. Within a brief period of acquisition of the Target Company, MMR and his wife had resigned from the Board of Target Company and MMR was sentenced to prison term. The companies of the Promoter/MMR cannot be considered to be a sister concerns or related companies of Target Company as in the peculiar fact circumstances, Promoters are not part of the Board of the Target Company.
- 17.9. Further, the Target Company has no information about the occupation, present or past of the 4 Dubai based companies / owners including if they were at all associated with any of the companies of MMR in any form. The only relationship the Target Company has with the Dubai based companies is that of

shareholders of the Target Company. It has no mandate or powers to seek personal and other information from the said entities statutorily or otherwise, just in the same manner it has no personal information of its 4,000 plus shareholders.

17.10. For conducting a preferential allotment, the Target Company has mandated only collection of PAN card details, which the Target Company has done. When the statute itself lays down the KYC to be done in case of preferential allotment, there is no scope to travel beyond the statutory mandate by the Target Company and the regulators themselves.

17.11. Certain inconsistency noticed in the documents provided-

17.11.1. Documents related to M/s. Al Juriana-

17.11.1.1. The Account Profile (Personal) details form is not dated, except Emirates NBD and hence the date of execution is not known for others.

17.11.1.2. No Atlas LLC connection is noticeable on the documents, only his personal email id in some documents noticed.

17.11.1.3. His personal mobile number mentioned.

17.11.1.4. As per Bank KYC, he was in business from 2013 and post he had closed his bank account (salary) presumably on leaving employment.

17.11.1.5. From the bank accounts no transactions with Ramachandran or Atlas was noticed. Even under suppliers Atlas or Ramachandran have not been listed.

17.11.1.6. As per Bank's KYC the Company/Owner is not involved in doing investments on 3rd party accounts and neither route funds from 3rd party into his account.

17.11.1.7. Further from the various communications from the banks a thorough and detailed KYC check had been done on the said company by the said Banks before opening the bank account and there is no connection between Ramachandran or Atlas mentioned in the KYC checks, which also included personal visit to the Company's office.

17.11.1.8. He was a resident of UAE for last 7 years (before 2013 onwards, as dated in the document) and an ex-employee of Atlas (7 years) and

Kalyan Jewellers (5 years).

17.11.2. Documents related to M/s. Al Layya -

17.11.2.1. In one place atlas. era email id has been provided. The reason is not known as per Bank KYC he had 1.5 years' work experience in Atlas Jewellery.

17.11.2.2. The phone numbers provided are either mobile or some other number, which does not match with the numbers provided on Atlas, Dubai website.

17.11.3. Documents related to Mankool -

17.11.3.1. In the documents the emails ids are all his personal ids.

17.11.3.2. In the KYC it is also mentioned that Atlas LLC is one of his customers/suppliers.

17.11.3.3. In other document the mobile number and phone numbers do not match Atlas numbers as available on its website.

17.11.4. Documents related to AI Mareija -

17.11.4.1. In one of the non-banking documents atlas era email id and a showroom landline number has been mentioned.

17.11.4.2. Under KYC he has been listed as a business man and apart from other parties like Sabt, Anjali Jewellers, etc. Atlas LLC is also listed.

17.12. Historically we understand from many that MMR and Atlas LLC has helped many expatriates from India while they moved to middle east and they in turn keep their early association with MMR as an achievement and accomplishment and many Indians they make them proud. If at all they mentioned those connections while they provide their details to their banks, will not be sufficient to conclude that all of them are acting in concert with MMR. It merely shows their unverified past association with Atlas LLC. Further the veracity of their claims are yet to be verified and proved.

17.13. It is also evident that all of them had substantial experience in jewellery (more than decade plus) hence well aware of the nuances of the trade and also the brand value of Atlas. Their investments therefore in the Target Company would be one which is based on their assessment of the risks and returns. But it

would also be true that it would have provided them comfort when other likeminded businessmen are also participating in a public limited company, which accords the best transparency and availability of all information, financial or otherwise as the Target Company is a listed entity.

17.14. On perusal of the evidence forwarded by SEBI, no relationship of PAC between these four Dubai based companies can be deduced. The Dubai investees have stated to bank officials that the source of the funds was from their savings and earlier employment settlement benefits. Whether these Dubai entities had any business relationship among themselves were never known to the Target Company and no records suggest that the Dubai investees were doing business together. The Target Company was not privy to their bank statements or any other records forwarded to the Target Company by SEBI when the preferential allotments were made in favour of Dubai investees. On the contrary, the Bank documents and KYC verification done by bankers suggest that these entities are distinct and un-related. Further, even if it is suggested that they had business relationships that would not be sufficient to conclude that Dubai investees are PACs. The Dubai investees should have common objective to acquire the shares or voting rights of Target Company, which is not evident from any of the records. Rather, Dubai investees are always in compliance with investment agreement and have not interfered with the Board of the Target Company.

18. With respect to the queries raised at the time of the hearing, MMR and AJPL vide their common letter dated April 16, 2018, submitted as follows along with additional submissions: -

18.1. To the query raised at the time of hearing, whether the four owners of the concerned UAE Companies were employees of M/s. Atlas Jewellery or not, the Noticee submitted as follows:

18.1.1. As submitted during the course of hearing on March 14, 2018 the Promoter of AJPL, MMR is in prison in Dubai and the other Director of the company, Ms. Indira Ramachandran, wife of MMR is residing in Dubai. She is old and under medical attention. She is not involved in business activities of MMR and she is not aware of the same and despite good efforts, she could

not obtain the required information at this point of time.

18.1.2. Since MMR is in prison, all his employees have deserted him. Offices and showrooms in Dubai are not operational and AJPL in Cochin too is not functioning. His wife is staying at Dubai. Because of all these reasons, it is informed that records belonging to Atlas Group is not accessible and she is unaware, as there are no employees who can assist Mrs. Indira Ramachandran to access the information and confirm to the query raised by SEBI. The Noticees express their inability to submit the same at this point of time.

18.2. A query was raised at the time of hearing that in the bank account opening form and other documents referred to in Annexure 3, Atlas Jewellery Group address/other details are shown as contact details of the 4 Dubai based companies and its owners. In this regard, the Noticees have submitted as follows:

18.2.1. It is observed from these bank account opening forms that information such as mentioning of email ids, phone numbers and addresses will not make the four investees PACs.

18.3. A query was raised at the time of hearing regarding Settlement Amount shown in Bank A/c opening form of the 4 Dubai based companies. Further, the Noticees were advised to submit details of normal payments and settlement proceeds made to the 4 ex-employees of the concerned Dubai based Companies vis-a-vis other employees and to also furnish bank account statement showing the payment made for such salary and settlement benefits (for a period of 2 years). In this regard, the Noticees have submitted as follows:

18.3.1. It is reiterated that Noticees are not in a position to provide the documents requested by SEBI or confirm their veracity for reasons stated above at this point of time.

18.4. At the time of hearing the Noticees were advised to provide the original authorisation along with Power of Attorney in favour of Mrs. Indira Ramachandran by AJPL and MMR. In this regard, the Noticees submitted as follows:

- 18.4.1. It is submitted that Atlas Group is facing various litigations and the power of attorney needs to be submitted to various authorities as and when required. If the original needs to be submitted to SEBI, Mrs. Indira Ramachandran will not be in a position to defend or represent litigations which may arise in future as MMR is in prison. Further, for reasons mentioned above, since Mrs. Indira Ramachandran is old, and under medical attention and as she does not have any employees to assist her. She is unable to forward us even the authenticated copy of PoA at this point of time.
- 18.5. It is true that MMR did not provide a fresh net worth statement against the email dated 28.09.2015 for the simple reason that MMR was in prison and hence did not have sufficient clarity on his assets and liability position.
- 18.6. It is submitted that change in business after acquisition is a common business practice. i.e. to acquire a company which is underperforming and change its business into a profitable venture. It is submitted that venturing into Gems and Jewellery business is for capitalising on the rich experience and knowledge of promoters in the said field. The whole objective of MMR and AJPL to acquire the company is to replicate the success they had achieved in UAE. Thus, no other significance can be deciphered by change of business after acquisition as tried to be portrayed in the SCN.
- 18.7. It is submitted that the certificates given by Government of Sharjah depict that the four investees have obtained separate commercial licenses and have separate addresses. It also shows that the managers of these companies are also separate. It is thus evident that these companies are un-related to each other.
- 18.8. SCN acknowledges that the four investees have ongoing business of trading in jewellery in Dubai and the shareholder's networth was certified by a chartered accountant. It can be deduced from these facts that these four investees are separate and had their own funds for investments in the Target Company.
- 18.9. Four investees voting in favour of acquisition by MMR is as expected and beneficial to them. The investments can generate returns only if the Target Company is steered by MMR, who had experience in the gold jewellery business.

Since investments are made purely for returns, nothing incongruent can be painted as tried to be portrayed in the SCN.

- 18.10. It is but quite natural that since all the four were coming on similar financial terms, their agreements would quite naturally contain similar terms and conditions, anything different or biased towards one party would be liable to rejection by the others. MMR fails to understand anything untoward in this and this is the normal business practice.
- 18.11. Atlas for four decades had never defaulted and had the best of returns on its investments. The four Dubai based companies were investing in MMR and Atlas brand. Only a Promoter like MMR can have the wherewithal to turn the fortunes of the Target Company and reward its small shareholders and his investors believed in him.
- 18.12. It is a fact that all companies registered in Sharjah Duty Free Zone will have identical incorporation documents (MoA and AoA) as it is given by the Sharjah Duty Free Zone. Further business practice followed in Middle East countries is to form separate vehicles before investments are made. Hence, it would be a possibility to have all the investee companies getting registered during more or less same period. MMR further believes, any or all of these allegations will not make them PAC with him. Nothing of the above facts show that these entities are acting in concert, or these entities were managed by Atlas Group. MMR along with AJPL and four investees never had any common objective or purpose of acquisition of shares or voting rights in or control together. MMR was already in control of the affairs of the Target Company as on the date of investment by the alleged investees. MMR humbly submit that it served no purpose bringing new entities on the Board of Target Company and as stated hereinabove, these investments were accepted by him only to bring in funds for betterment of businesses of Target Company. MMR being an entrepreneur having four decades of experience and three decades of experience as a Banker, it makes no business sense or financial sense, when he already controls the Target Company. This factor is buttressed by the fact that these investors have never exercised any control over the company, never indulged in

any affairs of the company, never disposed their shareholdings, despite the fact that MMR and his wife had to vacate the office of directorship in the Target Company.

18.13. In normal circumstances if the Promoter is ineligible to participate in the affairs of the company, the PAC will attempt to take over the affairs, seek Board positions to save their investment as well as to keep the interests of the Promoters. In this case, none of these investors have taken any such steps. That itself establishes that they are not acting with MMR. They trusted in MMR and invested. They have no intent to participate or control the Target Company.

18.14. SCN alleges that the allotment was adjusted in a way among four investees, so that no company would trigger open offer regulations. It is not clear if SCN is suggesting that MMR and AJPL should have forced the four investees to subscribe to such shareholding which would trigger the open offer under Takeover Regulations. On the contrary, this shows that the four investees are separate entities and made investments with only expectation of returns and were not interested in taking control over the company by triggering an open offer under Takeover Regulations. Further, why a Promoter would allow an outsider to control his company. Should MMR have allowed mere financial investor to have majority control of the Atlas brand in India, which MMR has built so painstakingly for the last so many decades and that also by just investing some Rs. 65 crore.

18.15. It is noted that the SCN alleges that AI Marieja at the time of transfer to Target Company on December 28, 2013 had balance of AED 27,77,275 and out of which AED 27,56,000 had been received from Mankool. It is observed that AED 27,56,000 is received on December 26, 2013 from Mankool in the account of AI Marieja and before that there were around 18 both credit and debit transactions from November 2013. Further, it is also noted that many other entities other than Mankool have credited and debited the account. There are around 15 transactions just in the month of December. This being the case, it is not correct to conclude that Mankool has financed AI Marieja for investment into Target Company by accepting a meagre deposit of AED 27,56,250, just because

it is made on two dates before investment which may, at most indicate a financial relationship between Mankool and Al Marieja. Since SEBI has not examined cash deposits it is not clear from where the major amount of transaction is sourced for investment and therefore it is incorrect to isolate the transaction on December 26, 2013, of Mankool and allege to have financed investment in the Target Company. Similarly, submission is made for the financial transaction between Al Layyah and Mankool.

