BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AK/AO- 55-61 /2017]

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

In respect of

Jayalaxmi Holdings Pvt. Ltd., Brinan Investments Pvt. Ltd., Alk Holding Pvt. Ltd. (Amalgamated to Great View Properties Pvt. Ltd. (PAN: AADCG9697H), **Mr. Rohan Khatau** (PAN: AOKPK6871R), **Ms. MH Khatau** (PAN: AIOPK5261R), **Ms. PH Khatau** (PAN: AGVPK5316J) and **Mr. HA Khatau** (PAN: AABPK4771D)

In the matter of

Khatau Exim Limited (Now known as Velox Industries Limited)

FACTS OF THE CASE

1. A letter of offer in compliance with Regulation 10 and 12 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as **'Takeover Regulations, 1997'**) was filed by Mr. Nav Rattan Munjal (**Acquirer**) to acquire 49,800 equity shares of Rs. 10/- each (representing 20% of the paid up and voting equity share capital) of Khatau Exim Ltd (hereinafter referred to as the **'the Company')** at an offer price of Rs.27.34. The Public Announcement of the same was made on March 15, 2011 and the shares of the company were listed at Bombay Stock Exchange Ltd. (hereafter referred to as '**BSE'**) and Pune Stock Exchange Ltd. (hereafter referred to as '**PSE'**).

2. While examining the letter of offer document, Securities and Exchange Board of India (hereinafter referred to as **SEBI**) observed that the promoters of the company viz. Jayalaxmi Holdings Pvt. Ltd., Brinan Investments Pvt. Ltd., Alk Holding Pvt. Ltd. (all of whom are amalgamated to Great View Properties Pvt. Ltd.), Mr. Rohan Khatau, Ms. MH Khatau, Ms. PH Khatau and Mr. HA Khatau (hereinafter collectively referred to as **'Promoters'**/ '**Noticees'/ 'Promoter Noticees')** had failed to comply with the provisions of Regulations 8(1) and 8(2) of

the Takeover Regulations, 1997, as applicable, within the due date for nine consecutive financial years from FY 1997-98 to FY 2005-06 and subsequently again for two consecutive financial years from FY 2008-09 to FY 2009-2010. It was further observed from the letter of offer that the Noticees/Promoters of the company viz. Mr. Rohan Khatau, Alk Holding Pvt. Ltd., Brinan Investments Pvt. Ltd. and Jayalaxmi Holdings Pvt. Ltd. *inter alia* had also violated the provisions of Regulation 11(2) read with Regulation 14 of the Takeover Regulations, 1997.

3. Based on the aforesaid information with respect to non-compliance of Takeover Regulations, 1997, as applicable, Adjudication proceedings under Chapter VI-A of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**) were initiated against the Promoter Noticees *inter alia* under Section 15A(b) and/ or Section 15H(ii) of SEBI Act, as applicable, to inquire into and adjudicate the alleged violation of the provision of Takeover Regulations, 1997.

4. Vide Order Ref: AK/AO-75-81/2015 dated September 22, 2015 (hereinafter referred to as **'Order'**), it was *inter alia* held that the Promoter Noticees have violated the following applicable provisions of Takeover Regulations, 1997 and accordingly penalties as stated below were imposed on the Promoter Noticees:

Sr. No.	Promoter Noticee	Regulation violated	Penalty Amount (Rs.)
1	Jayalakshmi Holdings Pvt. Ltd. (Amalgamated to Great View Properties Pvt. Ltd.)	Regulation 8(1) of the Takeover Regulations, 1997	Rs. 7,50,000/- (Rupees Seven Lakh Fifty Thousand only)
		Regulation 8(2) of the Takeover Regulation 1997	
2	Brinan Investments Pvt. Ltd. (Amalgamated to Great View Properties Pvt. Ltd.)	Regulation 8(1) of the Takeover Regulations, 1997	Rs. 7,50,000/- (Rupees Seven Lakh Fifty Thousand only)
		Regulation 8(2) of the Takeover Regulation 1997	
3	Alk Holding Pvt. Ltd. (Amalgamated to	Regulation 8(1) of the Takeover Regulations, 1997	Rs. 7,50,000/- (Rupees Seven Lakh Fifty Thousand only)

	Great View Properties Pvt. Ltd.)	Regulation 8(2) of the Takeover Regulations, 1997	
4	Mr. Rohan Khatau	Regulation 8(1) of the Takeover Regulations, 1997	Rs. 5,25,000/- (Rupees Five Lakh Twenty Five Thousand only)
		Regulation 8(2) of the Takeover Regulations, 1997	
5	Mr. HA Khatau	Regulation 8(1) of the Takeover Regulations, 1997	Rs. 6,50,000/- (Rupees Six Lakh Fifty Thousand only)
		Regulation 8(2) of the Takeover Regulations, 1997	
6	Ms. PH Khatau	Regulation 8(2) of the Takeover Regulations, 1997	Rs. 5,00,000/- (Rupees Five Lakh only)
7	Ms. MH Khatau	Regulation 8(2) of the Takeover Regulation 1997	Rs. 5,00,000/- (Rupees Five Lakh only)

5. Further, vide the said Order, it was *inter alia* also held as follows:

a) That the charge of violation of Regulation 8(1) of the Takeover Regulations, 1997 against the promoter Noticees viz. Ms. MH Khatau and Ms. PH Khatau was dropped;

b) That the promoter Noticee viz. Mr. Rohan Khatau were absolved of the allegation of violation of Regulation 8(1) of the Takeover Regulations, 1997 for the entire period of allegation, except for 1997-98;

c) That it was held that violation of Regulation 8(1) of the Takeover Regulations, 1997 against the promoter Noticee viz. Mr. HA Khatau did not stand established for the years 2003-04, 2004-05, 2005-06, 2008-09 and 2009-10;

d) That with respect to the allegation of non-disclosure under Regulation 8(1) and 8(2) of the Takeover Regulation, 1997 for the year 2003-04, all the Noticees were given benefit of doubt in the matter;

e) Also, considering the facts and circumstances of the case, it was held that the instant matter was not fit for imposition of penalty under Section 15H(ii) of SEBI Act for violation of Regulation 11(2) read with 14(1) of the Takeover Regulations, 1997

against the promoter Noticees viz. Jayalaxmi Holdings Pvt. Ltd., Brinan Investments Pvt. Ltd., Alk Holding Pvt. Ltd. (all of whom have been amalgamated into Great View Properties Pvt. Ltd.), Mr. Rohan Khatau, Ms. MH Khatau, Ms. PH Khatau and Mr. HA Khatau.

6. The said Order dated September 22, 2015 was appealed against before the the Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT'**) by the Promoter Noticees challenging the penalty imposed on the Promoter Noticees under section 15A(b) of SEBI Act for violating the provisions contained in Regulation 8(1) and 8(2) of Takeover Regulations, 1997. In the matter, the Hon'ble SAT vide its Order dated March 21, 2016 set aside the Adjudication Order dated September 22, 2015 and restored to the file of SEBI for passing fresh order on merits and in accordance with law.

APPOINTMENT OF ADJUDICATING OFFICER

7. The undersigned was appointed as the Adjudicating Officer vide Order dated September 02, 2013 under section 15-I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **'SEBI Rules'**) to inquire into and adjudge under Section 15A(b) and Section 15H(ii) of the SEBI Act for the alleged violation of the Takeover Regulations, 1997.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

8. Show Cause Notices (hereinafter referred to as '**SCN**') Ref. No. EAD-6/AK/32370/2013, EAD-6/AK/32371/2013, EAD-6/AK/32374/2013, EAD-6/AK/32379/2013, EAD-6/AK/32383/2013, EAD-6/AK/32389/2013 and EAD-6/AK/32390/2013 dated December 12, 2013 were issued to the Promoter Noticees under rule 4(1) of SEBI Rules communicating the alleged violation of the Takeover Regulations, 1997, as applicable. The Promoter Noticees were also called upon to show cause as to why an inquiry should not be initiated against them and penalty be not imposed under Section 15A(b) and/ or Section 15H(ii) of the SEBI Act, as applicable, for the alleged violations committed by them. The copies of the relevant pages of the letter of Offer

and the shareholding pattern for the relevant years as per the BSE website were sent along with the respective SCNs.

9. The Promoter Noticees vide email dated January 03, 2014 sought for extension of time to make their submissions to the SCN dated December 12, 2013. The request of the Promoter Noticees was acceded to and the Promoter Noticees were granted time till January 20, 2014 to make their submissions to the SCN. Great View Properties Pvt. Ltd. vide letter dated January 21, 2014 *inter alia* informed that the Promoter Noticees viz. Alk Holdings Pvt. Ltd. (hereinafter referred to as **'Alk'**), Brinan Investments Pvt. Ltd. (hereinafter referred to as '**Brinan'**) and Jayalaxmi Holdings Pvt. Ltd. (hereinafter referred to as **'Jayalaxmi'**) have amalgamated with Great View Properties Pvt. Ltd. (hereinafter referred to as '**GVPPL'**) w.e.f January 28, 2011 by the Order of High Court, Bombay. Further, it was *inter alia* also stated that since the matter is very old, they are in the process of obtaining the necessary documents and requested for some more time to make their submissions.

10. In the interest of natural justice and in terms of rule 4(3) of the SEBI Rules, the Promoter Noticees were also granted an opportunity of personal hearing on January 24, 2014 vide hearing notice dated January 16, 2014. Mr. Pradip H. Udeshi and Mr. Miten Chawda appeared on behalf of the Promoter Noticees and *inter alia* submitted that an application for consent proceeding and a detailed reply to the SCN would be filed by February 15, 2014. Since no reply was received from the Noticees subsequent to the personal hearing, vide emails dated March 19, 2014 and August 22, 2014, and further vide letter dated August 25, 2014, the Promoter Noticees were advised to make their submissions to the SCN.

11. In continuation to the SCN dated December 12, 2013, a supplementary SCN dated January 30, 2015 was issued to the Noticees viz. Alk, Brinan, Jayalaxmi, Mr. Rohan Khatau, Ms. MH Khatau, Ms. PH Khatau and Mr. HA Khatau. It was *inter alia* alleged vide the supplementary SCN dated January 30, 2015 that in the year 1997-98, the promoter of the company, Mr.Rohan Khatau along with the persons acting in concert (PACs) viz. Alk, Brinan, Jayalaxmi, Ms. MH Khatau, Ms. PH Khatau and Mr. HA Khatau had acquired 27,525 (11.05%) shares of

the company during the year 1997-98, but, *inter alia* failed to comply with Regulation 11(2) read with Regulation 14 of the Takeover Regulations, 1997. It was further *inter alia* alleged that in the year 2003-04, the promoter entities viz. Alk, Brinan and Jayalaxmi along with the PACs viz. Mr. Rohan Khatau, Ms. MH Khatau, Ms. PH Khatau and Mr. HA Khatau acquired 40,000 (16.06%) equity shares during the year 2003-04, but, *inter alia* failed to comply with Regulation 11(2) read with Regulation 14 of the Takeover Regulations, 1997.

