

WTM/AB/IVD/ID2/ 217310 /2019-20

**SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER**

Under Sections 11(1), and 11B of Securities and Exchange Board of India Act, 1992 and Regulation 32 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 - In the matter of Focus Industrial Resources Limited.

Noticee No.	Name of the Noticee	PAN
1.	Pradeep Kumar Jindal	AAIPJ8526A
2.	Trishla Jain	AAMPJ2164N
3.	Satish Jain	ADEPJ5110B
4.	Renu Jain	AFNPJ7112E
5.	Shobha Jain	AAGPJ6737K
6.	Satender Kumar Jain and Sons (HUF)	AANHS9519P
7.	Anand Kumar Jain	AAYPJ3951B
8.	S.K Jain	ACSPJ6904A
9.	Satender Kumar Jain	AAHPJ8609H
10.	Mamta Jindal	AEEPJ6955K
11.	Chetan Jain	AEQPJ5780G
12.	Aanchal Jindal	AIHPJ4158R
13.	Archit Jindal	AGNPJ5775G
14.	Kanika Jindal	CPGPK3235J
15.	Laxman Singh Satyapal	AIDPS0821N
16.	Meera Mishra	AJBPM5839R

The aforesaid entities are hereinafter referred to individually by their respective names/Noticee numbers and collectively as “the Noticees”.

1. Present proceedings have been initiated against the Noticees, vide a show cause notice dated September 29, 2017 (hereinafter referred to as “**the SCN**”) issued by SEBI, to the Noticees, under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) and Regulation 32 of SEBI (Substantial Acquisition of Shares and Takeovers)

Regulations, 2011 (hereinafter referred to as “**SAST Regulations, 2011**”) for violation of Regulation 3(2) of the SAST Regulations, 2011.

2. Facts stated in the SCN and the allegations made therein are narrated hereunder:

a) Focus Industrial Resources Limited (hereinafter referred to as “**FIRL**”/ “**the Company**”) is a company having its registered office at 104, Mukund House, Commercial Complex, Azadpur, Delhi – 110033. The shares of the Company are listed on BSE. FIRL is incorporated on June 27, 1985 is registered with the Reserve Bank of India as a Non Deposit Accepting Non-Banking Financial company;

b) The category wise shareholding pattern of the company for the quarter ended December 2012 to September 2013 as disclosed on BSE website is as under:

(Table 1)

Particular	Quarter ended December 2012			Quarter ended March 2013			Quarter ended June 2013		
	No. of share holders	No. Of shares	%	No. of share holders	No. Of shares	%	No. of share holders	No. Of shares	%
Promoter Holding	12	71,23,565	58.42	13	62,05,748	50.89	13	62,10,030	50.92
Non Promoter Holding	593	50,70,634	41.58	601	59,88,451	49.11	547	59,85,469	49.08
Total	605	1,21,94,199	100.00	614	1,21,94,199	100.00	560	1,21,94,199	100.00

Particular	Quarter ended September 2013		
	No. of share holders	No. Of shares	%
Promoter Holding	11	62,08,730	50.92
Non Promoter Holding	547	59,85,469	49.08
Total	558	1,21,94,199	100.00

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From the above table, it was observed in investigation that the promoter holding during the quarter from December, 2012 to March, 2013 had decreased from 58.42% to 50.89%.

c) The Promoter wise shareholding, as disclosed by FIRL on BSE website for the quarter ended December 31, 2012 and September 30, 2013 was as under:

(Table 2)

S.No.	PAN	Entity Name	QE 31/12/2012		QE 31/03/2013		QE 30/06/2013		QE 30/09/2013	
			No of Shares	% of Holding	No of Shares	% of Holding	No of Shares	% of Holding	No of Shares	% of Holding
1	AIHPJ4158R	Aanchal Jindal (N 12)	2,940	0.02	2,940	0.02	2,36,321	1.94	6,00,000	4.92
2	AAYPJ3951B	Anand Kumar Jain (N 7)	9,97,500	8.18	6,96,607	5.71	6,82,807	5.6	6,82,807	5.60
3	AGNPJ5775G	Archit Jindal (N 13)	Not shown as promoter		4,282	0.04	5,04,282	4.14	6,04,282	4.96
4	AEQPJ5780G	Chetan Jain (N 11)	5,85,000	4.8	5,85,000	4.8	3,00,000	2.46	Not shown as promoter	
5	CPGPK3235J	Kanika Jindal (N 14)	Not shown as promoters						1,20,000	0.98
6	AIDPS0821N	Laxman Singh Satyapal (N 15)							4,52,227	3.71
7	AEEPJ6955K	Mamta Jindal (N 10)	10,689	0.09	39,439	0.32	2,20,810	1.81	5,36,104	4.4
8	AJBPM5839R	Meera Mishra (N 16)	Not shown as promoter						3,30,500	2.71
9	AAIPJ8526A	Pradeep Kumar Jindal (N 1)	7,496	0.06	5,496	0.05	5,496	0.05	5,496	0.05
10	AFNPJ7112E	Renu Jain (N 4)	9,97,500	8.18	9,97,500	8.18	9,97,500	8.18	9,97,500	8.18
11	ACSPJ6904A	S K Jain (N 8)	16,93,440	13.89	14,03,484	11.51	12,91,814	10.59	12,91,814	10.59
12	AAHPJ8609H	Satender Kumar Jain (N 9)	5,85,000	4.80	5,00,000	4.10	3,00,000	2.46	Not shown as promoter	
13	AANHS9519P	Satender Kumar Jain and Sons HUF (N 6)	5,88,000	4.82	5,00,000	4.10	3,00,000	2.46		
14	ADEPJ5110B	Satish Jain (N 3)	4,83,000	3.96	4,83,000	3.96	4,83,000	3.96		
15	AAGPJ6737K	Shobha Jain (N 5)	5,85,000	4.8	4,00,000	3.28	3,00,000	2.46		
16	AAMPJ2164N	Trishla Jain (N 2)	5,88,000	4.82	5,88,000	4.82	5,88,000	4.82	5,88,000	4.82
		Total	71,23,565	58.42	62,05,748	50.89	62,10,030	50.92	62,08,730	50.92

d) The quarter wise shareholding details of promoters on the basis of demat statements is given below:

