BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. ORDER/BM/JR/2022-23/ 23232 - 23237]

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

In respect of:

S. No.	Name	PAN Number
1.	Kaminiben Atulbhai Patni	**AQQPP5675G**
2.	Rakesh Bhailabhai Patel	**ABRPP6848D**
3.	Riddish Gopal Modi	**BIIPM8638M**
4.	Atul J Patni	**AEBPP2902H**
5.	Nitin K Modi	**AEQPM9774F**
6.	Jayesh Shah	**ACKPS0210J**

In the matter of

JSG Leasing Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI'**) conducted an examination of the acquisition of shares of JSG Leasing Limited (hereinafter referred to as "**Target Company**"/ "**JSG**") by the promoter group entities, i.e. Ms. Kaminiben Atulbhai Patni (hereinafter referred to as "**Noticee 1**"), Mr. Rakesh Bhailabhai Patel (hereinafter referred to as "**Noticee 2**"), Mr. Riddish Gopal Modi (hereinafter referred to as "**Noticee 3**"), Mr. Atul J Patni (hereinafter referred to as "**Noticee 4**"), Mr. Nitin K Modi (hereinafter referred to as "**Noticee 5**") and Mr. Jayesh Shah (hereinafter referred to as "**Noticee 6**") (hereinafter collectively referred to as "**Noticees**") to determine whether there is a violation of

regulation 3(1) and 4 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "**SAST Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer in the matter, conveyed vide communique dated November 1, 2022 under Section 19 read with Section 15-I of the Securities and Exchange Board India Act, 1992 (hereinafter referred to as "SEBI Act") read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to conduct adjudication proceedings in the manner specified under rule 4 of Adjudication Rules read with section 15I(1) and (2) of SEBI Act and if satisfied that penalty is liable, impose such penalty as deemed fit in terms of rule 5 of Adjudication Rules and section 15H(ii) of the SEBI Act for the alleged violations of regulation 3(1) and 4 of SAST Regulations.

SHOW CAUSE NOTICE, HEARING AND REPLY

3. Show Cause Notice/s dated November 28, 2022 (hereinafter referred to as 'SCN') was issued to the Noticees in terms of Rule 4 of the Adjudication Rules requiring the Noticees alleging, inter alia, the following:

   - *The shareholding pattern of promoter & promoter group entities for the quarter ended June 30, 2022 is as under:*

Category of shareholder	No. of Shareholders	Total Shares	Percentage
Promoter & Promoter Group	06	8,73,800	29.13
Public	176	21,26,200	70.87
Total	182	30,00,000	100.00

Sr. No	Name of the Promoter/ promoter Group entities		
		No. of Shares	**Shareholding %**
1	Mr. Rakesh Bhailalbhai Patel	1,44,150	4.81
2	Mr. Kaminiben Atulbhai Patni	1,44,150	4.81
3	Mr. Nitin K Modi	1,00,000	3.33
4	Mr. Jayesh Shah	2,09,600	6.99

Sr. No	Name of the Promoter/ promoter Group entities		
5	Mr. Riddish Gopal Modi	1,39,200	4.64
6	Mr. Atul J Patni	1,36,700	4.56
	Total	**8,73,800**	**29.13**

- *While processing the Letter of Offer (LOF) dated May 30, 2022 with regard to the open offer to be made by the Acquirer - Skybridge Incap Advisory LLP for acquisition of up to 7,80,000 equity shares representing 26% of the voting share capital of the Target Company, it was observed that during the financial year 2014-15, the Noticees were under an obligation to make a public announcement of an open offer, pursuant to change of management and control in the target company. The details of 2014-15 off market transactions are as under:*

Date of Transaction (Off market)	Selling Entities during 2014-15	No. of shares and percentage	Acquirers during 2014-15 & (presently Selling promoters)
01/11/2014	1. Anuj Dewan (promoter)	1,44,150 (4.81%) 1,44,150 (4.81%)	1. Rakesh Bhailalbhai Patel 2. Kaminiben Atulbhai Patni
	2. Public	1,00,000 (3.33%) 98,200 (3.27%) 1,39,200 (4.64%) 1,36,700 (4.56%)	3. Nitin K Modi 4. Jayesh Shah 5. Riddish Gopal Modi 6. Atul J Patni
	Total	**7,62,400 (25.41%)**	

- *In the FY 2014-15, the erstwhile promoter (Anuj Dewan) had transferred his equity shares to the Noticees through off market transaction route. No Share Purchase Agreement was executed for the purpose of this offer. Other Noticees had also acquired shares from public through off market.*
- *The pre-acquisition and post-acquisition holdings of the Noticees are as under:*

Noticees	pre-acquisition holdings	post-acquisition holdings
S.no. (1 to 6)	Nil	7,62,400 (25.41%)

- *Subsequent to the acquisition of 25.41% by the Noticees, the Noticees became the promoter & promoter group and their shareholding was 25.41%. This acquisition was accompanied with change in control as the erstwhile promoters (Dewans) exited the company as promoters. This is allegedly in violation of Regulation 3(1) and 4 of SAST 2011 during 2014-15 by the Noticees.*

4. In the interest of natural justice, an opportunity of personal hearing was given to the Noticees to appear before the AO on the following dates:

Noticee No.	Name of the Noticee	Date of personal hearing
1	Kaminiben Atulbhai Patni	January 5, 2023
2	Rakesh Bhailabhai Patel	January 6, 2023
3	Riddish Gopal Modi	January 9, 2023
4	Atul J Patni	January 9, 2023
5	Nitin K Modi	January 9, 2023
6	Jayesh Shah	January 9, 2023

5. Noticee 1 did not appear on the scheduled date. The Authorised Representative (hereinafter referred to as "AR") of Noticee 2 appeared before the undersigned on January 6, 2023 and requested for further time to submit the reply to the SCN. Noticees 3, 4, 5 and 6 also failed to appear on the scheduled date of hearing. Another opportunity of personal hearing was given to the Noticees on January 13, 2023.

6. Noticees, vide separate letter/s dated January 12, 2023 gave similar reply to the SCN stating, inter alia, the following:

- *It is submitted that I had not got engaged in any act, practice or deceit upon any person or employed any devise or scheme or artifice to defraud in* *connection with my dealings. Further, no complaint should have been received by SEBI, as the same was not mentioned in your Show Cause Notice dated 28/11/2022. This is a case where individuals have acquired shares in the JSG Leasing Limited and nothing has been done by the undersigned in a clandestine manner. The undersigned and the other noticee's are not relatives or related parties or person's acting in concert with each other or otherwise connected to each other through corporate dealings at the time of acquisition of shares of JSG Leasing Limited.*

- *The shares of the undersigned in JSG Leasing Limited was listed on regional stock i.e. Ahmedabad Stock Exchange and Delhi Stock Exchange which was lying suspended due to restructuring of stock exchanges as the same was undergoing till 2018 and thereafter, the Noticee's stocks were listed with BSE on 6th December, 2019.*
- *Further, thereafter, the answering noticee /undersigned stock were lying in lock-in with BSE from 2018 till May, 2021, it is most pertinent to mention here that the acquisition price of the shares of JSG Leasing Limited was Rs.9.75 per share. On the lifting of lock-in period the undersigned had entered into a share purchase agreement with SKYBRIDGE INCAP ADVISORY LLP, wherein the undersigned had sold her shares @ Rs. 10 per share.*
- *The Noticee as said above is an individual shareholder and cannot be read to be a person in concert (PAC) as at the time when these share were acquired there was no common objective of Noticees or purpose of acquisition of shares or voting rights in, or exercising control over the target company (JSG LEASING LTD.). Thus, there is no common objective or purpose for acquisition of shares in FY 2014-2015. Such understanding/corporation can only be inferred pursuant to SPA dated 13.04.2022 when the share purchase agreement was entered by the Noticee with SKYBRIDGE INCAP ADVISORY LLP. It is a well settled legal principle that the question of whether or not two persons are PAC's is a question of fact, to be answered after evaluating the facts and circumstances of each case.*
- *Thus, the noticee/undersigned have not derived any gain from the transaction, the violation is also not of repetitive nature. The irregularities if any did not harm the interest of any investors nor did it result in any unfair advantage to*

the noticee /undersigned. The undersigned has no malafide intention to suppress any information or violate any provision of law.

- *In the case of the present noticee, there is nothing to show that the noticee acted deliberately in defiance of law or guilty of conduct which contumacious or dishonest or that she has acted in a conscious disregard of her obligations.*
- *In the present case, lenient view ought to be taken because, firstly, at the relevant time dealings in shares of JSG Leasing Limited were suspended and non-disclosure did not make any difference to the investors /public shareholders, secondly no loss is caused to any investors/public shareholder on account of non-disclosure.*

7. The AR of the Noticees appeared before the undersigned on January 13, 2023 and reiterated the submissions made vide letter/s dated January 12, 2023.

ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS

8. After perusal of the material available on record, I have the following issues for consideration:

   I) Whether the Noticees failed to make the open offer as required under Regulation 3(1) and 4 of SAST 2011 during 2014-15?

   II) Does the violation, if any, on part of the Noticee attract penalty under section 15H(ii) of the SEBI Act?

   III) If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act?

9. Before proceeding, I would like to refer to the relevant provisions of the SAST Regulations which reads as under:

3. Substantial acquisition of shares or voting rights.

(1) No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty-five 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.

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.

Findings

Issue No. I) Whether Noticees have violated the provisions of regulation 3(1) and 4 of the SAST Regulations.

10. From the documents available on record, I find that on April 13, 2022, Skybridge Incap Advisory LLP (hereinafter referred to as "**acquirer**") had entered into a Share Purchase Agreement (SPA) with the Noticees for acquisition of 8,73,800 equity shares, constituting 29.13% of the voting share capital of the target company.

11. Pursuant to the above, the acquirer was under an obligation to make a public announcement of an open offer under SAST Regulations. Accordingly, the acquirer had announced an open offer for acquisition of up to 7,80,000 equity shares representing 26% of the voting share capital of JSG from the public shareholders of the target company.

12. SEBI had received a letter dated April 13, 2022 from Capital Square Advisors Private Ltd. (CSAPL-Manager to the open offer), informing about the open offer to be made by the acquirer (SIA) for acquisition of up to 7,80,000 equity shares representing 26% of the voting share capital of the target company. The brief summary is as under:

Transactions	**Equity Shares**	**%**	**Comments**
SPA to Acquire	8,73,800	29.13%	Triggered open offer under Regulation 3(1) and 4 of SAST 2011
Open Offer	7,80,000	26%	Upon completion of the open offer, the acquirer will hold 55.13% of the total share capital.
Total	**16,53,800**	**55.13%**	

13. While processing the aforesaid open offer by SEBI, it was observed from the Letter of Offer (DLOF) that during the financial year 2014-15, the Noticees were under an obligation to make a public announcement of an open offer, pursuant to change of management and control in the target company. The details of 2014-15 off market transaction (as per MGT 7) are as under:

Date of Transaction (Off market)	**Selling Entities during 2014-15**	**No. of shares and percentage**	**Acquirers during 2014-15 & (presently Selling promoters)**
01/11/2014	Anuj Dewan (promoter)	1,44,150 (4.81%) 1,44,150 (4.81%)	Rakesh Bhailalbhai Patel Kaminiben Atulbhai Patni
	Public	1,00,000 (3.33%) 98,200 (3.27%) 1,39,200 (4.64%) 1,36,700 (4.56%)	Nitin K Modi Jayesh Shah Riddish Gopal Modi Atul J Patni
	Total	**7,62,400 (25.41%)**	

14. The Noticees submitted that they were individual shareholders and cannot be read to be persons acting in concert as at the time when the shares were acquired there was no common objective. They also submitted that during the relevant time the shares of JSG was listed on Ahmedabad Stock Exchange and Delhi Stock Exchange where trading in the shares were suspended due to restructuring of stock exchanges. Thereafter the shares of the Noticees were listed with BSE.

15. As per regulation 2(q) of SAST Regulations, persons falling in the category of promoters and members of the promoter group are deemed to be persons acting in concert. It is observed that as per the shareholding pattern published on BSE, the Noticees are identified under promoters/ promoter group. In view of their status as promoters/ PACs the Noticees were under obligation to make open offer as their consolidated holding exceeded 25% pursuant to the acquisition. Noticees in their reply have merely stated that they acquired shares individually and hence not

to be considered as PACs. However, they have not given any explanation as to how they were appearing as promoters and PACs in their shareholding pattern filed with the exchange which is a public document. I further note that apart from acquisition of shares there was change in control as the erstwhile promoter exited from the company and the Noticees acquired control of the target company. Hence as per regulation 4 of SAST Regulation also public offer was required to be made. Noticees have not made any submissions with regard to the same.

16. I further note regulation 3 of the SAST Regulations deals with the obligation to make an open offer, when an acquirer acquires 'shares or voting rights' entitling him to exercise voting rights, in the target company, beyond stipulated threshold limit, whereas regulation 4 deals with such obligation arising out of acquisition of 'control' by an acquirer in the target company. In this case, the Noticees acquired both, the shares as well as exercised control over the target company without making any open offer. In this connection, I refer to the order dated September 8, 2011 by Hon'ble Securities Appellate Tribunal where it is stated that "*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.*"

17. Hence the contentions of the Noticees are not tenable. In view of the above the violation of regulation 3(1) and regulation 4 of SAST Regulations as alleged against the Noticees stands established.

ISSUE II: Does the violation, if any, on part of the Noticees attract penalty under section 15H(ii) of the SEBI Act.

18. In view of the violation as established above, I refer to the order of the Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) which held that - *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act*

and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".

19. In view of the above, I am convinced that it is a fit case for imposition of monetary penalty on the Noticee under the provisions of section 15H(ii) of the SEBI Act, which reads as under:

> ***Section 15H(ii) of SEBI Act: -*** *Penalty for non-disclosure of acquisition of shares and takeovers: If any person, who is required under this Act or any rules or regulations made thereunder, fails to,—*
>
> *…*
>
> *(ii) make a public announcement to acquire shares at a minimum price; or*
> *…*
>
> *he shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.*

ISSUE III: If so, how much penalty should be imposed on the Noticees taking into consideration the factors mentioned in section 15J of the SEBI Act?

20. While determining the quantum of penalty under section 15H(ii) of the SEBI Act, it is important to consider the relevant factors as stipulated in the section 15J of the SEBI Act which reads as under:-

> ***Factors to be taken into account while adjudging quantum of penalty.***
>
> *15J.While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely:—*
>
> *(a)the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
>
> *(b)the amount of loss caused to an investor or group of investors as a result of the default;*
>
> *(c)the repetitive nature of the default.*

21. The available records do not quantify the amount of profits made by the Noticees or losses suffered by the investors due to not making the open offer or the public announcement. However, I note that the requirement of making open offer is to give the exit option to the existing shareholders. The said right to exit is an invaluable right of which the investors should not be deprived of. In this case, the investors were denied the option of exiting the company when the Noticees acquired the shares. Further, default was not repetitive in nature.

ORDER

22. Having considered the facts and circumstances of the case, observations/ findings as discussed above, the material available on record and the factors mentioned in section 15J of the SEBI Act as enumerated above, I in exercise of powers conferred upon me under section 15-I of the SEBI Act, hereby impose following penalty of Rs.10,00,000/- (Rupees Ten Lakh only) jointly and severally on the Noticees under section 15H(ii) of the SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees.

23. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW

24. The aforesaid Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department 1 DRA-4), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051." The Noticees shall also provide the following details while forwarding DD / payment information:

- Name and PAN of the Noticee
- Name of the case / matter

- Purpose of Payment – Payment of penalty under AO proceedings
- Bank Name and Account Number
- Transaction Number

25. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

26. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees viz. Ms. Kaminiben Atulbhai Patni, Mr. Rakesh Bhailabhai Patel, Mr. Riddish Gopal Modi, Mr. Atul J Patni, Mr. Nitin K Modi and Mr. Jayesh Shah and also to the Securities and Exchange Board of India.

Date: January 30, 2023 **BARNALI MUKHERJEE**

Place: Mumbai **ADJUDICATING OFFICER**