12. Vide letter dated February 25, 2015, the Promoter Noticees viz. Alk, Brinan, Jayalaxmi, Mr. Rohan Khatau, Ms. MH Khatau, Ms. PH Khatau and Mr. HA Khatau while admitting that they were the promoters of the company during the relevant period have *inter alia* submitted as follows:

    a. *Allegation regarding violation of Regulation 8(1) and 8(2) of the Takeover Regulations, 1997*

- *That apart from relying on the status of compliance with the provisions of Chapter II of the Takeover Regulations, 1997 by the then promoters of the Company given in the Open Offer Letter of Offer dated June 29, 2011, SEBI does not have any independent findings of any investigation or inquiry in the matter to level such an allegation;*
- *That neither SEBI nor the Adjudicating Officer had the benefit of looking into the matter or background facts to assess the facts and determine whether proceedings should at all be initiated in this regard;*
- *That the alleged violations date back to nearly 19 years ago and it is impossible to prove compliance for want of records. It is wholly unreasonable to level an allegation two decades later and expect that innocence should be proven. Such an approach violates the constitutional provision available in India of the law not requiring the subject to prove innocence. On the contrary there needs to be a positive allegation of a violation on the basis of positive evidence of non-compliance. Moreover, acute delays and latches in initiating proceedings are wholly unsustainable and it would not be proper to expect a Noticee to prove innocence without access to old records, which it would not be reasonably expected to remain available. There is a catena of judgments of courts holding that delays and latches in initiating proceedings are*

untenable and in the instant case, the delay is writ large on the record since the alleged period of violation was nearly two decades ago;

- *That since the time of the alleged violation/non-compliance of Regulation 8(1) and 8(2) of the Takeover Regulations, 1997, majority ownership and control of the Company has changed hands. Further, Alk,* Brinan and Jayalaxmi *have amalgamated with the Amalgamated Company and hence have lost their identity. Currently, the Noticees including Amalgamated Company have no records to disprove any allegations of such non-compliance/violations;*
- *That it is a settled law that the onus of laying a charge is on the authority levelling the charge, and without doing so, it is not legally permissible to ask a noticee to disprove a charge or show cause why it should not be penalized. It is equally settled law that a weakness (i.e. in the instant case non availability of really old records after the erstwhile promoter Noticees have sold off their stake in the Company and some of the Noticees have amalgamated into another company) in the ability to defend can never become the strength of proving a charge;*
- *That the allegations made by SEBI in the SCN are merely on suspicions and conjecture based on the details given in the Open Offer Letter of Offer. There has been no investigation or independent application of mind by SEBI and the prosecution's case cannot rest on the weakness of the defence;*
- *That out of the 11 alleged instances of non-compliance / delayed compliance, SEBI too has acknowledged that there has been compliance in 10 out of the 11 instances, but that there has been an alleged delay of just a few days. None of these delays are material in character and therefore do not deserve regulatory penal intervention;*
- *With regard to the one instance of apparent non-compliance, SEBI has equated "No Records Available" with "Not Complied' - this is an approach completely alien to law. The only instance of apparent non-compliance is in the nature of absence of disproof being conflated to proof of non-compliance. They are unable to provide positive proof but it is evident that the Noticees would stand to gain nothing by not making these disclosures particularly when there have been disclosures before and after these instances;*

- *That it is a settled law that no one should be put to proceedings after a delay so inordinate that it is impossible for him to disprove the charge. In this case there is complete absence of any evidence to prove the charge either. In State of Punjab vs Chaman Lai Goyal, the Supreme Court of India has ruled that a delay in instituting proceedings by so long a period that renders a reasonable defence of a charge impossible, would by itself constitute a breach of the principles of natural justice. It can never be argued that the onus of disproving a charge should first be discharged by the person accused of violation and that inability to do so would necessarily render the charge as being proven. Such an approach is contrary to all known principles of natural justice applicable in India;*
- *That without prejudice to the foregoing, Clause 35 of the Listing Agreement also mandates submission of certain details with the stock exchanges by all listed companies, separately for each class of equity shares/security in the specified formats. In substance, such public filings under the Listing Agreement are in pari materia with the disclosures required under Regulation 8(1) and 8(2) of the Takeover Regulations, 1997. And there has been complete compliance under Clause 35 of the Listing Agreement and this has been clearly mentioned in the Letter of Offer relating to the Open Offer, on which SEBI has squarely relied upon;*
- *That rather thnt the form, it is the essence of a provision that must be taken into account, and as such, in the instant case the underlying intent and purpose of the Regulation had been adequately served. In effect, they did not gain any unfair advantage, nor was there any case of any investor grievance in connection with such filings;*
- *Even assuming that the approach adopted i.e. to substitute proof of a charge with proof of the defence, or to treat the weakness in a defence as a strength of a charge, there is no question of any gain or advantage that has accrued, let alone any disproportionate gain or unfair advantage, nor any loss has been caused to any investor as a result of the delayed disclosures of the acquisition;*
- *That the shareholding never ever changed for the disclosure to have any consequence, and no shareholder has been deprived of any benefits, nor, has there*

been any loss caused to them on account of the alleged violation. Further, the alleged delay or non-compliance was without any malafide intention and did not lead to any material benefits to the Noticees.

b. Allegation regarding violation of Regulation 11(2) read with Regulation 14 of the Takeover Regulations, 1997

- *That the allegations in the SCN proceeds upon a fundamentally erroneous interpretation of the relevant provisions of the Takeover Regulations, 1997;*
- *That one of the fundamental concepts on which the Takeover Regulations, 1997 is based is that of "persons acting in concert". Every obligation under the Takeover Regulations, 1997 is premised on aggregating the holdings of all "persons acting in concert" and regardless of individual shareholding of any person, the holdings of all persons acting in concert has to be reckoned as a collective aggregated shareholding or voting power;*
- *That from a plain reading of the provision it is only when the collective shareholding of a group of persons acting in concert along with the acquirer goes beyond 5% so as to confer an "additional entitlement" to voting rights, that Regulation 11 would become relevant. In the present case, at each instance, the collective shareholding of the persons comprising the promoter group in the Company prior and post the interse transfer amongst the promoters remained unchanged;*
- *That the SCN ignores the fundamental concept under the Takeover Regulations, 1997 that every acquisition and obligation should be reckoned only in the context of the collective entitlement to voting rights in the hands of all persons acting in concert;*
- *That the interpretation of the Takeover Regulations, 1997 by SEBI is contrary to the legislative intent;*
- *The underlying concept of Bhagwati Committee Report was to ensure that persons who have common objectives or purpose of voting rights in a listed company ought to be grouped together for the purpose of determining thresholds for the purpose of Takeover Regulations;*

- *That the position in this regard was clarified by the **Hon'ble Bombay High Court in its order dated September 28, 2001 in the case of Shirish Finance & Investment Private Limited v. M. Sreenivasulu Reddy [2002 35 SCL 27 (Bom)]** as follows:*

  "...By definition 'acquirer' includes persons acting in concert with the acquirer and, therefore, the acquisition of the acquirer and all those who act in concert with him is considered to be the acquisition of the acquirer...".
- *That the Takeover Regulations, 1997 were amended from time to time, with the concept of the need to aggregate the holding of persons acting in concert remaining unchanged;*
- *That to determine whether an open offer obligation is triggered, the acquisition of the acquirer should be taken together with two more factors viz. voting rights held by the acquirer himself and voting rights held by persons acting in concert with him. Unless the charging provision is attracted, there is no requirement for invoking the exemption provisions under Regulation 3. Therefore inter-se promoter transfers, pursuant to the acquisitions, fall outside the charging provisions of Regulation 11 since they constitute actions of a unit/group and not in their individual capacities. Since there was no change in the promoter group shareholding/voting rights post such acquisitions, it would be absurd to allege that the Acquisitions triggered Regulation 11(2) of the Takeover Regulations, 1997;*
- *That the stand adopted by SEBI in the SCN is contrary to the precedent set by it including a plethora of decisions of the Hon'ble Securities Appellate Tribunal ("SAT"). Courts have interpreted the Takeover Regulations, 1997 consistently with one single fundamental principle, i.e. the collective holding alone should be taken into account. This fundamental provisions run across the Takeover Regulations, 1997-not just for triggering provisions of Regulation 10 and 11, but, even for disclosures under Regulation 6, 7 and 8 of the Takeover Regulations, 1997. Some of such decisions are referred below:*
  - *In the case **of Sandip Save & Ors. v. Chairman, Securities & Exchange Board of India [(2003) 41 SCL 47 (SAT), the SAT** has ruled that:*

    "...On a combined reading of the above cited definitions it is not possible to agree with Shri Banerjee's submission that in view of the use of the word "acquirer" in

singular and the absence of the words "acting in concert" in the regulation excludes an acquirer whose individual holding does not exceed 5%, from complying with the requirement of the regulation. In the light of the definition of the expression 'acquirer' and the 'persons acting in concert' and also taking into consideration the purpose of regulation 7, I am of the view that the acquisition of shares by persons acting in league, is very relevant and the disclosure of such concerted acquisition to the target company and the company in turn to the concerned stock exchange is in tune with the objective of the said disclosure. If one is to accept Shri Banerjee 's contention, that would mean that each person acting in concert could acquire upto 5% shares without making the disclosure and continue- to do so upto 15%, without attracting the requirements of public offer in terms of regulation 10. Such an interpretation would defeat the very purpose of the Regulations. As already stated one of the objects of the Regulations is to protect the interests of the investors through prompt disclosures. In my view the shares acquired by all those persons acting in league has to be taken as a whole for the purpose of regulation 7. Since the Appellant itself having admitted that the holding of the Appellant with its associate (s) exceeded 5% of the paid up capital of Bombay Dyeing , it was incumbent upon the Appellant to make the disclosure, as per regulation 7(1) to Bombay Dyeing..."

- *That the **adjudication officer of SEBI vide Order dated July 31, 2008 in Re: Shri Sanjay***

  ***Sonvani and Ors.** observed the following:*

  "...Further the above definition of acquirer, read along with the definition of persons acting in concert as contained in regulation 2(l)(d) implies that the commonality of objective between the acquirer and the persons acting in concert clearly mandate that their actions should not be viewed in isolation. Hence in cases where shares have been acquired pursuant to a common objective, the aggregate shareholding of the acquirers and the persons acting in concert have to be taken into account to

determine whether the threshold limit prescribed under the regulations have been violated or not..."

