BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-8/KS/AA/AO/166-171/2018-19]

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

In respect of

1. **Shri Anand Kumar Arya (PAN: AAAPA8011H)**
2. **M/s Blue Blends Finance Ltd. (PAN: AAACB9027D)**
3. **M/s Anand Kumar Arya HUF (PAN: AAMHA0324H)**
4. **Ms. Indu Anand Arya (PAN: AAIPA1562F)**
5. **Shri Aman Anand Arya (PAN: AIPPA0705R)**
6. **M/s Cressida Traders Pvt. Ltd. (PAN: AAACC2388J)**

In the matter of Premier Synthetics Limited

FACTS OF THE CASE

1. A letter of offer was filed by Shri Gautamchand Kewalchand Surana, Shri Vikram Amritlal Sanghvi, Shri Rajiv Giriraj Bansal and Shri Sanjay Kumar Vinodbhai Majethia to acquire 26% equity shares of M/s Premier Synthetics Limited (hereinafter referred to as '**Premier/ Target Company**'). The public announcement for open offer was made on April 24, 2015. The Target Company is listed on the Bombay Stock Exchange (hereinafter referred to as '**BSE**').

2. While examining the Letter of Offer, Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed that Shri Anand Kumar Arya

(hereinafter referred to as '**Noticee 1'**) and M/s Blue Blends Finance Ltd. (hereinafter referred to as '**Noticee 2'**) in the past had violated the provisions of Regulation 10(5), 10(6) and 10(7) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations, 2011**'). It was also observed by SEBI that the Noticee 1 along with M/s Anand Kumar Arya HUF (hereinafter referred to as '**Noticee 3**'), Ms. Indu Anand Arya hereinafter referred to as '**Noticee 4'**), Shri Aman Anand Arya (hereinafter referred to as '**Noticee 5'**) and M/s Cressida Traders Pvt. Ltd. (hereinafter referred to as '**Noticee 6'**) in the past had violated the provisions of Regulations 30(1) and 30(2) of SAST Regulations, 2011. In view of the same, SEBI initiated adjudication proceedings against the above entities, who are hereinafter collectively referred to as '**Noticees**'.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Suresh Gupta was appointed as the Adjudicating Officer, vide communiqué dated March 08, 2017 under Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **'Adjudication Rules'**) to inquire and adjudge under Section 15A(b) of the SEBI Act, the alleged violations committed by the Noticees. Pursuant to superannuation of Shri Suresh Gupta, the Competent Authority, vide appointment order dated April 26, 2018, appointed the undersigned as the Adjudicating Officer in the instant matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A common Show Cause Notice (hereinafter referred to as '**SCN**') dated May 17, 2018 was issued to the Noticees under the provisions of Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated against the Noticees and why penalty, if any, should not be imposed on them

under the provisions of Section 15A(b) of the SEBI Act for the above alleged violations of SAST Regulations, 2011 .

5. The details in respect of alleged violation by the Noticees are as given below:

(a) It was observed that an inter-se transfer of 4,20,750 shares (11.55%) of the Target Company was made amongst its promoters on February 25, 2013. At the time of said transaction, Noticee 1 and Noticee 2 were the promoters of the Target Company and they had purchased the said 4,20,750 shares (11.55%) of the Target Company from other promoters of the Target Company. Noticee 1 and Noticee 2 had purchased 3,25,800 (8.98%) and 94,950 (2.61%) shares of the Target Company respectively. The said transactions amongst the promoters resulted in further acquisition of shares of the Target Company by Noticee 1 and Noticee 2. This triggered obligations mandated under the Regulations 10(5), 10(6) and 10(7) of the SAST Regulations, 2011 on them. It was alleged that Noticee 1 and Noticee 2 had failed to comply with Regulations 10(5), 10(6) and 10(7) of the SAST Regulations, 2011 as below:

Regulation	**Due date of compliance**	**Actual date of compliance**	**Delay (no. of days)**
10(5) – Prior intimation to stock exchanges	February 19, 2013	Not complied	-
10(6) – Report filing to stock exchanges post acquisition	March 01, 2013	Not complied	-
10(7) – Report filing to SEBI post acquisition	March 26, 2013	August 10, 2015	867