18.16. Nonetheless, it is submitted that mere transactions between the parties do not indicate that the four investees are PAC with respect to investment in the Target Company. It may only suggest that the four investees had financial relationship among themselves which may be for business or for whatever reason. The same does not indicate finances for investment into Target Company are sourced from Mankool.

18.17. On application of the ratio laid down by the Hon'ble Securities Appellate Tribunal ("**SAT**") in the matter of *Luxury Foarms Ltd. vs. Adjudicating Officer* decided on March 20, 2002, any acquirer or PAC if had made a public announcement that would have been sufficient for the purposes of regulation 10 of Takeover Regulations, 1997 (akin to regulation 3 of Takeover Regulations, 2011). Applying the said logic to the present facts, it is clear that MMR and AJPL have made the public announcement for acquisition of shares in Target Company and therefore insisting that the alleged PAC (assuming the argument of SEBI that the four investees are PAC) should also had made a public announcement is unwarranted. MMR and AJPL humbly submit that it is not the intention of MMR and AJPL to avoid making an open offer which is eventually made after passage of six months. Further, the whole objective of the Takeover Regulations is for providing an exit to existing shareholders in case of substantial acquisition or change in control. In line with the objective of Takeover Regulations, MMR and AJPL did have made an open offer and the same is pending. While this being the case, alleging that the four investees should have also made the public announcement will not advance the objective sought to be achieved by the Takeover Regulations. In this view of the matter, the allegations

against four investees are unsustainable under law.

18.18. Without accepting the observation of the SEBI that four companies are PAC with MMR, if for any reasons SEBI finds that the four investees are PACs, then please declare that the four investee companies are not allowed to participate in the open offer and permit MMR to complete the open offer using the Rs. 14 crore deposited in the escrow account.

18.19. If the observation of the SEBI that the four investee companies are also PAC is upheld, then the Target Company has already exceeded the limit of minimum public shareholding norms. Hence, conducting a fresh public offer will be violating the said regulations.

18.20. MMR and AJPL are willing to divest the shareholding in the Target Company to any ratios as directed by SEBI within a reasonable time frame in any manner suggested by SEBI including finding another strategic investor who can replace MMR and AJPL as Promoters and give an appropriate leadership to the company, so that the ordinary shareholders and people who invested in the Atlas Brand is not impacted.

19. Considering MMR and AJPL have made the submission that the documents provided to them by SEBI is not legible and in-congruent, MMR and AJPL were once again provided with all the relied upon documents in the SCN, vide letter dated June 5, 2018.

20. In the meantime, 6 out of 7 Noticees except the Target Company, pursuant to the SCN had filed settlement application dated August 13, 2018, in the extant proceedings. The said applications were rejected by SEBI and the said information was communicated to the Noticees on December 9, 2020. Pursuant to the same, the Noticees were advised to inform SEBI, vide emails dated January 13 and 20, 2021, whether they are desirous of availing another hearing opportunity in the matter. Further, they were granted time till January 25, 2021, to make additional submissions, if any. In response to the same, MMR and AJPL vide email dated January 20, 2021 sought a hearing opportunity while the Target Company informed vide its email dated January 24, 2021 that it does not have any further submissions to make in the matter.

21. Vide an email dated February 3, 2021, MMR and AJPL were granted an opportunity of hearing on February 23, 2021 through Webex. On the day of the scheduled hearing, Mr. N S Sheshashayee, Advocate, Fox Mandal and Associates appeared as AR of MMR and AJPL for the hearing through Webex. He reiterated the earlier submissions of the Noticees and submitted as follows:

21.1. MMR has not been able to retrieve the salary / benefits given to the owners of the Dubai based companies who were his ex-employees. However, the AR will approach his client for the same.

21.2. MMR had no intention of depriving shareholders. If open offer was made in January 2014 the offer price would have been Rs. 14/- but if the open offer was made in July 2014, the offer price would have been Rs. 21/-.

21.3. The AR proposed that MMR may be allowed to make the open offer and utilize the amount lying in the escrow account.

21.4. MMR does not have liquidity. SEBI may allow MMR to bring in a strategic investor.

21.5. MMR is not aware of the transactions among the four Dubai based companies.

21.6. There is no commonality among the four Dubai based companies.

21.7. As per regulation 22 (19) of Takeover Regulations, the open offer has to be made jointly and severally. MMR has already proposed to make an open offer in June, 2014.

21.8. With respect to certificate regarding MMR's ability to meet the financial obligations, the AR submitted that in June 2014 he was capable of meeting the open offer obligations but because of turn of events he was unable to go through his proposal of making the open offer.

21.9. The AR was advised to submit additional reply, if any, along with proposal for open offer, if any, on or before March 10, 2021.

22. Post hearing, MMR and AJPL made additional submissions vide their letter dated March 10, 2021, wherein they reiterated their earlier submissions and *inter alia* submitted as follows:

22.1. When the four investee companies are not eligible to tender the shares in

the pending open offer, Rs. 14 crore deposited in the escrow account is more than sufficient to complete the offer. SEBI may in that instance, permit the MMR and AJPL to complete the open offer by using the money deposited in the escrow account. Rs. 14 crore was credited to escrow account opened pursuant to open offer made by MMR in June 2014 and interest upon the same is being accrued. In the Target Company, 5,881 public shareholders are holding in total 5,06,54,433 equity shares. If the shares held by four investee companies alleged to be PAC are excluded i.e., 4,64,49,333, there would be 42,05,100 equity shares held by total of 5,877 shareholders in the Target Company. If an offer is made at the price of Rs. 21 (as determined under the LOO submitted to SEBI) assuming that 100% of remaining 42,05,100 equity shares will be tendered in open offer, total amount requires to be paid for such acquisition is Rs. 8,83,07,100/-. Even if we need to calculate the simple interest at the rate of 5.5% (present deposit rates offered by nationalized banks) per annum from 2014 to 2020, it would be approximately Rs. 2,79,43,753.56. The total of which amounts to Rs. 11,62,50,853.56. Thus, the total amount required for completion of open offer to shareholders of the Target Company would be very much within the amount in credit of escrow account.

22.2. As submitted during the course of hearing MMR and AJPL, had not attempted to look for the strategic investor due to lack of clarity if it would be acceptable to SEBI. Presently, MMR and AJPL immediately after the hearing have taken up the proposal to find a suitable investor who can replace MMR as a Promoter. However, few investors even though showed interest in investment, it is impossible to give effect to them as only 15 days was granted to reply on February 23, 2021. MMR and AJPL humbly once again prays that the process of investment would involve various steps such as due diligence, valuation, drawing of agreement which requires minimum time of at least three months. Accordingly, MMR prays that at least three months' time may be granted to him in order to find a suitable investor to replace him as a Promoter.

FINDINGS & CONSIDERATIONS

23. I have perused the SCNs, oral submissions, written submissions and other materials available on record. On perusal of the same, the following issues arise for consideration:

- i. *Whether the four Dubai based companies can be considered to be acting as PACs with AJPL for the investment made in the Target Company, as alleged in the SCN? Further, whether 52.8% of additional shares with an entitlement to voting rights, was acquired by the four Dubai based companies acting as PACs with AJPL, as alleged in the SCN?*
- ii. *Whether the acquisition of additional shares by the four Dubai based companies acting as PACs with AJPL, led to a violation of regulation 3(2) of Takeover Regulations, as alleged in the SCN? If the answer to it is in affirmative, then what is the trigger date?*
- iii. *Whether the acquisition of additional shares by the four Dubai based companies acting as PACs with AJPL, led to the violation of any other provision of securities laws, as alleged in the SCN? Further, whether the actions of all the Noticees, led to any other violations of securities laws in the extant matter as alleged in SCN?*
- iv. *If answers to the aforesaid issue nos. (ii) and (iii) are in affirmative, what directions, if any, need to be issued against the Noticees?*

24. Before proceeding to deal with the issues as enumerated above, I deem it necessary to deal, at the outset, with the preliminary objections raised by the Noticees.

25. One of the objections raised by the Noticees is that SEBI in SCN proceedings may not seek further evidence / document from the Noticees. In this regard it is noted that SCN after placing reliance on the material collected at the time of investigation, levels allegations against the Noticees. The service of the SCN on the Noticees is the first opportunity presented to them to refute the allegations made in the SCN along with supporting documents. In the instant case based on the material made available on record, it was alleged in the SCN that the owners of the four Dubai based entities were ex-employees of the Atlas Group. However, neither the Target Company nor MMR nor AJPL, directly refuted the connections of the owners of the four Dubai

based entities with the Atlas Group which was managed by MMR for over four decades, as per their own submission. In other words, the initial submissions of the Noticees, inadequately addressed the allegation of connection between four Dubai based entities and Target Company, MMR and AJPL. Principles of Natural Justice requires that an opportunity of hearing must be given to the Noticees before an order is passed against them. Hearing opportunity is not a mere formality which is done in a routine manner to comply with the principles of natural justice. Rather, it is a second opportunity which is provided to the Noticees to address the allegation levelled against them in the SCN. To make the hearing process effective, to serve the principles of natural justice, depending on the facts and circumstances of the case, attention of the Noticees may be drawn to allegations which have not been addressed by them or to their submission which has not been supported by documentary evidence. As held by Hon'ble Supreme Court of India ("SC") in the matter of *Liberty Oil Mills vs Union of India & Others* (1984) SCC 465, "*There can be no tape measure of the extent of natural justice. It may and indeed it must vary from statute to statute, situation to situation and case to case.*" Thus, advising the Noticees to submit additional documents in support of their case and effectively address the allegations levelled against them in the SCN is stemming from the fact that Noticees have to be provided ample opportunity to make their case as in the absence of the same, the only material that could be relied upon are the documents relied upon the SCN, which depending on the circumstances, may not support the Noticees. Therefore, advising the Noticees to submit additional documents, if any, embodies the principles of natural justice in letter and in spirit.

26. The other preliminary objection raised by the Noticees is that the documents provided to them are incomplete, not in sequence and illegible. In this regard, I note that the Noticees have not specifically stated the documents which they found to be incomplete and illegible. Thus, their submission is vague and ambiguous. Moreover, as noted in preceding paragraphs, Noticees were once again provided with a copy of all the relied upon documents in the SCN vide SEBI letter dated June 5, 2018. Therefore, the submission of the Noticees is not tenable.

27. I now proceed to deal with the merits of case.

Issue No. 1 - *Whether the four Dubai based companies can be considered to be acting as PACs with AJPL for the investment made in the Target Company, as alleged in the SCN? Further, whether 52.8% of additional shares with an entitlement to voting rights, was acquired by the four Dubai based companies acting as PACs with AJPL, as alleged in the SCN?*

28. It is observed from the record that a preferential allotment of shares in the Target Company was made to four Dubai based companies on January 15, 2014, the details of which are given below:

Sl. No.	Name of the allottees	No of equity shares	Post issue capital(%)
1	Al Juraina Precious Metals & Bullions	96,55,168	19.08
2	Al Layyah General Trading	1,21,88,737	24.06
3	Al Mareiha Precious Metal and Bullions	1,24,94,680	24.66
4	Mankool General Trading	1,21,10,748	23.90
	Total	4,64,49,333	91.70

The details mentioned in the aforesaid table has not been disputed by the Noticees mentioned therein.

29. It has been alleged in the SCN that the four Dubai based companies are connected with each other. In response to this allegation, MMR and AJPL have submitted that these companies are unrelated to each other as they have separate commercial licenses, separate addresses and separate managers. In this regard, it is observed that having separate commercial licenses does not mean that the companies are not connected with each other. Having a separate commercial license is based on, if a company wants to carry out trading in its own name, it requires a commercial license which is in its name. Thus, companies having separate license can still be connected with each other if they have common address, common domain name for email address, phone no., common management, common effective control, etc. Similarly, having separate managers and address does not mean the companies are unrelated with each other, if other circumstances when seen together, evidence otherwise.