- *That it is explicit from the above that the provisions of Regulation 11 of the Takeover Regulations, 1997 provide that it is the collective shareholding of the acquirer and persons acting in concert with him that have to be considered for determining whether any additional shares were acquired or not. In the present case, if SEBI were to ignore this position in law, then in every case, where the individual shareholding of any single person acting in concert has not crossed any triggering thresholds prescribed in Regulation 11 of the Takeover Regulations, 1997, no open offer ought to be triggered. It can never be SEBI's regulatory intention to adopt such a position, which would be absurd and would defeat the very scheme and would be contrary to entire history and legacy of Takeover Regulations in India. Such an interpretation taken by SEBI in the present case, would indeed make the concept of "persons acting in concert" nugatory;*
- *That to take a separate interpretation for Regulation 10 (i.e. collective holding of persons acting in concert to be considered, in Madhuri Pitti and Ors. v. SEBI) and a separate interpretation for Regulation 11 (i.e. individual holding to be considered irrespective of the collective holding, as alleged in the SCN) is completely absurd. Therefore, the provisions of regulation 10 and Regulation 11 of Takeover Regulations, 1997 ought to be similarly interpreted as the underlying intent behind the same is concurrent;*
- *That as the collective holding of the promoter group did not change following the acquisitions, no open offer was triggered and hence the question of penalty under Section 15H(ii) of the SEBI Act does not arise;*
- *In the Supplementary SCN, the terms "PACs1", "PACs2", "PACs3" and "PACs4" are used -essentially comprising all the very same constituents in different combinations. In fact, this indeed demonstrates that all the constituents of the group of persons acting in concert were all acting in composite group of persons acting in concert. Therefore, the very approach of the Supplementary SCN underlines the arguments made above about how it is wrong to club and combine in one instance*

and yet attempt to distinguish and separate in other instances on the same set of facts;

- *That Regulation 3(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 was introduced for the first time and cannot be applied retrospectively. This was aimed to deal with situations where persons in concert transferred shares among one another and changed the degree of ownership. If the exemption provisions were not to apply, there was a need to have a charging provision to trigger an open offer, which led to this provision. Since the collective shareholding of any group of persons acting in concert would remain unchanged, there would have been no instance ever of Regulation 3 getting attracted, and therefore this provision was introduced specifically to give meaning to the exemption provisions;*
- *That the requirement of considering the individual shareholding of the acquirer disregarding the shareholding of persons acting in concert, was not envisaged under the Takeover Regulations, 1997 and introduced for the first time under the Takeover Regulations, 2011. Applying a position as would be covered under the Takeover Regulations, 2011 to facts to which the Takeover Regulations, 1997 applied, would constitute a retrospective application of the law, which would also be unconstitutional;*
- *That it is trite law that provisions of sub-ordinate legislation such as the Takeover Regulations cannot apply retrospectively. The* ***Hon'ble Supreme Court of India has, amongst various others, ruled in the case of Income-Tax Officer, Alleppey v. M.C. Ponnoose & Ors. [1970 SCR (1) 678]****:*

  "'...The courts will not, therefore, ascribe retrospectively to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature. The Parliament can delegate its legislative power within the recognized limits. Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule

or regulation with retrospective effect. But where no such language is to be found it has been held by the courts that the person or authority exercising subordinate legislative functions cannot make a rule, regulation or bye-law which can operate with retrospective effect..."

- *That the provisions of Section 30 of the SEBI Act does not contain expressly or impliedly contain anything to indicate that the power to retrospectively apply the provisions of the Takeover Regulations is available to SEBI. Further, it is apparent from the express provisions of Regulation 35 of the Takeover Regulations, 2011, that the provisions thereof cannot be retrospectively applied. The* ***Hon'ble Bombay High Court*** *has, in the context of Regulation 47 of the Takeover Regulations, 1997 (identical to Regulation 35 of the Takeover Regulations, 2011) ruled* ***in Harinarayan Bajaj v. Union of India [(2009) 147 Comp Cases 579 (Bom)]*** *that the same: " ...nowhere provide for retrospective application of these Regulations..."*
- *Without prejudice to the aforesaid, in order to compensate for the potential loss incurred to any investors, if any due to the alleged violations, the Acquirer of the Open Offer had revised the offer price of Open Offer to Rs. 27.34 (Rupees Twenty Seven Paise Thirty Four Only) per fully paid up equity shares inclusive of interest of Rs. 16.01 (Rupees Sixteen Paise One Only) per fully paid up equity share calculated @ 10% from April 1, 1997 to May 16, 2011 and such additional cost was borne by the Noticees due to the increase in the offer price. Accordingly, any potential loss allegedly attributable to the investors, if any, were in any case on a without-prejudice basis made good with such an increase in offer price in the Open Offer.*

13. Another opportunity of personal hearing was granted to the Noticees on February 26, 2015 in the matter. On the date of the personal hearing on February 26, 2015, Mr. Somasekhar Sundaresan, Mr. Gaurav Singhi and Mr. Dhaval Kothari, Authorized Representatives (hereinafter referred to as **ARs**), and Mr. Pradip H Udeshi (director of GVPPL) appeared on behalf of the Promoter Noticees and reiterated the submissions made vide letter dated February 25, 2015. The ARs submitted the following cases during the hearing, viz.; ***Sandip Save v. Chairman, SEBI [2003] 41 SCL 47, Mr. Naagraj G Jain v. Sri Sai Ram dated 17.08.2001,***

AO Order dated 31.07.2008, Swedish Match v SEBI, SAT order dated 31.10.2013 on Ms. Madhuri Pitti and Ors v. SEBI, ITO Alleppy v. MC Ponnoose (1969), Harinarayan G Bajaj v UOI (2007) SCC Bom 1041, Sirish Finance and Investment v. M Sreenivasulu Reddy and Ors (2001) SCC Bom 838 and State of Punjab v. Chaman Lal Goyal (1995) 2 SCC 570. The ARs further submitted that though the Noticees had not retained copies of filing made to the company under Regulation 8(1) by persons holding more than 15% and under Regulation 8(2) by the promoters, an attempt would be made to obtain the same from the company as per the disclosures made in the letter of Offer. The ARs submitted that they would submit the copies so obtained from the company by March 20, 2015. The ARs further confirmed that there was no past non-compliance of the SEBI Act and Regulations by the Noticees and no action was taken by SEBI in the past against the Noticees.

14. Consequent upon the personal hearing on February 26, 2015, the Noticees vide letter dated March 31, 2015 submitted that they were unable to retrieve the copies of the disclosures made under Regulation 8(1) and 8(2) of the Takeover Regulations, 1997 for the relevant period mentioned in the SCN. The Noticees instead submitted the copies of the disclosures made under Regulation 8(3) of the Takeover Regulations, 1997 by the company for the years 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2006, 2009 and 2010.

15. During the course of the adjudication proceedings, the Hon'ble Supreme Court vide its Order dated November 26, 2015 in the matter of *SEBI v. Roofit Industries Ltd.* opined that the Adjudicating Officer had no discretion under Section 15J in deciding the quantum of penalty for offences committed between 2002 and 2014, other for than penalty under Section 15F(a) and Section 15HB of the SEBI Act. However, subsequently, another Bench of the Hon'ble Supreme Court in the matter of *Siddharth Chaturvedi v. SEBI* vide Order dated March 14, 2016 stated that the matter deserved consideration at the hands of a larger Bench. Accordingly, the Supreme Court directed that the papers of these appeals be placed before the Hon'ble Chief Justice of India for placing these matters before a larger Bench. Hence, the current Adjudication proceedings were kept on hold until determination of the issue of applicability

of Section 15J to Sections 15A(a), (b) and (c), 15B, 15C, 15D, 15E, 15F(b)& (c), 15G, 15H and 15HA of the SEBI Act, for offences committed between 2002 and 2014.

16. However, subsequent to the amendment made vide the Finance Act, 2017 to Section 15J of the SEBI Act, 1992 (notified on April 26, 2017), the following Explanation has been inserted in Section 15J:

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

17. Thus, it is now settled that Section 15J also applies to Sections 15A(a), (b) and (c), 15B, 15C, 15D, 15E, 15F(b)& (c), 15G, 15H and 15HA of the SEBI Act, for offences committed between 2002 and 2014.

18. Subsequent to the notification of the Finance Act, 2017 and the amendment made thereby to Section 15J of the SEBI Act, an opportunity of personal hearing was granted to the Promoter Noticees on June 27, 2017 vide hearing notice dated June 07, 2017. Further, vide the said hearing notice, the Promoter Noticees were *inter alia* also advised to provide the following information on or before the hearing date:

    a. Whether the Promoter Noticees namely Jayalaxmi, Brinan, Alk (all of whom have been amalgamated into GVPPL), Mr. Rohan H Khatau, Ms. MH Khatau, Ms. PH Khatau and Mr. H A Khatau were individual promoters or constituted a promoter group/were acting in concert during FY 1997-1998 to FY 2005- 2006 and FY 2008-2009 to FY 2009-2010;
    b. In case they constituted a promoter group/ were acting in concert, documentary evidence in support thereof.

19. On the scheduled date Mr. Somasekhar Sundaresan, Mr. Abishek Venkatraman, Mr. Dhaval Kothari and Mr. Akash Joshi (the Authorised Representatives hereinafter referred to as **'ARs'**), appeared on behalf of the Promoter Noticees and provided a copy of the appeal filed by the

Promoter Noticees before the Hon'ble SAT. Further, the ARs referred to the relevant pages of the said appeal filed before the Hon'ble SAT highlighting the fact that the Noticees were part of the promoter group/person acting in concert. The ARs further stated that written submissions would be filed in the matter. The ARs also pointed out that since Regulation 8(2) of Takeover Regulations, 1997 covers disclosures to be made by promoters, hence the Promoter Noticees can be charged only under Regulation 8(2) and not under both the Regulations viz. Regulation 8(1) and Regulation 8(2) of Takeover Regulations, 1997.

20. The ARs vide letter dated July 03, 2017 filed written submissions on behalf of the Promoter Noticees *inter alia* stating that the Company at all relevant times was owned and controlled by the Khatau family. It was further submitted vide the said letter that all these constituents of the Promoter Group of the Company were all "relatives" as defined for purposes of the Takeover Regulations, 1997. A table showing the inter-relationship between the Noticees has been provided as follows:

Sr. No.	**Name of the promoters at the relevant time**	**Relationship**	**Position under Regulation 2(h) of 1997 Takeover Regulations**
1.	Mr. H.A Khatau	Original Promoter (From 1984 till 2011)	Promoter
2.	Mr. Rohan Khatau	Son of Mr. H.A Khatau (From 1995 till 2011).	Relative of the Promoter. Member of the 'Promoter Group' in view of Clause (b)(i) of Explanation I – connected with Mr. H. A. Khatau.
3.	Ms. M.H Khatau	Daughter of Mr. H.A Khatau (From 1995 till 2011).	Member of the 'Promoter Group' in view of Clause (b)(i) of Explanation I – connected with Mr. H. A. Khatau.