(b) It was noted by SEBI that the Noticee 1, Noticee 3, Noticee 4, Noticee 5 and Noticee 6, were the promoters of the Target Company and holding shares or voting rights entitling them to exercise twenty-five per cent or more of the voting rights in the Target Company as on the end of March 2014 and June 2014. In view of the same, it was observed that the Noticee 1, Noticee 3, Noticee 4, Noticee 5 and Noticee 6 were required to make disclosures

mandated under Regulations 30(1) and 30(2) [read with Regulation 30(3)] of SAST Regulations, 2011, in respect of aggregate shareholding and voting rights as of March 31, 2014 in the Target Company, within seven working days from the end of financial year, i.e., 2013-14 to,—(a) every stock exchange where the shares of the Target Company are listed; and (b) the Target Company at its registered office. It was observed that Noticee 1, Noticee 3, Noticee 4, Noticee 5 and Noticee 6 failed to make the requisite disclosures mandated under Regulations 30(1) and 30(2) of SAST Regulations, 2011 to the stock exchange, i.e., BSE for the financial year 2013-14. The due date for the said compliance was April 10, 2014. In view of the same, it was alleged that Noticee 1, Noticee 3, Noticee 4, Noticee 5 and Noticee 6 have violated the provisions of Regulations 30(1) and 30(2) [read with Regulation 30(3)] of SAST Regulations, 2011.

6. The SCN issued to the Noticees was sent via Speed Post Acknowledgement Due ('SPAD'). The SCN issued to Noticee 1, Noticee 3, Noticee 4, Noticee 5 and Noticee 6 was duly delivered. The said Noticees failed to submit their reply to the SCN within 15 days of its delivery. In view of the same, a reminder cum hearing notice dated June 21, 2018 was issued to Noticee 1, Noticee 3, Noticee 4, Noticee 5 and Noticee 6 granting them an opportunity of hearing in the matter on July 05, 2018. The said Noticees were also granted a final opportunity to submit their reply to the SCN latest by July 03, 2018.

7. Meanwhile, the SCN issued to Noticee 2 returned undelivered with remark "Unclaimed". In terms of Rule 7 of the Adjudication Rules, the said SCN was duly affixed at the last known address of Noticee 2.

8. Thereafter, vide letter dated June 28, 2018, Noticee 1 on behalf of himself, Noticee 3, Noticee 4, Noticee 5 and Noticee 6 requested to adjourn the hearing scheduled on July 05, 2018. The Noticee 1 also requested for additional time for

filing reply to the SCN. In view of the said requests, the Noticee 1 was granted a final opportunity of hearing for himself, Noticee 3, Noticee 4, Noticee 5 and Noticee 6 on July 13, 2018 vide hearing notice dated July 03, 2013. The Noticee 1 was also advised to submit reply to SCN at least two days before the hearing date.

9. It was also observed that Noticee 2 had not submitted any reply to the SCN within 15 days of its affixture. In view of the same, Noticee 2 was granted an opportunity of hearing on July 13, 2018 vide reminder cum hearing notice dated July 03, 2018. Noticee 2 was also granted a final opportunity to submit its reply to SCN latest by July 11, 2018. However, the said reminder cum hearing notice returned undelivered. In terms of Rule 7 of the Adjudication Rules, the said reminder cum hearing notice was duly affixed at the last known address of Noticee 2.

10. On scheduled date of hearing, i.e., on July 13, 2018, Shri Balveer Chaudhary appeared as the Authorized Representative ('AR') of Noticee 1, Noticee 3, Noticee 4, Noticee 5 and Noticee 6, while Noticee 2 failed to avail of the hearing opportunity. The AR of Noticee 1, Noticee 3, Noticee 4, Noticee 5 and Noticee 6 undertook to file reply in the matter latest by July 17, 2018. As Noticee 2 had not availed of the hearing opportunity and had not submitted any reply to the SCN, Noticee 2 was granted a final opportunity of hearing on July 23, 2018 vide hearing notice dated July 16, 2018. However, the said hearing notice addressed to Noticee 2 returned undelivered. In terms of Rule 7 of the Adjudication Rules, the said reminder cum hearing notice was duly affixed at the last known address of Noticee 2.

11. The Noticee 1 vide letter dated July 17, 2018 submitted reply to the SCN on behalf of himself, Noticee 3, Noticee 4, Noticee 5 and Noticee 6. In the said letter, Noticee 1 *inter alia* made the following submissions:

2. At the outset, we would like to bring to your kind notice that Noticee 2 has already been taken over by new promoters by giving an open offer somewhere in and around 2013 itself. However, since this transaction took place when we were in control, we are explaining the alleged transaction carried out by Noticee 2. We are not representing Noticee 2.

….

