

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

Under Sections 11(1), 11B(1) and 11(2)(h) of the Securities and Exchange Board of India Act, 1992 read with Regulation 32(1)(h) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

In respect of

Sl. No.	Noticee(s)	PAN
1.	Rutmarg Commercial Pvt. Ltd.	AABCR6975K
2.	Latika Ganeshkumar Kuppan	AJKPK5500E
3	Anand Ganesh Kumar	APBPG8259H

(The aforesaid entities are hereinafter referred to by their respective names or Noticee number and collectively as “the Noticees”.)

In the matter of Perfect-Octave Media Projects Ltd.

Background:

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”), had issued a show cause notice dated April 18, 2023 (“SCN”) to Rutmarg Commercial Pvt. Ltd. (“Rutmarg” / “Noticee 1”), Ms. Latika Ganeshkumar Kuppan (“Noticee 2”) and Shri Anand Ganesh Kumar (“Noticee 3”) alleging that the said entities had acquired shares of Perfect-Octave Media Projects Ltd. (“POMPL” / “Target Company”) in violation of the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“SAST Regulations, 2011”). The details of the allegations, as mentioned in the SCN, are given below.
2. POMPL, incorporated on September 16, 1991 with the Registrar of Companies, Mumbai, has its Registered Office at Indl Gala No. 11, 2nd Floor, Kapadia Indl

Premises, 123/24, Andheri Kurla Road, Andheri (East), Mumbai, Maharashtra, 400093. It is listed on BSE Ltd. (hereinafter referred to as “**BSE**”).

3. SEBI received a complaint dated August 15, 2020 against the Target Company, POMPL, from one Mr. Ratish Tagde (hereinafter referred to as “**Complainant**”), a promoter of the Target Company. The said complaint, *inter alia*, alleged that there was change in management of the Target Company and Rutmarg, Ms. Latika Ganeshkumar Kuppan and Mr. Anand Ganeshkumar (the Noticees), who constituted the new management of the Noticee, had crossed the threshold limit for an open offer in December 2016 but did not make an open offer. The said complaint was forwarded by SEBI to BSE for examination and to Rutmarg for Comments. Subsequently, the Complainant also provided SEBI a copy of an agreement dated September 15, 2016 (“**Acquisition Agreement**”) entered into between Mr. Ratish Tagde, Mr. Sharadchandra Tagde and Ms. Rajni Tagde (promoters of POMPL) on one side and Rutmarg (represented by Mr. K. Ganesh Kumar) on other side, for acquisition of promoters’ shares in POMPL by Rutmarg.
4. In respect of the allegations, Rutmarg vide email dated February 22, 2022 contended that Rutmarg infused funds in the Target Company against the shares of Mr. Ratish Tagde, an existing promoter, since Ratish Tagde was unable to pay for the expenses of the Target Company. However, as per Rutmarg, Mr. Ratish Tagde had not made any legal document either for transfer of shares towards clearing of these liabilities or for bestowing the rights of title of these shares to Rutmarg. Rutmarg further contended that the promoter first marked and then revoked the pledge on shares in September 2018 unilaterally without consultation/signing of an agreement as to how Rutmarg would be compensated for infusion of funds.
5. BSE, vide email dated December 21, 2020 submitted *inter alia* that Rutmarg had significant holding in POMPL and was always shown under the head ‘Public Category’ in the Shareholding Pattern filed by the Target Company with the BSE. The shareholding of Rutmarg in the Target Company, between July 2016 to September 2020, are provided in the Table below:

Table 1: Shareholding of Rutmarg in POMPL

Quarters	July 2016	Sep 2016	Dec 2016 to Sep 2017	Dec 2017	Mar 2018 to Sep 2018	Dec 2018 to Sep 2020
Percentage of shares	15.11	27.77	27.48	34.66	23.71	24.11

6. From the disclosures pertaining to the quarterly shareholding pattern of the Target Company for the quarters ending June 2016 and September 2016 filed with BSE, the following changes were observed:

Table 2: Changes in Quarterly Shareholding

Sr. No.	Entity	Quarterly Shareholding as disclosed for June 2016	Quarterly Shareholding as disclosed for September 2016	Change
1	Mr. Ratish Tagde	60,87,758	46,87,758	(14,00,000)
2	Ms. Rajni SharadChandra Tagde	23,00,400	NIL	(23,00,400)
3	Mr. SharadChandra Tagde	7,15,120	25000	(6,90,120)
4	Rutmarg Commercials Pvt. Ltd.	52,44,444	96,34,964	43,90,520

7. From the above Table, it was observed that the total number of shares held by the entities at Sr. Nos. 1 to 3 in the Table 2 above in the Target Company had reduced by 43,90,520 shares and there was corresponding increase in Rutmarg's shareholding in the Target Company (i.e. shareholding increased by 43,90,520 shares).
8. From the disclosures made under SAST Regulations, 2011 on BSE Website, it was observed that the entities mentioned at Sr. Nos. 1, 2 & 3 in the Table 2 above had disclosed the abovementioned change in the shareholding under Regulation 29(2) of the SAST Regulations, 2011, belatedly on February 06, 2017. While the entities at Sr. Nos. 2 & 3 in the Table 2 above had mentioned the abovementioned transactions resulting in change in shareholding as "pledge", the entity at Sr. No. 1 in Table 2 above had mentioned the transaction as "Off Market Transfer by way of Loan". However, the purported pledge was

not routed/registered with any of the depositories under the relevant provisions of the Depositories Act, 1996, as confirmed by the demat account statements of the abovementioned entities and Rutmarg.