30. It is observed that the aforesaid four Dubai based companies have the following similarities / linkages which shows that they are connected with each other:
- 30.1. The four Dubai based companies were incorporated within a span of 13 days between June 10, 2013 and June 23, 2013, having one shareholder and one Director each.
 - 30.2. All the four entities are in the similar line of business.
 - 30.3. Identical tri-partite agreements were entered into with the Target Company and the Promoter of the Target Company agreeing not to exercise control over the Target Company.
 - 30.4. Investment in shares of the Target Company form a major chunk of the assets of the companies, the details of which are given below:
 - 30.4.1. Al Juraina Precious Metals & Bullions - 77.89%
 - 30.4.2. Al Layyah General Trading - 81.95%
 - 30.4.3. Al Mareiha Precious Metal and Bullions - 81.83%
 - 30.4.4. Mankool General Trading - 83.75%
 - 30.5. From the bank account opening form it is observed that in cases of Al Juraina and Al Layya, in the additional remarks column of the form, reference has been drawn to the ownership details of other entity i.e. in the form of Al Juraina reference has been w.r.t to ownership of Al Layyah and vice-versa.
 - 30.6. From the transactions in the bank accounts of the four entities it is noted that:
 - 30.6.1. There are several entries in the books of each of the entities for fund transfers only among themselves and one other entity Satwa Precious Metals and Bullion Trading (entity to whom preferential issue was proposed in postal ballot submitted by MB but no preferential allotment was made).
 - 30.6.2. (a) Any credit to the account from another entity is followed by cash withdrawal either the same day or next day and (b) any cash deposit in the account is either transferred to any one of the remaining 4 entities or is withdrawn the same or next day. Thus, at all points of time, the available balance in each of these accounts is kept at a very minimal level.

30.6.3. Same individuals (Jamsheer with ID no. 784198661879761, Mankool with ID no. 1014744639701 etc.) are operating the aforesaid bank accounts. This is confirmed from the fact that apart from same name, for every withdrawal transaction the individual has provided an ID, and these identification details are found to be the same for a particular individual across bank accounts.

30.6.4. The balance available in each of the accounts at the time of transfer of funds for subscribing to preferential issue was examined. At the time of transfer of funds amounting to AED 2,756,250 by Al Mareiha (on December 28, 2013, to Target Company) the total available balance in the account of said entity was AED 2,777,275. Out of the said balance, an amount equivalent to AED 2,756,000 was received from Mankool. Similarly, at the time of transfer of funds amounting to AED 1,104,000 by Al Layyah (on January 04, 2014, to Target Company) the total available balance in the account of said entity was AED 1,124,825. Out of the said balance, an amount equivalent to AED 60,000 was received from Mankool.

31. It was further observed that the four Dubai based companies were not only connected with each other but were also connected with the Atlas Jewellery LLC as follows:

31.1. From the investment agreement entered with SAIF Zone Authority it is noted that in two cases (Al Juraina and Al Mareija), the address of the investor in the investment agreement is stated as Atlas Jewellery LLC and the contact number (04-2254235) provided is of one of the stores of Atlas Jewellery LLC in UAE.

31.2. From the bank account opening forms of the four entities the following is observed:

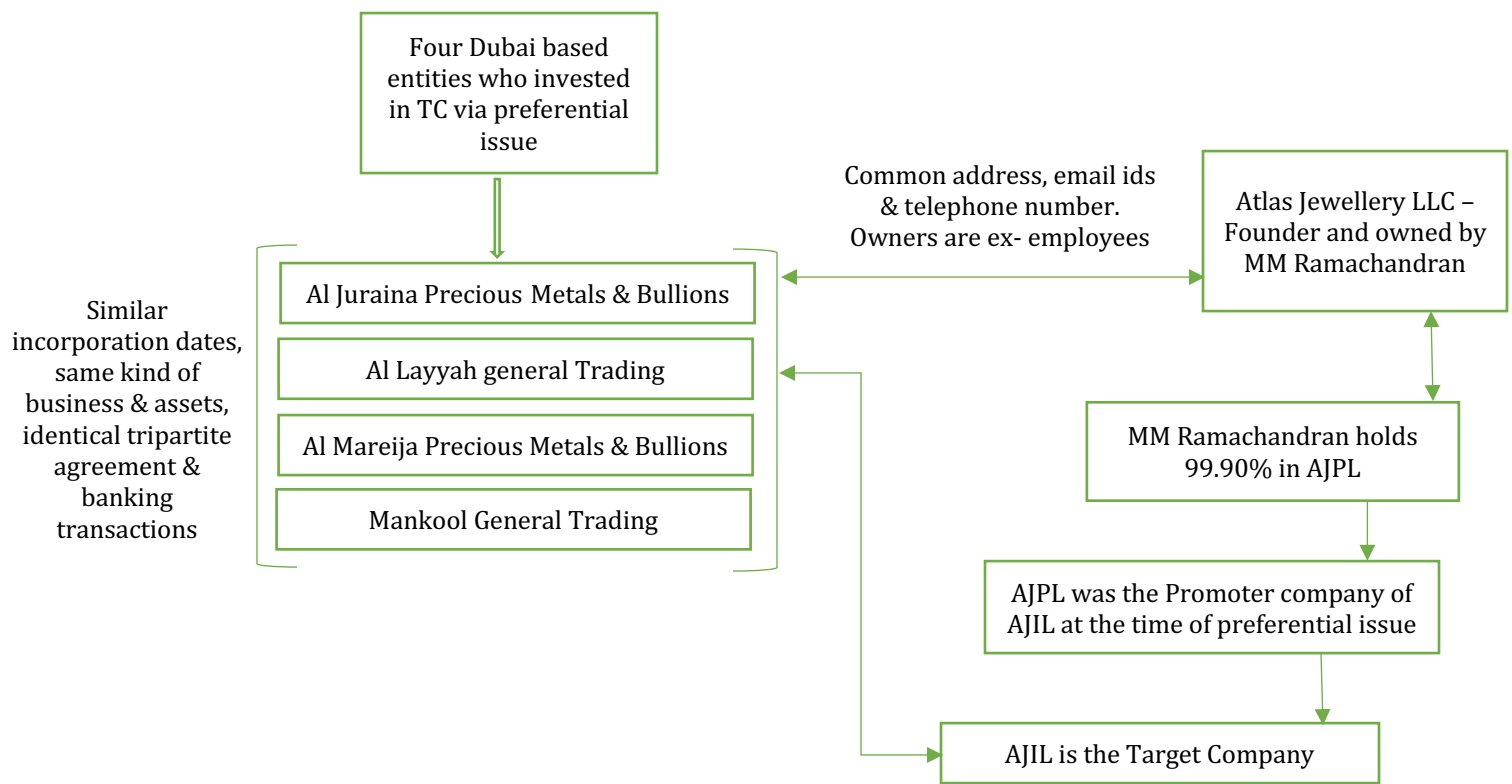
31.2.1. The four individuals (Surjith Poyil – Al Juraina, Jamsheer Narikuni – Al Layya, Sankara Pillai – Mankool and Faizal Koppa – Al Mareija) who are shown as owners of the four entities are ex-employees of Atlas Jewellery

LLC.

31.2.2. In case of Al Mareija in the customer contact information, the telephone number (+97142254235) provided is of Atlas Jewellery LLC store and in two cases (Al Layyah and Al Mareija) the domain name (jamsheer@atlasera.com; Faizal@atlasera.com) of email id is Atlasera.com which is the website of Atlas Group.

31.2.3. In two cases i.e., Mankool and Al Layya, where the individuals have submitted their salary statements for showing proof of funds while opening the accounts, it is noted that the salary received of AED 2400 and AED 3800 (approx.) is from previous employer or payment from client (in one case client being Atlas Jewellery LLC, Dubai).

32. Thus, from the above it is observed that not only the four Dubai based companies are connected with each other, but they are also connected with Atlas Jewellery LLC which in turn is connected with MMR as MMR is the founder of Atlas Jewellery LLC. Further the four Dubai based companies are also connected with AJPL by virtue of MMR holding 99.90% in AJPL. A pictorial representation for indicating relationship among the entities is as under:



33. Now that a connection has been established among the four Dubai based companies with MMR and Promoter of the Target Company, the issue that requires consideration is whether, from the facts of the matter, it can be ascertained that the four Dubai based companies were acting in concert with AJPL for the acquisition made by them in the Target Company. Before proceeding further, it will be relevant here, to quote the definition of PAC as defined under regulation 2 (1)(q)(1) of Takeover Regulations. The same reads as follows:

(q) "persons acting in concert" means, —

(1) persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company.

34. Here it will be relevant to make a reference to the order of Hon'ble SC in the matter of *M/S Daiichi Sankyo Company Ltd. vs. Jayaram Chigurupati & Ors.* decided on July 8, 2010, wherein the Hon'ble Court while referring to the definition of PAC under Takeover regulations, 1997, determined the true meaning of PAC as follows:

"43. To begin with, the concept of "person acting in concert" under regulation 2(e)(1) is based on a target company on the one side, and on the other side two or more persons coming together with the shared common objective or purpose of substantial acquisition of shares etc. of the target company. Unless there is a target company, substantial acquisition of whose shares etc. is the common objective or purpose of two or more persons coming together there can be no "persons acting in concert". For, de hors the target company the idea of "persons acting in concert" is as irrelevant as a cheat with no one as victim of his deception. Two or more persons may join hands together with the shared common objective or purpose of any kind but so long as the common object and purpose is not of substantial acquisition of shares of a target company they would not comprise "persons acting in concert".

44. *The other limb of the concept requires two or more persons joining together with the shared common objective and purpose of substantial acquisition of shares etc. of a certain target company. There can be no "persons acting in concert" unless there is a shared common objective or purpose between two or more persons of substantial acquisition of shares etc. of the target company. For, de hors the element of the shared common objective or purpose the idea of "person acting in concert" is as meaningless as criminal conspiracy without any agreement to commit a criminal offence. The idea of "persons acting in concert" is not about a fortuitous relationship coming into existence by accident or chance. The relationship can come into being only by design, by meeting of minds between two or more persons leading to the shared common objective or purpose of acquisition of substantial acquisition of shares etc. of the target company. It is another matter that the common objective or purpose may be in pursuance of an agreement or an understanding, formal or informal; the acquisition of shares etc. may be direct or indirect or the persons acting in concert may cooperate in actual acquisition of shares etc. or they may agree to cooperate in such acquisition. Nonetheless, the element of the shared common objective or purpose is the sin qua non for the relationship of "persons acting in concert" to come into being."*

35. Further, Hon'ble High Court of Bombay in *KK Modi vs. SAT* decided on November 5, 2001 held as follows:

"...The question as to whether a person is acting in concert with the acquirer, is essentially a question of fact... therefore, in each case, the facts have to be examined to reach a conclusion as to whether a person is or is not acting in concert with the acquirer for the purpose of substantial acquisition of shares or voting rights or gaining control over the target company....".

36. Similarly, Hon'ble SAT while deliberating on who qualifies as PAC in the matter of *Kishore Rajaram Chhabria vs The Chairman, SEBI* decided on August 1, 2003, held as follows:

"Acquisition can be in different spells in different quantities. But nexus of the acquirer and the person acting in concert is relevant. That nexus as the Bhagwati Committee put is "the commonality of objective and the community of interest" If it is established that

two or more persons with a common objective are acquiring shares in a company, it can be safely concluded that they are acting in concert. The commonality of objective is not amenable to any litmus test. The facts and circumstances provide the clue. The conclusion could be on inference also.”

37. Though the aforesaid findings are with respect to the definition of PAC under Takeover Regulations, 1997, the definition of PAC under Takeover Regulations, 2011 has not undergone any material change in terms of its meaning / application. In light of the aforesaid judicial pronouncements, I note that whether persons are or are not acting in concert would depend upon the facts of each case. It is the conduct of the parties that determines their commonality, and this commonality, if any, must be established based on preponderance of probability which is drawn reasonably and supported by the facts and circumstances of the case, and / or by inference from various clues seen in totality.
38. In light of the aforesaid findings by Hon'ble Courts and Tribunal, the connection among the four Dubai based companies and the tripartite agreement entered into between the four Dubai companies respectively with the Target Company and AJPL especially clause 7.2 of the said agreement wherein the four Dubai based companies had relinquished their right to appoint and nominate a Director on the Board of Director of the Target Company in the present and even in future despite their holding significant shareholding, I proceed to consider the submissions of the Noticees.
39. The Noticees have submitted that if the four Dubai based companies were PACs with MMR, he would have had no reason to bring in Rs. 100 crore and lock another Rs. 14 crore in the escrow account and also take on further liability of Rs 42 crore when the four Dubai based companies along with AJPL controlled 94.93% of the share capital. In this regard, I note that PAC is a concept which is acquisition specific which means if for a particular acquisition in a Target Company, A and B are PACs with C, they (A and B) may or may not be PACs with C for another acquisition in the same Target Company. In the instant matter it has been alleged in the SCN that the four Dubai based companies were PACs with AJPL and thus with MMR also, as he owns 99.9%

share capital in AJPL for the acquisition of shares via preferential allotment on January 15, 2014. Further, as noted from the tripartite agreement, the four Dubai based companies had decided never to interfere with the management of the company and had also agreed not to ask for any supervision over the affairs of the company, despite substantial acquisition of shares. They had also agreed to not to do anything which would affect the present management of the company. The fact that four Dubai based companies have all agreed not to have control rights indicate that they all had a prior meeting of minds that they agreed only for substantial acquisition of shares. Therefore, it points to the fact that they were in concert for acquisition of shares not for control. That explains why MMR had brought in Rs 100 crore of its own money so as to have a majority stake (49.67% post issue capital after open offer) in the Target Company which along with AJPL (1.62% post issue capital after open offer) would have given him control over the Target Company. Furthermore, infusion of funds in a company is a two-way need / wish. The first being the company needs funds and hence the infusion is required and secondly, the person infusing the funds, in this case MMR, wants to exercise control over the company. Also, the submission of the Noticees that Mr. M M Ramachandaran brought in another Rs. 14 crore in the way of deposit in the escrow account and also took on further liability of Rs 42 crore, is also devoid of merit as the same was not done out of his own volition but rather it was a statutory mandate under the Takeover Regulations as he had triggered the provisions of Open Offer obligations.

40. Noticees have also contended that MMR had the advantage of a one year lock in period to gain management control and therefore as a Promoter he took a risk. It paid off as he managed to gain full control (51.29%) of the company within a short span of 6 months. It is observed that the submission of the Noticees does not answer the allegation on merit. Secondly, as seen from the records, MMR was never facing any risk as he had a formal understanding with the four Dubai based companies by virtue of the tripartite agreement which gave him unfettered supervision and management control over the Target Company. The status quo in terms of running the affairs of the Target Company which was maintained in January 2014 was not

altered by acquisition of shares by MMR in July 2014.

41. It was submitted by the ARs of the Target Company at the time of hearing that that there is no connection with the four Dubai based companies and the said companies invested in the Target Company only for financial interest. It has been brought out in preceding paragraphs that there exists strong connection between the four Dubai based companies and the Promoter of the Target Company.
42. The Target Company has submitted that there is nothing on record available with Target Company to show that these four investees have acted in concert for acquisition of shareholding and there was no scope for Target Company to reach such conclusion. Moreover, Takeover Regulations does not envisage under any of its provision that the Target Company can determine relationship between investors. In this regard, it is observed that the allegation against the Target Company is not that it has failed in its obligations as mandated under Takeover Regulations. As noted from records, shares were allotted by the Target Company in a preferential allotment unlike a public issue where funds are raised by inviting subscriptions from the public in general. Preferential issues can only be made by pre-negotiation. In the instant matter as part of negotiation for preferential issue, a tripartite agreement was executed between four Dubai based companies respectively with Target Company and AJPL. MMR being the Director of the Target Company and also being in control of AJPL, had the knowledge with respect to the negotiations pertaining to preferential issue. This when seen in light of the connections established in preceding paragraphs between the four Dubai based companies and Atlas Jewellery LLC whose founder is MMR, on a preponderance of probability shows that MMR was aware of the constitution of the four Dubai based companies which were single shareholder companies. A company being a legal entity can only act through its Directors / Board of Directors. Thus, knowledge of Directors is attributable to the company. In the instant matter the knowledge of MMR can be attributed to the Target Company as MMR is its Director. It may also be noted that the owners of the four Dubai based companies were ex-employees of MMR. Thus, MMR had the knowledge of the constitution of the four Dubai based companies irrespective of him being the

Director of Target Company and him being the majority shareholder of AJPL. Therefore, the submission of the Target Company that there was no scope for it to find out connection among four Dubai based companies is untenable as its Director (MMR) had the knowledge about the same.

43. MMR has submitted that if MMR and the four Dubai based companies were acting under a common objective, there would have been no occasion to enter into the said tripartite agreement and that too individually with each of them since this agreement does nothing to enhance or diminish this common intent, if any, but creates an illusion of PAC. In this regard, it is observed that the tripartite agreement was entered into to put in writing and formalise the understanding amongst the parties involved in the agreement and also to ensure that under no circumstances the four Dubai based companies can interfere with the supervision and management of the Target Company. Further, the tripartite agreement was entered into individually with the four Dubai based companies to reflect the transactions, on the surface of it, to be distinct and independent of each other. Thus, purportedly displaying that their shareholding is not clubbed with each other.
44. MMR has further contended that he through AJPL was already having majority control over the Target Company so there was no commercial or other exigency to execute such the said agreement nor to accept equity and invite un-necessary regulatory glare. I note that the AJPL was having 38.91% stake in the Target Company. The same still leaves the door open for a big investor to take over the reins of the company from its existing Promoter. Further, in the instant matter, though prior to the preferential allotment of equity shares, MMR through AJPL was in control of the Target Company, the company during the relevant period (when MMR took over the Target Company) needed funds. But there was also other priority for MMR during the said period which is of not ceding control of the Target Company thereby giving up the supervision and management of the Target Company. Thus, there was need to balance both the priorities and hence, a tripartite agreement was entered into between the four Dubai based companies respectively with the Target Company and AJPL. The said tripartite agreement not only resolved the need for funds for the

Target Company but it also left the then management of the Target Company unaffected from the interference and supervision of the four Dubai based companies, indefinitely. Also, MMR by stating that there was no commercial or other exigency to execute such the said agreements, is contradicting his own submissions as he has also stated that when he took over the Target Company (erstwhile M/s GEE EL Woollens Pvt. Ltd.), his immediate strategy was to make the Target Company operational for which he needed funds. His inability to arrange funds of his own led him to seek investments from Dubai based companies. Therefore, there did exist a commercial exigency for issue of preferential capital while retaining supervision and management over the Target Company by executing the said tripartite agreements.

45. The Target Company has made the following submissions with respect to the parties to the tripartite agreement:

45.1. Firstly, AJPL being a confirming party is proof enough that the agreement was a purely commercial agreement with each party being distinct, having unrelated objectives to participate and driven by their own and distinct agenda.

With respect to the above, I note that the commercial nature of the agreement is not in dispute to the extent that funds were infused into the Target Company. It has been noted earlier that the Promoter of the Target Company had majority voting rights in the Target Company prior to preferential allotment and the composition of the Board of Directors was such that it was tilted in favour of the Promoter of the Target Company (The Board of Directors of the Target Company had four Directors. MMR was the Chairman of the Board of Directors and out of the remaining three Directors, two were Independent Directors while the last Director was the wife of MMR and she was Non- Executive, Non-Independent Director of the Target Company). Even after, post preferential allotment, the status quo with respect to supervision and management of the affairs of the Target Company was maintained by virtue of the tripartite agreement. In this scenario, the agenda of each party to the said agreement, prior to preferential allotment or at the time of entering into the tripartite agreement, can be put as under:

- Target Company – The Target Company wanted funds and the continuity of the present management / Board of Directors, post preferential allotment and no interference from the preferential allottees in the management of the Target Company.
- AJPL – Being the Promoter of the Target Company to ensure that post preferential allotment, its supervision and management over the affairs of the Target Company is not reduced and the Target Company's need for funds is also addressed.
- Four Dubai based companies – To ensure that nothing affects the present management of the Target Company. In other words, leaving the management of the Target Company in the hands of the Promoter of the Target Company. Further, they also wanted to infuse funds in the Target Company.

Thus, from the above it can be seen that the common thread among the parties involved in the agreement was to address the issue of funds required by the Target Company and to ensure that the Promoter of Target Company / MMR has supervision and management over the affairs of the Target Company, even though significant stake was to be held by “purportedly independent” parties. To put it differently, despite the four Dubai based companies bringing in significant funds and holding significant stake in the Target Company, post preferential allotment, had the same common objective as that of AJPL and MMR. The same in the given facts and circumstances of the case, can be seen as one of the indicators of common objective / purpose amongst them for the acquisition of shares in the preferential allotment.

45.2. Secondly, the Target Company has argued that the agreement on behalf of the Target Company was not signed by MMR but by the Company Secretary of the Target Company. This clearly indicates that as far as the agreement goes, the rights and interest of the Target Company is distinct from that of MMR and the other signatories. Hence, he is not representing Target Company interest in the

agreement and vice versa.

With respect to the above, I note that signing of an agreement by the Company Secretary does not indicate in any way that the rights and interest of the Target Company is distinct from that of its Promoter. The signing by the Company Secretary is a procedural formality. The agreement must be approved by the Board of Director of the Target Company to be legally binding on the Target Company. And as stated earlier, the Promoter of the Target Company already had majority voting rights, prior to the preferential allotment and was also in control of the Board of Directors resulting in the Promoter being in charge of managing the daily operations of the Target Company. In light of the said discussion and in the absence of any explanation from the Target Company as to how the rights and interest of the Target Company are distinct from that of MMR, the submission of the Target Company is unacceptable.

- 45.3. Thirdly the Target Company has argued that the role of the Target Company in the agreement is only to ensure that the preferential allotment process is conducted as per the provisions of law and nothing more or less.

With respect to the above, I note that to ensure that the preferential allotment process is conducted as per the provisions of law, there is no obligation under law that the Target Company has to enter into a tripartite agreement with the preferential allottees. As a general rule, every member of a company limited by shares and holding equity capital therein, has a right to vote in proportion to his share in the paid up equity capital of the company. However, in the present case, the four Dubai based companies chose not to exercise their right with respect to any item concerning the control and management of the Target Company. Therefore, it was only to ensure that the said understanding is explicit and unambiguous and also the fact that it had a bearing not only on the Target Company but also on the existing majority shareholder and management of the Target Company, a need arose to enter into a tripartite agreement.

- 45.4. The Target Company has submitted that most importantly by not allowing MMR to represent the interests of the Target Company, the company had erected

a chinese wall between itself and MMR by firstly ensuring that he did not represent the interest of the company and secondly having AJPL as the confirming party and thereby binding MMR into ensuring that there is due compliance of regulatory requirements as far as the preferential allotment process goes.

With respect to the above, I note that it is incorrect to state that MMR did not represent the interest of the Target Company. The decision to allot shares on preferential basis has to be approved by the Board of the Target Company. He being the Chairman of the Board of Directors along with his wife as a Non-Executive, Non-Independent Director was in control of the Board of Directors which had two other Independent Directors. Thus, MMR being the Chairman of the Board of Directors can be reasonably said to be involved in the decision-making process of the Target Company which should be in the interest of the Target Company. Moreover, in the given situation, the interests of the Target Company and MMR were in alignment as both of them wanted the status quo in terms of supervision and management of the Target Company to be maintained, pre and post preferential allotment. The second leg of submission of the Target Company that by having AJPL as the confirming party, the Target Company ensured that MMR is bound to comply with the regulatory requirements as far as the preferential allotment process goes, in the absence of further explanation, is vague. However, from the wording of the tripartite agreement, it is clear that the purpose of the agreement was to give enforceable right to AJPL that the preferential allottees will not take control of the Target Company despite having significant shareholding.

46. The Target company has further contended that if the Promoter and the four Dubai companies were PACs, then there was no need for the Promoter to pay a premium for the purchase at Rs. 10 per share as compared to only Rs. 4 per share paid by the four Dubai investees, a premium of nearly 250% within a span of less than six months for a company which is yet to start its commercial operations. In this regard, as observed in preceding paragraphs, the tripartite agreement maintained the status

quo with respect to the management and supervision of the affairs of the Target Company. It did not give him new control over the Target Company. Rather, due to allotment of shares to the four Dubai based companies, MMR's / AJPL own direct shareholding in the Target Company had reduced to 3.23%. The fact that he paid premium to purchase shares, shows that the driving reason could only be his need to increase his shareholding in the Target Company / take majority control of Target Company and not leave anything to chance or to fully depend on a tripartite agreement. Further, the company was in need of funds and MMR being a Promoter related entity, it was mutually beneficial for him to meet the requirement of funds by the Target Company. Thus, the need to acquire the shares of the Target company, even if it is available at a premium. Moreover, pricing of a preferential issue is as per the applicable provisions of ICDR Regulations and has nothing to do with the previous pricing of a preferential issue done by the company. Thus, comparing pricing of preferential issues across months, is untenable. Further, the submission that MMR did not want to leave anything to chance or to fully depend on a mere tripartite agreement is also not acceptable as the tripartite agreement was a legally binding agreement which defined the rights of the four Dubai based entities vis-à-vis the Target Company. Once the said agreement has been executed and acted upon and shares have been allotted pursuant to it, it is not upon the parties to renege from its terms. Thus, there was nothing left to chance when it came to supervision and managing the affairs of the Target Company in light of the unequivocal terms of the tripartite agreement.

47. It has been submitted by the Target Company that the present Board of the company is independent and has no knowledge or information regarding the companies with which the four investees were employees including Atlas Jewellery LLC, mentioned in the SCN. It is observed that when the preferential allotment of shares was done by the Target Company in January 2014, the company was managed and supervised by MMR who was part of the Promoter Group and was the Chairman of the Board of Directors. MMR was also the founder of Atlas Group whose ex-employees were the owners of the four Dubai based companies. The same leads to an inference that the

Target Company had the knowledge that the owner of the four Dubai based companies had connection with its Promoter and Director. A subsequent change in the constitution of Board of Directors of the Target Company will not alter the knowledge / information that the company had in its possession previously. The said knowledge / information when coupled with other facts and circumstances, if results in a liability for the Target Company, the present management cannot disown such a liability of the Target Company. The reason being that a liability of company does not cease to exist with the change in the management of the company, as the liability exists so long it is attributable to the company and the company is in existence. Existence of a company is perpetual unless it is wound up as per the provisions of Companies Act, which is the case in the instant matter.

48. Further, the Target Company has submitted that within a brief period of acquisition of the Target Company, MMR and his wife had resigned from the Board of Target Company and MMR was sentenced to prison term. In this regard, I note that the said fact is not relevant to the allegation as levelled in the SCN, as at the time of preferential allotment as well as when MMR made the public announcement of Open Offer, MMR and his wife were part of the Board of the Target Company. The Target Company has also submitted that the companies of the Promoter/ MMR cannot be considered to be sister concerns or related companies of the Target Company as in the peculiar fact circumstances, Promoter is not part of the Board of the Target Company. It is observed that the allegation against the four Dubai based companies in the SCN is that they are PACs with AJPL. The allegation is not that they are sister concerns or related companies of the Target Company. Moreover, during the relevant time in January 2014, Promoter of the Target Company was represented by MMR on the Board of the Target Company.

49. Further, the Target Company has contended that the Target Company has no mandate or powers to seek personal and other information from the four Dubai based companies, statutorily or otherwise, just in the same manner it has no personal information of its 4,000 plus shareholders. It is observed that in the instant matter, a situation as contemplated by the Target Company which would require the Target

Company to seek personal information from the owners of the four Dubai based companies never arose, as the Target Company already had the information of existence of a connection among the owners of the aforesaid Dubai based companies through its Promoter and Director, as discussed in preceding paragraphs. This coupled with the fact of execution of identical tripartite agreement defining Dubai based companies, rights and role in the Target Company should have led to further meaningful enquiries. Thus, the issue in the instant matter whether the Target Company had the power to seek information from preferential allottees, is only academic as it was already in possession of material information related to their inter-connectedness. Moreover, seeking information from a potential preferential allottee with which the company is entering into one-on-one negotiation for a substantial stake sale is different from seeking information from thousands of its own shareholders.

50. The submission of the Target Company that for conducting a preferential allotment, the Target Company has mandated only collection of PAN card details, which the Target Company has done and there is no scope to travel beyond the statutory mandate by the Target Company, is untenable as it is a very selective reading of the provisions of regulations concerning preferential allotment. The other relevant provisions pertaining to a preferential issue are regulation 73 (1) of ICDR Regulations and Section 173 (2) of Companies Act, 1956, where the company making a preferential issue must disclose to its shareholders all the material information before seeking their approval in the general meeting. In the instant matter, the Target Company had the knowledge of connection of the four Dubai based companies with its Promoter and Director as the knowledge of its Director, MMR is attributable to the Target Company and the aforesaid knowledge was also independently accessible to the Target Company as it is a signatory to the tripartite agreement. The information pertaining to the connection of the four Dubai based companies with Promoter and Director of the Target Company is a material information particularly in the context of the four Dubai based companies holding more than 90% shareholding in the Target Company, post preferential allotment and as such was

required to be placed before its shareholders, which in the instant matter has not been done. Therefore, to submit that the only statutory mandate vis-à-vis proposed preferential allottees is to collect their PAN card details, is being oblivious to the other statutory requirements pertaining to the proposed preferential allottees.

51. One of the submissions of the Target Company is that all the four Dubai based companies had substantial experience in jewellery (more than decade plus) hence are aware of the nuances of the trade and have invested in the brand value of Atlas. Their investments therefore in the Target Company would be one which is based on their assessment of the risks and returns. In this regard, I note that the submission of the Target Company is not supported by any due diligence report which it would have been done at the time of preferential allotment with respect to the four Dubai based companies. Further, it has been noted in the preceding paragraphs that not only the four Dubai based companies are connected amongst each other but are also connected to the Atlas Jewellery LLC. This when seen along with the identical tripartite agreement signed by them limiting their role and rights in the Target Company and the fact that the four Dubai based companies who were incorporated at the same time and were in existence for only 5 months, had a major chunk of their assets as investment in shares of the Target Company, casts a shadow of doubt over the objectivity and independence of the investment decision making process of the four Dubai based companies. Moreover, as seen from the bank account opening form that two of the owners of the four Dubai based companies do not have work experience of more than a decade and one of them has work experience as an accountant. Even if the submission of the Target Company is accepted, it still does not deal with the allegation at hand which is that of the four Dubai based companies were acting as PACs with AJPL.

52. MMR has submitted that the information obtained from bank opening forms such as email ids, phone numbers, addresses will not make the four Dubai based companies, PACs. The said submission of MMR is acceptable. It is also not the case at hand. The said commonalities between the four Dubai based companies were emphasised to establish a connection amongst them and the Atlas Group / Atlas Jewellery LLC

whose founder MMR was part of the Promoter Group as he was holding 99.9% in AJPL, the Promoter of the Target Company. As discussed in preceding paragraphs, whether or not the four Dubai based companies were acting as PACs has to be inferred based on their conduct and their common interest, as has been elaborated earlier.

53. MMR and AJPL have further submitted as follows:

53.1. The four Dubai based companies had their own funds for investment as they have an ongoing business of trading in jewellery in Dubai and the shareholder's networth was certified by a chartered accountant. The same shows that the companies had their own funds for investments in the Target Company.

With respect to the above, I note that the allegation against the aforesaid companies in the SCN is that they were acting as PACs with AJPL for the purpose of preferential allotment done on January 15, 2014. The issue at hand does not deal with how and who funded the acquisition of shares by the four Dubai based companies. Moreover, the chartered accountant had certified the financial statements of the four Dubai based entities. The same is not equivalent to certifying the networth of the individual owners of the four Dubai based entities nor the source of such funds.

53.2. Four investors voting in favour of acquisition by MMR is as expected and beneficial to them. In this regard, I note that the aforesaid was highlighted as one of the circumstances to show that the four Dubai based companies were acting in sync with each other to maintain the supervision and management of the Target company in the hands of MMR.

53.3. It is quite natural that since all the four were coming on similar financial terms, their agreements would quite naturally contain similar terms and conditions, anything different or biased towards one party would be liable to rejection by the others. The Noticees fail to understand anything untoward in this and this is the normal business practice.

It is observed that in normal course of business, each company has its own investment strategy depending on its net worth, assets and liabilities and time

horizon. Therefore, it is not sacrosanct that multiple investors investing at the same time, will negotiate same terms as that of the next investee. Each investor will negotiate terms that is beneficial to its interests. In the present matter, the four Dubai based companies have identical tripartite agreement terms as they did not want to interfere with the supervision and management of the company. This when seen in isolation may or may not arouse suspicion. However, when seen along with the fact that the four Dubai based companies are connected with each other, connected with the Promoter and Director of Target Company, substantial investment by the said companies was done within few months of incorporation etc. leads to an inference that the transaction (preferential allotment) was not done at arm's length. Thus, to submit that four Dubai based companies coming together on similar terms is a normal business practice, is to keep each fact and circumstance in silos and not addressing the cumulative circumstances in the matter.

53.4. Further, business practise followed in Middle East countries is to form separate vehicles before investments are made. Hence, it would be a possibility to have all the investee companies getting registered during more or less same period.

With respect to the above, I note that the submission of the Noticees that it is a common business practice in the Middle East countries to form separate vehicles before investments are made, is not supported by any documentary evidence. Hence, it is difficult to accept the same. Moreover, when near about incorporation dates are seen in light of other common traits shared by the four Dubai based companies viz common address, common email ids, common telephone nos., owners being ex-employees of MMR etc., the cumulative effect of all the said circumstances as described in preceding paragraphs would definitely give rise to a cause for a prudent person to make further meaningful inquiries to establish the identity of the said companies.

53.5. In normal circumstances if the Promoter is ineligible to participate in the affairs of the company, the PAC will attempt to take over the affairs, seek Board positions to save their investment as well as to keep the interests of the

Promoters. In this case, none of these investors have taken any such steps. That itself establishes that they are not acting with MMR.

It is observed that a PAC is acquisition specific concept. The submission of the Noticees that once the Promoter becomes ineligible, the PAC will take over, is inappropriate, as management of the affairs of the company is in the hands of Board of Directors. The composition of the Board of Directors can be changed either by the majority shareholder who by virtue of his voting rights has the right to appoint a Director. In the given case, the four Dubai based companies have relinquished their right to interfere with the management and control of the Target Company and therefore, they not taking any steps is not on their own volition, but it is because of a legally binding tripartite agreement.

53.6. SCN alleges that the allotment was adjusted in a way among four investors, so that no company would trigger open offer regulations. It is not clear if SCN is suggesting that the Noticees should have forced the four investors to subscribe to such shareholding which would trigger the open offer under Takeover Regulations.

It is observed that the aforesaid fact was emphasised in the SCN as one of the circumstances to establish that the Target Company, MMR, AJPL and the four Dubai based companies were in sync with each other, by keeping the allotment below 26% of the total equity share capital, so as to ensure that a detailed scrutiny of the preferential allottees do not take place, which inevitably would have, triggered the open offer.

53.7. Further, it was contented that why a Promoter would allow an outsider to control his company. Should MMR have allowed mere financial investor to have majority control of the Atlas brand in India, which he has built so pain-stakingly for the last so many decades and that also by just investing some Rs. 65 crore. With respect to the above, I note the presumption in this argument is that the Dubai based companies are not PACs because they are sharing control as strangers. However, the fact of the matter is that they are not sharing control. It may be noted that PAC in the instant case is PAC for substantial acquisition of shares not for control since they have relinquished it through the tripartite

agreement. Therefore the argument why a Promoter would allow an outsider to control his company, therefore, they are not PAC does not hold good.

54. It is observed that the various financial transactions which have been stated in the SCN among the four Dubai based entities, is to establish a connection and commercial relationship amongst them including the frequency of the transaction which was very high and a pattern of their transaction. The same was not to allege that the four Dubai based entities have financed each other to subscribe to the preferential allotment.

55. In light of the aforesaid discussions, the findings that have been arrived at based on the material made available on record and upon consideration of submissions made by the Noticees, can be summarised as follows:

55.1. The four Dubai based companies are *inter se* connected with each other and are also connected with MMR and AJPL.

55.2. As part of negotiation for preferential issue, a tripartite agreement was executed among four Dubai based companies, Target Company and AJPL. MMR being the Director of the Target Company and also being in control of AJPL, had the knowledge with respect to the negotiations pertaining to the preferential issue. Thus, the knowledge that there exists connection among the four Dubai based companies and with him, can be attributed to the Target Company as its Director (MMR) and its Promoter (AJPL) had the knowledge about the same.

55.3. There did exist a commercial exigency for executing the said tripartite agreements as the Target Company needed funds to become operational.

55.4. The common objective among the parties involved in the tripartite agreement was to ensure that Promoter of Target Company / MMR has supervision and management over the affairs of the Target Company.

55.5. MMR had brought in Rs 100 crore of its own money to have a majority stake in the Target Company which would have given him higher degree of independent control over the Target Company and it would also fulfill the requirement of funds required by the Target Company.

55.6. By bringing in the four Dubai based companies, MMR never faced any risk of losing management control over the Target Company as he had a formal understanding with the said companies by virtue of the tripartite agreement which gave him unfettered supervision and management control over the Target Company. Accordingly, there was a need to put the said understanding in writing as it would ensure that under no circumstances the four Dubai based companies can interfere with the supervision and management of the Target Company.

55.7. Pricing of a preferential issue is as per the applicable provisions of ICDR Regulations and has nothing to do with the previous pricing of a preferential issue done by the company. Thus, comparing pricing of preferential issues across months, is untenable.

55.8. Liability incurred by a company does not cease to exist with the change in the management of the company, as the liability exists so long it is attributable to the company and the company is in existence.

56. Now, I proceed to answer the issue whether the four Dubai based companies were acting as PACs with AJPL for the purpose of substantial acquisition of shares in the preferential issue of equity shares of the Target Company on January 15, 2014. In the given facts of the case, it has been established in the preceding paragraphs that there exists not only a connection among the four Dubai based companies, AJPL and MMR based on common address, phone no., common domain name for email id, prior professional connection etc. but there also exists multiple similarities / commonalities amongst them viz., similar incorporation dates, same line of business, frequent fund transfers, a pattern of credit and debit from the bank accounts, same person operating the said bank accounts etc. Further, within few months (5 months) of their incorporation, the said four companies invested substantial money in the Target Company such that the investment was almost 80% of their asset portfolio. The aforesaid when seen along with the fact that all the four Dubai based companies entered into a tripartite agreement wherein inspite of holding substantial shares and / or voting rights, they decided to not interfere with the management and supervision of the Target Company, based on a preponderance of probability leads

to a conclusion that the common objective of the four Dubai based companies was to ensure that AJPL, the Promoter of the Target Company, in effect MMR's unfettered management and supervision over the affairs of the Target Company, continues. In other words, the four Dubai based companies pursuant to an informal understanding amongst each other and a formal understanding (tripartite agreement) with the Promoter of the Target Company, were cooperating amongst each other in the acquisition of shares so that post acquisition of shares, the Promoter of the Target Company manages the affairs of the Target Company and the status quo is maintained with the composition of the Board of Directors of the Target Company.

57. In view of the aforesaid discussions, it is held that the AJPL being the Acquirer acquired shares with PACs namely Al Juraina Precious Metals & Bullions, Al Layyah General Trading, Al Mareiha Precious Metal and Bullions and Mankool General Trading, in the Target Company during the preferential allotment made by the Target Company on January 15, 2014.

58. Further, credence to the aforesaid finding is lent by the following:

58.1. Post preferential allotment to the four Dubai based companies – Voting in favour of resolution which proposed to allot 5 crore shares of the Target Company to MMR on preferential basis, demonstrates the common objective of the four Dubai based companies, in action.

58.2. Submission by the Target Company – One of the submissions of the Target Company is that one of the criteria which was looked into by MMR for choosing the four Dubai based companies was that they will never interfere into the management of the Target Company nor will they ask for any supervision over the affairs of the Target Company. Thus, MMR / AJPL were certain in what they were looking, for in their proposed preferential allottee(s). Therefore, it can be held that AJPL was acting in concert with the four Dubai based entities as before taking the said Dubai based companies onboard, AJPL had an understanding with them which required them to not exercise certain of their rights which naturally comes with substantial acquisition of shares in a company.

59. This brings us to the discussion and determination of whether AJPL along with the four Dubai based companies acquired 52.8% of additional shares with an entitlement to voting rights as on January 15, 2014 as envisaged under regulation 3(2) of Takeover Regulations. Regulation 3(2) states as follows:

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

Provided that such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding

Explanation. — For purposes of determining the quantum of acquisition of additional voting rights under this sub-regulation,—

(i) gross acquisitions alone shall be taken into account regardless of any intermittent fall in shareholding or voting rights whether owing to disposal of shares held or dilution of voting rights owing to fresh issue of shares by the target company.

(ii) in the case of acquisition of shares by way of issue of new shares by the target company or where the target company has made an issue of new shares in any given financial year, the difference between the pre-allotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition.

...”

60. On a reading of the aforesaid regulation, it is observed that the first requirement is

to find out whether the Acquirer/PACs were already having shareholding with an entitlement to exercise more than 25 per cent of voting rights and less than maximum permissible non-public shareholding. It is noted from the records that prior to the preferential allotment, the Acquirer, AJPL was holding 38.91% of equity share capital in the Target Company.

61. The second requirement is to consider the “additional shares” acquired by the Acquirer/PACs. It is noted from the records that post the preferential allotment of shares to the PACs, the total equity share capital held by the PACs was 91.70% of equity share capital of the Target Company as on January 15, 2014. Thus, the total share capital held together by AJPL which reduced from 38.91% to 3.23%, as a result of issue of additional equity shares and PACs (91.70%) is 94.93%, post preferential allotment. Therefore, additional acquisition of shares / voting rights acquired by the Acquirer with PACs, is 56.02% (94.93% - 38.91%) and not 52.8% as alleged in the SCN.

Issue No. 2 - *Whether the acquisition of additional shares by the four Dubai based companies acting as PACs with AJPL, led to a violation of regulation 3(2) of Takeover Regulations, as alleged in the SCN? If the answer to it is in affirmative, then what is the trigger date?*

62. The text of regulation 3 (2) of Takeover Regulations has been reproduced above. As noted in preceding paragraphs on account of acquisition of shareholding with an entitlement to exercise 56.02% voting rights in the Target Company by the Acquirer and PACs on January 15, 2014 (in the financial year 2013-2014) whose pre-acquisition shareholding with an entitlement to exercise voting rights was 38.91% in the Target Company, and in the absence of any exemption available automatically under regulation 10 or under regulation 11 of Takeover Regulations, to the Acquirer and PACs, it is held that Acquirer and PACs have violated regulation 3(2) of the Takeover Regulations.

63. The second issue that arise for determination is with respect to the date on which the Open Offer obligation is triggered. As per regulation 13 (1) of Takeover Regulations, public announcement for Open Offer has to made on the date of agreeing

to acquire shares or voting rights in, or control over the Target Company. Further, as per regulation 13 (2) (g) of Takeover Regulations, such public announcement, *“pursuant to an acquirer acquiring shares or voting rights in, or control over the target company, under preferential issue, shall be made on the date on which the board of directors of the target company authorises such preferential issue.”* In the instant case, it is observed from the tripartite agreement that the Board of Directors of the Target Company had approved the investment by the four Dubai based companies on November 4, 2013. Thus, the trigger date to make the public announcement for Open Offer by AJPL and the four Dubai based entities is November 4, 2013, as on that date Board of the Target Company authorized the preferential issue. It is noted that the percentage of shares that were ultimately allotted to the four Dubai based entities on January 15, 2014, is at slight variance with what was initially agreed upon by them with the Target Company. The same is however, not material as the four Dubai based entities who were PACs with the Acquirer were allotted additional shares which entitled them to exercise more than five per cent of the voting rights in the Target Company.

Issue No. 3 - *Whether the acquisition of additional shares by the four Dubai based companies acting as PACs with AJPL, led to the violation of any other provision of securities laws, as alleged in the SCN? Further, whether the actions of all the Noticees, led to any other violations of securities laws in the extant matter as alleged in SCN?*

64. Before, proceeding further, it will be appropriate here to determine whether the four Dubai based companies can be classified as Promoters. As per regulation 2(1)(s) of Takeover Regulations, promoter has the same meaning as in ICDR Regulations and includes a member of the promoter group. Promoter has been defined under regulation 2(1)(za)(i) of ICDR Regulations to include person or persons who are in control of the issuer. On applying the definition of promoter in the facts and circumstances of the case, it is observed that post preferential allotment of equity shares to the four Dubai based companies who as discussed in preceding paragraphs are connected with each other, have 91.70% of equity share capital of the Target Company as on January 15, 2014. Thus, when seen only in terms of share capital, the

four Dubai based companies have absolute majority over the Target Company. However, in the peculiar facts and circumstances of the matter it is observed that as per the tripartite agreement executed between the four Dubai based companies respectively with the Target Company and AJPL, more specifically under the heading “Control” in the said tripartite agreement under clauses 7.1 and 7.2., the four Dubai based companies have agreed neither to interfere in the management of the Target Company nor to ask for any supervision over the affairs of the Target Company. Further, they have also agreed that the Target company shall be managed by the present management. As has been discussed in preceding paragraphs, the common objective of the four Dubai based companies was to give unfettered supervision and management control over the Target Company to MMR. In other words, they wanted and agreed that MMR to be in control of the Target Company. Here, it is relevant to reiterate that the four Dubai based companies did not acquire control in the Target Company as they did not have the right to appoint majority of the directors or to control the management or policy decisions, by virtue of their shareholding as they were bound by the terms of the tripartite agreement. Also, they never had the common objective of acquiring control over the Target Company. The acquisition of 91.70% of equity share capital of the Target Company by the four Dubai based companies effectively ensured that the Promoter of the Target Company, AJPL through MMR maintains its control over the Target Company. To put it differently, the four Dubai based companies by their actions have not only supported the endeavor of MMR to exercise control over the Target Company but they also strengthened it. The acquisition of shares by the four Dubai based companies with the common objective of non-interference and absence supervision over the affairs of the Target company, is one of the pillars which enabled AJPL through MMR, to wield control over the Target Company. Therefore, in the peculiar facts and circumstances of the case, it is held that the actions of the four Dubai based companies leads to an inference that they as persons acting in concert with the Promoter having agreed with the Promoter for the Promoter to maintain the control of the Target Company and hence they also have to be treated as Promoters. It is clarified that not everyone who supports the Promoters who are in control of the

company should be categorized as Promoters. In the present matter, not only the four Dubai based companies supported the Promoter but also strengthened Promoter's control over the Target Company especially when they are PACs for the purpose of substantial acquisition. Also, as per AJPL and MMR's own submission is that one of the driving reasons for the allotment of shares on a preferential basis to the four Dubai based companies was the objective of the four Dubai based companies, to not change the Board composition of the Target Company, so as to strengthen the existing control structure within the Target Company, which was exercised by MMR. Therefore, the cumulative effect of the above circumstances has led to the categorization of the four Dubai based companies as Promoters. Hence, each matter must be examined as per its own facts and circumstances.

Violations due to acquisition of additional shares

65. It is alleged in the SCN that AJPL and the four Dubai based companies have also violated Rule 19A (2) of SCRR read with Section 21 of SCRA read with clause 40A of Listing Agreement. The text of the said provisions are reproduced below:

Conditions for listing.

21. *Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange*

Continuous Listing Requirement.

19A. (1)...

(2) Where the public shareholding in a listed company falls below twenty five per cent. at any time, such company shall bring the public shareholding to twenty five per cent within a maximum period of twelve months from the date of such fall in the manner specified by the Securities and Exchange Board of India.

Listing Agreement

40 A *Minimum level of public shareholding*

The company agrees to comply with the requirements specified in Rule 19(2) and Rule 19A of the Securities Contracts (Regulation) Rules, 1957.

66. It is observed that pursuant to the acquisition of additional shares by AJPL and the four Dubai based companies on January 15, 2014, the total shareholding of the Promoters of the Target Company was 94.93%. As a consequence of the same, the resultant public shareholding in the company had fallen below 25% i.e., it reduced from 61.09% to 5.07%. Further, as per Rule 19A (2) of SCRR, considering the Target Company was compliant with minimum public shareholding prior to preferential allotment, it had a year from January 15, 2014 to reduce its Promoter shareholding to 75% of the total equity share capital of the company. However, it is noted from records that the Target Company has not taken any steps to comply with minimum public shareholding norms. Therefore, it is held that the Target Company has violated Rule 19A(2) of SCRR read with Section 21 of SCRA read with clause 40A of Listing Agreement. Further, as AJPL and the four Dubai based companies are held to be Promoters, it is their responsibility also to comply with minimum public shareholding norms. Therefore, it is held that AJPL and the four Dubai based companies have also violated Rule 19A(2) of SCRR read with Section 21 of SCRA read with clause 40A of Listing Agreement.

67. It is further alleged in the SCN that the Target Company has violated clause 35 of Listing Agreement read with Section 21 of SCRA. The text of clause 35 of Listing Agreement is reproduced below:

35. The company agrees to file with the exchange the following details, separately for each class of equity shares/security in the formats specified in this clause, in compliance with the following timelines, namely:-

a. ...

b. On a quarterly basis, within 21 days from the end of each quarter.

...

68. As discussed in the proceeding paragraphs, the knowledge / information of MMR is attributable to the Target Company. Therefore, it can be held that the Target Company was in possession of information that the four Dubai based companies who have acquired substantial shareholding in the Target Company, were connected with MMR and in turn with the Promoter of the Target Company, AJPL as MMR holds

99.9% shareholding in AJPL. Therefore, the Target Company should have classified the four Dubai based companies as Promoters. Accordingly, the Target Company should not be allowed to benefit from its failure to classify the four Dubai based companies as Promoters. The same has therefore, resulted in incorrect disclosure of shareholding for 8 quarters ended March, June, September and December 2014, March, June, September and December 2015 by the Target Company. Hence, the Target Company has violated clause 35 of Listing Agreement read with Section 21 of SCRA.

69. The Target Company has submitted that before final determination is made by SEBI with respect to the four Dubai based companies as to whether they are PACs or not with AJPL, the Target Company cannot be held liable for incorrect disclosures. The disclosures made by the Target Company was as per its records. The aforesaid argument of the Target Company fails to take into account that the liability of the Target Company is independent of any determination made by SEBI. Moreover, for its failure, the Target Company cannot shift its obligation of making correct disclosure post determination by SEBI. If such argument is accepted, all the legal obligations and compliance requirements pose the risk of being not discharged or postponed on the pretext of non-crystallization. Also, it would make the compliance of regulatory / statutory requirement imposed on the companies bereft of clarity and incentivise delay in compliance of statutory obligation by the companies until such non-compliance is enforced through proceedings such as this.

Other Violations

70. One of the allegations against MMR and AJPL is violation of regulation 25(1) read with regulation 25 (5) of Takeover Regulations. The text of the said provisions are reproduced below:

Obligations of the acquirer

25(1) Prior to making the public announcement of an open offer for acquiring shares under these regulations, the acquirer shall ensure that firm financial arrangements have been made for fulfilling the payment obligations under the open offer and that the

acquirer is able to implement the open offer, subject to any statutory approvals for the open offer that may be necessary.

...

(5) The acquirer and persons acting in concert with him shall be jointly and severally responsible for fulfillment of applicable obligations under these regulations.

71. It is alleged that for the Open Offer announcement which MMR and AJPL had made on June 9, 2014, they have failed to submit his net worth certificate regarding his ability to meet the financial obligations for the said Open Offer especially in light of cheque bouncing news articles pertaining to MMR. The said allegation has been admitted by MMR that the net worth certificate has not been produced by him to SEBI. However, he has submitted that since he was in prison, he did not have sufficient clarity on his assets and liability positions. It is observed from material available on record that his net worth certificate is till date not on record. The fact that he was / is in jail does not prohibit him to take outside professional help to take stock of his assets and liabilities and furnish a net worth certificate to SEBI. Thus, the contention of MMR is not acceptable. Thus, considering AJPL was PAC with MMR who was the Acquirer for the aforesaid Open Offer, it is held that both of them have violated regulation 25(1) read with regulation 25 (5) of Takeover Regulations.

72. The other allegation against MMR with respect to the Open Offer announcement made by him as an Acquirer on June 9, 2014, is that he has violated regulation 3 (d) of PFUTP Regulations. Here, it will also be relevant to quote regulation 2 (1)(c)(1) of PFUTP Regulations along with regulation 3 (d) of PFUTP Regulations. The text of the said provisions are reproduced below:

2 (1) In these regulations, unless the context otherwise requires,-

(a)...

...

(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent

to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include--

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

Regulation 3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

...

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under

73. It has been alleged that MMR concealed his relationship with the four Dubai based companies. In this regard, it is observed that his relationship with the four Dubai based companies is a material fact as the four Dubai based companies pursuant to the preferential allotment were to be treated as Promoters of the Target Company. Consequently, the Promoters would be holding more than 90% of the total equity share capital of the Target Company prior to the said Open Offer, which is a material fact which the investors ought to have been made aware of to make an informed decision. Thus, by concealing the material fact pertaining to the connection between him and the four Dubai based companies, MMR has perpetrated fraud on the investors in terms of regulation 2 (1)(c)(1) of PFUTP Regulations. Therefore, it is held that MMR has violated regulation 3 (d) of PFUTP Regulations.

74. SCN also alleges that the Target Company has also violated regulation 72(1)(c) of ICDR Regulations when the Board of the Target Company approved preferential allotment to the Acquirer in June, 2014, as the Promoter shareholding of the company was beyond 75%. I note that regulation 72(1)(c) of ICDR Regulations prescribes that a listed issuer may make a preferential issue of securities, if the issuer

is in compliance with the conditions for continuous listing of equity shares as specified in the listing agreement with the recognized stock exchange. It has been noted in preceding paragraphs that post the preferential allotment on January 15, 2014, the Promoters of the Target company was holding 94.93% of the total equity share capital. Further, no steps were taken by the Target Company to reduce the shareholding of the Promoters. Therefore, as on June 2014 when the Board of the Target Company approved the preferential allotment of shares to MMR, the Target Company was not in compliance with the conditions for continuous listing of equity shares as specified in the listing agreement with the recognized stock exchange. Hence, the Target Company has violated regulation 72(1)(c) of ICDR Regulations.

75. I note that SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 has been rescinded and SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2018 (hereinafter referred to as “**ICDR, 2018**”) as notified on September 11, 2018 and has been brought into force from sixtieth day from September 11, 2018. Regulation 301 of ICDR, 2018 provides as under:

Repeal and Savings

301. (1) On and from the commencement of these regulations, the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements), Regulations 2009 shall stand rescinded.

(2) Notwithstanding such rescission:

a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Regulations shall be deemed to have been done or taken under the corresponding provisions of these regulations.

b) any offer document, whether draft or otherwise, filed or application made to the Board under the said Regulations and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations.

Thus, the present proceeding is saved by above mentioned regulation of ICDR, 2018

against AJIL.

Issue No. 4 - *If answers to the aforesaid issue nos. (ii) and (iii) are in affirmative, what directions, if any need to be issued against the Noticees?*

76. As per the mandatory provisions of regulation 3 (2) of Takeover Regulations, no Acquirer who together with persons acting in concert with him, has acquired and holds shares or voting rights in a Target Company entitling them to exercise twenty-five per cent or more of the voting rights in the Target Company, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the Acquirer makes a public announcement of an open offer for acquiring shares of such Target Company. Thus, once the provisions of regulation 3 (2) of Takeover Regulations are triggered and the Acquirer together with PACs has acquired additional 5% shares without making a public announcement and in the absence of any exemption available automatic under regulation 10 or under regulation 11 of Takeover Regulations, a direction to make public announcement has to be issued to the Acquirer together with the PACs. The liability of the PACs is joint and several with the Acquirer and the same can be seen from the provision of regulation 7(1) of Takeover Regulations which deals with Offer Size. It reads as follows:

“7 (1). The open offer for acquiring shares to be made by the acquirer and persons acting in concert with him under regulation 3 and regulation 4 shall be for at least twenty six per cent of total shares of the target company, as of tenth working day from the closure of the tendering period”.

77. In view of the aforesaid, the liability to make the public announcement in the instant matter is on the Acquirer namely, AJPL and on the PACs namely, Al Juraina Precious Metals & Bullions, Al Layyah General Trading, Al Mareiha Precious Metal and Bullions and Mankool General Trading.

78. AJPL and MMR have submitted that they have made the public announcement for acquisition of shares in Target Company and therefore insisting that the alleged PACs (assuming the argument of SEBI that the four investees are PACs) should also had made a public announcement is unwarranted. Noticees have relied on the decision

of Hon'ble SAT in the matter of *Luxury Forams Ltd. vs. Adjudicating Officer* decided on March 20, 2002, in support of their submissions. The said submission of the Noticees is untenable. The reason being that the identity of the Acquirer and PACs in any Open Offer is a material fact which is one of the parameters which is considered by the shareholders to arrive at an informed decision whether or not to tender their shares in the Open offer. In the instant case the identity of the Acquirer and PACs in the public announcement made on June 9, 2014 are different from the one if the public announcement was made on November 4, 2013. Further, there are other material aspects which are determined by the triggered date viz, shareholders who will be eligible to tender their shares and Open Offer price and interest, if any to be paid etc. Thus, just because an Open Offer has been given pertaining to the Target Company will not satisfy the requirement and obligations under the law.

79. Further, the findings of Hon'ble SAT in the matter of *Luxury Forams Ltd. vs. Adjudicating Officer*, is distinguishable from the present matter. In the former matter, Hon'ble SAT had given a finding that since the Appellants who had acquired shares were belonging to the Promoter Group and all of them have acted in concert with each other for the said acquisition shares, so each one of them could be considered as an acquirer. Since the acquisition of shares had exceeded the prescribed limit, it warranted a public announcement, obligation of which would have been met, if any one of the 10 Appellants made the announcement. Thus, as can be noted in *Luxury Forams Ltd.* matter there was neither any ambiguity / lack of disclosure about who were the persons acting in concert nor there was any ambiguity / lack of disclosure when the shares in question were acquired. As noted in the preceding paragraph, the same cannot be said about the instant matter. Moreover, it is well settled law that public announcement can be made either by the Acquirer or PAC or jointly by them. However, what is relevant is to disclose the identity of the Acquirer and PAC and the relevant date for the trigger for public announcement.

80. It has been submitted by the Noticees that MMR had no intention of depriving shareholders. If open offer was made in January 2014 the offer price would have been Rs. 14/- but if the open offer was made in July 2014, the offer price would have

been Rs. 21/-. In this regard, it is noted that open offer price is determined as per the provisions of Takeover Regulations. For an open offer obligation, the relevant parameter is the trigger date as mandated under the provisions of Takeover Regulations. The same is sacrosanct. Once the threshold mentioned under the provisions of Takeover Regulations is breached, open offer must follow. The price at which the open offer has to be made, is the consequence of the mandatory obligation to make the open offer. In the given facts and circumstances of the matter by not making the open offer on the trigger date, AJPL and the PACs have deprived the shareholders an exit opportunity as on the trigger date. Therefore, the submission of the Noticees that MMR / AJPL had no intention of depriving shareholders, is incorrect.

81. It is also submitted by the Noticees that if a finding is given that the four Dubai based entities are PACs with AJPL then the Target Company would be in non-compliance of minimum public shareholding norms. Hence, public offer will be in violation of the said regulations. It is observed that the submission of the Noticees is without any merit. It may be noted that as per the second proviso to regulation 3 (2) of Takeover regulations, no Acquirer is entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding. However, in the instant matter the same has already happened. The argument of the Noticee cannot be accepted as the Noticees themselves have breached the maximum limit upto which they can acquire shares thereby they have already breached minimum public shareholding norms. However, breaching of minimum public shareholding is permitted if the same happens because of open offer obligations. As per regulation 7 (4) of Takeover Regulations, in the event the shares accepted in the open offer were such that the shareholding of the acquirer taken together with persons acting in concert with him pursuant to completion of the open offer results in their shareholding exceeding the maximum permissible non-public shareholding, the acquirer shall be required to bring down the non-public shareholding to meet the norms of minimum public shareholding. Though,

regulation 7 (4) of Takeover Regulations is not applicable in the present case, Noticee cannot take benefit of the time period referred to in regulation 7(4) of Takeover Regulations as well. The requirement of continuous minimum public shareholding norms have been breached by the act of the Noticees. Therefore, the subsequent breach due to the present open offer required to be given, cannot be given the benefit of time limit which is available under regulation 7(4) of Takeover Regulations.

82. In this regard, I note that once the mandatory provision of Open Offer is triggered and the acquisition in question does not fall within the exemptions provided under the Takeover Regulations, then the Acquirer along with the PAC has to make an Open Offer. Once the limits are breached, then the interests of the shareholders have to be protected which is by way of giving them the option to exit in an Open Offer made by the Acquirer. The same is also in line with the principle of equality of treatment and opportunity to all the shareholders.

83. MMR and AJPL have submitted that they do not have liquidity and SEBI may allow them to bring a strategic investor. In this regard, I would like to refer to the findings of Hon'ble SC in the matter of *Nirma Industries Ltd. vs. SEBI* decided on May 9, 2013, wherein the Hon'ble Court held as follows:

"...we are unable to stretch the meaning of terms such circumstances from the realm of impossibility to the realm of economic undesirability. In essence, the submission made by Mr. Divan is that unless they are allowed to walk away from the public offer they would have to bear losses which would otherwise have been shared by the erstwhile shareholders of the target company. Accepting such a proposition would be contrary to the aims and objectives of the Takeover Code which is to ensure transparency in acquisition of a large percentage of shares in the target company. It would also encourage undesirable and speculative practices in the stock market. Therefore, we are unable to accept the submission of Mr. Shyam Divan. Regulation 27(1) (d) would empower the SEBI to permit withdrawal of an offer merely because it has become uneconomical to perform the public offer."