6. At the outset and without prejudice to anything stated hereinafter, we deny all the allegations and findings made against us in the said notice except to the extent specifically admitted by us. Nothing contained in the said notice may be deemed to be admitted by us by reason of non-traverse or otherwise, save and except what is expressly admitted herein. We deny all the statements, submissions, contentions, allegations and averments contained in the said notice that are contrary to and/or inconsistent with what is stated herein below.

The reply of Noticee No. 1 for alleged violation of Regulation 10(5), 70(6) & 10(7) of SEBI (SAST) Regulations, 2011 is as follows:

7. It has been alleged in the said SCN that since Noticee 1 who was part of Promoter Group & they carried out inter se transfer of shares , Noticee 1 was required to make disclosures of above mentioned transfer in PSL, details of which are as follows:-

Acquirer	*Pre-acquisition shareholding*	*Shares acquired*	*Post-acquisition shareholding*
Anand Kumar Arya	*6,32,531 (17.36%)*	*3,25,800 (8.98%)*	*9,58,331 (26.30%)*

It has been alleged that the inter se transfer was carried out by noticee 1 on February 25, 2013. It has been further alleged that due to non-disclosure of above transaction, Noticee 1 has violated provisions of Regulations 10(5), 10(6) & 10(7) of SAST Regulations, 2011.

8. As regards the allegations contained in SCN against Noticee 1 for violation of Regulation 10(5), 10(6) & 10(7) of SAST Regulations, 2011, it is submitted that Noticee 1 was a part of the promoter group of PSL during the time when inter se transfer was carried out and PSL was regularly filing the shareholding pattern under the Listing Agreement, and that shareholding of Noticee 1 was disclosed under the heading 'shareholding belonging to Promoter and Promoter group for the quarter ending March, 2013 and the same was in public domain. We state that appropriate disclosure was filed by PSL as per Listing Agreement, wherein shareholding pattern of the promoters of PSL for the quarter ending March, 2013 was disclosed. Hence the public shareholders were made aware of the change in

shareholding of Noticee 1 in the Company. Hence, it is denied that there was any non-disclosure on part of Noticee 1.

9. *We submit that non-disclosure, if any, was technical in nature, and due to inadvertence, devoid of any malafide intention. Further, no harm has been caused to any investor nor any loss has occurred due to nondisclosure as the details regarding the change in shareholding of Noticee 1 was disclosed in the shareholding pattern filed by the company during the quarter ending March, 2013.*

10. *It is brought to your notice that Noticee 1 was holding shares of PSL only till December, 2015 quarter.*

11. *With regard to allegation of violation of Regulation 10(5) & 10(6), we submit that due to oversight we have not filed the report under Regulation 10(5) & 10(6), however in 2015 we have filed report under Regulation 10(7) to SEBI & the same was duly taken on record & therefore the shortcoming of violation of Regulation 10(5) & 10(6) have already been accepted by SEBI under Regulation 10(7).*

12. *Further, it is submitted that Noticee 1 has submitted disclosure under Regulation 10(7) to SEBI on August 10, 2015. A copy of the said disclosures is annexed at Exhibit A. However, the disclosure was filed belatedly. Hence, notice 1 & submits that there is no non-compliance on our part & the requirement was complied with though belatedly.*

13. *It is further submitted that only one acquirer has to file the report under Regulation 10(7), Noticee 1 has filed the said report along with necessary fees which has been accepted by SEBI.*

14. *In view of the above, it is denied that Noticee 1 has violated Regulation 10(5), 10(6) & 10(7) of SAST Regulations, 2011.*

The reply of Noticee 1 & 3 to 6 for alleged violation of Regulation 30(1) & 30(2) read with Regulation 30(3) of SAST Regulations, 2011

15. *It has been alleged in the said SCN that Noticee 1 & 3 to 6_were promoters in the target Company and holding shares or voting rights entitling them to exercise twenty five percent or more of the voting rights in the target company as on March 2014 & June 2014.1n view of the same they were required to make disclosure under Regulation 30(1) & 30(2) read with Regulation 30(3) under SAST Regulations,2011 in respect of aggregate shareholding and voting rights within seven working days from the end of Financial year 2013-14 to every stock exchange where shares of the Target company are listed & to the registered office of the Target Company.*

16. *It has been alleged that due to non-disclosure of above information, Noticee 1 & 3 to 6 have violated provisions of Regulations 30(1)& 30(2) read with Regulation 30(3) of SEBI (SAST) Regulations,2011.*