9. It was also observed that the entities at Sr. Nos. 2 & 3 in the Table 2 above again made a disclosure in respect of the aforesaid shares as “revocation of pledge”, on September 27, 2018, under Regulation 29(2) of the SAST Regulations, 2011. However, the revocation disclosures were filed without actual movement of underlying shares, as confirmed by the demat statement of the Rutmarg. Further, no disclosures in respect of the subject transactions were made by Rutmarg.
10. Further, it was observed that though shares were transferred off-market (inter-depository transfer) from the demat account of Mr. Ratish Tagde (entity at Sr. No. 1 in Table 2) to Rutmarg. Rutmarg claimed that the said transaction was a pledge transaction and no pledge was created in the depository system, in terms of Regulation 58 of the erstwhile SEBI (Depositories and Participants) Regulations, 1996 (hereinafter referred to as “**DP Regulations**”), as applicable at the relevant time.
11. SEBI vide its letter dated August 17, 2010 to Depositories (subsequently included in the Master Circular dated Dec 15, 2016) has *inter alia* clarified that-
 - a. *Any procedure followed other than as specified under the provision of law shall not be treated as pledge.*
 - b. *An off market transfer of shares leads to change in ownership and cannot be treated as pledge.*
12. From the above, it is clear that an off-market transfer of shares led to change in ownership and the same cannot be treated as pledge of shares. Further, any procedure followed other than as specified under the provisions of law cannot be treated as Pledge. Accordingly, the transfer of shares from the demat accounts of the entities at Sr. Nos. 1 to 3 in Table 2 above to the demat account of Rutmarg led to Rutmarg becoming the beneficial owner of the said shares.

13. Further, the Acquisition Agreement dated September 15, 2016 clearly stated that *“This arrangement is for acquisition of substantial shares from existing promoters”* and that Rutmarg, subsequent to the transfer of the said shares, would be classified under the promoters’ category.
14. As Rutmarg had acquired more than 25% shares of the Target Company and also control in the Target Company by virtue of the Acquisition Agreement dated September 15, 2016 and the subsequent off-market transfer of shares, it had allegedly crossed the threshold limit prescribed under Regulation 3(1) of the SAST Regulations, 2011 and had triggered open offer requirements under Regulations 3(1) and 4 of the SAST Regulations, 2011.
15. Regulation 13(1) of the SAST Regulations, 2011 states that the public announcement for open offer ought to be made on the date of agreeing to acquire shares or voting rights in, or control over the target company. Accordingly, since the Acquisition Agreement for acquisition of shares and control was entered into on September 15, 2016, Rutmarg was required to make a public announcement for an open offer on September 15, 2016 itself. However, Rutmarg allegedly failed to do so.
16. As per records available on portal of Ministry of Corporate Affairs (MCA), Ms. Latika Ganeshkumar Kuppan (Noticee 2) and Mr. K. Ganeshkumar are the directors of Rutmarg. They are thus deemed to be persons acting in concert with Rutmarg in terms of provisions of Regulation 2(1)(q)(2)(ii) of SAST Regulations, 2011 Regulations. Further, in terms of Regulation 2(1)(q)(iii) of SAST Regulations, 2011, associates of directors are also deemed to be person acting in concert, making Mr. Anand Ganesh Kumar (Noticee 3) (the son of Ms. Latika Ganeshkumar Kuppan and Mr. K. Ganeshkumar) a person acting in concert.
17. It was noted that subsequent to Rutmarg acquiring more than 25% shares in the Target Company, Mr. Anand Ganeshkumar had also acquired shares in Target Company due to which the combined shareholding of Rutmarg and Mr. Anand Ganeshkumar, had increased by 7.18% on November 22, 2017, which was more than the threshold limit of 5% in a single financial year, provided

under Regulation 3(2) of the SAST Regulations, 2011. Accordingly, Rutmarg and Mr. Anand Ganeshkumar were allegedly required to make an open offer in terms of Regulation 3(2) of the SAST Regulations, 2011.