(Table 3)

S.No.	PAN	Name of promoter	31/12/2012		31/03/2013		30/06/2013		30/09/2013	
			No of Shares	% of Holding	No of Shares	% of Holding	No of Shares	% of Holding	No of Shares	% of Holding
1	AIHPJ4158R	Aanchal Jindal (N 12)	2,940	0.02	2,940	0.02	2,36,321	1.94	6,00,000	4.92
2	AAYPJ3951B	Anand Kumar Jain (N 7)	9,97,500	8.18	6,96,607	5.71	6,82,807	5.6	6,82,807	5.6
3	AGNPJ5775G	Archit Jindal (N 13)	Not a Promoter		4,282	0.04	5,04,282	4.14	6,04,282	4.96
4	AEQPJ5780G	Chetan Jain (N 11)	5,85,000	4.8	5,85,000	4.8	3,00,000	2.46	3,00,000	2.46
5	CPGPK3235J	Kanika Jindal (N 14)	Not a promoter						1,20,000	0.98
6	AIDPS0821N	Laxman Singh Satyapal (N 15)	Not a promoter						4,52,227	3.71
7	AEEPJ6955K	Mamta Jindal (N 10)	10,689	0.09	39,439	0.32	2,20,810	1.81	5,36,104	4.4
8	AJBPM5839R	Meera Mishra (N 16)	Not a Promoter						3,30,500	2.71
9	AAIPJ8526A	Pradeep Kumar Jindal (N 1)	7,496	0.06	5,496	0.05	5,496	0.05	5,496	0.05
10	AFNPJ7112E	Renu Jain (N 4)	9,97,500	8.18	9,97,500	8.18	9,97,500	8.18	9,97,500	8.18
11	ACSPJ6904A	S K Jain (N 8)	16,93,440	13.89	14,03,484	11.51	12,91,814	10.59	12,91,814	10.59
12	AAHPJ8609H	Satender Kumar Jain (N 9)	5,85,000	4.80	5,00,000	4.10	3,00,000	2.46	3,00,000	2.46
13	AANHS9519P	Satender Kumar Jain and Sons HUF (N 6)	5,88,000	4.82	5,00,000	4.10	3,00,000	2.46	3,00,000	2.46
14	ADEPJ5110B	Satish Jain (N 3)	4,83,000	3.96	4,83,000	3.96	4,83,000	3.96	4,83,000	3.96
15	AAGPJ6737K	Shobha Jain (N 5)	5,85,000	4.8	4,00,000	3.28	3,00,000	2.46	3,00,000	2.46
16	AAMPJ2164N	Trishla Jain (N 2)	5,88,000	4.82	5,88,000	4.82	5,88,000	4.82	5,88,000	4.82
		Total	71,23,565	58.42	62,05,748	50.89	62,10,030	50.93	78,91,730	64.72

- e) On perusal of demat statements of all the promoters for the said period, it was observed during investigation that for the quarter ended September 30, 2013, the promoter group was holding 78,91,730 shares which is 64.72% to the total share capital of the company. However, the Company disclosed promoter group holding as 62,08,730 shares which is 50.92% (reference-table 2 above). This difference was due to non-disclosure of shareholding of five promoter group entities viz., Noticee no. 11, Noticee no. 9, Noticee no. 6, Noticee no. 3 and Noticee no. 5. Further, for the quarter ended March 2013, Noticee no. 13, was included in the promoter group and for the Quarter ended September 2013, three entities viz., Noticee no. 14, 15 and 16 were included in the promoter group.
- f) In response to SEBI query with respect to above findings at para 2 (e), FIRL, vide letters dated February 15, 2017, February 21, 2017 and March 10, 2017 replied that:
- i. The 5 entities viz., Chetan Jain, Satender Kumar Jain, Satender Kumar Jain and Sons HUF, Satish Jain and Shobha Jain vide their letter dated September 02, 2013 expressed their unwillingness to be part of promoter group as they do not have any interest in the management decision making/control, so they wanted to exit from the promoter group. Therefore, their shareholding was not shown as a part of promoter group for the quarter ended September 30, 2013.
 - ii. Archit Jindal was entered as a shareholder in the company w.e.f. February 22, 2013. Archit Jindal is covered under the promoter group, being son of Shri Pradeep Kumar Jindal who is a promoter of the Company. Therefore, his shareholding was shown as a part of promoter group for the quarter ended March 31, 2013.
 - iii. Kanika was included in the promoter group w.e.f. quarter ended September 30, 2013 as she was added as the new member in the family as wife of Archit Jindal and daughter-in-law of Pradeep Jindal who are already the promoters of the company w.e.f. July 16, 2013 (marriage date). Therefore, her shareholding was shown as a part of promoter group for the quarter ended September 30, 2013.

iv. The two entities viz., Laxman Singh Satyapal and Meera Mishra were already holding shares in the company and were not part of the promoter group. Meera Mishra and Laxman Singh Satyapal joined hands with the management and showed their interest in the affairs and control of the Company from September 05, 2013. Therefore, their shareholding was shown as a part of promoter group for the quarter ended September 30, 2013.

g) Investigation further revealed that the promoter group was holding 50.89% (62,05,748 shares out of total no. of shares of the company i.e 1,21,94,199 shares) in the beginning of the Financial Year 2013-14 which is more than 25%. The table below shows gross acquisition of shares by the promoters exceeding 5% of the share capital of the company. While computing the acquisition of shares, as mentioned in explanation to Regulation 3(2) of SAST Regulations, 2011 only gross acquisitions are taken into consideration excluding the disposal of shares during the period.