17. *As regards said violation, it is submitted as follows:-*
    a. *Notice 1 and 3 to 6 were part of the promoter group of PSL and were regular in filing the compliances.*

b. *The said report was filed in a proper format and was signed by one of the promoters, however, inadvertently letter head of PSL was used to file the report. A copy of the said report is annexed at Exhibit 13. It is submitted that as per the practice which has been accepted by the regulators (BSE etc.) one promoter files report on behalf of all the promoters and same is considered as compliance.*
c. *It is submitted that the stock exchanges ought to have taken the same on record since the same was coming from the authentic source of the company. The intention of the legislature is that any changes in the shareholding should be in public domain and the source is not important. We therefore submit that the disclosure were made, albeit a little late and not in specific format which establishes that there is no non-disclosure on our part.*
d. *In view of the above, it is submitted that report to be filed under the said regulation was filed and it is denied that Noticee 1 & 3 to 6 have violated Regulation 30(1) & 30 (2) read with Regulation 30(3) of SAST Regulations, 2011.*

18. *Without prejudice to the above, it is further submitted that Noticee 1 & 3 to 6 were a part of the promoter group of PSL and PSL was regularly filing the shareholding pattern under the Listing Agreement, and that shareholding of Noticee 1 & 3 to 6 was disclosed under the heading 'shareholding belonging to Promoter and Promoter group' for the quarter ending March, 2014 and the same was in public domain. We state that appropriate disclosure under was filed by PSL as per Listing Agreement, wherein shareholding pattern of the promoters of PSL for the quarter ending March,2014 was disclosed, whereby the public shareholders were made aware of the shareholding of Noticee 1 & 3 to 6 in the Company. Hence, it is denied that there was any non-disclosure on part of Noticee 1 & 3 to 6.*

19. *We once again submit and reiterate that noticees did not have any intention to conceal the information from investors at large and as detailed above, neither noticees had any unfair gain or advantage nor any loss or harm was caused to the investors with non disclosure of the said information.*

20. *Non-disclosure, if any, was technical in nature, and delay, if any has occurred due to inadvertence and is devoid of any malafide intention. Further, no harm has been caused to any investor nor any loss has occurred due to nondisclosure as the details regarding the shareholding of Noticee 1 & 3 to 6was disclosed in the shareholding pattern filed by the company during the quarter ending March, 2014.*

21. *We submit that the main purpose of the disclosures stipulated as per the Takeover Regulations, 2011 is that the retail investor is immediately aware of any significant happening in a listed company so that he is able to take an informed decision and in both the alleged violations, the disclosures have been made albeit a little late and in a different format.*

22. *In view of the above, it is categorically denied that Noticee 1 & 3 to 6 have violated Regulation 30(1) & 30(2) read with Regulation 30(3) of SAST Regulations, 2011.*

LEGAL SUBMISSIONS:

23. *The judgements passed by Hon'ble Courts/ Hon'ble SAT for levying penalty are as follows:*

a. *Case of Reliance Industries Ltd. v SEBI (SAT Appeal No. 39/2002)-*

The company failed to make relevant disclosure in time under Regulation 7(1) of Takeover Regulations, and Hon'ble SAT observed that "The High Court in Cabot's case has pronounced that if a breach was merely technical and unintentional it does not merit penal consequence. It ultimately depends on the facts of each case."

b. *Akbar Badrudin Jiwani V. Collector of Customs, Bombay AIR 1990 SC 1579*

It is noteworthy to mention wherein the Hon'ble Supreme Court had stated that :-Para 61:" We refer in this connection the decision of Merck Spares v. Collector of Central Excise & Customs, New Delhi, 1983 ELI 1261, Shama Engine Valves Ltd.., Bombay v. Collector of Customs, Bombay (1984) 18 ELT 533 and Madhusudhan Gordhandas & Co. v. Collector of Customs, Bombay, (1987) 29 ELT 904, wherein it has been held that in imposing penalty the requisite mens rea has to be established"

c. *Hindustan Steel Ltd., v State of Orissa, (1970) 1 SCR 753; (AIR 1970 SC 2563)*

The Hon'ble Supreme Court held that:- " The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law, or is. guilty of contumacious or dishonest conduct, or acts in conscious disregard to its obligation; but not, in cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute".

We submit that our violation, if any, is technical and venial in nature and same is unintentional.