18. It was further noted that on January 23, 2018, the shareholding of Rutmarg (23.71%), Mr. Anand Ganesh Kumar (0.44%) along with Ms. Latika Ganeshkumar Kuppan (10.95%) collectively crossed more than prescribed threshold limit of 25%, which allegedly triggered the requirements of open offer under Regulation 3(1) of SAST Regulations, 2011.

19. A summary of the alleged non-compliances of provisions of SAST Regulations, 2011 by the Noticees is provided below:

Trigger	Entities	Date	Nature of Event	Provisions violated
Trigger 1	Rutmarg	September 15, 2016	Date of Acquisition Agreement	Regulation 3(1) and Regulation 4
Trigger 2	Rutmarg and Mr. Anand Ganeshkumar	November 22, 2017	Increase in shareholding beyond 5% in a Financial Year	Regulation 3(2)
Trigger 3	Rutmarg, Mr. Anand Ganeshkumar and Ms. Latika Ganeshkumar Kuppan	January 23, 2018	Collective shareholding crossed prescribed threshold of 25%	Regulation 3(1)

20. In view of above, the Noticees were alleged to have violated the provisions of Regulations 3(1), 3(2) and 4 of the SAST Regulations, 2011 and Regulation 12A(f) of the SEBI Act, 1992. Accordingly, vide the SCN, the Noticees were called upon to show cause as to why suitable directions under Sections 11B(1) and 11(2)(h) read with Section 11(1) of SEBI Act, 1992 and Regulation 32(1)(h) of SAST Regulations, 2011, including directions to the Noticees to make an open offer for acquiring shares of the Target company at highest price prevailing at such trigger dates and to pay interest at such rate as considered appropriate by SEBI along with the offer price, should not be issued for the aforementioned alleged violations.

Reply and personal hearing:

21. The SCN was duly served on the Noticees. The Noticees replied to the SCN vide letter dated May 10, 2023. A personal hearing for the Noticees was

scheduled on September 15, 2023, during with Noticees appeared and made oral submissions.

22. The Noticees vide letter dated May 10, 2023 have submitted *inter alia* the following:

- (a) Rutmarg took up the mantle to save a sinking company to protect the interests of shareholders and its investment, by reviving the operations of the Company. It did this by borrowing against its assets and infusing funds from its own sources, since the Noticees are passionate about the continuation of a TV channel, INSYNC TV, dedicated to Indian Classical Music and Tradition.
- (b) SEBI is acting upon the complaint of the promoter, Mr. Ratish who simply deserted the company operations and his shareholding when huge liabilities and arrest warrants stared at his face. The promoter seems to have enriched himself before leaving, by partly offloading his shares at an astronomical price to Rs. 40/- share without any justification in the operations of the Company. He is also guilty of withdrawing large amounts from the bank account of the Company. The shareholder's value was completely destroyed and nothing was left behind. Even the assets of POMPL have never been handed over.
- (c) Mr. Ratish floated multiple companies with similar names/activities to fudge the financials of POMPL. Many of them seem to be bogus entries of content which was never in the library.
- (d) The Noticees have Infused funds into the Company to clear all the liabilities created by the promoter who has refused a "formal agreement for transfer of his Promoter shares". The Noticees' goal is to revive the operations of the Company and not control of the company or acquisition of shares without proper procedure. All the liabilities of POMPL have been cleared by borrowing from various sources against the Noticees' existing assets.
- (e) The only business of POMPL is running a television channel INSYNC dedicated to Indian Classical Music and tradition. This is the only TV channel in India to promote Indian Classical Arts and Tradition and being viewed by 40 million viewers across India.

- (f) The Noticees have managed to bring back the Company to normalcy despite Pandemic for two years - but they still may have to handhold. If this is interrupted, the Noticees will simply give up and the Company will surely collapse. The Noticees have not earned a single penny from the Company since assuming charge as the MD. On the contrary, they have infused almost Rs. 5 Crore at various stages from Sept 2016 to 2018. Out of this, over Rs. 3.50 Crore is still to be recovered. This includes an OD facility to POMPL of Rs. 1.75 Crore, granted against Fixed Deposit of Mr. Ganesh Kumar.
- (g) The Noticees have no interest or ever shown interest in take-over as there is no value left in the Company by the promoters. The very fact that Noticees' shareholding is now within 25% is an ample proof that they have no interest in take-over. The Noticees do not have the ability to take over or become the promoter, since at this juncture, they are seriously in debt and still continue to service their debts to keep POMPL afloat.
- (h) Rutmarg was incorporated in the year 1986 and has been continuously exporting Agro-chemicals from India to many countries with an unblemished record as an exporter.
- (i) Shri K Ganeshkumar, the founder & MD of Rutmarg, is a domain expert in Indian Classical Music and Maharashtra Abhang Ratna, Chairman of Music Forum, Ex Chairman of The Fine Arts Society - a large cultural institution in Mumbai and the Vice - President of Indian Musicological Society, a 56 year old institution publishing International Journals on Indian Classical Music. He is considered to be an illustrious person in the fraternity of Indian Classical Music and deeply involved in promotion and nurture of Classical Music, Dance and tradition, even today.
- (j) Sometime in Aug 2013, the promoter of POMPL - Mr. Ratish Tagde, met the Noticees and requested them to invest in his company POMPL and committed to sell 44 Lakh shares of various entities held/controlled by him at a total value of Rs. 4 Crores. A copy of one such agreement is enclosed. These entities are the same with whom dubious transactions have been done by the Promoter, Mr. Ratish, using POMPL.
- (k) The only operation of POMPL is running a TV channel INSYNC. Since the Noticees have an intense passion to promote Indian Classical Music and

