BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. AK/AO- 3 to 14/2014]

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

Shri Amul Sumatichandra Mehta (PAN: AAHPM0112E), Shri Yugesh Sumatichandra Mehta (PAN: AFFPM5967A), Shri Akul Yugesh Mehta (PAN: ALEPM3353K), Ms Jayendra Yugesh Mehta (PAN: AAGPM3471M), Ms Mrudula Amul Mehta (PAN: AAFPM7346A), Ms Maitri Amul Mehta (PAN: ACPPM8715K), Ms Rachna Amul Mehta (PAN: AFFPM9255H), Ms Sunali Yugesh Mehta (PAN: AHEPM4649L), M/s Senator Investment Private Limited (PAN: AAECS3302A), M/s Touristor Investments Pvt. Ltd. (PAN: AABCT1257G), M/s Yug Investment Pvt. Ltd. (PAN: AAACY0239J) and Amul Sumatichandra Mehta-HUF (PAN: AAAHA5202N).

In the matter of

Safari Industries (India) Limited

FACTS OF THE CASE IN BRIEF

1. Shri Amul Sumatichandra Mehta, Shri Yugesh Sumatichandra Mehta, Shri Akul Yugesh Mehta, Ms Jayendra Yugesh Mehta, Ms Mrudula Amul Mehta, Ms Maitri Amul Mehta, Ms Rachna Amul Mehta, Ms Sunali Yugesh Mehta, M/s Senator Investment Private Limited, M/s Touristor Investments Pvt. Ltd., M/s Yug Investment Pvt. Ltd. and Amul Sumatichandra Mehta-HUF (hereinafter referred to as the **"Noticees/ Promoters"**) of Safari Industries (India) Limited (hereinafter referred to as **"The Company"**) is a company incorporated under the Companies Act. A letter of offer under regulations 10 and 12 of the Takeover Regulation was made by Mr. Sudhir Jatia as the Acquirer and Ms. Neeti Jatia as the Person Acting in Concert (**PAC**) to acquire 5,98,000 fully paid up equity share of Rs. 10/- each at Rs.

170/- per share (representing 20% of the total issued and subscribed equity share capital and 20% of the voting right) of the company. The public announcement of the same was made on September 09, 2011. The equity shares of the company were listed on Bombay Stock Exchange Ltd. (hereinafter referred to as '**BSE'**). On perusal of the letter of offer, SEBI observed that Noticees in the past had not complied with Regulation 8(2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (**hereinafter referred to as "Takeover Regulations"**) within the due date during the year 2006. Based on the aforesaid information with respect to the non-compliance of Takeover Regulations, 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 Noticees under Section 15A(b) of SEBI Act to inquire into and adjudicate the alleged violation of the provision of 8(2) of the Takeover Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer on 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) of the SEBI Act for the alleged violation of Regulation 8(2) of Takeover Regulations committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice (hereinafter referred to as **"SCN"**) Ref. No. EAD-6/AK/VS/29262/2013, EAD-6/AK/VS/29265/2013, EAD-6/AK/VS/29270/2013, EAD-6/AK/VS/29275/2013, EAD-6/AK/VS/29277/2013, EAD-6/AK/VS/29279/2013, EAD-6/AK/VS/29282/2013, EAD-6/AK/VS/29287/2013, EAD-6/AK/VS/29289/2013, EAD-6/AK/VS/29290/2013, EAD-6/AK/VS/29291/2013 and EAD-6/AK/VS/29292/2013 dated November 18, 2013 were issued to the Noticees under rule 4(1) of SEBI Rules communicating the alleged violation of Takeover Regulations. The Noticees were also called upon to show cause as to why an inquiry should not be initiated against it and penalty be not imposed under Section 15 A(b) of the SEBI Act for the alleged violations.