Sr. No.	Name of the promoters at the relevant time	Relationship	Position under Regulation 2(h) of 1997 Takeover Regulations
4.	Ms. P.H Khatau	Daughter of Mr. H. A. Khatau (From 1995 till 2011).	Member of the 'Promoter Group' in view of Clause (b)(i) of Explanation I – connected with Mr. H. A. Khatau.
5.	Great View Properties Pvt. Ltd. (Three erstwhile promoter group companies viz. Alk, Brinan and Jayalaxmi who were members of promoters between 1995 to 2010 merged into GVPPL)	Promoter Group Company (From 2010 to 2011).	Members of Promoter Group in view of Clause (a)(ii) of Explanation-I, as they wholly owned and controlled by the Khatau family

21. It was further *inter alia* submitted that these relationships would fall within the meaning of the term "immediate relative" under the currently-applicable Takeover regulations *viz*. Regulation 2(1)(l) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**Takeover Regulations, 2011'**). It has been stated that such a position would place the Noticees in the position of persons deemed to be acting in concert in many categories – Regulation 2(1)(q)(iv) and Regulation 2(1)(q)(v) and in two other categories, Regulation 2(1)(q)(xii) and Regulation 2(1)(q)(xiii), "immediate relatives" of other persons in those categories would also be deemed to be persons acting in concert.

22. The ARs have stated that same was the position under the Takeover Regulations, 1997. The introduction of Regulation 2(1)(q)(iv) to bring in "promoters and promoter group" as a new category, was only consequential to the position that was always applicable *viz*. that "relatives" (not even "immediate relatives") were considered to have a common objective

and purpose. Thus, by law, all the Noticees have always been persons deemed to be acting in concert with one another under Regulation 2(1)(e)(2).

23. The ARs have further stated that that the earlier Order passed by the Adjudicating Officer had wrongly held the Noticees to be in breach of Regulation 8(1) as well as Regulation 8(2). The ARs have *inter alia* stated that Regulation 8(1) is a general provision that applies to all persons who hold more than 15% shares or voting rights in a target company, whereas Regulation 8(2) is a special provision that specially applies to promoters (and persons having control over a company – which is but the definition of "promoter"). Therefore, once it is held that a person is a promoter or part of the promoter group, the obligation to make annual disclosures of his holding would be under Regulation 8(2), since the very same obligation is set out in Regulation 8(1). It has been stated further that the same person is not expected to file the same disclosure twice, hence, while prescribing the form for disclosure, SEBI has a single form for both provisions and has never expected two filings to be made by promoters.

24. In support of its argument as above, the ARs have stated that it is well settled that when legislation creates a specific obligation to be discharged by a specified category of persons, the presumption is that the special category was not intended to be covered by the general. In that respect, the obligation of disclosure required under Regulation 8(2) is specific to "promoters" or "every person having control over a company" in comparison to the more general obligation covered under Regulation 8(2) which is on "every person, including a person mentioned in regulation 6 who holds more than fifteen per cent shares or voting rights in any company".

25. Further, in support of its argument, the ARs have cited the judgement of the Hon'ble Supreme Court, in the case of *Commercial Tax Officer, Rajasthan v. Binani Cements Limited and Another* (2014) 8 SCC 319.

CONSIDERATION OF ISSUES

26. I have carefully perused the written submissions of the Noticees, the submissions made at the hearings and the documents available on record. It is observed that the allegation against

the Promoter Noticees is that they have failed to make the relevant disclosure under the provisions of Regulations 8(1) and 8(2) of the Takeover Regulations, 1997, as applicable, and under Regulation 11(2) read with Regulation 14(1) of Takeover Regulations, 1997.

27. The issues that, therefore, arises for consideration in the present case are:

a. Whether the Noticees viz. Alk, Brinan, Jayalaxmi (all of whom have been amalgamated to GVPPL), Mr. Rohan Khatau, Ms. MH Khatau, Ms. PH Khatau and Mr. HA Khatau have violated the provisions of Regulation 8(1) and Regulation 8(2) of the Takeover Regulations, 1997 for nine consecutive financial years from FY 1997-98 to FY 2005-06 and subsequently again for two consecutive financial years from FY 2008-09 to FY 2009-2010?
b. If so, whether the Promoter Noticees were individual promoters or did they constitute 'Promoter group' acting in concert under the Takeover Regulations, 1997?
c. Further, whether the Noticee Promoters viz. Alk, Brinan, Jayalaxmi (all of whom have been amalgamated to GVPPL), Mr. Rohan Khatau, Ms. MH Khatau, Ms. PH Khatau and Mr. HA Khatau have failed to comply with provision of Regulation 11(2) read with regulation 14(1) of SEBI Takeover Regulations on four occasions i.e., once in the year 1997-98 and thrice during the year 2003-04 by acquiring shares of the company during the said years?
d. Do the violations, if any, attract monetary penalty under Section 15A(b) and/ or under Section 15H(ii) of SEBI Act, as applicable?
e. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

FINDINGS

28. Before moving forward, it is pertinent to refer to the relevant provisions of Regulation 8(1) and 8(2) and Regulation 11(2) and 14(1) of the Takeover Regulations, 1997 which reads as under:

Regulations 8 (1) and 8(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997

Continual disclosures.

8. (1) *Every person, including a person mentioned in regulation 6 who holds more than [1][fifteen] per cent shares or voting rights in any company, shall, within 21 days from the financial year ending March 31, make yearly disclosures to the company, in respect of his holdings as on 31st March.*

8 (2) *A promoter or every person having control over a company shall, within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that company to the company.*

Regulation 11(2) as per SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 1998, w.e.f. 28-10-1998 upto 26-05-2006

Consolidation of holdings*.*

11(2) *An acquirer, who together with persons acting in concert with him has acquired, in accordance with the provisions of law, fifty five per cent (55%) or more but less than seventy five per cent (75%) of the shares or voting rights in a target company, may acquire either by himself or through persons acting in concert with him any additional share or voting right, only if he makes a public announcement to acquire shares or voting rights in accordance with these regulations."*

Timing of the public announcement of offer.

14. (1) *The public announcement referred to in regulation 10 or regulation 11 shall be made by the merchant banker not later than four working days of entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein:*

[Provided that in case of disinvestment of a Public Sector Undertaking, the public announcement shall be made by the merchant banker not later than 4 working days of the acquirer executing the Share Purchase Agreement or Shareholders Agreement with the

[1] Substituted for "ten" by Amendment Regulations, 1998 wef 28-10-1998.

Central Government [or the State Government as the case may be,] for the acquisition of shares or voting rights exceeding the percentage of shareholding referred to in regulation 10 or regulation 11 or the transfer of control over a target Public Sector Undertaking.

29. Now the first issue for consideration is whether the Promoter Noticees viz. Alk, Brinan, Jayalaxmi (all of whom have been amalgamated into GVPPL), Mr. Rohan Khatau, Ms. MH Khatau, Ms. PH Khatau and Mr. HA Khatau have violated the provisions of Regulation 8(1) and 8(2) of the Takeover Regulations, 1997 for nine consecutive financial years from FY 1997-98 to FY 2005-06 and subsequently again for two consecutive financial years from FY 2008-09 and FY 2009-2010. The SCN alleged violation/non-compliance by the Promoter Noticees in respect of Regulation 8(1) and 8(2) of Takeover Regulations, 1997 as incorporated in the letter of Offer. The same is as shown in the tabular form below:

Regulation	Due Date of compliance	Date of compliance	Non compliance / Delay (in no. of days)
8(1) & 8(2)	21.04.1998	25.02.2004	2,136
8(1) & 8(2)	21.04.1999	25.02.2004	1,771
8(1) & 8(2)	21.04.2000	25.02.2004	1,405
8(1) & 8(2)	21.04.2001	25.02.2004	1,040
8(1) & 8(2)	21.04.2002	25.02.2004	675
8(1) & 8(2)	21.04.2003	25.02.2004	310
8(1) & 8(2)	21.04.2004	-	Not complied
8(1) & 8(2)	21.04.2005	28.04.2005	7
8(1) & 8(2)	21.04.2006	22.01.2007	276
8(1) & 8(2)	21.04.2009	07.05.2009	17
8(1) & 8(2)	21.04.2010	13.05.2010	23

30. In the matter, I find that the promoter Noticees vide letter dated February 25, 2015 have *inter alia* contended that the onus of laying the charge is on the authority leveling the charge, and without doing so, it is not legally permissible to ask the promoter Noticees to disprove a charge or show cause why it should not be penalized. Vide the said letter, the promoter Noticees have *inter alia* also stated that SCN merely relies on the 'Status of Compliance by the Promoters' as given in the letter of Offer dated June 29, 2011 and that SEBI has not done any independent finding or any investigation or inquiry in the matter, to level an allegation

of non-compliance of Regulation 8(1)/ 8(2) of Takeover Regulations, 1997 against the promoter Noticees.

31. I note here that as rightly brought out by the promoter Noticees, the SCN relies upon the disclosures made in the letter of Offer dated June 29, 2011 by Mr. Nav Rattan Munjal ('Acquirer') to acquire upto 49,800 Equity Shares of Rs. 10/- each representing 20% of the total issued and paid-up equity share capital of the company. The information disclosed in the said letter of Offer has been vetted by the Manager to the Offer Corporate Professionals, a Merchant Banker registered with SEBI. The said letter Of Offer, vetted by a SEBI registered intermediary, disclosed as follows: *"As per the information received from the Target Company, there has been a delay in filing the disclosures ……under regulation 8(1) and 8(2) of the Regulations for the years 1998 to 2003, 2005, 2006, 2009 and 2010 by the promoters. Further no record with respect to the disclosure made under regulation 8(1) and 8(2) by the promoters for the year 2004 is available."*

32. Thus, on a perusal of the letter of Offer, it becomes apparent that the Manager to the Offer who has vetted the disclosures made in the letter of Offer, has in 2011 made a clear distinction between records of promoter filing under Regulation 8(1)/ 8(2) of the Takeover Regulations which were not available, from the delayed filing made by the promoters under Regulation 8(1)/8(2). Such distinction would not have been possible unless the Manager to the Offer had carried out the due diligence exercise at the relevant point of time. Under the SEBI (Merchant Banking) Regulations, 1992, the Manager to the Offer is responsible for verification of the contents of the Letter of Offer in respect of the Offer and the reasonableness of the views expressed therein, and is required to submit to the Board at least two weeks prior to the opening of the issue for subscription, a due diligence certificate. I note that the Manager to the Offer Corporate Professionals vide due diligence certificate dated March 21, 2011 has *inter alia* confirmed that the disclosures made in the draft letter of Offer/final letter of Offer are true, fair and adequate to enable the investors to make a well informed decision. Any false or untrue certification by the Manager to the Offer would attract the risk of suspension/ cancellation of its registration to act as a Merchant Banker. I, thus,

note here that the promoter Noticees have failed to appreciate the fact that a SEBI registered intermediary had carried out the necessary due diligence while concluding that the promoter Noticees had made delayed filings.