Arts, they considered investing in the shares of the Company, POMPL. However, Rutmarg has 'zero' experience of the share market and does not deal in shares or trading. It had no experience of a Listed Company. The Noticees have no shares other than of POMPL and they have no interest in take-over of the Company. The Noticees' shareholding is below 25%.

- (l) The Noticees are only engaged in serving the nation by promoting its rich heritage, Classical Music and Arts. Even today, if someone acquires more shares than them, they would gladly hand over the operations, provided the funds infused by them in POMPL with interest, is paid back. As the MD of POMPL, Mr. K. Ganeshkumar has not even charged the remuneration that is provided for, as POMPL makes losses. The promoter is yet to handover the assets of POMPL and other crucial documents like Minutes of the Board Meetings, Agreements signed with Performing Artists, legal papers for Transfer of Promoter shares etc.
- (m) Starting 2014 and by August 2016, Rutmarg, was the second largest shareholder holding over roughly 24% of the Company (POMPL), due to infusion of large sums for purchase of shares held solely by Mr. Ratish and his associates and for creation of video content. In this regard, a , for which a "Shareholders Agreement" was signed with the Promoter of POMPL, Mr. Ratish who in turn transferred shares from various entities controlled by him upon payment by Rutmarg. It is highly suspicious that some of these entities have dues payable to POMPL running into lakhs of Rupees, for which the promoter, Mr. Ratish has not given an explanation till date.
- (n) As per the abovementioned Shareholders Agreement, the promoter of POMPL, Mr. Ratish, was to induct Mr. Ganeshkumar or his nominee into the board of POMPL as a director in April of 2014. It was never done. Mr. Ganeshkumar was urgently inducted into the board only in August of 2016, by which time the operations of the Company had already collapsed. It was ratified by the relevant ministry only in May 2017. Neither Mr. Ganeshkumar nor any of his nominees was ever invited to attend the board meetings of POMPL from 2014 to 2016. The operations of the Company collapsed without Noticees' knowledge or engagement. Even though they were the largest shareholder by August of 2016, the Promoter withheld information

from them on the liabilities and went about bringing disrepute to POMPL, so much so that by 2016, POMPL was to collapse.

- (o) By August of 2016, Rutmarg held approx. 82.35 Lakh shares (including the above referred 44 Lakh shares against payment), transferred solely upon the instructions of Mr. Ratish by his associates upon creation of Carnatic Video Content by the Noticees. All these shares were upon payment (Rs. 3 Crore) and balance against content created.
- (p) By late August 2016, the TV channel stopped for non-payment to various companies and MIB for uplink and downlink and subsequently, Mr. Ratish and the board of POMPL were to be arrested in serious Cheque Bouncing Cases under Sec. 138 of the IPC filed by M/s Tata Sky Ltd. and M/s. Hathway Cable & Oatacom Ltd for not honoring cheques amounting to over Rs. 1 Crore. It was only after he and his brother, Mr. Mahesh Sharadchandra Tagde's (Director of POMPL in 2016) made desperate calls to Mr. Ganeshkumar that the Noticees decided to help POMPL by infusing urgently required additional funds. Mr. Ratish promised to undertake responsibility for liquidating liabilities created solely by him and to meet operational expenses after the Noticees infused required funds. By this time, the Noticees opened a new bank account of POMPL and made all payments to creditors respectively for clearing the most crucial liabilities to save the Company from going down under.
- (q) During this period, Mr. Ratish, the promoter, drew up a "draft note" that included change in promotership and acquisition of promoter shares, which is referred to in the SCN. The said draft note has no legal standing since it is not on a legal paper, no share value and has multiple flaws including -
- No Rubber stamp or Seal of Rutmarg
 - Rutmarg never held 52.44 Lakh shares in Sept 2016, rather it held approx 82.35 Lakh shares of POMPL (As per Demat Statement of Rutmarg).
- (r) Moreover, the draft paper was only a "work in progress" to be confirmed and ratified by both the Boards, which has not been done till date. In this draft note, there are other serious non-adherence and factual alterations and

omissions by the Promoter, Mr. Ratish which we were to be rectified. There were serious lacunae and Rutmarg's Board had suggested various inclusions. The promoter refused to have clarity on these points and delayed the process under one pretext or the other after dumping his shares to the Noticees. In the meantime, things were getting precarious from the Ministry point of view. Hence, Rutmarg's Board took a decision not to go ahead with this arrangement.