(Table 4)

Date	Name of the Acquirer	No. of Shares acquired	% of acquisition to the share capital of the company 1,21,94,199 shares	Cumulative no. of shares acquired	Cumulative % of Acquisition
04/04/2013	Acquisition of shares by Mamta Jindal	24,000	0.20	24,000	0.20
03/05/2013	Acquisition of shares by Anand Kumar Jain	20,000	0.16	44,000	0.36
27/04/2013	Acquisition of shares by Mamta Jindal	2,570	0.02	46,570	0.38
27/06/2013	Acquisition of shares by: 1. Aanchal Jindal – 2,33,381 shares 2. Archit Jindal – 2,95,718 shares 3. Mamta Jindal – 1,56,847 shares	6,85,946	5.63	7,32,516	6.01
Cumulative Acquisition of shares exceeded 5% on June 27, 2013 and hence Regulation 3(2) of SEBI (SAST) Regulations, 2011 is triggered.					
28/06/2013	Acquisition of shares by: 1. Archit Jindal – 2,04,282 shares 2. Mamta Jindal – 29,954 shares	2,34,236	1.92	2,34,236	1.92
22/07/2013	Acquisition of shares by Kanika	1,20,000	0.98	3,54,236	2.90
02/09/2013	Acquisition of shares by Mamta Jindal	32,000	0.26	3,86,236	3.17
25/09/2013	Acquisition of shares by: 1. Aanchal Jindal – 3,63,679 shares 2. Archit Jindal – 1,00,000 shares 3. Mamta Jindal – 2,83,294 shares	7,46,973	6.13	11,33,209	9.29
Cumulative Acquisition of shares exceeded 5% on September 25, 2013 and hence Regulation 3(2) of SEBI (SAST) Regulations, 2011 is triggered					
30/09/2013	Acquisition of shares by: 1. Laxman Singh Satyapal– 2,86,292 shares 2. Meera Mishra – 2,10,500 shares	4,96,792	4.07	4,96,792	4.07

- h) In view of the above, SCN alleges that on June 27, 2013, Noticee no. 10, 12 and 13, alongwith PAC's viz. Noticee no. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 11, triggered Regulations 3(2) of the SAST Regulations, 2011 for which they were required to make public announcement for an open offer in terms of Regulation 3(2) of SAST Regulations, 2011 which the Noticees failed to make. The SCN also alleges that on September 26, 2013, Noticee no. 10, 12 and 13, alongwith PAC's viz. Noticee no. 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 14, 15 and 16, again triggered Regulations 3(2) of the SAST Regulations, 2011 for which they were required to make public announcement for an open offer in terms of Regulation 3(2) of SAST Regulations, 2011 which the Noticees failed to make.

Personal hearing, replies and written submissions:

3. Noticee no. 1, 10, 12, 13, 14, 15 and 16, availed the opportunity of personal hearing granted to them on August 13, 2019 and August 29, 2019. Noticee no. 5, 6, 9 and 11 availed the opportunity of personal hearing on July 23, 2019. I note that Noticee no. 2, 3, 4, 7 and 8, were granted the first opportunity of hearing on July 23, 2019, on which date Advocate Deepak Panwar i/b Credence Law, representing the said Noticees sought for an adjournment on the ground that he was awaiting further instructions from his clients in this matter. Thus the matter was adjourned to August 2, 2019 for the said Noticees. On July 31, 2019, another request for adjournment was received from Credence Law on the ground that the Advocate engaged by them was not available on the next date of hearing. In the interest of justice, another opportunity of hearing was granted to Noticee no. 2, 3, 4, 7 and 8, on August 13, 2019, which was communicated to Credence Law vide email dated August 7, 2019 and August 8, 2019. On the date of scheduled hearing none appeared on behalf of Noticee no. 2, 3, 4, 7 and 8 and no request of adjournment was received from them. In the interest of justice, a final opportunity of personal hearing was granted to the said Noticees on August 29, 2019, which was communicated to Credence Law (Law firm representing Noticee no. 2, 3, 4, 7 and 8) vide email dated August 14, 2019. I note that none appeared on behalf of the said Noticees on the last date of hearing fixed for them i.e. August 29, 2019. Thus, I note that Noticee no. 2, 3, 4, 7 and 8, were granted opportunity of personal hearing on four occasions viz, July

23, 2019, August 2, 2019, August 13, 2019 and August 29, 2019, however, the said Noticees have failed to appear on all the four occasions, hence, the matter is being proceeded *qua* the said Noticees, on the basis of their reply available on record.

4. Noticee no. 2, 4, 3, 7 and 8 vide their separate replies dated May 10, 2019 and February 28, 2018, have inter alia raised the following common contentions to the allegation in the SCN:

- i. That they were holding shares in one of the transferor companies (Lord Shiv Investment and Trading Co. Pvt. Ltd./ Instant Travels and Tours Pvt. Ltd./ Parsandi Leasing and Finance Pvt. Ltd.) which got merged with the transferee company i.e. FIRL in terms of Scheme of Arrangement being sanctioned by the Hon'ble High Court of Delhi on April 27, 2010. Thus they become shareholders of FIRL pursuant to the Scheme of Arrangement.
- ii. That they have never been qualified under the definition of acquirer (section 2(a)), person acting in concert (section 2(q)), promoter (section 2(s)) and promoter group (section 2(t)). It is incumbent upon SEBI to prove that they fall in the definition of any of these categories. Since they do not fall under any of the definition as mentioned above, there is no compulsion for them to make open offers as per Regulation 3(2) of SEBI (SAST) Regulations, 2011.