33. I agree with the Noticees that the initial burden of proving the allegation rests on the person making the allegation. In the extant matter, as stated earlier, the SCN has been issued based on the due diligence conducted by a SEBI registered Merchant Banker, whereby it was observed that there had been a delay in compliance by the promoters in respect of Regulation 8(1) and 8(2) of the Takeover Regulations, 1997 for certain years. The exact number of days of such delay along with the source of information was disclosed in the letter of offer and was available in public domain. Thus, it is not that the SCN was not supported by evidence as claimed by the Noticees. The disclosure in the letter of Offer based on due diligence exercise conducted by a merchant banker is evidence enough to prove the charge. The source of information i.e. the company was also disclosed. I note that Noticees have neither questioned the validity of the due-diligence conducted by the Merchant Banker, nor, have the Noticees denied the alleged delayed/ non-compliance of the provisions of the Takeover Regulations, 1997. The onus was on the Noticees to point out failure/ lapse, if any, on the part of Manager to the Offer to act diligently in the matter. When a fact is proved in the affirmative or evidence is led to prove the same, the onus shifts on the other side to negate the charge.

34. In this context, I note that in the matter of ***A. Raghavamma and Another v. A. Chenchamma and Another*** (AIR 1964 SC 136), while making a distinction between burden of proof and onus of proof, the Hon'ble Supreme Court has opined as follows:

"There is an essential distinction between burden of proof and onus of proof: burden of proof lies upon the person who has to prove a fact and it never shifts, but the onus of proof shifts. The burden of proof in the present case undoubtedly lies upon the plaintiff to establish the factum of adoption and that of partition. The said circumstances do not alter the incidence of the burden of proof. Such considerations, having regard to the circumstances of a particular case, may shift the onus of proof. Such a shifting of onus is a continuous process in the evaluation of evidence."

35. I find further that the Noticees at the relevant point of time did not deny such information which was in public domain. The Noticees came up with the defense of records being unavailable only at the adjudication stage. However, I note that the Noticees except claiming non-availability of records due to delay in initiating proceedings have not stated anything else. Even for records of 2009 and 2010 which were closer to the open offer in 2011, the Noticees have claimed non-availability of records at their end. However, the Noticees have not given any explanation as to why they did not retain even records that should have been available with them at the time of open offer, despite being within knowledge of the fact that action would be initiated for delayed disclosure made by them as brought out in the letter of Offer.

36. In view of all of the above, I find that the submission made by the Noticees that the SCN had failed to discharge the burden of proof is absolutely misconceived.

37. I note further that the promoter Noticees have stated that the alleged violations dates back to nearly nineteen years ago and it is wholly unreasonable to level an allegation two decades later and to expect that their innocence should be proven. However, I find that the promoter Noticees do not even have records of disclosures made by them to the Company under Regulation 8(1)/ 8(2) closer to the open offer in the year 2009 and 2010. Further, it is pertinent to mention here that disclosures under Regulation 8(1)/ 8(2) of the Takeover Regulations, 1997 were not required to be submitted by the promoters to the concerned stock Exchange(s)/ SEBI, but, only to the company. In such a scenario, it is only the company and the promoters who can produce evidence of whether the disclosures were made, and if so, when. For example, if SEBI/ Adjudicating Officer has sent a document to a Noticee, SEBI/ Adjudicating Officer bears the burden of proving delivery of the documents/ notices it has issued to the parties/ Noticees concerned. Hence, if the promoters have filed the disclosures with the company, they should be able to produce proof of delivery thereof. The merchant banker has relied on the information so provided by the company while disclosing in the letter of Offer the fact regarding delayed filing by the promoters *inter alia* under Regulation 8(1)

and 8(2) of Takeover Regulations, 1997. The contention now raised by the promoter Noticees pursuant to the issue of SCN that no records are available is especially suspect given the fact that the promoters had not brought any such facts to the notice of SEBI earlier, despite the letter of Offer being in public domain. Any prudent person who is made aware of a likelihood of proceeding being initiated would atleast retain all available records at the point of time. However, I find that the Noticees do not even have records pertaining to the years 2009 and 2010, which were the immediate preceding years to the year of open offer i.e. 2011. Further, neither have the promoter Noticees pointed out any prejudices and disadvantages suffered by them due to the alleged delay in initiating proceedings. And mere delay in initiating proceedings cannot be a reason for absolving any person of the liability arising under law.

38. There are more than 5,000 listed companies whose promoters were required under Takeover Regulations, 1997 to make annual filing in respect of their holdings as on 31st March to the company under Regulation 8(2) and under Regulation 8(1), if applicable. The extant delayed disclosure by the promoters to the company under Regulation 8(1)/ 8(2) came to notice of the Manger to the Offer while carrying out the due diligence with respect to the compliances made by the promoters under Takeover Regulations, 1997 at the time of open offer by Mr. Nav Rattan Munjal ('Acquirer'). The same was accordingly disclosed in the letter of offer and to SEBI. SEBI thereafter initiated the extant adjudication proceedings in the matter.

39. Besides under the SEBI Act, there is no limitation on initiation of adjudication proceedings for violation of various provisions of Act and Regulations made thereunder. In the matter of ***Radheyshyam Chiranjilal Goenka Vs. Adjudicating Officer, SEBI, the Hon'ble SAT*** on August 31, 2000 held that –

"… adjudication under section 15I for default under section 15F cannot be said to be hit by Article 14 of the Limitation act, as the default identified thereunder being a continuing one, till such time it is made good. In the instant case the default was made good only in September 1999, whereas the adjudication proceedings had commenced much earlier as way back in the year 1998."

40. In the case at hand, I note from the disclosures made in the letter of Offer that the default for the years 1998 to 2003 was made good only in 2004, and thereafter as per the dates provided in para 29 above. Further, I find that the promoter Noticees adopted a casual approach to the whole matter. The Noticees did not take due care to preserve the available records of even the immediate preceding period. Hence, the contention of the promoter Noticees that delay is writ large on the record since the alleged period of violation was nearly two decades ago does not hold any merit. Thus under the circumstances, if the Noticees are to be given benefit on the ground that there has been delay in initiating the proceedings, and therefore the proceedings should be quashed, I am of the view that it would result in travesty of justice than upholding of justice.

41. In fact, I find it pertinent to mention here that the ***Hon'ble SAT in the matter of Vaman Madhav Apte & Ors. Vs. SEBI has vide Order dated March 04, 2016*** observed as follows -

"Argument of the appellants that the proceedings initiated against the appellants suffer from gross delay and laches and, therefore, the impugned order is liable to be quashed and set aside is without any merit, because firstly, neither the SEBI Act nor the regulations framed thereunder prescribe any time limit for initiating proceedings against the persons who have violated the securities laws. Secondly, neither the SEBI Act nor the regulations framed thereunder provide that if there is delay in initiating proceedings, no action can be taken against the person who has committed violations of the securities laws."

42. Further, I note that the promoter Noticees have contended that the allegation made in the SCN are merely on suspicions and conjecture based on details given in the letter of Offer and that there has been no investigation or independent application of mind by SEBI. If this argument of the Noticees were to be accepted, then the basis of regulatory requirement of appointing a SEBI registered merchant banker for conducting due diligence in an open offer would become redundant and would also naturally raise the basic question on the *raison d'être* of the merchant banker. I, thus, find that the said argument too does not hold any merit.

43. As per the letter of Offer, I find that no record with respect to the disclosures made under regulation 8(1) and 8(2) by the promoters for the year 2004 is available. However, at the same time, I find that default for the earlier years from 1998 to 2003 was made good in the year 2004 itself on February 25, 2004. Taking the said fact into consideration, I am inclined to give the benefit of doubt to the promoters for that particular year i.e. 2004 for which records are not available and conclude that violation of Regulation 8(1) and 8(2) of the Takeover Regulations, 1997 for the year 2003-04 against the promoter Noticees does not stand established.

44. I further note that as per Regulation 8(1) of the Takeover Regulations, 1997, every person, including a person mentioned in regulation 6 who holds more than fifteen per cent shares (substituted for ten percent by Amendment Regulations, 1998 w.e.f. October 28, 1998) or voting rights in any company, shall, within 21 days from the financial year ending March 31, make yearly disclosures to the company, in respect of his holdings as on 31st March. I find from the copy of the disclosure under Regulation 8(3) as forwarded to BSE by the Company (copies of which were submitted by the Promoter Noticees along with their reply dated March 31, 2015) and also from the shareholding pattern from the BSE website that the Promoter Noticees viz. Ms. MH Khatau and Ms. PH Khatau held less than the threshold holding requiring disclosure under Regulation 8(1) of the Takeover Regulations, 1997, i.e. ten percent/ fifteen percent shares/ voting rights in the company, as applicable, during the entire period under allegation i.e. from FY 1997-98 to FY 2005-06 and subsequently from FY 2008-09 to FY 2009-2010. I further note that the Noticee Promoter Mr. Rohan Khatau held less than the threshold holding of fifteen percent shares/ voting rights in the company requiring disclosure under Regulation 8(1) of the Takeover Regulations, 1997 during the entire period under allegation, except during the year 1997-98 when his holding was 11.05% as on March 31, 1998 and the threshold limit for disclosure under Regulation 8(1) as at the relevant point of time was ten percent. As regards the Noticee Promoter Mr. HA Khatau, it is observed that he held more than the threshold holding requiring disclosure under Regulation 8(1) of the Takeover Regulations, 1997, i.e. ten percent/ fifteen percent shares/ voting rights in the company, as applicable, (jointly/individually) only for six consecutive financial years from FY

1997-98 to FY 2002-03, out of the entire alleged period. In view of the above, the allegation of Regulation 8(1) of the Takeover Regulations, 1997 against the Noticees viz. Ms. MH Khatau and Ms. PH Khatau are liable to be abated for the entire period of allegation. Further, the allegation of violation of Regulation 8(1) of the Takeover Regulations, 1997 against the promoter Noticee viz. Mr. Rohan Khatau is liable to be abated for the entire period of allegation, except for 1997-98. Also, the allegation of violation of Regulation 8(1) of the Takeover Regulations, 1997 against the promoter Noticee viz. Mr. HA Khatau is liable to be abated for the years 2003-04, 2004-05, 2005-06, 2008-09 and 2009-10.