4. The Noticees vide letter dated November 25, 2013 sought extension of 30 days time to reply to the SCN. Vide email dated November 26, 2013, the Noticees were advised to submit their reply to the SCN by December 16, 2013. Shri Amul Mehta submitted reply dated December 16, 2013 to the SCN on behalf of himself and other Noticees *inter alia* admitting to the alleged charges. Vide the aforesaid reply, the Noticees have *inter alia* stated as follows:

i. That for the financial year ending March 31, 2006, the NOticees had made the disclosure in terms of Regulation 8(2) of the Takeover Regulations on April 28, 2006 against due date of April 21, 2006 (i.e. a delay of 7 days);

ii. That the delay was inadvertent, unintentional and of a technical or minor nature. It did not cause any harm to any of the shareholders of the company or public at large as the information necessary to be available in the public domain i.e. the Stock Exchange, was available pursuant to the quarterly filing by the company under clause 35 of the Listing Agreement;

iii. That none of the Noticees has made any disproportionate gain or unfair advantage as a result of delay in compliance with the Takeover Regulations.

5. In the interest of natural justice and in terms of rule 4(3) of the SEBI Rules, the Noticees were granted an opportunity of hearing on January 08, 2014 vide notice dated December 10, 2013 and the said notice was duly acknowledged by the Noticees. Accordingly, Shri Ramakant Kini, Shri Supreme Waskar and Shri Pradumnya from M/s Sterling Associates (hereinafter referred to as **"ARs"**), appeared on behalf of the Noticees and reiterated the submissions made vide reply dated December 16, 2013. During the hearing, the ARs submitted that Shri Amul Mehta was the main holder and other promoters were his relatives as joint holders, hence only Shri Amul Mehta may be considered as responsible for making the disclosures. ARs were advised to submit copies of the disclosures made by the Noticees under Clause 35 of the Listing Agreement to the Exchange for the quarters ended December 2005 and March 2006 along with the acknowledged receipts of the Bombay

Stock Exchange Ltd. (BSE) and copy of the report filed with the company under Regulation 8(2) of Takeover Regulations on April 28, 2006. ARs were further advised to inform any past non-compliance by the Noticees concerned with respect to Takeover and/ or Insider Trading Regulations as well as action taken by SEBI, if any, against the Noticees in the past. ARs undertook to provide the aforesaid documents/ information by January 15, 2014.

6. Vide letter dated January 15, 2014, Noticees submitted the following documents:

   i. Copy of the Shareholding Pattern of the company for the quarter ended December 31, 2005 pursuant to clause 35 of the Listing Agreement filed with BSE vide company's letter dated January 13, 2006 and acknowledged by BSE on January 19, 2006;
   ii. Copy of the Shareholding Pattern Summary form for free-float indices as on March 31, 2006, copy of the Controlling/ Strategic Holders form and copy of the form disclosing the holdings of 1% & above filed by the company with BSE vide letter dated April 26, 2006 and acknowledged by BSE on May 02, 2006; and
   iii. Report under Regulation 8(2) of the Takeover Regulations filed with the company on April 28, 2006. The date of filing of report by the Noticees with the company is April 28, 2006. It is, however, noted that the same has been initialed as on the same date, but, without the receiving official's name or the company's seal of receiving the documents.

CONSIDERATION OF ISSUES

7. I have carefully perused the written submissions of the Noticees and the documents available on record. It is observed that the allegation against the Noticees is that they have failed to make the relevant disclosure under the provisions of Regulation 8(2) of the Takeover Regulations for the financial year 2006 within the stipulated time

8. The issues that, therefore, arises for consideration in the present case are:
   a. Whether the Noticee has violated the provision of Regulation 8(2) for the financial year 2006 of the Takeover Regulations?
   b. Does the violation, if any, attract monetary penalty under Section 15 A(b) of SEBI Act?
   c. 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

9. Before moving forward, it is pertinent to refer to the provisions of Regulation 8(2) of Takeover Regulations, which reads as under:

   Regulation 8 (1) & (2) of Takeover Regulation:

   Continual disclosures.

   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.*

10. The first issue for consideration is whether the Noticees were required to make the relevant disclosure under the provisions of Regulations 8(2) of the Takeover Regulations. I find from the Letter of Offer filed by the Acquirer before SEBI that the Noticees were the promoter of the company at the relevant point of time. Hence, the Noticees were required to make the relevant disclosure under the provisions of Regulation 8(2) of the Takeover Regulations for the financial year 2006.