5. Noticee no. 1, 10, 12, 13, 14, 15 and 16 vide their reply dated September 18, 2019 and during the personal hearing held on August 13, 2019 and August 29, 2019, have inter alia raised the following contentions and made the following submissions to the allegations raised in the SCN:

- i. Though the copies of documents relied upon in the SCN have been provided but our request for inspection of such documents have not been acceded to.

- ii. In Table 5 of the SCN, no allegation has been made against Noticee no. 14-16, for trigger of first open offer as they were admittedly not part of the Promoter Group at that time. Thus, the allegation made in para 11 of the SCN are inconsistent with the details given in Table 5 of SCN. On this ground alone, the proceedings against the Noticee no. 14-16, respectively should be dropped.
 - iii. It is further submitted that the matter belongs to the year 2013 and we are not in a position to recollect all the circumstances under which the promoter group acquired the shares.
 - iv. We, Noticee no. 1, 10, 12 and 13, are not admitting our guilt but for the peace of mind, are ready to make open offer for 10.28 % of the capital of FIRL, subject to co-operation of other 9 promoters of FIRL.
6. Noticee no. 5, 6, 9 and 11 vide their reply dated January 25, 2018, July 31, 2019 and during the personal hearing held on July 23, 2019, have inter alia raised the following contentions to the allegations raised in the SCN:
- i. We were holding shares in one of the transferor companies (Instant Travels and Tours Pvt. Ltd./ Parsandi Leasing and Finance Pvt. Ltd.) which got merged with the transferee company i.e. FIRL in terms of Scheme of Arrangement being sanctioned by the Hon'ble High Court of Delhi on April 27, 2010. Thus, we become shareholders of FIRL pursuant to the Scheme of Arrangement. If we had any intention of entering into the promoter/promoter group of FIRL, we would have made some changes in our shareholding pattern by either infusing more capital or contributing to the capital in any other manner. We submit that we have made no such contribution in FIRL.
 - ii. We have never participated in the management or day to day business of either the transferor company or the transferee company.

- iii. We have never signed any document in respect of merger or for the purpose of becoming the promoters of FIRL.
 - iv. We carry on the business of manufacturing gram flour in the family, whereas FIRL is an NBFC. We therefore do not possess any knowledge, expertise or information to even get involved in financing business of FIRL.
 - v. We became aware that we are shown as promoters of FIRL after its listing on BSE in 2012. As soon as we noticed this, we contacted our acquaintance/promoter of transferor companies, who informed us that, pursuant to the merger of transferor company with FIRL, the shareholder of transferor private company were mandatorily shown as promoters of the merged listed entity FIRL to satisfy certain conditions of Clause 40A of the erstwhile Listing Agreement.
 - vi. Considering that we were never part of promoters of transferor companies and never intended to be part of promoter group of FIRL, we brought this to the notice of management of FIRL and requested them to remove our name from promoter group of FIRL. Accordingly, our name was removed from the promoter group of FIRL w.e.f quarter ending September 2013.
 - vii. We state that we were neither a part of the promoter group in the transferor company, nor did we have any intention to become part of the promoter group in transferee company i.e. FIRL. Any act carried out by other entity cannot be added on to us, since from the beginning we were neither the promoters of FIRL, nor did we ever express our intention at any point in time to be part of its promoter group.
 - viii. In view of the above, we deny that we are Persons Acting in Concert alongwith other promoters in FIRL. Thus, we state that we are not liable to give any open offer alongwith other promoters of FIRL in the given matter.
7. Before dealing with the issues involved in the matter, it would be appropriate to refer to the relevant provisions of law involved in the matter, the relevant extract of which is reproduced hereunder:

Relevant extract of provisions of SAST Regulations, 2011:

“Definition:

2. (1) *In these regulations, unless the context otherwise requires, the terms defined herein shall bear the meanings assigned to them below, and their cognate expressions and variations shall be construed accordingly, -*

(a) *“acquirer” means any person who, directly or indirectly or indirectly, acquires or agrees to acquire whether by himself, or through, or with persons acting in concert with him, shares or voting rights in or control over the target company;*

.....

(e) *‘control’ includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner:*

.....

(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.*

(2) *Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established, —*

.....

(iv) *promoters and members of the promoter group;*

.....

(s) 'promoter' has the same meaning as in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and includes a member of the promoter group;

.....

Substantial acquisition of shares or voting rights.

3. (1)

(2) 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

Provided further that.....

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)”

Relevant extract of provisions of SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009:

“2. (1) In these regulations, unless the context otherwise requires:

.....

(za) “promoter” includes:

- (i) the person or persons who are in control of the issuer;*
- (ii) the person or persons who are instrumental in the formulation of a plan or programme pursuant to which specified securities are offered to public;*
- (iii) the person or persons named in the offer document as promoters:*

.....”