- (s) The Noticees' original view was that by the time the promoter shares were transferred in Sept 2016, the Noticees would immediately sell their existing shares in Rutmarg in the market to raise resources to settle the liabilities and yet remain within the 25% limit as they were never Interested in take-over. This could have been easily achieved with due process of law. However, the promoter dumped the shares on the Noticees without any discussions or formal agreement and also marked pledge and revoked the same later, all on his own volition and without a formal agreement with the Noticees at any time. Also, in the meantime, the Noticees realized that the draft note was a deceit as many crucial information were concealed.
- (t) The Noticees are surprised that based upon this draft paper as evidence, they have been served with the SCN. They believe that having saved POMPL from collapse, they are being made a scapegoat. Though technically the shares were not pledged, as per the available documents and information available on the BSE Website, the pledge creation and revocation details are for all to see.
- (u) The promoter, Mr. Ratish is a qualified Company Secretary by profession and till the time of his exit in 2019, as the Chairman, was fully in control of the Company where all disclosures, compliances etc were managed by him. His brother, Mr. Mahesh Sharadchandra Tagde too was a Director of POMPL and involved in the operations of the Company.
- (v) SEBI has included Mr. Ratish as a "Complainant" in the SCN, however, in reality, he is the main culprit because of whom POMPL had failed.
- (w) Overall, Rutmarg has loaned to POMPL over Rs. 5 Crore towards clearing of liabilities. Whereas, Mr. Ratish's promoter shares as collateral value after revocation of the pledge without Noticees' consent was at Rs.1.60 Crore (Rs. 2/share). Rutmarg was never going to profit from this. The actions on

part of the largest shareholder, Rutmarg, was to save POMPL and give it breathing life, due to its passion to protect and nurture Indian Classical Music. The actions on part of the Promoter, Mr. Ratish, was to cheat and trap Rutmarg.

- (x) In 2016, when the INSYNC channel stopped due to the wrongdoings and various liabilities created by the promoter, the Noticees, as the then next major shareholder, had no option but to urgently infuse funds to save their original investment of Rs. 4 Crores and the Company, thus protecting shareholder's value which would have become zero. In fact, the Ministry of Information and Broadcasting issued a show cause notice as to why the license should not be cancelled as the channel had closed and the renewal fee had not been paid. Both had to be resolved within a few days.
- (y) Having taken charge of the operation of POMPL, the Noticees had to face several notices from Labour Court for non-payment of Salaries to staff, some of them for 2 years, while Mr. Ratish was Managing Director of POMPL. This caused further financial strain.

Consideration of Issues and Findings:

- 23. I have perused the contents of the SCN, the submissions of the Noticees in respect of the allegations and other material available on record.
- 24. Before proceeding any further, I deem it appropriate to refer to the relevant provisions of the SAST Regulations, 2011 and the SEBI Act, 1992, which are quoted below:

SAST Regulations, 2011

Regulation 3(1): Substantial acquisition of shares or voting rights:

“No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty-five per cent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open

offer for acquiring shares of such target company in accordance with these regulations.”

Regulation 3(2): Substantial acquisition of shares or voting rights:

“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.”

Regulation 4: Acquisition of Control:

“Irrespective of acquisition or holding of shares or voting rights in a target company, no acquirer shall acquire, directly or indirectly, control over such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.”

SEBI Act, 1992

12A. Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control

No person shall directly or indirectly—

... (f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognised stock exchange in contravention of the regulations made under this Act.

25. I note from the SCN that Rutmarg is alleged to have acquired shares of POMPL beyond the prescribed threshold limit of 25% without making an open offer as per the provisions of SAST Regulations, 2011. As per the SCN, pursuant to the Acquisition Agreement dated September 15, 2016, Rutmarg had acquired

shares of POMPL due to which Rutmarg's shareholding in POMPL had breached the threshold limit of 25% for the quarter ended September 2016 and remained above 25% till December 2017. The quarter-wise shareholdings of Rutmarg in POMPL are provided in Table 1 under para 5 above. The SCN has further alleged that since Rutmarg had agreed to acquire shares under the Acquisition Agreement dated September 15, 2016, the open offer for shares had to be made on the date of agreeing to acquire shares, i.e. September 16, 2016 itself.

26. In this regard, I note from the demat account statement of Rutmarg, which is provided as Annexure 9 to the SCN, that Rutmarg was holding 82,34,964 shares of POMPL (23.73% of total shareholding of POMPL) as on August 25, 2016, which increased to 96,34,964 shares (27.77% of total shareholding of POMPL) as on September 12, 2016. The said increase in the shareholding of Rutmarg had taken place due to off-market transfer of 14,00,000 shares of POMPL from the demat account of Mr. Ratish Tagde (Promoter of POMPL and the Complainant) on September 12, 2016. I thus note that the shareholding on Rutmarg had crossed the threshold limit of 25%, prescribed under Regulation 3(1) of the SAST Regulations, 2011.
27. I note that the Noticees have denied that Rutmarg crossed the threshold limit of 25%. They have also disputed the Acquisition Agreement dated September 15, 2016 by dismissing the same as being merely a draft agreement having no legal validity and sanctity. As per the Noticees, they did not acquire shares beyond the threshold limit but only received shares as collateral against funds provided by them to the Company.
28. I note from records that though the promoter related entities, which had transferred shares to Rutmarg, had reported the said transactions as "pledge" and "Off Market Transfer by way of loan", on the platform of the exchange under Regulation 29(2) of the SAST Regulations, 2011, the procedure prescribed for creation of pledge on shares in demat account, under Regulation 58 of the erstwhile DP Regulations, 1996 was admittedly not followed.

29. SEBI's letter dated August 17, 2010 to Depositories and the Master Circular dated December 15, 2016 have clarified that any procedure followed other than as specified under the provisions of law shall not be treated as pledge and that an off-market transfer of shares leads to change in ownership and cannot be treated as pledge. I further note that the Hon'ble Securities Appellate Tribunal in the case of *Liquid Holdings Pvt. Ltd. Vs. SEBI* (Appeal No. 83 of 2010, Date of Decision: 11.03.2011), has held that once the shares are transferred to the demat account of a person, he becomes beneficial owner of such shares.
30. Accordingly, the abovementioned off-market transfers of shares of POMPL from promoter related entities to Rutmarg cannot be treated as pledge and it is clear that the said transfers have resulted in Rutmarg becoming the beneficial owners of the said shares, leading to the breach of threshold limit of 25% provided under Regulations 3(1) of the SAST Regulations, 2011.
31. Further, even if Noticees' contention that the Acquisition Agreement dated September 15, 2016 was merely a draft agreement having no legal validity is accepted, the same becomes irrelevant since Rutmarg had already acquired shares beyond 25% threshold limit on September 12, 2016 itself. Thus, the obligation to make open offer under Regulation 3(1) of the SAST Regulations, 2011 was triggered on September 12, 2016 itself, before the execution of Acquisition Agreement on September 15, 2016, as alleged in the SCN. Accordingly, Rutmarg was obligated to make an open offer, in terms of the provisions of the SAST Regulations, 2011, which it failed to do. I thus find that Rutmarg (Noticee 1) has violated the provisions of Regulation 3(1) and 4 of the SAST Regulations, 2011 read with Section 12A(f) of the SEBI Act, 1992.
32. Further, as the Complainant, Mr. Ratish Tagde, has admitted to having executed the Acquisition Agreement dated September 15, 2016, which contained clauses for transfer of shares and control of POMPL to Rutmarg, I note that Mr. Ratish Tagde and persons deemed to be acting in concert with him are not entitled to receive the open offer, in terms of Regulation 7(6) of the SAST Regulations, 2011, which provides that – *“Any open offer made under these regulations shall be made to all shareholders of the target company,*

other than the acquirer, persons acting in concert with him and the parties to any underlying agreement including persons deemed to be acting in concert with such parties, for the sale of shares of the target company.”

33. Apart from the above, SCN has further alleged that Rutmarg and Mr. Anand Ganesh Kumar (Noticee 3), who is a person acting in concert with Rutmarg, acquired shares of POMPL beyond the creeping acquisition threshold of 5% within single financial year 2017-18, prescribed under Regulation 3(2) of the SAST Regulations, 2011, and triggered open offer obligations on November 22, 2017. As per records available on portal of Ministry of Corporate Affairs (MCA), Ms. Latika Ganeshkumar Kuppan (Noticee 2) and Mr. K. Ganeshkumar are the directors of Rutmarg, due to which they are deemed to be persons acting in concert with Rutmarg in terms of provisions of Regulation 2(1)(q)(2)(ii) of SAST Regulations, 2011. Further, Mr. Anand Ganesh Kumar, being the son of Ms. Latika Ganeshkumar Kuppan and Mr. K. Ganesh Kumar, is also deemed to be a person acting in concert with Rutmarg, in terms of Regulation 2(1)(q)(iii) of SAST Regulations, 2011.
34. Regarding the above, I note from Rutmarg’s demat account statement that as on April 01, 2017, Rutmarg’s shareholding in POMPL stood at 95,34,964 shares, which was 27.48% of total shareholding. I further note that Rutmarg’s shareholding in POMPL increased to 1,20,27839 shares, as on November 22, 2017, which was 34.66% of the total shareholding of POMPL. Accordingly, I note that there was a change of 7.18% in Rutmarg’s individual shareholding within one financial year. The same was more than the creeping acquisition limit of 5% within a financial year, prescribed under Regulation 3(2) of the SAST Regulations, 2011. I note that the SCN has taken into account the combined shareholding of Rutmarg and Noticee 3 to allege that Noticee 3 had also triggered open offer requirement, along with Rutmarg. However, I note that the shareholding of Noticee 3 did not change during April 01, 2017 to November 22, 2017 and it was Rutmarg’s individual shareholding which witnessed a change of more than 5 % within one year. Accordingly, I find that Rutmarg had triggered open offer obligations under Regulation 3(2) of the SAST Regulations, 2011, due the abovementioned increase in their shareholding. Similar to earlier

instance, in terms of Regulation 7(6) of the SAST Regulations, 2011, Rutmarg was required to make open offer to all the shareholders, except Mr. Ratish Tagde and persons deemed to be acting in concert with him, since the shares received by Rutmarg had apparently come from an entity belonging to Mr. Ratish Tagde, as per understanding reached between Noticee 1 and Mr. Ratish Tagde. I find that Rutmarg (Noticee 1) by failing to make an open offer, has violated the provisions of Regulation 3(2) of the SAST Regulations, 2011.

35. Additionally, Noticees 1 to 3 are also alleged to have triggered open offer obligations on January 23, 2018, under Regulation 3(1) of the SAST Regulations, 2011. As per SCN, their combined shareholding as on that date had crossed threshold limit of 25%.
36. Regarding the above allegation, I note from demat account statements of Noticees 1, 2 and 3 that they were holding 1,20,26,839 shares, 1,000 shares and 1,53,765 shares respectively, as on January 22, 2018. Thus, their combined shareholding in POMPL as on January 22, 2018 was 1,21,81,604 shares (35.10%). I further note that on January 23, 2018, Rutmarg (Noticee 1) transferred 3,79,900 shares to Noticee 3, as a result of which the shareholding of Noticee 1, 2 and 3 as on January 23, 2018 stood at 82,27,839 shares, 38,00,000 shares and 1,53,765 shares respectively. The combined shareholding of Noticees 1, 2 and 3, as on January 23, 2018 stood at 1,21,81,604 (35.10%). I thus find that there was no change in the combined shareholding of Noticees 1, 2 and 3 (who were persons acting in concert) on January 23, 2018, as they were already holding more than 25% shares prior to the said date.
37. Further, I note that though Noticee 2's shareholding had increased from 1,00,000 shares (0.29%) to 38,00,000 shares (10.95%), the same had happened due to an inter-se transfer of shares from Rutmarg to Noticee 2. I find that the said increase of more than 5% within one year in Noticee 2's individual shareholding is exempt under Regulation 10(1)(a)(iii) of the SAST Regulations, 2011, which exempts inter alia inter-se transfers between a company and persons holding not less than fifty percent of the equity shares of such

company. I note that Noticee 2, along with her husband (K. Ganesh Kumar), holds 100% shares in Rutmarg.

38. Accordingly, I find that the allegation that Noticees 1 to 3 had breached the threshold limit of 25% shareholding, under Regulation 3(1) of the SAST Regulations, 2011, again on January 23, 2018, as mentioned in the SCN, is not substantiated.
39. I note that the Noticees have tried to explain the transactions which triggered the open offer obligations by contending that the shares were transferred to their demat account as collateral against funds provided by them to clear the liabilities of the Company. They have contended that they had no intention to acquire the shares transferred to their demat account. However, I note from copies of various emails exchanged between Mr. K. Ganesh Kumar, the director of Rutmarg, and the Complainant (Mr. Ratish Tagde) that the Noticees had clearly intended to own those shares. Some of the instances are mentioned below.
40. Mr. K. Ganesh Kumar, vide email dated June 01, 2018, wrote to Mr. Ratish Tagde –
“If you are going to delay the process of passing on the shares to us under one pretext or other, you will have to face consequences. You will appreciate, we have already settled all the past liabilities. Hence for all practical purposes the shares pledged with us belong to us now.”
41. Mr. K. Ganesh Kumar, vide email dated June 01, 2018, wrote to Mr. Ratish Tagde –
“... .. The new tranche of about 85 lakh shares, which were transferred, we consider it as a sale to us against liability assumed by us – pending paper work as per your signed MOU.”
42. Mr. K. Ganesh Kumar, vide email dated June 10, 2018, wrote to Mr. Ratish Tagde –
“... .. I) Matter pertaining to your recent email that you have marked a pledge on the shares transferred:

*This has been done unilaterally by you and without our consent and clearly to mislead us and BSE. This was never informed to us before. This is a clear contra to what you have agreed both in person and writing that the shares have been transferred to us to enable us to assume the liabilities and hence **the shares belong to us** as we have already assumed liabilities. **We will maintain that the shares duly transferred, belong to us.**" (Emphasis supplied)*

43. Similarly, vide email dated July 04, 2018, Mr. K. Ganesh Kumar wrote to Mr. Ratish Tagde -
"... The shares were transferred to us and not pledged...."
44. From the abovementioned emails, it is apparent that the Noticees received the shares in their demat account in the character of a buyer having absolute right over them.
45. The Noticees have prayed that no direction for making an open offer be issued against them. They have contended that the collective shareholding of the Noticees in POMPL has already come down to less than 25% as on March 2018 and has remained so as on date. The Noticees have also contended that any direction for open offer would cast a huge financial liability on them which they can't fulfil. However, I find the said contentions to be irrelevant. I note that under the SAST Regulations, 2011, the interest of the investors has to be given precedence. The Hon'ble SAT in the matter of *Nirvana Holdings Private Limited vs. SEBI* (Appeal no. 31/2011) dated September 08, 2011, has held as under:

"The primary object of the takeover code is to provide an exit route to the public shareholders when there is substantial acquisition of shares or a takeover. This right to exit is an invaluable right and the shareholders cannot be deprived of this right lightly. It is only when larger interest of investor protection or that of the securities market demands that this right could be taken away. Therefore, as a normal rule, a direction to make a public announcement to acquire shares of the target company should issue to an acquirer who fails to do that. The Board need not give reasons as to why such a direction is being issued because that is the mandate of Regulations 10, 11 and 12. However, if the issuance of

such a direction is not in the interest of the securities market or for the protection of interest of investors, the Board may deviate from the normal rule and issue any other direction as envisaged in Regulation 44 of the takeover code. In that event, the Board should record reasons for deviation."

46. From the abovementioned judgment of the Hon'ble SAT, it is clear that the primary object of the SAST Regulations, 2011 is to provide an exit route to the public shareholders when there is substantial acquisition of shares or a takeover. It is also clear that any deviation from the said normal rule of providing an exit opportunity to shareholders can be permitted only if issuance of such direction is not in the interest of the securities market or for the protection of interest of investors.
47. I note that Noticee 1 has triggered open offer obligations on two occasions, i.e. September 12, 2016 and November 22, 2017, as already discussed above. Accordingly, the price at which open offers were to be made as per two different trigger dates would be different. I note that Noticee 1 is liable to make open offer at price which is more beneficial to the shareholders.
48. I note that the shares of the Company are currently infrequently traded and the closing price of the scrip on BSE on March 12, 2024 was Rs.2.59, whereas the Volume Weighted Average Market Price of the scrip for 60 trading days in respect of the first open offer trigger date of 15, 2016 is Rs.19.05, in terms of Regulation 8(2)(d) of the SAST Regulations, 2011, as per BSE's email to SEBI dated January 14, 2022. Thus, if an exit opportunity is provided to the existing shareholders, they may tender their shares and exit from the company. Further, a number of shareholders who were holding shares in the Target Company on the date when Noticee 1 incurred open offer obligations and are eligible for interest payment as per law on price of shares tendered in the open offer, may also benefit from such payment of interest on the consideration amount for the period of delay in making the open offer. In such circumstances, it is apparent that a direction for making open offer in accordance with the provisions of the SAST Regulations, 2011 would be in the interest of the shareholders of the Company. Accordingly, I proceed to issue appropriate directions in this matter.

Directions:

49. I, in exercise of the powers conferred upon me under Sections 11(1), 11(2)(h) and 11B(1) read with Section 19 of the SEBI Act, 1992 and Regulation 32(1)(h) of the SAST Regulations, 2011, hereby issue the following directions:
- a) Noticee 1 (Rutmarg Commercial Pvt. Ltd.) shall make a public announcement to acquire shares of the Target Company at highest price calculated for the dates when open offer was triggered, in accordance with the provisions of the SAST Regulations, 2011, within a period of 45 days from the date of this order. However, in terms of Regulation 7(6) of the SAST Regulations, 2011, such open offer shall not be made to Mr. Ratish Tagde and persons deemed to be acting in concert with him.
 - b) Noticee 1 (Rutmarg Commercial Pvt. Ltd.) shall, along with the offer price, pay interest at the rate of 10% per annum from the date when it incurred the liability to make the public announcement till the date of payment of consideration, to the shareholders who were holding shares in the Target Company on the date of trigger of open offer and whose shares are accepted in the open offer, after adjustment of dividend paid, if any.
50. The proceedings against Noticee 2 (Latika Ganeshkumar Kuppan) and Noticee 3 (Anand Ganesh Kumar) are hereby disposed of without any direction against them.
51. This order shall come into force with immediate effect.
52. A copy of this Order shall be served on the Noticees and Mr. Ratish Tagde.

PLACE: MUMBAI**DATE: MARCH 13, 2024****ASHWANI BHATIA****WHOLE TIME MEMBER****SECURITIES AND EXCHANGE BOARD OF INDIA**