11. The next issue for consideration is whether the Noticees have violated the provisions of Regulations 8(2) of the Takeover Regulations for the financial year ended March 31, 2006. In

respect of the alleged non-compliance of regulation 8(2) by the Noticees, the Noticees who were amongst the promoters of the company at the relevant point of time were required to disclose the aggregate shareholding and voting rights as of the 31st day of March in the prescribed format to the company within 21 days from March 31, 2006.

12. I find from the reply dated December 16, 2013 filed by the Noticees that the Noticees have *inter alia* stated that the alleged violation was inadvertent, unintentional and of technical or minor nature. Based on the documents provided by the Noticees vide letter dated January 15, 2014, I find that the disclosure under Regulation 8(2) of the Takeover Regulation was made to the company only on April 28, 2006. The violation of the Notiicees are given below:

S.No.	Entity	Violation of Regulation	Due date for compliance	Actual date of compliance	Delay (No. of Days)
1	Amul Sumatichandra Mehta	8(2)	21.04.2006	28.04.2006	7
2	Yugesh Sumatichandra Mehta	8(2)	21.04.2006	28.04.2006	7
3	Akul Yugesh Mehta	8(2)	21.04.2006	28.04.2006	7
4	Jayendra Yugesh Mehta	8(2)	21.04.2006	28.04.2006	7
5	Mrudula Amul Mehta	8(2)	21.04.2006	28.04.2006	7
6	Maitri Amul Mehta	8(2)	21.04.2006	28.04.2006	7
7	Rachna Amul Mehta	8(2)	21.04.2006	28.04.2006	7
8	Sunali Yugesh Mehta	8(2)	21.04.2006	28.04.2006	7
9	Senatory Investments Pvt. Ltd.	8(2)	21.04.2006	28.04.2006	7
10	Touristor Investments Pvt. Ltd.	8(2)	21.04.2006	28.04.2006	7
11	Yug Investments Pvt. Ltd.	8(2)	21.04.2006	28.04.2006	7
12	A S Mehta HUF	8(2)	21.04.2006	28.04.2006	7

13. From the table given above, it is observed that for the financial year 2006, the due date for compliance by the Noticees as per the Takeover Regulations was April 21, 2006. I find that the actual date of filing of report by the Noticees with the company was April 28, 2006. It is further noted that the same has been initialed as on the same date, but, without the receiving official's name or the company's seal of receiving the documents. Presuming, however, that the report was received by the company on the same date i.e. April 28, 2006, the disclosure was made with a delay of seven (7) days. The same has been specifically admitted by the Noticees in their replies.

Thus, I find that the Noticees have admitted the violation of Regulation 8(2) of the Takeover Regulations for the financial year ended March 31, 2006.

14. The Noticees, I find have further submitted that Shri Amul Mehta was the main holder and other promoters were his relatives as joint holders, hence only Shri Amul Mehta may be considered as responsible for making the disclosures. I find that as per Section 15 of Table A of Schedule I of the Companies Act, the joint holders of a share are jointly and severally liable to pay all calls in respect thereof. Further, I find that the Companies Act, 1956 make the joint holders liable severally as well as jointly for and in respect of calls and other payments which ought to be made in respect of such shares, whereas, it allows any one of such persons to be given effectual receipts for any dividends, or, other moneys payable in respect of such share to such joint holders. Thus, extending the same further, I am of the view that the joint holders are liable severally and jointly in complying with all obligations, including regulatory compliances required under the takeover regulation. Also, the Takeover Regulations does not provide any exemption as claimed by the Noticees. After taking into consideration of all the facts and circumstances of the case, it is established that the Noticees has violated the provisions of Regulation 8(2) of the Takeover Regulations for the financial year ended March 31, 2006.

15. 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*.

16. 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, which reads as under:

Penalty for failure to furnish information, return, etc.

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

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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.

17. 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.

18. 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.

19. As per Section 15A(b) of the SEBI Act, 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. Further, under Section 15-I of the SEBI Act, the adjudicating officer has to give due regard to certain factors which have been stated as above while adjudging the quantum of penalty. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticee. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticee. Also, the Noticee has stated that no action has been taken or proceedings initiated against the Noticee in the past, for any offence with respect to Takeover Regulations or Insider Trading Regulations, except for the present adjudication proceeding contemplated under the subject notice.