8. Noticee no. 1, 10, 12, 13, 14, 15 and 16 have raised a preliminary objection that though copies of relied upon documents have been provided to them, but inspection of the same have not been provided by SEBI. I note that the advocates for the said Noticees were provided the inspection of documents on August 13, 2019 of the letter dated February 15, 2017, February 21, 2017 and March 10, 2017 written by FIRL to SEBI. Another set of documents namely, letter by NSDL to SEBI dated July 23, 2015, the copy of which alongwith its Annexures, was provided to the advocate of Noticee no. 1, 10, 12, 13, 14, 15 and 16, at the time of hearing on August 29, 2019, however, as the said letter was received as an attachment to an email which was written to SEBI by NDSL, a printed copy of the same was provided to the Noticees. The said letter contained two annexures namely Annexure A (information of the BO account held by all the Noticees) and Annexure B (details of transactions in the equity shares of FIRL from December 1, 2012 to December 31, 2013). I note that the authenticity of the contents of the said letter by NSDL including the authenticity of its Annexures thereof have not been disputed by Noticee no. 1, 10, 12, 13, 14, 15 and 16. I also note that inspection of documents obtained in electronic form may not be feasible in all cases, as the original contents are in electronic form and they can be provided to the entities at the time of inspection or as annexures to SCN, after taking printouts of the same, which has been done in the instant case. I also note that after inspection of the documents, these Noticees have also filed their replies. Therefore, asking for inspection of a document which is an email in electronic form, is not tenable, as printout of the same has already been furnished to these Noticees.

9. I note that SCN alleges that during the Financial Year 2013-14, Noticee no. 10 acquired 0.20% shares of FIRL on April 04, 2013, Noticee no. 7 acquired 0.16 % shares of FIRL on May 03, 2013, Noticee no. 10 acquired 0.02% shares of FIRL on April 04, 2013 and Noticee no. 10, 12 and 13, collectively, acquired 5.63 % shares of FIRL on June 27, 2013. I note that because of these acquisitions, on June 27, 2013 (“**first trigger**”), by Noticee no. 7, 10, 12 and 13 (hereinafter referred to as “**acquirers in first trigger**”), the shareholding of the acquirers in first trigger alongwith the shareholding of Noticee No. 1, 2, 3, 4, 5, 6, 8, 9 and 11 (hereinafter referred to as “**PACs in first trigger**”), increased from 50.89% to 56.9% on gross basis, as calculated from Table 4 above. It is further alleged in the SCN that Noticee no. 1 to 13 were the part of the promoter group of FIRL as on the date of respective acquisitions by the acquirers in first trigger. As per Regulation 3(2), no acquirer who together with person acting in concert with him was holding 25% or more but less than the maximum permissible non-public shareholding, shares or voting rights in a company, could acquire in any financial year 5% or more shares or voting rights in such company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company. Further, Explanation appended to said Regulation 3(2) provide that only gross acquisitions shall be taken into account regardless of any intermittent fall in shareholding or voting rights. Thus, the SCN alleges that the acquirers in first trigger alongwith PACs in first trigger, by acquiring more than 5% shares (i.e. 6.01% shares) in a financial year on June 27, 2013, without making public announcement for an open offer, have violated Regulation 3(2) of SAST Regulations, 2011.
10. SCN further alleges that during the same Financial Year 2013-14, Noticee no. 13 further acquired 1.68% shares of FIRL on June 28, 2013, Noticee no. 10 further acquired 0.24% shares of FIRL on June 28, 2013, Noticee no. 14 acquired 0.98% shares of FIRL on July 22, 2013, Noticee no. 10 has further acquired 0.26% shares of FIRL on September 02, 2013 and Noticee no. 10, 12 and 13, collectively, acquired 6.13 % shares of FIRL on September 25, 2013. SCN alleges that because of these acquisitions, on September 25, 2013 (“**second trigger**”) by Noticee no. 10, 12, 13 and 14 (hereinafter referred to as “**acquirers in second trigger**”), the shareholding of the acquirers in first trigger alongwith shareholding of Noticee no. 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 15 and 16 (hereinafter referred to as “**PACs in second**

trigger") increased from 56.9% to 66.19% on gross basis, as calculated from Table 4 above. As per Regulation 3(2), no acquirer who together with person acting in concert with him was holding 25% or more but less than the maximum permissible non-public shareholding, shares or voting rights in a company, could acquire in any financial year 5% or more shares or voting rights in such company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company. Further, Explanation appended to said Regulation 3(2) provide that only gross acquisitions shall be taken into account regardless of any intermittent fall in shareholding or voting rights. Thus, the SCN alleges that the acquirers in second trigger alongwith PACs in second trigger, by again acquiring more than 5% shares (i.e. 9.29% shares) in a financial year on September 25, 2013, without making public announcement for an open offer, have violated Regulation 3(2) of SAST Regulations, 2011.

11. I note that none of the Noticees have disputed the acquisitions which resulted into first trigger and second trigger. I also note that none of the Noticees have disputed percentage of their respective shareholding in FIRL or the percentage of pre or post acquisition shareholding of other Noticees in FIRL, as shown in Table 3 of the SCN. The Noticee no. 2, 3, 4, 5, 6, 7, 8, 9 and 11 have mainly contended that they were not the part of the promoter group of FIRL and consequently, they cannot be termed as person acting in concert with the acquirers in first trigger and second trigger. The said contention of these Noticees has been articulated and dealt in the following paras.

12. I note that as stated in the SCN, shareholding of Noticee no. 5, 6, 9 and 11 were disclosed as part of the shareholding of promoter/members of promoter group of FIRL, in the quarterly shareholding disclosures made by FIRL to the stock exchanges from the quarter ending December 31, 2012 to quarter ending on June 30, 2013. As per Regulation 2(1)(q)(2) of SAST Regulations, 2011, person acting in concert means a person 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. Further, in terms of Regulation 2(1)(q)(2)(iv) of SAST

Regulations, 2011, unless the contrary is established promoters and members of the promoter group shall be deemed to be persons acting in concert with other person in the same category, as acquirers. In order to better appreciate the concept of 'person acting in concert', the judgment of Hon'ble Supreme Court in ***Daiichi Sankyo Company Ltd. Vs. Jayayram Chigurupati & Ors. (2010) 7 SCC 449*** is worth referring to, wherein it was observed as under:

".....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, dehors 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.....