24. *Further it is reiterated that shareholding was disclosed in the shareholding pattern under the heading 'shareholding belonging to Promoter and Promoter group for the quarter ending March 2013 & March 2014 and the same was in public domain. The information regarding the acquisition of shares was in public domain, and therefore even though disclosures were not made in prescribed format, there was no non-disclosure on our part either.*

25. *We submit and say that we have always followed all the procedures as stipulated by any regulatory authority, followed all rules/ regulations/ instructions etc. issued by any government agency, and our intention has never been to conceal any information. As already explained above, the details of promoter holding were already in public domain. It was a procedural lapse on our part to not to disclose the information in formats specified under said Regulations.*

26. *In view of the above circumstances, we submit as follows:*
    - *We did not have any intention to conceal the information and nor we have concealed any information.*
    - *No unfair advantage or gain has occurred to us, and also no harm or loss has been caused to any retail investors.*
    - *Violation, if any, is merely technical in nature.*

- *We deny that we have violated SAST Regulations, 2011 as the information of our shareholding was already in the shareholding pattern filed under Listing Agreement.*

12. As noted earlier, Noticee 2 had been provided with a final opportunity of hearing on July 23, 2018. However, Noticee 2 failed to avail of the hearing opportunity on the scheduled date of hearing. I am of the view that principles of natural justice have been complied with since sufficient opportunities have been provided to the Noticee 2 to submit its reply to the SCN and to appear for hearing. However, Noticee 2 has failed to submit its reply to SCN and failed to avail of the hearing opportunities. Therefore, I am proceeding further in the matter on the basis of the submissions made by other Noticees and available documents on record.

CONSIDERATION OF ISSUES AND FINDINGS

13. I have taken into consideration the facts and circumstances of the case and the material available on record and the issues that arise for consideration in the present case are :

    (a) Whether the Noticee 1 and Noticee 2 have violated the provisions of Regulations 10(5), 10(6) and 10(7) of the SAST Regulations, 2011?

    (b) Whether Noticee 1, Noticee 3, Noticee 4, Noticee 5 and Noticee 6 have violated the provisions of Regulation 30(1) and 30(2) [read with Regulation 30(3)] of the SAST Regulations, 2011?

    (c) Do the above violations, if any, attract monetary penalty under Section 15A(b) of the SEBI Act?

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

14. Before moving forward, it is pertinent to refer to the relevant provisions of the SAST Regulations, 2011, which read as under:

General exemptions.

10. (1) ……

(5) In respect of acquisitions under clause (a) of sub-regulation (1), and clauses (e) and (f) of sub-regulation (4), the acquirer shall intimate the stock exchanges where the shares of the target company are listed, the details of the proposed acquisition in such form as may be specified, at least four working days prior to the proposed acquisition, and the stock exchange shall forthwith disseminate such information to the public.

(6) In respect of any acquisition made pursuant to exemption provided for in this regulation, the acquirer shall file a report with the stock exchanges where the shares of the target company are listed, in such form as may be specified not later than four working days from the acquisition, and the stock exchange shall forthwith disseminate such information to the public.

(7) In respect of any acquisition of or increase in voting rights pursuant to exemption provided for in clause (a) of sub-regulation (1), sub-clause (iii) of clause (d) of sub-regulation (1), clause (h) of sub-regulation (1), sub-regulation (2), sub-regulation (3) and clause (c) of sub-regulation (4), clauses (a), (b) and (f) of sub-regulation (4), the acquirer shall, within twenty-one working days of the date of acquisition, submit a report in such form as may be specified along with supporting documents to the Board giving all details in respect of acquisitions, along with a non-refundable fee of rupees [1][one lakh fifty thousand] [2][by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI or] by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board.

…

Continual disclosures.

30 (1) Every person, who together with persons acting in concert with him, holds shares or voting rights entitling him to exercise twenty-five per cent or more of the voting rights in a target company, shall disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.

[1] Substituted by the SEBI (Payment of fees) (Amendment) Regulations, 2014 w.e.f. 23-05-2014, for the words "twenty five thousand"

[2] Inserted by the SEBI (Payment of Fees and Mode of Payment) (Amendment) Regulations, 2017, w.e.f. 6-3-2017.

(2) The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the end of each financial year to,—

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

15. The first issue for consideration is whether Noticee 1 and Noticee 2 have violated the provisions of Regulations 10(5), 10(6) and 10(7) of the SAST Regulations, 2011. I note that Noticee 1 and Noticee 2 were promoters of the Target Company. On February 25, 2013, there was inter-se transfer of 4,20,750 shares representing 11.55% of the share capital of the Target Company among the promoters, wherein Noticee 1 and Noticee 2 were the purchasers of the said shares. As a result, the Noticee 1 and Noticee 2 made a further acquisition of 4,20,750 shares representing 11.55% of the share capital of the Target Company. In the extant case, the acquisition made by Noticee 1 and Noticee 2 pursuant to inter se transfer amongst promoters was exempt from obligation to make an open offer. However, the acquirers, viz., Noticee 1 and Noticee 2 were required to comply with Regulations 10(5), 10(6) and 10(7) of SAST Regulations, 2011.