20. In addition to the aforesaid, I am also inclined to consider the following mitigating factors while adjudging the quantum of penalty: a) the paid-up capital/ market capitalization of the company at the relevant point of time; b) the trading volumes of the company's shares on BSE, where the shares were listed, during the relevant period; c) the change in the Noticee's shareholding, if any, during the relevant period; and d) the number of occasions in the instant proceeding that the Noticees have violated the relevant provisions of the Takeover Regulations.

21. From the shareholding pattern for the quarter ended December 31, 2005, I note that the paid up capital of the company was Rs. 2,60,00,000 comprising of 26,00,000 equity shares of Rs. 10/- each, of which 7,50,140 shares of Rs. 10/- each representing 28.85% of the paid-up capital was held by the Noticee Promoters. I further note that 13,73,683 shares representing 52.83% of the total paid-up capital of the company was held by the Promoter Group and 12,26,317 shares representing 47.16% of total paid-up capital of the company was held by the Institutional Investors, Indian Public and NRIs/ OCBs. The market capitalization of the company was approx. Rs. 7.3 crore. I note that the average daily traded volume during April 21, 2006 to April 28, 2006 on BSE, where the equity shares of the company were listed, was approx. 1,350 shares.

22. I find that the Noticees made a delayed disclosure to the company. The delay in the instant case is by seven (7) days on one occasion for the financial year ended March 31, 2006 with regards to making the relevant disclosure under the provisions of Regulation 8(2) of the Takeover Regulations to the company. The Noticees have submitted that the delayed disclosure did not cause any harm to any of the shareholders of the company or public at large as the information necessary to be available in the public domain i.e. Stock Exchange, was available pursuant to the quarterly filing by the company under clause 35 of the Listing Agreement. The Noticees have also submitted the filing made to BSE under Clause 35 of the Listing Agreement for the quarter ending December 2005 and copy of the Shareholding Pattern Summary form for free-float indices as on March 31, 2006, copy of Controlling/ Strategic Holders form and copy of the form disclosing the holdings of 1% & above filed by the company with BSE as on March 31, 2006. I, however, note from the aforesaid documents produced before me that the shareholding of the Noticees for the quarter ended March 31, 2006 was submitted by the company to BSE vide letter dated April 26, 2006, which was acknowledged by BSE only on May 02, 2006. Thus, I observe that the same was received by BSE much after the delayed filing made by the Noticees to the company on April 28, 2006. Thus, I find that as on April 21, 2006 i.e. the due date for compliance of regulation 8(2) of the Takeover Regulation, the information about the Noticee promoter’s

holding as on March 31, 2006 was not available in public domain, even as required under clause 35 of the listing agreement. I, however, note that there was no change in the Noticees holding filed by the company with BSE under clause 35 of the Listing Agreement for the previous quarter ended December 31, 2005. The Noticees, however, cannot absolve themselves by making disclosures under Listing Agreement in lieu of making necessary disclosures under the Takeover Regulations as the purpose and intent of both the laws are different. Though I note that there was no change in the Noticee promoter's shareholding from that disclosed to BSE under clause 35 of the listing agreement for the quarter ended December 2005, as the promoters of a listed company, the Noticees had a responsibility to comply with the disclosure requirements in accordance with Regulation 8(2) of the Takeover Regulations in accordance with their spirit, intention and purpose, so that the investors could take a decision whether to buy, sell, or hold the company's securities in the right perspective. Delayed compliance to disclosure requirements by the promoter of a listed company, undermines the regulatory objectives and jeopardizes the achievement of the underlying policy goals.

ORDER

23. After taking into consideration all the facts and circumstances of the case, I impose a penalty of **Rs. 2,00,000/- (Rupees Two lacs only)** under Section 15 A(b) on each of the Noticees **(a total of Rs. 24,00,000/- on the Noticees)** which will be commensurate with the violations committed by the Noticees.

24. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Shri V S Sundaresan, Chief General Manager, Corporation Finance Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

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

Date: **January 29, 2014** **Anita Kenkare**

Place: **Mumbai** **Adjudicating Officer**