.....

48..... Regulation 2(1)(e)(2) defines "person acting in concert". It is a deeming provision. It has to be read in conjunction with regulation 2(1)(e)(1) which states that person acting in concert comprises of persons who in furtherance of a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal), directly or indirectly cooperate by acquiring or agreeing to acquire shares or voting rights in the target company or to acquire control over the target company. The word "comprises" in regulation 2(1)(e) is

significant. It applies to regulation 2(1)(e)(2) as much as to regulation 2(1)(e)(1). A fortiori, a person deemed to be acting in concert with others is also a person acting in concert. In other words, persons who are deemed to be acting in concert must have the intention or the aim of acquisition of shares of a target company. It is the conduct of the parties that determines their identity. Whether a person is or is not acting in concert with the acquirer would depend upon the facts of each case. In order to hold that a person is acting in concert with the acquirer or with another person it must be established that the two share the common intention of acquisition of shares of some target company.....”

13. I note that the Judgment in the Daichi case (*supra*) was rendered in case where definition of “person acting in concert” as provided under Regulation 2(1)(e) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (since repealed) whereas in the present case provisions of SAST Regulations, 2011 are involved wherein “person acting in concert” has been defined under Regulation 2(q). I note that Regulation 2(1)(e) of SAST Regulation, 1997 and Regulation 2(1)(q) of SAST Regulation, 2011 are *pari materia* and hence, interpretation given to Regulation 2(1)(e) of SAST Regulations, 1997 by Hon’ble Supreme Court in Daichi case (*supra*) can be referred to with respect to interpretation of Regulation 2(1)(q) of SAST Regulations, 2011 also.

14. Therefore, in terms of Regulation 2(1)(q)(2)(iv) of SAST Regulations, 2011, there is a presumption that Noticee no. 5, 6, 9 and 11 whose shareholding was disclosed as part of the shareholding of the promoter group of FIRL, were acting in concert with other Noticees i.e. other promoters of FIRL, for the acquisitions of shares of FIRL which resulted into first and second trigger. In order to rebut the said presumption, these Noticees have contended that they were the shareholders in the transferor companies which got merged with FIRL pursuant to a scheme of amalgamation approved by Hon’ble Delhi High Court, in the year 2010 and they have been wrongly shown as promoter by FIRL since then. These Noticees have also contended that on becoming aware of such wrong disclosure by FIRL, in the December, 2012, they approached FIRL, vide their letter dated September 02, 2013 requesting therein to remove their name from the promoter/promoter group of FIRL. In this regard, I note that at the relevant time shareholding pattern was

disclosed by the FIRL to the stock exchanges in terms Clause 35 of the Equity Listing Agreement. In terms of Clause 35 of the Equity Listing Agreement, a listed company is required to disclose *inter alia* shareholding of the promoter and promoter group at the end of each quarter to the stock exchange with in 21 days from the end of each quarter. The shareholding of Noticee no. 5, 6, 9 and 11 was disclosed as part of the shareholding of the promoter/promoter group by FIRL in the disclosures made under Clause 35 of the Equity Listing Agreement to the stock exchange for the quarters ending December, 2012, March, 2013 and June, 2013. As per said Clause 35, definition of “promoter” and “promoter group” had to be as per Clause 40A of the Equity Listing Agreement. As per Clause 40A of the Equity Listing Agreement the terms “promoter” and “promoter group” had the same meaning as was assigned to them under Explanations I, II and III to sub-clause (m) of clause 6.8.3.2 of the SEBI (Disclosure and Investor Protection) Guidelines, 2000 (DIP Guidelines). DIP Guidelines were rescinded on August 26, 2009 and were replaced by ICDR Regulations, 2009 [*since repealed and replaced by SEBI (ICDR) Regulations, 2018 on September 11, 2018*]. As per then existing Regulation 111 of ICDR Regulations, 2009, DIP Guidelines were rescinded on August 26, 2009, however, notwithstanding such recession, *inter alia*, anything done or any action taken or purported to have been done or taken shall be deemed to have been done or taken under the corresponding provisions of the ICDR Regulations, 2009. As per Regulation 2(1)(za) of ICDR Regulations, 2009 promoters was defined as follows:

“(za) “promoter” includes:

- (iv) the person or persons who are in control of the issuer;
- (v) the person or persons who are instrumental in the formulation of a plan or programme pursuant to which specified securities are offered to public;
- (vi) the person or persons named in the offer document as promoters:

.....”

15. Following the aforesaid provisions, FIRL disclosed shareholding of Noticee no. 5, 6, 9 and 11 as part of the shareholding of promoter/promoter group of the company. These Noticees have submitted that vide their letter dated September 02, 2013,