16. In this regard, I note that Noticee 2 has not filed any reply to the SCN though the same was duly served on it and did not avail of the hearing opportunity granted to it. The Hon'ble SAT in the matter of Classic Credit Ltd. vs. SEBI [2007] 76 SCL 51 (SAT - MUM) *inter alia* held that – "*the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them*". The Hon'ble SAT also made such proposition in case of Sanjay Kumar Tayal & Ors. vs. SEBI

(in appeal No. 68/2013) decided on February 11, 2014 viz. *"…..appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices".*

17. I observe that Noticee 1 in his letter dated July 17, 2018 has stated that he was a part of the promoter group of the Target Company during the time when inter-se transfer was carried out and that the Target Company was regularly filing the shareholding pattern under the Listing Agreement. He has further stated that his shareholding was disclosed under the heading 'shareholding belonging to Promoter and Promoter group for the quarter ending March, 2013' and the same was in public domain. Hence, the Noticee 1 has stated that the public shareholders were made aware of the change in shareholding of Noticee 1 in the Target Company. In view of the same, Noticee 1 has denied that there was any non-disclosure on his part. In the same letter, Noticee 1 has also stated that due to oversight he has not filed the report under Regulations 10(5) and 10(6) of the SAST Regulations, 2011. Noticee 1 has further argued that he had filed report under Regulation 10(7) to SEBI in the year 2015 and the same was duly taken on record by SEBI. In view of the same, Noticee 1 has claimed that the shortcoming of violation of Regulations 10(5) & 10(6) has already been accepted by SEBI under Regulation 10(7). Further, Noticee 1 stated that he has submitted disclosure under Regulation 10(7) to SEBI on August 10, 2015. However, the disclosure was filed belatedly. On account of the same, Noticee 1 has submitted that there is no non-compliance on his part and the requirement was complied with though belatedly. Noticee 1 has further submitted that only one acquirer has to file the report under Regulation 10(7) and Noticee 1 has filed the said report along with necessary fees which has been accepted by SEBI. Noticee 1 has also stated that due to non-filing of relevant disclosures no gain or

advantage has occurred to him and no loss or harm has been caused to any investor.

18. In this regard, I note that there is a statutory obligation on the acquirer of the shares to submit information to the stock exchanges where the shares of the target company are listed under Regulations 10(5) and 10(6) of the SAST Regulations, 2011 and to SEBI under Regulation 10(7) of the SAST Regulations, 2011. The obligations mandated under Regulations 10(5), 10(6) and 10(7) of the SAST Regulations, 2011 are independent. The information being in public domain through various disclosures made by the Target Company does not absolve the acquirer from making the relevant disclosure under the afore-mentioned regulations. In this context, I would like to rely on observation of Hon'ble Securities Appellate Tribunal ('SAT') in Ambaji Papers Pvt. Ltd. vs. the Adjudicating Officer, SEBI dated January 15, 2014, wherein similar contention of information being in the public domain was raised by the appellant. Hon'ble SAT observed: *".... that a reading of Regulation 7 of the SAST Regulations, 1997 read with Regulation 35(2) of the SAST Regulations, 2011 clearly points out that not only the company, but an acquirer is also required to inform the stock exchanges at every stage of aggregate of the shareholding or voting rights in the company. The object underlying these regulations is, therefore, unequivocally to bring more transparency by dissemination of complete information to the public as well as shareholders at large not only by the concerned company but by the individual acquirer as well*."

19. In this context, I note that Noticee 1 in his reply has admitted that he failed to comply with Regulations 10(5) and 10(6) of SAST Regulations, 2011. I also note that the Noticee 1 has submitted disclosure under Regulation 10(7) to SEBI on August 10, 2015 while the impugned transaction was carried out on February 25, 2013. In terms of Regulation 10(7) of the SAST Regulations, 2011, an acquirer has to submit report to SEBI within 21 days of the acquisition. In the

present case, I note that Noticee 1 filed disclosure under Regulation 10(7) to SEBI with a delay of more than 2 years. I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance with the mandatory obligation. The Hon'ble SAT in its order dated September 30, 2014, in the matter of Akriti Global Traders Ltd. Vs SEBI had observed that "*Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations.*" I would further like to refer to the observations of Hon'ble SAT in the matter of Virendrakumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014 vide order dated October 14, 2014*)*, wherein it was held that - *".. obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures*."