45. I, thus, note that the holding of the promoter Noticee Mr. Rohan Khatau for the year 1997-98, holding of the promoter Noticee Mr. HA Khatau for the years 1997-98, 1998-99, 1999-00, 2000-01, 2001-02 and 2002-03, and the holding of the promoter Noticees viz. Alk, Brinan and Jayalaxmi for the entire alleged period i.e. nine consecutive financial years from FY 1997-98 to FY 2005-06 and subsequently again for two consecutive financial years from FY 2008-09 to FY 2009-2010, was above the applicable threshold requiring disclosure to the company under Regulation 8(1) of the Takeover Regulations, 1997. The status of their compliance under Regulation 8(1) for the relevant period is as given in para 29, duly vetted by the Manager to the Offer. However as stated earlier, taking into consideration the fact that default for the earlier years from 1998 to 2003 was made good in the year 2004 itself on February 25, 2004, I am inclined to give the benefit of doubt to the promoter Noticees viz. Alk, Brinan and Jayalaxmi (all of whom have been amalgamated into GVPPL) for the year 2003-04, for which records were not available as at 2011 when the due diligence was conducted by the Manager to the Offer.

46. Further as per Regulation 8(2) of the Takeover Regulations, 1997, I find that the Regulation states that a promoter or every person having control over a company shall, within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that company to the company. I note that the Noticees in their submissions have admitted that they were the promoters of

the company during the relevant time as mentioned in the SCN. Hence, they were required under Regulation 8(2) of the Takeover Regulations, 1997 to disclose their holdings to the company within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend. The status of compliance by the promoter Noticees under Regulation 8(2) of the Takeover Regulations, 1997 for nine consecutive financial years from FY 1997-98 to FY 2005-06 and subsequently again for two consecutive financial years from FY 2008-09 to FY 2009-2010 is as given in para 29, duly vetted by the Manager to the Offer. However as stated earlier, taking into consideration the fact that default for the earlier years from 1998 to 2003 was made good in the year 2004 itself on February 25, 2004, here too, I am inclined to give the benefit of doubt to the promoter Noticees for the year 2003-04 for which records were not available as at 2011, when the due diligence was conducted by the Manager to the Offer.

47. In view of all of the above, it stands established that the promoter Noticees viz. Alk, Brinan, Jayalaxmi, Mr. Rohan Khatau, Ms. MH Khatau, Ms. PH Khatau and Mr. HA Khatau have violated Regulation 8(2) of the Takeover Regulations, 1997 for 6 consecutive financial years from FY 1997-98 to FY 2002-03, 2 consecutive financial years FY 2004-05 and FY 2005-06 and subsequently again for 2 consecutive financial years FY 2008-09 and FY 2009-2010 (i.e. 10 occasions). Further, the promoter Noticees viz. Alk, Brinan and Jayalaxmi have also violated Regulation 8(1) of the Takeover Regulations, 1997 for 6 consecutive financial years from FY 1997-98 to FY 2002-03, 2 consecutive financial years FY 2004-05 and FY 2005-06 and subsequently again for 2 consecutive financial years FY 2008-09 and FY 2009-2010 (i.e. 10 occasions). Promoter Noticee Mr. HA Khatau has violated Regulation 8(1) of the Takeover Regulations for 6 consecutive years i.e. from FY 1997-98 to FY 2002-03. Promoter Noticee Mr. Rohan Khatau has violated Regulation 8(1) of the Takeover Regulations, 1997 only for the year 1997-98. The respective number of days of delay in compliance of Regulation 8(1) and/ or 8(2), as applicable, in respect of each applicable financial year has been enumerated in the table at Para 29 above.

48. Next, I find that ***vide Order dated November 20, 2015, the Hon'ble SAT in the matter of Gopalakrishnan Raman & Ors. Vs. SEBI*** has *inter alia* held as follows:

> *"20. …firstly, use of the word 'A promoter' instead of the word 'every promoter' clearly indicates that the disclosure could be made not only by promoter but also by a promoter group. Secondly, by including every person/member in the promoter group within the meaning of 'promoter' it is made clear that the obligation cast on the promoter has also to be discharged by the promoter group. Thirdly, all the entities covered under the promoter group though treated as 'promoter', every such entity may not be holding shares of the Target Company and in that case, if contention of SEBI is accepted it would mean the every promoter covered under the Takeover Regulations must make yearly disclosure even though some of the promoters never held any shares of the Target Company. Having included persons/members of the promoter group within the meaning of 'promoter' under the Takeover Regulations, SEBI cannot now contend that it would be difficult for a promoter in the promoter group to know the shares held by other promoters in the promoter group and their PAC* [Persons Acting in Concert] *before making disclosure and therefore, every promoter must be directed to make yearly disclosure. Therefore, it is just and reasonable to hold that under the Takeover Regulations the obligation to make yearly disclosure is on the promoter or the promoter group as the case may be.*
>
> *…*
>
> *23…The obligation to make yearly disclosure under regulation 8(2) and regulation 30(2) of the Takeover Regulations framed by SEBI in the year 1997 & 2011 respectively is on the promoter/promoter group. If the promoters of a listed company are individual promoters then the obligation is on the individual promoters and in case there is a 'promoter group' then the promoter group is required to make yearly disclosure. If the promoter group fails to disclose the shares or voting rights held by the promoters in the promoter group as also their PAC's within the time stipulated under the Takeover Regulations, then, penalty is imposable on the promoter group and the said penalty would be recoverable jointly and severally from the promoters in the promoter group who held shares or voting rights in the Target Company with their PAC's…"*

49. Hence, as per the above cited judgment of the Hon'ble SAT, it is imperative that we determine next whether the Promoter Noticees were acting as individual promoters or as a Promoter Group acting in concert. I have carefully read the submissions made by the Promoter Noticees in the matter, which includes the copy of appeal memo filed by the Promoter Noticees before the Hon'ble SAT as the 'promoter group' of the Company. Further, vide letter dated August 08, 2017 enclosing therewith the written submissions on behalf of the Promoter Noticees as well as at the hearing held on June 27, 2017, the ARs on behalf of the Promoter Noticees have confirmed that they were part of a Promoter Group and that all Promoter Noticees are persons deemed to be acting in concert.

50. I find that as per Explanation 1 to Regulation 2(h) of the Takeover Regulations, 1997, promoter group shall include:

(a) in case promoter is a body corporate—

(i) a subsidiary or holding company of that body corporate;

(ii) any company in which the promoter holds 10 % or more of the equity capital or which holds 10 % or more of the equity capital of the promoter;

(iii) any company in which a group of individuals or companies or combinations thereof who holds 20 % or more of the equity capital in that company also holds 20 % or more of the equity capital of the

target company; and

(b) in case the promoter is an individual—

(i) the spouse of that person, or any parent, brother, sister or child of that person or of his spouse;

(ii) any company in which 10 % or more of the share capital is held by the promoter or an immediate relative of the promoter or a firm or HUF in which the promoter or any one or more of his immediate relative is a member;

(iii) any company in which a company specified in (i) above, holds 10 % or more, of the share capital; and

(iv) any HUF or firm in which the aggregate share of the promoter and his immediate relatives is equal to or more than 10 per cent of the total.

51. I note from the submissions of the Noticees that Mr. HA Khatau was an Original Promoter of the Company. Mr. Rohan Khatau is the son and Ms. MH Khatau and Ms. PH Khatau are the daughters of Mr. HA Khatau. As a result, they are a part of the same promoter group as per Clause (b)(i) of Explanation 1 to Regulation 2(h) of the Takeover Regulations, 1997. Further, as per the *inter-se* relationship between the Promoter Noticees as set out in the Appeal Memo and Annexure A to the written submissions filed on August 08, 2017, I find that GVPPL into which Alk, Brinan and Jayalaxmi have amalgamated has been shown to be a part of the same promoter group by virtue of Clause(a)(ii) of Explanation 1 to Regulation 2(h) of the Takeover Regulations, 1997, as they were wholly owned and controlled by the Khatau family.

52. In view of the submissions as aforesaid made by the ARs on behalf of the Promoter Noticees, I find that the Promoter Noticees formed part of the same promoter group. I further note that there is nothing on record to establish anything contrary to the above. In view of the same, the Promoter Noticees herein are persons acting in concert (PACs), being promoters and part of the same promoter group. Thus, I conclude that the responsibility for making the disclosure under Regulation 8(2) of the Takeover Regulations, 1997 rests upon the Promoter Group as a whole, and not upon the individual Promoter Noticees.

53. I find that the ARs in its written submissions filed vide letter dated August 08, 2017 on behalf of the Promoter Noticees have *inter alia* further pointed out that the obligation under the general provision in Regulation 8(1) is subsumed in the obligations set out in the special provision in Regulation 8(2) – the latter adds and builds upon Regulation 8(1) and includes and repeats the requirement under Regulation 8(1) in so far as promoters are concerned. Therefore, the ARs have stated that once it is held that a person is a promoter or part of the promoter group, the obligation to make annual disclosure of his holding would be under Regulation 8(2), since the very obligation is set out in Regulation 8(1), and the same person is not expected to file the same disclosure twice. In support of its argument, the ARs have referred to the judgment of the Hon'ble Supreme Court in the case of ***Commercial Tax***

Officer, Rajasthan v. Binani Cements Limited and Another (2014) 8 SCC 319, wherein the Court has held as follows:

"32...the settled legal position in law, that is, ***if in a statutory rule or statutory notification, there are two expressions used, one in general terms and the other in special words, under the rules of interpretation, it has to be understood that the special words were not meant to be included in the general expression.****"*

54. I find here that the Takeover Regulations were first framed in the year 1994 as SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1994. Thereafter a Committee was set up in November 1995 under the Chairmanship of Justice P.N. Bhagwati, former Chief Justice of India (hereinafter referred to as '**Bhagwati Committee'**) to review the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1994. The terms of reference of the Bhagwati Committee were to examine the areas of deficiencies in the then existing Takeover Regulations and to suggest amendments in the Takeover Regulations with a view to strengthening the Takeover Regulations and making them more fair, transparent and unambiguous and also protecting the interest of investors and of all parties concerned in the acquisition process. Since Takeover Regulations, 1997 were reframed after taking into consideration the recommendations of the Bhagwati Committee under the Chairmanship of Justice Shri P.N. Bhagwati, in order to understand the intent of the provisions of Regulation 8(1) and 8(2), I consider it appropriate to refer to the recommendations of the Bhagwati Committee with regard to the disclosure requirements. I note here that Para 5 of Bhagwati Committee Report on Takeovers dated January 18, 1997 deals with 'Disclosures of shareholding and control in a listed company'. Para 5.2, in particular, reads as follows:

"5.2 It may be mentioned that the existing provisions required disclosure by any person to the stock exchanges and the company. For operational ease, and to reduce the duplication of paper work, he would now be required to disclose his holding only to the company and the company in turn would be required to annually report the holdings of the persons to the stock exchanges. ***Additionally, the promoters or any person having control over the company will be required to disclose his holding to the company.*** *The company will also*

be required to disclose the details of persons in control of the management and their shareholdings to all the stock exchanges immediately after the notification of the revised Regulations. Such information should be maintained in a separate register in the prescribed format and should be available for inspection. Now that change in control would also trigger of a public offer, the latter requirement will provide supplemental evidence of change of control."

55. The Annual disclosures to be made under Regulation 8(1) and 8(2) of the Takeover Regulations, 1997 were framed after taking into consideration the aforesaid recommendations of the Bhagwati Committee. On perusal of Para 5.2 of Bhagwati Committee Report, I find that the Bhagwati Committee clearly intended additional annual disclosures to be made by promoters and persons having control over the company.

56. I further find that the said view is also supported by ***Hon'ble SAT vide its Order dated January 17, 2006 in the matter of Upendra C Shah & Nilam U Shah (Appellants) Vs SEBI of Star Leasing Ltd., wherein it has held as follows:***

"Appellants under an obligation to comply with Regulations 6(1) and 6(3) of the Regulations for the year 1997 and Regulations 8(1) and 8(2) of the Regulations for the years 1997 to 2000. The appellants as the past promoters of the company had disclosed on 19.4.1997 their aggregate shareholding in the Company to the Company. The appellants did not make any further yearly disclosures to the Company even though they held more than 15% of its shares. This is clear from the letter dated March 27, 2001 sent by the merchant banker to the Board. The appellants had declared their shareholding in the Company but did not satisfy the provisions of Regulation 8(2) even for the year 1997 because they had not disclosed the number and percentage of shares held by persons acting in concert with them. They had, thus, violated Regulation 8(1) for the years 1998 up to the year 2000 and Regulation 8(2) had never been complied with. When they declared their aggregate shareholding in the Company which was more than 15% shares in the Company within two months of the notification of the Regulations, they complied with Regulation 8(1) for the year 1997 and Regulation 6(1) as well. Since they did not

disclose the number and percentage of shares held by the persons acting in concert with them in the Company, the provisions of Regulation 6(3) stood violated. It is on record that the appellants and persons acting in concert with them were holding more than 78% equity shares in the Company. ***The adjudicating officer was therefore right in holding that Regulation 6(3) and Regulations 8(1) and 8(2) stood violated. These provisions are mandatory and their non-compliance will attract the provisions of sub-section (b) of section 15A of the Act***."

57. Further, the ***Hon'ble SAT vide Order dated October 20, 2015 in the matter of Inland Printers Ltd. Vs. SEBI (Appeal No. 199 of 2014)*** has held as follows:

"…In other words, while the shareholders/promoters of the company are obliged to make annual disclosures to the Company under Regulations 8(1) and 8(2) of the Takeover Regulations, 1997, the company is obliged to make annual disclosures to the stock exchanges under Regulation 8(3) of the Takeover Regulations, 1997. ***To put it simply, if the shareholders/promoters fail to make annual disclosures under Regulations 8(1) and 8(2) they are liable for penal action under Section 15A(b) of SEBI Act*** *and if the Company fails to make annual disclosures to the stock exchanges within the time stipulated under Regulation 8(3), the Company is liable for penal action under Section 15A(b) of the SEBI Act."*

58. I, thus, conclude that Promoter Noticees were required to make disclosure under Regulation 8(1) and 8(2) of Takeover Regulations 1997, as the said provisions are mandatory in nature and its non-compliance has been made penal. This is because failure to make disclosures within the time stipulated under Regulation 8(1) and 8(2) of the Takeover Regulations, 1997 renders the promoter Noticees liable for penalty under section 15A(b) of the SEBI Act.

59. Further, though the ARs have strenuously asserted the rule of statutory construction that the specific governs the general, I find that it is not an absolute rule, but, is merely a strong indication of statutory meaning that can be overcome by textual indications that point in the other direction. In the extant case, I find that it was in tune with the recommendations of the Bhagwati Committee that Takeover Regulations, 1997 made disclosures under Regulation

8(1) and 8(2) mandatory. In such a situation, I find it difficult to ignore the legislative intent behind the provisions and adopt an interpretation which would change the express language as well as the plain meaning underlying the said provisions. While interpreting the intent of the provisions of the Takeover Regulations, 1997, I find it important to go by the guidance of the words used by the Bhagwati Committee and in the Regulation, and not merely on the basis of formats prescribed as emphasized by the Noticees.

60. I find further that prior to October 28, 1998, under Regulation 8(1), every person including a person mentioned in Regulation 6 who held more than 10% shares or voting rights in any company, were required to disclose their holdings as on 31st March to the company within 21 days from financial year ending March 31. Regulation 8(1) was amended with effect from October 28, 1998, whereby the threshold of 10% for making disclosure under Regulation 8(1) was increased to 15%. I find that this amendment to Regulation 8(1) was in line with the amendment dated October 28, 1998 made to Regulation 10 and Regulation 11, whereby the threshold for making an open offer by the acquirer was increased from 10% to 15%. I find that the threshold for making an open offer to the shareholders of the company pursuant to acquisition of shares of the company was increased from 10% to 15% under Regulation 10 and from "not less than 10%, but, not more than 51%" to "15% or more, but, less than 55%" shares or voting rights in the company under Regulation 11(1) with effect from October 28, 1998. Thus, I find that the intent of Regulation 8(1) is to clearly identify and highlight the changes in the holdings from year to year of every person (including promoters and persons in control of the company) who hold more than the minimum open offer threshold, when the company makes disclosure under Regulation 8(3) to the stock Exchanges, so as to enable the investors to take an informed investment decision. I further find it pertinent to mention here that Takeover Regulations, 1997 obliges not only the promoters of the company, but, even persons having control over the company (which again may include persons holding fifteen percent shares or voting rights in the company) to disclose under Regulation 8(1) and 8(2) of Takeover Regulations, 1997. From all of the above, I find that there is a necessary purpose behind the obligation cast upon promoters and persons having control over the company to

disclose their holding under Regulation 8(1) and Regulation 8(2) of Takeover Regulations, 1997.

61. Further, on perusal of the format of disclosure under Regulation 8(1) and 8(2) of Takeover Regulations, 1997, I find that under one format distinctly separate disclosures to be made by virtue of Regulation 8(1) and by virtue of Regulation 8(2) have been prescribed. Hence, if a promoter makes disclosure under the prescribed format in the prescribed manner, he automatically fulfills the requirement of distinct disclosures required to be made under Regulation 8(1) and Regulation 8(2) of Takeover Regulations, 1997. However, at the same time non-compliance renders the promoters liable to penalty under section 15A(b) of the SEBI Act for violation of Regulation 8(1) and 8(2) of Takeover Regulations, 1997. And, such penalty under Regulation 8(1) and 8(2), I find is leviable and recoverable differently under Regulation 8(1) (as the obligation to disclose here is on every person) vis-à-vis under Regulation 8(2)(where the obligation to disclose is on promoter group, where promoters are acting in concert).

62. Hence, by not appreciating all of the aforesaid facts, I find that ARs have erred in contending that earlier Order wrongly held Noticees to be in breach of Regulation 8(1) and Regulation 8(2). However, I agree with the submissions made by ARs to the extent that since the same format prescribes distinctly separate disclosures to be made by virtue of Regulation 8(1) and by virtue of Regulation 8(2), the same can be considered as one of the mitigating factors while deciding the penalty leviable for violation of Regulation 8(1) and 8(2) of Takeover Regulations, 1997.

63. Now the next issue for consideration is whether the Promoter Noticees viz. Alk, Brinan, Jayalaxmi, Mr. Rohan Khatau, Ms. MH Khatau, Ms. PH Khatau and Mr. HA Khatau failed to comply with provision of Regulation 11(2) read with regulation 14(1) of SEBI Takeover Regulations. The details of the transactions are as follows:

Financial Year	Name of the promoter/ promoter group entity	Shares acquired	Non Compliance	Individual holding (in terms of shares and %)		Collective holding (in terms of %) (Promoter group)	
				Pre-Acquisition	Post-Acquisition	Pre-Acquisition	Post-Acquisition
1997-98	Mr. Rohan Khatau along with the PACs-1	27,525 (11.05%)	Regulation 11(2) read with 14 of the Takeover Regulations, 1997	0	27,525 (11.05%)	99.95	99.95
2003-04	Alk Holding Pvt. Ltd. along with the PACs-2	40,000 (16.06%)		46,400 (18.63%)	59,900 (24.06%)	89.99	89.99
	Brinan Investment Pvt. Ltd. along with the PACs-3			49,100 (19.72%)	61,600 (24.74%)		
	Jayalaxmi Holdings Pvt. Ltd. along with the PACs-4			42,150 (16.93%)	56,150 (22.55%)		

PACs 1 - Alk Holding Pvt Ltd., Brinan Investments Pvt Ltd., Jayalaxmi Holdings Pvt Ltd, Ms. MH Khatau, Ms. PH Khatau and Mr. HA Khatau
PACs 2 - Brinan Investments Pvt Ltd., Jayalaxmi Holdings Pvt Ltd., Mr. Rohan Khatau, Ms. MH Khatau, Ms. PH Khatau and Mr. HA Khatau;
PACs 3 - Alk Holding Pvt Ltd., Jayalaxmi Holdings Pvt Ltd., Mr. Rohan Khatau, Ms. MH Khatau, Ms. PH Khatau and Mr. HA Khatau
PACs 4 - Alk Holding Pvt Ltd., Brinan Investments Pvt Ltd., Mr. Rohan Khatau, Ms. MH Khatau, Ms. PH Khatau and Mr. HA Khatau

64. It was alleged that the Noticees viz. Alk, Brinan, Jayalaxmi, Mr. Rohan Khatau, Ms. MH Khatau, Ms. PH Khatau and Mr. HA Khatau have *inter alia* failed to comply with provision of Regulation 11(2) read with regulation 14(1) of SEBI Takeover Regulations, 1997 on four occasions i.e., once in the year 1997-98 and thrice during the year 2003-04 by acquiring shares of the company during the said years.

65. I note that as per Regulation 11(2), as it existed at the relevant point of time i.e. during the acquisition made on 1997-98 and 2003-04, an acquirer together with persons acting in concert with him has acquired, in accordance with the provisions of law, 55% or more but less than 75% of shares or voting rights in a company, may acquire either by himself or through person acting in concert with him any additional shares or voting rights, only if he makes a public announcement for the same. I, thus, note that the obligation to make public offer under Regulation 11(2) of the Takeover Regulations, 1997 does not cover a situation where an acquirer, who together with persons acting in concert with him has acquired 75% or more of shares or voting rights of the company. In the present matter, the Noticees as promoters of the company were holding 99.95% of the shareholding in the year 1997-98 and 89.99% of the shareholding in the year 2003-04 at the time of the aforesaid transactions. I, thus, find that the total shareholding of the acquirers together with persons acting in concert was outside the limit prescribed under Regulation 11(2) of Takeover Regulations, 1997. In the matter, I note that in the case of *Eider e-Commerce Ltd. Vs SEBI,* a similar question as to whether an acquirer who already holds *more than* 75% of the shares in a company, acquires further shares in that company is required to make a public announcement to acquire such further shares in accordance with the Takeover Regulations, 1997, was before the Hon'ble Securities and Appellate Tribunal (SAT). The ***Hon'ble SAT in the said Order dated August 20, 2008 Eider e-Commerce Ltd. Vs SEBI*** has held that once an acquirer together with persons acting in concert with him holds *more than* 75% in a company, then, if he were to acquire additional shares, there is no requirement in the Takeover Code that he has to make any public announcement, as Regulation 11 is not attracted in such a situation. Hence, without going into the merits of the matter, I find that the extant case cannot be covered by Regulation 11(2) of the Takeover Regulation, 1997.

66. The Noticees, I find, have referred to various case judgment with respect to the allegation of the failure to make an Open Offer under Regulation 11(2) of the Takeover Regulation, 1997. Since the allegation under Regulation 11(2) of the Takeover Regulations, 1997 stands abated against the promoter Noticees as on fact of the matter, I hence proceed without examining the case laws as submitted by the Noticees in the matter.

67. The Hon'ble Supreme Court of India in the matter of ***SEBI Vs. Shri Ram Mutual Fund*** [2006] 68 SCL 216(SC) 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…".* Further in the matter of Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed *"Once it is established that the mandatory provisions of takeover code was violated the penalty must follow*.

68. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section 15A(b) of the SEBI Act, for the violation of Regulation 8(1) and Regulation 8(2) of the Takeover Regulations, 1997, as applicable, against the Noticees, which reads as under:

15 A(b) of the SEBI Act, 1992 prior to SEBI (Amendment) Act, 2002 (w.e.f. 29-10-2002)

If any person, who is required under this Act or any rules or regulations made thereunder,--
To file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues.

15 A(b) of the SEBI Act, 1992 after SEBI (Amendment) Act, 2002 (w.e.f. 29-10-2002)

Penalty for failure to furnish information, return, etc.-

15.A(b) *If any person, who is required under this Act or any rules or regulations made thereunder,--*
To file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

69. While determining the quantum of monetary penalty under Section 15 A(b), I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

Factors to be taken into account by the adjudicating officer

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

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

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

(c) the repetitive nature of the default.

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

70. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticees. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticees. However, the main objective of the Takeover Regulations is to afford fair treatment for shareholders who are affected by the change in control. The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decision. Thus, the cornerstone of the Takeover regulations is investor protection.

71. As per Section 15A(b) of the SEBI Act, prior to amendment dated October 29, 2002, the Noticee was liable to a penalty not exceeding Rs. 5,000/- for every day of default during which such default continues for failure to file any return or furnish information, books or

documents within the time specified. With effect from October 29, 2002, the Noticee is liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. I also note that the ARs have confirmed that there was no past non-compliance of SEBI Act and Regulations by the Noticees and no action was taken by SEBI in the past against the Noticees.

72. I, however, note that the ***Hon'ble Securities Appellate Tribumal (SAT) in the matter of Komal Nahata Vs. SEBI (Date of judgment- January 27, 2014)*** has observed that:

"Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure."

In view of the same, the argument put forth by the Noticees that no loss was caused to any investor as a result of the delayed disclosures of the acquisition and that there was no case of any investor grievance in connection with such filings is not relevant for the given case.

73. In the matter, I also note that in ***Appeal No. 78 of 2014 of Akriti Global Traders Ltd. Vs. SEBI, the Hon'ble Securities Appellate Tribunal (SAT) vide Order dated September 30, 2014*** *had observed that:*

"… Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay."

In view of the same, the argument put forth by the Noticees that there is no question of any gain or advantage that has accrued, let alone any disproportionate gain or unfair advantage and that the alleged delay was without any malafide intention is also not relevant for the given case.

74. I note that the promoter Noticees viz. Alk, Brinan, Jayalaxmi (all of whom have been amalgamated into GVPPL); Mr. Rohan Khatau, Ms. MH Khatau, Ms. PH Khatau and Mr. HA Khatau have violated Regulation 8(2) of the Takeover Regulations, 1997 for 6 consecutive financial years from FY 1997-98 to FY 2002-03, 2 consecutive financial years FY 2004-05 and FY 2005-06 and subsequently again for 2 consecutive financial years FY 2008-09 and FY 2009-2010 (i.e. for 10 years). Further, the promoter Noticees viz. Alk, Brinan and Jayalaxmi have also violated Regulation 8(1) of the Takeover Regulations, 1997 for 6 consecutive financial years from FY 1997-98 to FY 2002-03, 2 consecutive financial years FY 2004-05 and FY 2005-06 and subsequently again for 2 consecutive financial years FY 2008-09 and FY 2009-2010 (i.e. for 10 years). Promoter Noticee Mr. HA Khatau has violated Regulation 8(1) of the Takeover Regulations for 6 consecutive years i.e. from FY 1997-98 to FY 2002-03. Promoter Noticee Mr. Rohan Khatau has violated Regulation 8(1) of the Takeover Regulations only for 1 year in the year 1997-98.

75. The ***Hon'ble SAT in Inland Printers Ltd. Vs. SEBI*** has observed that the penalty imposable for failure to make yearly disclosures for financial years ended March 31, 2002 to March 31, 2011 at the rate of Rs. One Lakh per day would run into several crores of rupees. Similarly, in the extant case too, penalty for delayed yearly disclosures made by the Noticees under Regulation 8(2) for financial years ended March 31, 1998 to March 31, 2003 and March 31, 2005, March 31, 2006, March 31, 2009 and March 31, 2010, as also under Regulation 8(1), as applicable, would run into several crores of rupees. However as stated in the earlier part of the Order, I have considered the fact that the same format prescribes distinctly separate disclosures to be made by virtue of Regulation 8(1) and by virtue of Regulation 8(2), as one of the mitigating factors while deciding the penalty leviable for violation of Regulation 8(1) and 8(2) of Takeover Regulations, 1997.

76. I further note that the Noticees have submitted that the shareholding of the Noticees with respect to the period in question was available on record in view of the disclosure made by the company with BSE under clause 35 of the Listing Agreement. In the matter, I would like to refer to the ***Order of the Hon'ble SAT dated June 13, 2014 in the matter of Mafatlal***

Finance Company Limited (hereinafter referred to as 'MFCL'), wherein the Hon'ble SAT has held that obligation to make disclosure under Regulation 8(1) and 8(2) of the Takeover Regulations, is independent of the obligation to make disclosure under clause 35 of the Listing Agreement, which is on the company. In the given case, I find that the violation has been committed by the promoters of the Company. As promoters of the listed company, the Noticees had a responsibility to comply with the disclosure requirements in accordance with their spirit, intention and purpose. Delayed compliance with disclosure requirements by promoters undermines the regulatory objectives and jeopardizes the achievement of the underlying policy goals.

ORDER

77. After taking into consideration all the facts and circumstances of the case, I impose the following penalty against the Promoter Noticees under the provisions of Section 15A(b) of the SEBI Act for the violation of Regulation 8(1) and/ or 8(2) of the Takeover Regulations, 1997, as applicable:

Sr. No.	Promoter Noticee	Regulation violated	Penalty Amount (Rs.)
1	**Jayalakshmi Holdings Pvt. Ltd., Brinan Investments Ltd. and Alk Holding Pvt. Ltd. (Amalgamated to Great View Properties Pvt. Ltd.)**	Regulation 8(1) of Takeover Regulations, 1997	**Rs. 7,50,000/- (Rupees Seven Lakh Fifty Thousand only)**
2	**Mr. Rohan Khatau**	Regulation 8(1) of Takeover Regulations, 1997	**Rs. 2,00,000/- (Rupees Two Lakh only)**
3	**Mr. HA Khatau**	Regulation 8(1) of Takeover Regulations, 1997	**Rs. 2,00,000/- (Rupees Two Lakh only)**
4	**Jayalakshmi Holdings Pvt. Ltd., Brinan**		

Sr. No.	Promoter Noticee	Regulation violated	Penalty Amount (Rs.)
	Investments Ltd. and Alk Holding Pvt. Ltd. (Amalgamated to Great View Properties Pvt. Ltd.)	Regulation 8(2) of Takeover Regulations, 1997	**Rs. 7,50,000/- (Rupees Seven Lakh Fifty Thousand only) (payable jointly and severally)**
	Mr. Rohan Khatau		
	Mr. HA Khatau		
	Ms. PH Khatau		
	Ms. MH Khatau		

78. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the default committed by the promoter Noticees.

79. Further, the charge of violation of Regulation 8(1) of the Takeover Regulations, 1997 against the promoter Noticees viz. Ms. MH Khatau and Ms. PH Khatau is dropped. The promoter Noticee viz. Mr. Rohan Khatau stands absolved of the allegation of violation of Regulation 8(1) of the Takeover Regulations, 1997 for the entire period of allegation, except for 1997-98. The violation of Regulation 8(1) of the Takeover Regulations, 1997 against the promoter Noticee viz. Mr. HA Khatau does not stand established for the years 2003-04, 2004-05, 2005-06, 2008-09 and 2009-10. With respect to the allegation of non-disclosure under Regulation 8(1) and 8(2) of the Takeover Regulation, 1997 for the year 2003-04, all the Noticees are given benefit of doubt in the matter.

80. Further considering the facts and circumstances of the case as discussed at para 61 of the Order, I, however, do not find the instant matter fit for imposition of penalty under Section 15H(ii) of SEBI Act for violation of Regulation 11(2) read with 14(1) of the Takeover Regulations, 1997 against the promoter Noticees viz. Jayalaxmi Holdings Pvt. Ltd., Brinan Investments Pvt. Ltd., Alk Holding Pvt. Ltd. (amalgamated to Great View Properties Pvt. Ltd.), Mr. Rohan Khatau, Ms. MH Khatau, Ms. PH Khatau and Mr. HA Khatau.

81. 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 e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

82. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department, SEBI. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under:

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

83. In terms of rule 6 of the Rules, copies of this order are sent to the Promoter Noticees and also to the Securities and Exchange Board of India.

Date: August 29, 2017 **Anita Kenkare**

Place: Mumbai **Adjudicating Officer**