they had requested to FIRL to remove their name from the promoters of FIRL which was accepted by FIRL and accordingly, they were not shown as part of the promoter group in the quarterly shareholding disclosure made by FIRL for the quarter ending September 30, 2013. Be that as it may be the real issue to be determined here is whether these Noticees were sharing common objective or purpose of acquiring shares or voting rights or control in FIRL, so as to term them PACs with the acquirers in first and second trigger. In this regard, as mentioned above, these Noticees were the shareholders in the transferor companies which got merged with the transferee company i.e. FIRL, pursuant to a scheme of amalgamation approved by Hon'ble Delhi High Court, in the year 2010 and after merger with FIRL, shareholding of these Noticees were disclosed under shareholding of promoter/promoter group of FIRL, in the quarterly shareholding disclosures made by FIRL to the stock exchange for the quarters ending June, 2012, September, 2012, December, 2012, March, 2013 and June, 2013. However, these Noticees objected to inclusion of their shareholding in the shareholding of the promoter/promoter group disclosed by FIRL to the stock exchange, after merger of transferee company with FIRL, vide their letter dated September 02, 2013. It is also noted that these Noticees also sold about 50% of their shares in FIRL during April to June, 2013. In these facts and circumstances, in my view these Noticees who were shareholders of transferor companies did not share common objective or purpose of acquiring shares or voting rights in the FIRL, with acquirers in first and second trigger which as per Daichi Sankyo judgment (*supra*) is must for terming a person as "person acting in concert" as they took objection to inclusion of their shareholding in the promoter/promoter group of FIRL and also sold about 50% of their shareholding in FIRL. As far as contention raised by Noticee no. 3 is concerned, I note that his case is similarly placed as that of Noticee no. 5, 6, 9 and 11 to the extent that he was disclosed as part of the promoter group by FIRL pursuant to scheme of the merger of the transferor companies with FIRL wherein he was a shareholder and that he raised objections with FIRL on inclusion of his name as promoter of FIRL and that acceding to his request FIRL removed his name from the promoter group in quarterly disclosure of shareholding pattern made to stock exchange for the quarter ending September 30, 2013.

16. I note that SCN has identified Noticee no. 2, 4, 7 and 8 as the promoter/members of promoter group of FIRL, as per the disclosure of quarterly shareholding pattern by FIRL to the stock exchange for the quarters ending December, 2012, March 2013, June, 2013 and September, 2013 and thus, it is alleged that the said Noticees are deemed to be 'persons acting in concert' with the acquirers in the first and second trigger, in terms of Regulation 2(q)(2)(iv) of SAST Regulations, 2011. To rebut the presumption of "person acting in concert", Noticee no. 2, 4, 7 and 8 have now in their replies contended that they do not fall under the definition of 'person acting in concert'. These Noticees have also contended that they were the shareholders in the transferor companies which got merged with FIRL pursuant to a scheme of amalgamation approved by Hon'ble Delhi High Court, in the year 2010 and they have been wrongly shown as promoter by FIRL since then. Except this bald assertion, I find that these Noticees have never approached FIRL claiming that their shareholding could not be included in the promoter/promoter group shareholding. On the contrary FIRL continued to disclose shareholding of these Noticees under promoter/promoter group shareholding. I further note that Noticee no. 7 has acquired 0.16% shares on May 03, 2013. In view of the aforesaid discussion, I find that these Noticees were not person acting in concert with the acquirers in first and second trigger.

17. Noticee no. 10, 12 and 13 who are the acquirers in first as well as second triggers, have not disputed respective acquisitions attributed to them in the SCN. I note that Noticee no. 10, 12 and 13 were the promoters of FRIL even prior to the merger of the transferor companies with transferee company i.e. FIRL. Noticee no. 10, 12 and 13 have not disputed that their acquisitions resulting into first and second trigger were not made while acting in concert with each other and with persons acting in concert for the impugned acquisitions. I note that Noticee no. 14 who is also an acquirer in the second trigger, is the wife of Noticee no. 13. I also note that Noticee no. 1 is the father of Noticee no. 13 and father-in-law of Noticee no. 14. I note that on the basis of disclosure of quarterly shareholding pattern to the stock exchange for the quarters ending June, 2012, September, 2012, December, 2012, January, 2013, March 2013, June, 2013 and September, 2013, the SCN has identified that Noticee no. 1 as the promoter/members of promoter group of FIRL and thus it is alleged that the said Noticee is deemed to be 'person acting in

concert' with the acquirers in the first and second trigger, in terms of Regulation 2(1)(q)(2)(iv) of SAST Regulations, 2011. I note that Noticee no. 1 was also the promoter of FIRL even prior to the merger of the transferor companies with FIRL. I further note that Noticee no. 1 has not disputed that he is part of the promoter/promoter group of FIRL. I also note that Noticee no. 1 was part of promoter/promoter group on both the trigger dates i.e. June 27, 2013 and September 25, 2013. Noticee no. 1 has also not disputed that he acted in concert with the acquirers in first and second trigger. Thus, I find that allegation made in the SCN that Noticee no. 1 acted in concert with acquirers in first and second trigger, stands established.

18. I note that SCN has alleged that Noticee no. 14 was disclosed under the promoter/members of promoter group of FIRL in quarterly shareholding disclosure made by FIRL to the stock exchange for the quarter ended September 30, 2013. SCN alleges that Noticee no. 14 acquired .98% shares of FIRL on July 22, 2013 and she is wife of Noticee no. 13 and daughter-in-law of Noticee no. 1, the other promoters of FIRL. Thus SCN alleges that Noticee no. 14 is deemed to be 'person acting in concert' with the acquirers in second trigger, in terms of Regulation. 2(1)(q)(2)(iv) of SAST Regulations, 2011. I note that Noticee no. 14 has not disputed that she is part of the promoter/promoter group of FIRL. I also note that Noticee no. 14 became part of promoter/promoter group on July 22, 2013 when she acquired .98% shares of FIRL. Noticee no. 1 has also not disputed that she acted in concert with the acquirers in first and second trigger. Thus, I find that allegation made in the SCN that Noticee no. 1 acted in concert with acquirers in second trigger, stands established.