20. In view of the above, the contentions of the Noticee 1 that the information related to increase in its shareholding in the Target Company was available in public domain and that due to non-filing of relevant disclosures no gain or advantage has occurred to him and no loss or harm has been caused to any investor is not acceptable. In view of the same, I find that the violation of Regulations 10(5),

10(6) and 10(7) of the SAST Regulations, 2011 is established against the Noticee 1 and Noticee 2.

21. The second issue for consideration is whether Noticee 1, Noticee 3, Noticee 4, Noticee 5 and Noticee 6 have violated the provisions of Regulation 30(1) and 30(2) [read with Regulation 30(3)] of the SAST Regulations, 2011. I note that there is a common format for filing disclosures under Regulation 30(1) and Regulation 30(2) of SAST Regulations, 2011. Further, it is stated in the said format that in case of promoter(s) making disclosure under Regulation 30(2), no additional disclosure under Regulation 30(1) is required. I also note that Noticee 1, Noticee 3, Noticee 4, Noticee 5 and Noticee 6 were the promoters of the Target Company and holding shares or voting rights entitling them to exercise 25% or more of the voting rights in the Target Company as on the end of March 2014. In view of the same, Noticee 1, Noticee 3, Noticee 4, Noticee 5 and Noticee 6 were required to make disclosures mandated under Regulations 30(1) and 30(2) [read with Regulation 30(3)] of SAST Regulations, 2011, in respect of aggregate shareholding and voting rights as of March 31, 2014 in the Target Company, within seven working days from the end of financial year 2013-14 to,—(a) every stock exchange where the shares of the Target Company are listed; and (b) the Target Company at its registered office. It was alleged in the SCN that Noticee 1, Noticee 3, Noticee 4, Noticee 5 and Noticee 6 failed to make the requisite disclosures mandated under Regulations 30(1) and 30(2) of SAST Regulations, 2011 to the stock exchange BSE for the financial year 2013-14.

22. In this regard, I observe that Noticee 1 has submitted reply on behalf of himself, Noticee 3, Noticee 4, Noticee 5 and Noticee 6 vide letter dated July 17, 2018. Noticee 1 in his letter has stated that they were regular in filing the compliances. Noticee 1 has further submitted that a report for making the said disclosures was filed in proper format and was signed by one of the promoters, however,

inadvertently letter head of the Target Company was used to file the report. Noticee 1 submitted that as per the practice, which has been accepted by the regulators (BSE etc.), one promoter files report on behalf of all the promoters and same is considered as compliance. Noticee 1 has further submitted that the stock exchanges ought to have taken the same on record since the same was coming from the authentic source of the company. The intention of the legislature is that any changes in the shareholding should be in public domain and the source is not important. Noticee 1 has therefore submitted that the disclosure were made, *albeit* a little late, and not in specific format which establishes that there is no non-disclosure on their part.

23. I note from the above reply submitted by Noticee 1 on behalf of himself, Noticee 3, Noticee 4, Noticee 5 and Noticee 6 that he has admitted that the disclosure was filed belatedly to BSE on the letterhead of the Target Company. I observe that the due date of disclosure under Regulations 30(1) and 30(2) was April 10, 2014 for FY 2013-14. However, I note that the disclosure was filed with BSE on April 16, 2014 and was made on the letterhead of the Target Company. BSE in its email dated October 21, 2015 has stated that – "*As per Exchange records, attached disclosure was received from the company, i.e., Premier Synthetics Ltd. It may be noted that under Regulation 30(1) & 30(2) of SEBI (SAST) Regulations, 2011, the disclosure is required to be sent by the acquirer / Promoter and not by the company. Hence, the disclosure provided by the company was not taken on record.*" In this context, I would like to rely on observation of Hon'ble SAT in Premchand Shah and Others V. SEBI dated February 21, 2011, wherein it was held that *"…..When a law prescribes a manner in which a thing is to be done, it must be done only in that manner…….Non-disclosure of information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take informed decision while making investments….."*

24. In the reply letter dated July 17, 2018, Noticee 1 has also stated that the Target Company was regularly filing the shareholding pattern under the Listing Agreement, and that shareholding of Noticee 1 & 3 to 6 was disclosed under the heading 'shareholding belonging to Promoter and Promoter group' for the quarter ending March, 2014 and the same was in public domain. I note that in the matter of E-Ally Consulting (India) Pvt. Ltd.& Ors. Vs SEBI (Appeal No 203 of 2014 decided on August 06, 2014), wherein similar contentions were raised by the appellant in the case relating to violation of Regulation 30 (1) and 30 (2) of the SAST Regulations, 2011, Hon'ble SAT had observed that: "*We see no merit in the above contentions. Obligations to make disclosures under Regulation 30 (1) and 30 (2) read with Regulation 30 (3) of SAST Regulations, 2011 is mandatory and is independent of the obligation to make the disclosures under the listing agreement. Similarly, fact that proper advise was not there or that the delay was unintentional/ without any fraudulent intention or there is no complaint from investors does not absolve appellants from their obligation to make the disclosures under SAST Regulations, 2011*."

25. Noticee 1 has further stated that Noticees did not have any intention to conceal the information from investors at large and neither Noticees had any unfair gain or advantage nor any loss or harm was caused to the investors with non-disclosure of the said information. In this respect, I note that the Hon'ble SAT in the matter of *Komal Nahata Vs. SEBI (Appeal No. 5 of 2014 decided on January 27, 2014)* has observed that: "*Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure."*

26. In view of the above, I find that the allegation of violation of Regulations 30(1) and 30(2) [read with Regulation 30(3)] of SAST Regulations, 2011 is established against Noticee 1, Noticee 3, Noticee 4, Noticee 5 and Noticee 6.

27. I observe that the Noticee 1 has relied on the judgements of Hon'ble Supreme Court in the matter of Hindustan Steel Ltd. v State of Orissa, (1970) 1 SCR 753; (AIR 1970 SC 2563) & in the matter of Akbar Badrudin Jiwani V. Collector of Customs, Bombay AIR 1990 SC 1579 and the judgement of Hon'ble SAT in the matter of Reliance Industries Ltd. v SEBI (SAT Appeal No. 39/2002) with regards to imposition of penalty. However, I note that the facts of the above cases are different from the facts of the present proceedings. Hon'ble Supreme Court in its order dated May 23, 2006 in the case of Chairman SEBI vs. Shriram Mutual Fund and Anr. {[2006] 5 SCC 361} has clarified that the decision in case of Hindustan Steel Ltd. pertains to criminal/ quasi criminal proceedings and it would not apply to imposition of civil liabilities under SEBI Act and Regulations made thereunder. In the said order dated May 23, 2006, the Hon'ble Supreme Court also held that - "*In our opinion, mens rea is not an essential ingredient for contravention of the provisions of a civil act. In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial..… Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary.*" Further, in the matter of Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed that "*Once it is established that the mandatory provisions of takeover code was violated the penalty must follow*".

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

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*

…

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty [3][which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees];

…..

29. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under:-

Factors to be taken into account by the adjudicating officer.

15J. While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

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

30. The material available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss

[3] Substituted for the words —"of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.

suffered by the investors as a result of the non-compliance committed by the Noticees. I note from documents available on record that Noticee 1 and Noticee 2 had each submitted demand draft for Rs. 1,50,000/- to SEBI while submitting report under Regulation 10(7) of SAST Regulations, 2011 in the year 2015.

ORDER

31. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose the following penalty under the provisions of Section 15A(b) of the SEBI Act on the Noticees:

S. No.	Name of the Noticees	Provisions violated	Penalty
1	1. Shri Anand Kumar Arya 2. M/s Blue Blends Finance Limited	Regulations 10(5), 10(6) and 10(7) of SAST Regulations, 2011	Rs. 3,00,000 (Rupees Three Lakh Only) *Payable jointly and severally*
2	1. Shri Anand Kumar Arya 2. M/s Anand Kumar Arya HUF 3. Ms. Indu Anand Arya 4. Shri Aman Anand Arya 5. M/s Cressida Traders Pvt. Ltd.	Regulations 30(1) and 30(2) of SAST Regulations, 2011	Rs. 2,00,000 (Rupees Two Lakh Only) *Payable jointly and severally*

32. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees. The amount of penalty shall be paid either by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or by e-payment in the account of “SEBI - Penalties Remittable to Government of India”, A/c No. 31465271959, State Bank of

India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.

33. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1 – DRA III), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051."

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

34. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees viz. Shri Anand Kumar Arya, M/s Blue Blends Finance Limited, M/s Anand Kumar Arya HUF, Ms. Indu Anand Arya, Shri Aman Anand Arya and M/s Cressida Traders Pvt. Ltd. and also to the Securities and Exchange Board of India.

Date: August 16, 2018

Place: Mumbai

K SARAVANAN

GENERAL MANAGER &

ADJUDICATING OFFICER