84. Further, the Hon'ble Apex Court in the matter of *SEBI vs. Akshya Infrastructure Pvt. Ltd.* decided on April 25, 2014, the Hon'ble SC has held as follows:

“We are also not impressed by the submission of Mr. Nariman that it has now become economically impossible to give effect to the public offer. This very submission has been rejected in Nirma Industries Ltd. (supra). We reiterate our opinion in Nirma Industries Ltd. (supra) that under Clause 27(1)(b)(c) and (d), a Public Offer, once made, can only be permitted to be withdrawn in circumstances which make it virtually impossible to the Public Offer. In fact, the very purpose for deleting Regulation 27(1)(a) was to remove any misapprehension that an offer once made can be withdrawn if it becomes economically not viable.”

85. I note that though the aforesaid two observations of the Hon'ble SC was in reference to withdrawal of Open Offer, the same principle will also be applicable to situations where Open Offer was due by the Acquirer but the same was not made and later on the Acquirer claims economic hardship to not make an Open Offer. The changed financial condition of the Noticees is not a cogent reason for giving them additional time to look for a strategic investor and further keep in abeyance their liability arising out of breaching the provisions of regulation 3(2) of Takeover Regulations. In the instant case I also note that MMR and AJPL have deposited Rs 14 crore in an escrow account for the Open Offer announcement made by them on June 9, 2014. The Open Offer in question in the instant order also involves AJPL as the Acquirer and as noted MMR holds 99.9% of share capital in AJPL. In view of the same, I am of the considered opinion that in the peculiar facts of the case, the ends of justice would be met, by giving a direction to the Acquirer / PACs to utilize the amount lying in the escrow account to fulfill their obligations under the Open Offer which was triggered on November 4, 2013.

86. The question that arises next are which shareholders of the Target Company are eligible to tender shares in Open Offer and whether any interest is payable to the shareholders of the Target Company. The obligation of the Acquirer to make an Open Offer continues till the time he makes it. Further, Hon'ble SC in the case of *Clariant International Limited and another vs. SEBI* [Appeal (Civil) No. 3183/2003] while determining the question to whom the interest is payable in case of delayed Open Offer, held as follows:

“...While compensating a person, the court should see that he is not unjustly enriched. Interest is directed to be paid on the default of the acquirer occasioning loss suffered by an investor of his money. The question of paying interest by way of compensation to persons who had not suffered any loss, thus, would not arise. Interest was, therefore, payable only to such persons who shareholders were of target company as on the triggering date...

...

We uphold that part of the decision of the Tribunal whereby it was held that those persons who were the shareholders till 24.2.1998 and continued to be shareholders on the closure day of public offer alone would be entitled to interest.”

87. In the aforesaid order, the Hon'ble Court made a distinction between shareholders who were eligible to be paid interest and shareholders who are not eligible for the same. To put it differently, shareholders whose name appear in the register of the company at the time when public announcement of the Open Offer should have been made as per the Takeover Regulations and continue to be shareholders till the closure day of public offer, when made, are eligible to be compensated for the delayed Open Offer while the other shareholders who can tender their share prior to the closure of Open Offer, are not eligible to be compensated for delayed Open Offer. Corollary to this is that every shareholder of the Target Company is eligible to tender their shares in the Open Offer prior to its closure irrespective of whether their name appears in the register of the company as on the date of public announcement of the Open Offer. In the extant matter, though some of the shareholders of the Target Company would have reduced their shareholding in the company or would have exited the company and new shareholders would have come in their place, but that does not discharge the Acquirer and PACs from their Open Offer obligation to make it to all the existing shareholders of the Target Company, as the Open Offer is yet to be completed by the Acquirer and PACs / Open Offer is yet to be closed. Therefore, the direction to make Open Offer as stipulated in the present order, should be extended to all shareholders including the new shareholders of the Target Company who became the shareholders of the company post trigger date.

88. In addition to the directions to make Open Offer under the provisions of the Takeover Regulations, under regulation 32 (1)(h) of Takeover Regulations, a direction has to be given to the Acquirer and PACs to pay interest for the delay in making Open Offer. Further, for the purpose of calculation of interest, Hon'ble SC in the case of *Clariant International Limited and another vs. SEBI* [Appeal (Civil) No. 3183/2003] held *inter alia* as follows:

"... In view of our findings aforementioned, we are of the opinion that while calculating the amount of interest, the amount of dividend paid to the shareholders should be excluded. The shareholders who by reason of default on the part of acquirer have been deprived of interest payable on the difference of the offer price and market price would be entitled to interest as direction to pay interest being not penal in nature, they cannot make double gains."

89. Since the shareholders who held shares on the date when the Board of Director of the Target Company approved the investment by the four Dubai based entities i.e., on November 4, 2013, and continued to hold shares in the Target Company till the date when the public announcement would be made for the acquisition of shares on January 15, 2014, were denied of their statutory right to exit with interest, in light of the provisions of the Takeover Regulations, I find that those shareholders, as per the Hon'ble SC judgment recorded above, are entitled to receive interest of 10% simple interest per annum on the Open Offer price.

90. With respect to the non-compliance of minimum public shareholding norms, I note that the rationale behind the insertion of Rule 19A in the SCRR, can be noted from the Press Release dated June 4, 2010, issued by the Ministry of Finance, Government of India, which *inter alia* states that "*A dispersed shareholding structure is essential for the sustenance of a continuous market for listed securities to provide liquidity to the investors and to discover fair prices. Further, the larger the number of shareholders, the less is the scope for price manipulation.*" Further, the Hon'ble SAT in the matter of *Siel Financial Services Ltd. vs. SEBI* decided on August 3, 2020 has held as follows that: "*The reason for bringing in the minimum public shareholding requirement was to ensure that there is no concentration of shares at the hands of single person or a group*

of persons. The idea is that if there are a large number of shareholders then there is less scope of price manipulation and further provides liquidity to the investors and helps in discovery of fair price

91. As such, in order to ensure a level playing field for the Promoter/ Promoter Groups of these companies with the Promoter/ Promoter Groups of the other companies that have already complied with the abovementioned provisions of SCRR and in the manner as specified by SEBI, it is imperative that this balance be restored and the disproportionate advantage arising out of non-compliance of the minimum public shareholding requirement not be permitted to be vested with the Promoter/ Promoter Group. In view thereof, in the interest of all investors and the orderly development of the securities market, it is necessary to pass suitable directions.
92. With respect to the concealment by MMR of his relationship with the four Dubai based companies, I note that SEBI has adopted a disclosure based regulatory regime. Under this framework, market participants disclose relevant details about themselves, the products, financial results etc., so that the investor can take informed investment decisions based on such disclosures. In the case of an Open Offer by a company, the information about the company is made available to the public / investors in the form of offer document / public announcement. The public / investors make its decision based on the information provided to them in the form of disclosures in the offer document / public announcement.
93. Full, fair and timely disclosures form the cornerstone of any disclosure requirement stipulated by SEBI. The guiding principle in a disclosure based regulatory regime is the need for the Acquirer / PACs in case of an Open Offer to disseminate true and complete information to the potential investors in respect of themselves to enable the potential investors to make their own informed investment decisions. The same is also with a view to bring transparency in the securities market. The access to the securities market for Acquirer / PACs is conditional upon such disclosures. The disclosure-based regime imposes a heavier responsibility on Acquirer / PACs in respect of the accuracy and completeness of the information disclosed by them. The purpose of filing the offer document /making public announcement is not a mere

ritual or formality. Therefore, the importance of contents of the offer document / public announcement in a disclosure regime cannot be over emphasised. Accordingly, suitable directions have been incorporated in this order against MMR for concealing information from the shareholders and investors.

ORDER

94. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11(1) and 11B (1) of the SEBI Act read with regulation 32 of the Takeover Regulations, hereby issue the following directions:

94.1. Atlas Jewellery Pvt. Ltd., Al Juraina Precious Metals & Bullions, Al Layyah General Trading, Al Mareiha Precious Metal and Bullions and Mankool General Trading shall joint and severally make a public announcement to acquire shares of the Target Company in accordance with the applicable provisions of the Takeover Regulations, within a period of 45 days from the date of this Order. It is once again reiterated that the aforementioned Noticees are permitted to use the money lying in the escrow account to meet their Open Offer obligations.

94.2. The Noticees mentioned at sub paragraph 94.1 shall, along with consideration amount, will pay, as per the ratio of, judgment of Hon'ble SC in *Clariant International Limited and another vs. SEBI* [Appeal (Civil) No. 3183/2003], simple interest at the rate of 10% per annum from the trigger date on the Open Offer price at which they were supposed to make the Open Offer when they had triggered regulation 3(2) of Takeover Regulations, till the date of payment of consideration to the shareholders other than Promoters and the four Dubai based companies, who were holding shares in the Target Company on the trigger date and continued to hold shares till the date of public announcement to be made by the Noticees mentioned at sub paragraph 94.1 and whose shares have been accepted in the current Open Offer directed to be made in this Order, after adjustment of dividend, if any, paid.

95. Further, I, in exercise of the powers conferred upon me in terms of Section 19 read

with Sections 11(1), 11(4) and 11B (1) of the Securities and Exchange Board of India Act, hereby direct the following:

95.1. Atlas Jewellery India Ltd.

95.1.1. Atlas Jewellery India Ltd. is hereby directed to comply with the minimum public shareholding norms within six months from the completion of the current Open Offer directed in this Order.

95.1.2. For the violation of clause 35 of the Listing Agreement and regulation 72 (1)(c) of ICDR Regulations, Atlas Jewellery India Ltd., is hereby debarred from accessing the securities market for a period of one year from the date of this order except for the complying with the minimum public shareholding norms as directed in this Order.

95.2. Mr. M.M. Ramachandaran

95.2.1. He is hereby restrained from accessing the securities market, from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, for a period of two years from the date of this order except for the purpose of complying with the minimum public shareholding norms as directed in this Order.

95.2.2. He is further restrained from being associated with any listed company except AJIL or any SEBI registered intermediary, in any capacity including as a Director or key managerial person, directly or indirectly, from the date of this Order till the completion of period of two years from the date of this order.

95.2.3. With respect to the violation of regulation 25 (1) of Takeover Regulations read with regulation 25 (5) of Takeover Regulations, in the facts and circumstances of the case a warning would suffice and is hereby issued.

95.3. Atlas Jewellery Pvt. Ltd.

95.3.1. Atlas Jewellery Pvt. Ltd is also hereby restrained from accessing the

securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner for a period of two years from the date of this order except for the purpose of complying with the Open Offer directions and for complying with the minimum public shareholding norms as directed in this Order.

95.3.2. With respect to the violation of regulation 25 (1) of Takeover Regulations read with regulation 25 (5) of Takeover Regulations, in the facts and circumstances of the case a warning would suffice and is hereby issued.

95.4. Al Juraina Precious Metals & Bullions, Al Layyah General Trading, Al Mareiha Precious Metal and Bullions and Mankool General Trading

95.4.1. They are hereby directed to comply with the minimum public shareholding norms within six months from the completion of the current Open Offer directed in this Order.

95.4.2. They are also hereby restrained from accessing the securities market for a period of two years from the date of this order except for the purpose of complying with the Open Offer directions and for complying with the minimum public shareholding norms as directed to be made in this Order. They are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of two years from the date of this order except for the purpose of complying with the Open Offer directions and for complying with the minimum public shareholding norms as directed in this Order.

95.5. Axis Bank Ltd. is hereby directed to release the money lying in the escrow account only for the purpose of compliance with the Open Offer directions made in this Order.

96. This order disposes of the show cause notice dated January 13, 2017.

97. This order shall come into force with immediate effect.

98. A copy of this order shall be served upon all the Noticees, Axis Bank Ltd., recognised Stock Exchanges, Depositories and the Registrar and Share Transfer Agents to ensure compliance with the above directions.
99. This order is without prejudice to any other actions that SEBI may take in accordance with securities laws.

-Sd-

DATE: June 17, 2021

PLACE: Mumbai

**MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**