19. I note that SCN has alleged that Noticee no. 15 and 16, as part of the promoter/members of promoter group of FIRL, are deemed to be 'persons acting in concert' with the acquirers in the second trigger in terms of Regulation 2(1)(q)(2)(iv) of SAST Regulations, 2011. I note that SCN alleges that FIRL in its letter dated February 15, 2017 had informed SEBI that Noticee no. 14 and 15 had joined hands with the management of FIRL and showed their interest in the affairs and control of FIRL from September 05, 2013, hence, they were shown as part of promoter group in the quarterly shareholding disclosures on September 30, 2013.

I note that Noticee no. 14 and 15 have not disputed the said allegation made in the SCN. Thus, I find that Noticee no. 15 and 16 had common objective and purpose of acquiring shares/voting right/control in FIRL for the acquisitions made by the acquirers in second trigger on September 25, 2013. Therefore, I find that allegation made in the SCN that Noticee no. 15 and 16 acted in concert with acquirers in second trigger, stands established.

20. In view of the aforesaid discussions, I find that, -

- (i) during the Financial Year 2013-14, Noticee no. 10 acquired 0.20% shares of FIRL on April 04, 2013, Noticee no. 7 acquired 0.16 % shares of FIRL on May 03, 2013, Noticee no. 10 acquired 0.02% shares of FIRL on April 04, 2013 and Noticee no. 10, 12 and 13, collectively, acquired 5.63 % shares of FIRL on June 27, 2013. I note that because of these acquisitions, on June 27, 2013 by Noticee no. 7, 10, 12 and 13, the shareholding of the said acquirers alongwith the shareholding of persons acting in concert with them for the said acquisitions i.e. Noticee no. 1, 2, 4 and 8 increased by 6.01% (more than 5% in a financial year), from 30.65% to 36.86%, on gross basis. The said acquirers on acquiring 6.01% on June 27, 2013 were required to make a public announcement for an open offer, in terms of Regulation 3(2) of SAST Regulations, 2011 which these acquires have failed to make.
- (ii) during the Financial Year 2013-14, Noticee no. 13 further acquired 1.68% % shares of FIRL on June 28, 2013, Noticee no. 10 further acquired 0.24% shares of FIRL on June 28, 2013, Noticee no. 14 acquired 0.98% shares of FIRL on July 22, 2013, Noticee no. 10 further acquired 0.26% shares of FIRL on September 02, 2013 and Noticee no. 10, 12 and 13, collectively, acquired 6.13 % shares of FIRL on September 25, 2013. I note that because of these acquisition by Noticee no. 10, 12, 13 and 14, the shareholding of the said acquirers alongwith shareholding of the persons acting in concert with them for the said acquisitions i.e. Noticee no. 1, 2, 4, 7, 8, 15 and 16 which previously increased from 30.65% to 36.86% (first trigger) in the financial year 2013-14, further increased by 9.29% (more than 5% in a financial year) from 36.86% to 46.15% (second trigger) in the same financial

year, on gross basis. The said acquirers on again acquiring more than 9.29% shares i.e. more than 5% shares in a financial year on September 25, 2013 were required to make a public announcement for an open offer, in terms of Regulation 3(2) of SAST Regulations, 2011 which these acquires have failed to make.

21. As noted above, the respective acquirers after acquiring shares/voting rights in FIRL beyond the threshold of creeping acquisition, have failed to make an open offer in terms of Regulation 3(2) of SAST Regulations, 2011, on two trigger dates namely, June 27, 2013 and September 25, 2013. I also note that the for trigger on June 27, 2013, acquirers were Noticee no. 7, 10, 12 and 13 whereas for trigger on September 25, 2013 acquirers were Noticee no. 10, 12, 13 and 14. Similarly, persons acting in concert for the trigger on June 27, 2013, were Noticee no. 1, 2, 4 and 8 whereas for trigger on September 25, 2013, person acting in concert were Noticee no. 1, 2, 4, 7, 8, 15 and 16. However, I note that no pragmatic outcome will be achieved by directing the said Noticees to give two separate open offers. Hence, as a measure of feasibility and practicality, I find that a single open offer by all the acquirers along with the persons acting in concert would suffice in the facts and circumstances of the case.

22. However, I note that under SAST Regulations, 2011, one of the principle underlying is exit opportunity to the public shareholders of the target company at the best price and accordingly, Regulation 8 of SAST Regulations, 2011 which deals with offer price provides that offer price in an open offer has to be highest of the prices of shares of the target company derived through various methods enlisted therein. Thus, I note that public shareholders of FIRL are entitled to highest of the offer price to be computed in accordance with Regulation 8 of the SAST Regulations, 2011, from each date of trigger.

23. In view of the above, I, in exercise of the powers conferred upon me under Sections 11 and 11B of the SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992 and Regulation 32(1) of SAST Regulations, 2011, hereby direct:

- a) Noticee no. 1, 2, 4, 7, 8, 10, 12, 13, 14, 15 and 16 to make a public

announcement of an open offer for acquiring shares of FIRL, within a period of 45 days from the date when this order comes into force, in accordance with SAST Regulations, 2011;

- b) Noticee no. 1, 2, 4, 7, 8, 10, 12, 13, 14, 15 and 16, shall along with the offer price, pay interest at the rate of 10% per annum, for delay in making of open offer in terms of SAST Regulations, 2011, to the public shareholders of FIRL who were shareholders of FIRL as on the date of first or second trigger and whose shares are accepted in the open offer directed to be made.

24. In view of the exceptional circumstances emerging due to the outbreak of a COVID-19 and also in view of the Hon'ble SAT's Office Order dated March 16, 2020, this order shall come into force on March 28, 2020.

25. A copy of this Order shall be forwarded to the Noticees, FIRL, recognized stock exchanges and depositories, for necessary action.

Place: Mumbai

Date: March 19, 2020

Sd-

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA