

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO. AK/AO- 18-24 /2017]**

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**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

**Mr. Gopal Krishan Somani** (PAN No. AACPS1898J); **Gopal Krishan Somani (HUF)** (PAN No. AAAHG0640Q); **Mr. Sanjay Somani** (PAN No. AACPS1897H); **Sanjay Somani (HUF)** (PAN No. AAAHS9535A); **Ms. Shruti Somani** (PAN No. AAZPS6820M); **Alok Wires Pvt. Limited** (PAN No. AAACA8596N); and **Mebags Investment Services Pvt. Limited** (PAN No. AAACM3214F)

In the matter of  
Mapro Industries Limited

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**FACTS OF THE CASE**

1. A letter of offer was made by Mr. Sandeep Gupta, Mr. Atul Kumar Sultania and Mr. Umesh Kumar Kanodia, as the Acquirers to acquire 2,82,750 fully paid up equity shares of Rs 10/- each at an offer price of Rs. 20/- per equity share (representing 26% of the total paid-up equity share capital/ voting share capital) of Mapro Industries Limited (hereinafter referred to as '**the Company**'/ '**Mapro**'). The public announcement of the same was made on January 16, 2013. The shares of the company were listed at Bombay Stock Exchange Ltd (herein after referred to as '**BSE**').
2. While examining the letter of offer document of the Acquirer to acquire the shares of the Company, it was observed that the erstwhile promoters of the Company, viz. Mr. Gopal Krishan Somani, Gopal Krishan Somani (HUF), Mr. Sanjay Somani, Sanjay Somani (HUF), Ms. Shruti Somani, Alok Wires Pvt. Ltd and Mebags Investment Services Pvt. Ltd.(hereinafter referred to as '**Promoter Noticees**'/ '**Noticees**') did not comply with the provisions of Regulation 30(2) read with 30(3) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as

'Takeover Regulations, 2011') for the financial year ended March 31, 2012 within the stipulated time. Based on the aforesaid information with respect to the non-compliance of Takeover Regulations 2011, 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 aforementioned Promoters Noticees under Section 15A(b) of SEBI Act to inquire into and adjudicate the alleged violation of the aforesaid provisions of Takeover Regulations, 2011, as applicable. Vide Order Ref: AK/AO-212-219/2014 dated November 27, 2014, it was held that the Promoter Noticees had violated Regulation 30(2) read with 30(3) of Takeover Regulations, 2011, and had accordingly imposed a penalty of Rs.2,00,000 (Rupees Two Lakh) on each of the Promoter Noticees.

3. The said Order dated November 27, 2014 was appealed against before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT**') by the Promoter Noticees. The Hon'ble SAT, vide its Order dated November 20, 2015 set aside the Adjudication Order dated November 27, 2014 and restored the appeals to the file of SEBI for passing fresh order on merits and in accordance with law.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

4. The undersigned was appointed as the Adjudicating Officer on November 26, 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 Takeover Regulations, 2011, as applicable, committed by the Promoter Noticees. Pursuant to the Order of the Hon'ble SAT dated November 20, 2015, the matter was restored to the undersigned for passing fresh order on merits and in accordance with law.

#### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

5. A common Show Cause Notice (hereinafter referred to as '**SCN**') Ref. No.EAD-6/AK/VG/25140/2014/1, EAD-6/AK/VG/25140/2014/2, EAD-6/AK/VG/25140/2014/3, EAD-6/AK/VG/25140/2014/4, EAD-6/AK/VG/25140/2014/5, EAD-6/AK/VG/25146/2014/1 and EAD-6/AK/VG/25146/2014/2 dated August 26, 2014 was issued to the Noticees under rule 4(1) of SEBI

Rules communicating the alleged violation of Takeover Regulations, 2011, as applicable and detailed below:

Regulations/ Sub-regulation	Due date for compliance	Actual date of compliance	Delay in compliance (in no. of days)
30(2)/ 30(3)	10.04.2012	30.04.2012	20

6. The Noticees were 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) of the SEBI Act for the alleged violations.
7. Vide letter dated September 08, 2014, Mr. GK Somani had communicated that they would be filing a consent application in the matter in respect of the erstwhile promoter Noticees. However, no such application was received. Vide hearing notice dated September 25, 2014 sent to the erstwhile Promoter Noticees, they were advised to file their reply to the SCN, if any, at the earliest. Further, they were granted an opportunity of personal hearing Vide individual letters dated October 01, 2014, Mr. GK Somani, Mebags Investment Services Pvt Ltd., Alok Wires Pvt. Ltd., Ms. Shruti Somani, Sanjay Somani HUF, Mr. Sanjay Somani and GK Somani HUF filed their replies to the SCN and *inter alia* submitted as follows:
  - a) *That SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as 'Takeover Regulations, 1997') provided for disclosures to be made within 21 days and only to the Target Company, whereas the Takeover Regulations, 2011, which were introduced on September 23, 2011 (in supersession of earlier Takeover Regulations, 1997) provided that the disclosures should be made to the company and additionally to the stock exchanges, within seven working days;*
  - b) *That for the year 2012, the erstwhile promoters inadvertently made the disclosures within 21 days to the Company in compliance with the Takeover Regulations, 1997, and the Company, in turn, intimated the Stock Exchange within 30 days from the financial year ended March 31, 2012;*
  - c) *That while submitting the said disclosures, it was the stock exchange that pointed out the change in law and the applicability of Takeover Regulations, 2011;*
  - d) *That subsequently, the promoters immediately filed disclosures under Regulation 30(2) read with 30(3) of the Takeover Regulations, 2011, and hence there was a delay of 20 days in compliance;*

8. Consequently, Authorized Representatives of the Noticees appeared for a personal hearing on November 20, 2014, and reiterated the submissions made vide their replies dated October 1, 2014. Following the same, an Order dated November 27, 2014 was passed against the promoter Noticees, as noted above.
9. Subsequent to the remand of the matter, an opportunity for personal hearing was granted to the Promoter Noticees on August 23, 2016 vide hearing Notice dated July 08, 2016. On the scheduled date, Mr. J. J. Bhat, Authorized Representative (hereinafter referred to as '**AR**') appeared on behalf of the Promoter Noticees. The AR was advised to confirm whether the Promoter Noticees were individual promoters or constituted a promoter group/ were acting in concert during the period 2011-2012. They were also advised to submit documentary evidence in support thereof, in case they constituted a promoter group/ were acting in concert. The Noticees filed their written submissions dated August 29, 2016 and *inter alia* submitted as follows:

- i. Mapro Industries Ltd. was promoted by Mr. Gopal Krishnan Somani whose family comprises of:

S.NO.	Name	Relation
1	Gopal Krishan Somani	Self
2	Gopal Krishan Somani(HUF)	HUF of Sr. No. 1
3	Sanjay Somani	Son of Gopal Krishan Somani
4	Sanjay Somani (HUF)	HUF of Sr. No. 3
5	Shruti Somani	Daughter in law of Gopal Krishan Somani and wife of Sanjay Somani
6	Alok Wires Pvt Ltd	Family owned company of Gopal Krishan Somani
7	Mebags Investment Services Pvt Ltd	Family owned company of Gopal Krishan Somani

- ii. In support of the above, the Promoter Noticees *inter alia* further enclosed the following documents along with their submission:
- A copy of the Share Purchase Agreement dated January 16, 2013 and a Letter of Offer dated March 22, 2013;
  - Copies of disclosures under Regulation 8(2) of Takeover Regulations, 1997 from 2005 to 2011 and under Regulations 30(1), 30(2) of Takeover Regulations, 2011 dated April 28,

2012 for the shareholding as of March 31, 2012 filed with BSE, which *inter alia* demonstrated that Somani family acted as one cohesive promoter group.

10. The Promoter Noticees vide the aforesaid letter also stated that the family of Mr. Gopal Krishan Somani was a promoter group of Mapro Industries Ltd and acted as such throughout till it divested its holding in 2013.
11. 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.
12. 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.”.*
13. 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.

14. 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 Noticees vide the hearing notice dated May 04, 2017. On the scheduled date of hearing, i.e. June 5, 2017, Mr. G K Somani, Mr. Sanjay Somani and Mr. Dipesh Shah, appeared on behalf of the Promoter Noticees and reiterated their earlier submissions and filed a copy of their submissions made before the Hon'ble SAT, highlighting certain points and requesting that the same be considered.

### **CONSIDERATION OF ISSUES**

15. I have carefully perused the written submissions of the Promoter Noticees, the submissions made at the hearing and the documents available on record. It is observed that the allegation against the erstwhile Promoter Noticees is that they did not comply with the provisions of Regulation 30 (2) read with 30(3) of the Takeover Regulations, 2011 for the financial year ended March 31, 2012 within the stipulated time.
16. The issues that, hence, arise for consideration in the present case are:
- a) Whether the erstwhile promoters complied with the provisions of Regulation 30(2) read with 30(3) of the Takeover Regulations, 2011 for the financial year ended March 31, 2012 within the stipulated time?
  - b) Whether the Promoter Noticees were individual promoters or did they constitute 'Promoter group' acting in concert under the Takeover Regulations, 2011?
  - c) Do the violations, if any, attract monetary penalty under Section 15 A (b) of SEBI Act?
  - d) 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**

17. Before moving forward, it is pertinent to refer to the relevant provisions of the Takeover Regulations, 2011, which reads as under:

#### **Regulation 30 (2) and (3) of the Takeover Regulations, 2011**

##### ***Continual disclosures***

30(1) ..

*(2) The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.*

*(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the end of each financial year to,—*

- (a) every stock exchange where the shares of the target company are listed; and*
- (b) the target company at its registered office.*

18. The issue for consideration is whether the Noticees complied with the provisions of the Takeover Regulations, 2011, as applicable, within the stipulated time. As per Regulation 30(2) read with 30(3) of the Takeover Regulations, 2011, the aforementioned erstwhile promoters of the Company were required to disclose within seven working days from thirty-first day of March, their aggregate holdings to the Company and the concerned Stock Exchanges where the shares of the Company were listed. With regard to the aforesaid compliances, the Promoter Noticees in their submission have stated that the lapses/delay in compliance of making disclosures have occurred due to inadvertence. I further note that the Promoter Noticees have admitted to the delay of 20 days in compliance of Regulation 30(2) read with 30(3) of Takeover Regulations, 2011 as stated in the SCN. Thus, I note that the Promoter Noticees have admitted to the delay in complying with the alleged provisions of Takeover Regulations, 2011.

19. I, thus, find from the submission of the Promoter Noticees that it is established without doubt that the Promoter Noticees did not comply with the provisions of Regulation 30(2) read with 30(3) of the Takeover Regulations, 2011 for the financial year ended March 31, 2012 within the stipulated time.

20. The next issue that arises is whether the Promoter Noticees were individual promoters or do they constitute 'promoter group' acting in concert under the Takeover Regulations, 2011. Vide Order dated November 20, 2015, the Hon'ble SAT held that -

*"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..."*

21. Hence, as per the above cited judgment of the Hon'ble SAT, it is imperative that we determine whether the Promoter Noticees were acting as individual promoters or as a Promoter Group. Vide letter dated August 24, 2016, the Noticees have confirmed that they were part of a Promoter Group. Under Regulation 2(1)(t) of the Takeover Regulations, 2011, "*promoter group*" has the same meaning as in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as '**ICDR**'); whereas Regulation 2(1)(zb) of the ICDR defines 'promoter group' as:

2(1)

(zb) "*promoter group*" includes:

**(i) the promoter;**

**(ii) an immediate relative of the promoter (i.e., any spouse of that person, or any parent, brother, sister or child of the person or of the spouse); and**

**(iii) in case promoter is a body corporate:**

A. a subsidiary or holding company of such body corporate;

B. any body corporate in which the promoter holds ten per cent. or more of the equity share capital or which holds ten per cent. or more of the equity share capital of the promoter;

C. any body corporate in which a group of individuals or companies or combinations thereof which hold twenty per cent. or more of the equity share capital in that body corporate also holds twenty per cent. or more of the equity share capital of the issuer; and

**(iv) in case the promoter is an individual:**

**A. any body corporate in which ten per cent or more of the equity share capital is held by the promoter or an immediate relative of the promoter or a firm or Hindu Undivided Family in which the promoter or any one or more of his immediate relative is a member;**

B. any body corporate in which a body corporate as provided in (A) above holds ten per cent. or more, of the equity share capital;

**C. any Hindu Undivided Family or firm in which the aggregate shareholding of the promoter and his immediate relatives is equal to or more than ten per cent. of the total; and**

**(v) all persons whose shareholding is aggregated for the purpose of disclosing in the prospectus under the heading "shareholding of the promoter group":**

*Provided that a financial institution, scheduled bank, foreign institutional investor and mutual fund shall not be deemed to be promoter group merely by virtue of the fact that ten per cent. or more of the equity share capital of the issuer is held by such person:*

*Provided further that such financial institution, scheduled bank and foreign institutional investor shall be treated as promoter group for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them;*

22. I note from the submissions of the Noticee that Mr. Gopal Krishna Somani was an original promoter of the company. Further Mr. Sanjay Somani is the son of Mr. Gopal Krishna Somani, and hence part of the same promoter group as per Regulation 2(1)(zb)(ii) of ICDR, being an immediate relative of the promoter. Furthermore, Sanjay Somani was himself a promoter of the company at the relevant time. Ms. Shruti Somani is the wife of Mr. Sanjay Somani. As a result, Ms. Shruti Somani is also part of the same promoter group as per Regulation 2(1)(zb)(ii). Alok Wires Pvt. Ltd and Mebags Investment Services Pvt. Ltd, are family owned companies of Mr. Gopal Krishna Somani. As per the shareholding pattern of the aforementioned two private companies submitted with the written replies dated August 24, 2016, Mr. Gopal Krishna Somani himself held 35% of shares in Alok Wires Pvt Ltd during the period 2005-2012. In the case of Mebags investment Services Pvt Ltd., Mr. Gopal Krishna Somani held 31.17% of the shares from 2005-2009 and 83.33% of the shares from 2010-2012. Under Regulation 2(1)(zb) (iv) (A) of ICDR in case the promoter is an individual, any body corporate in which ten percent or more of the equity share capital is held by the promoter or an immediate relative of the promoter is included in promoter group. Thus, both Alok Wires Pvt. Ltd and Mebags Investment Services Pvt. Ltd. are part of the same promoter group of Mapro.
23. Further, Regulation 2(1)(zb)(iv) (C) of ICDR, states that in case the promoter is an individual, a Hindu Undivided Family or firm in which the aggregate shareholding of the promoter and his immediate relatives is equal to or more than ten percent of the total, is included as part of the promoter group. Gopal Krishna Somani (HUF) is stated to be the HUF of Mr. Gopal Krishna Somani, and Sanjay Somani (HUF) has been stated to be the HUF of Mr. Sanjay Somani. As per the submissions made by the Noticees, the Karta of Gopalkrishan Somani HUF is Shri Gopalkrishan Somani. The same is evidenced by IT Returns of Gopalkrishan Somani HUF for the AY 2012-13. Further, the Noticees have stated that the Coparceners of Gopalkrishan Somani HUF are Sanjay Somani (son of Gopalkrishan Somani), Yash Somani (grandson of Gopalkrishan Somani), and Ananya Somani (grand daughter of Gopalkrishan Somani). Similarly, in respect of Sanjay Gopal Somani HUF, the Karta is Sanjay Somani, as seen from the IT Returns filed by the said HUF for AY 2012-13. The Coparceners of Sanjay Gopal Somani HUF are stated to be Shruti Somani (wife of Sanjay Somani) Yash Somani (son of Sanjay Somani) and Ananya Somani (daughter of Sanjay Somani). Hence, I note that all the coparceners of both Gopal Krishna Somani (HUF) and Sanjay Somani (HUF) are *immediate relatives* of the promoters of the Company. Thus, I am of the opinion that Gopal Krishna Somani (HUF) and Sanjay Somani (HUF) are also part of the promoter group as per Regulation 2(1)(zb)(iv) (C) of ICDR .

24. I further find from the copy of disclosures forwarded by Mapro to BSE, in turn, forwarding the copy of disclosure under Regulation 30(2) of Takeover Regulations, 2011 for the year ended March 31, 2012 made by the promoter group that Mr. Gopal Krishna Somani has filed the disclosure in respect of himself and Mr. Sanjay Somani, Ms. Shruti Somani, Mebags Investment Services Pvt. Ltd and Alok Wires Pvt. Ltd.
25. In view of the above, I find that the Promoter Noticees formed part of the same promoter group. Further, I find that Regulation 2(q)(2)(iv) of the Takeover Regulations, 2011 qualifies promoters and members of the promoter group as deemed to be persons acting in concert with other persons within the same category, unless the contrary is established. I note that there is nothing on record to establish anything contrary to the above. In view of the same, the Promoter Noticees herein are PACs, being promoters and part of the same promoter group.
26. Thus, the responsibility for making the disclosure under Regulation 30(2) of the Takeover Regulations, 2011, rests upon the Promoter Group as a whole, and not upon the individual Promoter Noticees. Further, as has been discussed in the earlier paras of the Order, the Promoter Noticees have admitted to delay of 20 days in filing disclosure under Regulation 30(2) read with 30(3) of Takeover Regulations, 2011 for the financial year ended March 31, 2012, as stated in the SCN.
27. Thus, we come to the next issue, i.e., do the violations, if any, attract monetary penalty under Section 15 A (b) of SEBI Act. In this regard, I note that the Hon'ble Supreme Court of India in the matter of *SEBI Vs. Mr. 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."*
28. I note that at the time of the hearing, the AR of the Noticees cited the **judgment of the Hon'ble Supreme Court in the case of *Bharjatiya Steel Industries V. Commissioner, Sales Tax, UP (2008)*** stating that after taking into consideration the ***judgment in Chairman, SEBI Vs. Shriram Mutual Fund***

(2006 SC), the Supreme Court had held therein that that when there is a discretion to not award any penalty at all, the question of *mens rea* becomes relevant. The AR had undertaken to file written submissions in this regard. However, the additional written submissions filed by the Noticees do not mention the same.

29. However, after having perused the Order of the Hon'ble Supreme Court in both the above cases, I am of the view that the judgment of Bharjatiya Steel does not state anything contrary to the finding in Chairman, SEBI Vs. Shriram Mutual Fund. I find that in ***Bharjatiya Steel Industries vs. Commissioner, Sales Tax, U.P. on March 05, 2008, the Hon'ble Supreme Court*** had observed as thus:

*"Furthermore, the question as to whether mens rea is an essential ingredient or not will depend upon the nature of the right of the parties and the purpose for which penalty is sought to be imposed.*

*19. A distinction must also be borne in mind between a statute where no discretion is conferred upon the adjudicatory authority and where such a discretion is conferred. Whereas in the former case the principle of mens rea will be held to be imperative, in the latter, having regard to the purport and object thereof, it may not be held to be so."*

30. In ***Chairman, SEBI vs. Shriram Mutual Fund***, referred above, ***the Hon'ble Supreme Court*** while interpreting the provisions of the SEBI Act has 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 Regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not. We also further held that unless the language of the statute indicates the need to establish the presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not. On a careful perusal of Section 15(D)(b) and Section 15-E of the Act, there is nothing which requires that mens rea must be proved before penalty can be imposed under these provisions. Hence once the contravention is established then the penalty is to follow."*  
(emphasis supplied)

31. In abovementioned matter of ***Bharjatiya Steel Industries vs. Commissioner, Sales Tax*** that the Noticees have cited, I note that the Hon'ble Supreme Court after quoting the above cited lines from the Chairman, SEBI Vs. Shriram Mutual Fund judgment has further stated as follows:
- "It is, therefore difficult to accede to the contention ... that under no circumstances absence of mens rea would not be a plea for levy of penalty. An assessing authority has been conferred with a discretionary jurisdiction to levy penalty. By necessary implication, the authority may not levy penalty. If it has discretion not to levy penalty, existence of mens rea becomes a relevant factor."*
32. From the above, it becomes apparent that the judgment in ***Bharjatiya Steel Industries vs. Commissioner, Sales Tax*** was re-emphasizing the ruling in ***Chairman, SEBI vs. Shriram Mutual Fund***. I note that the ***Hon'ble Supreme Court*** made it clear in ***Chairman, SEBI vs. Shriram Mutual Fund*** that Chapter VIA of the SEBI Act has no element of any criminal offence, and therefore there is no question of proof of intention or any mens rea by the appellants and it is not an essential element for imposing penalty under SEBI Act and Regulations. On the other hand, the ***judgment in Bharjatiya Steel Industries vs. Commissioner, Sales Tax*** talks about a situation where the statute allows discretion and hence *mens rea* becomes a relevant factor.
33. It, thus, becomes clear from the above that the ***Hon'ble Supreme Court in Bharjatiya Steel Industries vs. Commissioner, Sales Tax*** cited ***Chairman, SEBI vs. Shriram Mutual Fund***, not to overrule it, but, to show that the necessity to prove *mens rea* depends on the wording on the statute, and whether it allows discretion. Hence, after perusing both the Orders of the Hon'ble Supreme Court, **it is clear that the later judgment in *Bharjatiya Steel Industries vs. Commissioner, Sales Tax*, does not overrule the former judgment in *Chairman, SEBI Vs. Shriram Mutual Fund*.**
34. In ***Chairman, SEBI vs. Shriram Mutual Fund, the Supreme Court*** further observed therein that *"...The impugned Order sets the stage for various market players to violate statutory regulations with impunity and subsequently plead ignorance of law or lack of mens rea to escape the imposition of penalty. The imputing mens rea into the provisions of Chapter VIA is against the plain language of the statute and frustrates entire purpose and object of introducing Chapter VIA to give teeth to the SEBI to secure strict compliance of the Act and the Regulations."*

35. In view of the same, I am of the view that mens rea is not an essential element for imposing penalty under Chapter VI A of the SEBI Act. The Supreme Court has unambiguously stated that *imputing mens rea into the provisions of Chapter VIA is against the plain language of the statute and frustrates entire purpose and object of introducing Chapter VIA to give teeth to the SEBI to secure strict compliance of the Act and the Regulations.*
36. The aforesaid gets further strengthened by the fact that subsequent to the judgment in *Bharjatiya Steel Industries vs. Commissioner, Sales Tax, the Hon'ble Supreme Court on September 29, 2008 in Union of India & Ors vs. Dharamendra Textile* has cited the judgment in *Chairman, SEBI v. Shriram Mutual Fund* with respect to in built discretion, and has stated that the judgment has analyzed the legal position in the correct perspective.
37. 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, —

(a)...

(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.

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

***“15J - Factors to be taken into account by the adjudicating officer***

*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.]<sup>1</sup>”*

39. 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. Further, I find that the main objective of the Takeover Regulations is to afford fair treatment for shareholders who may be affected by the change in control/ ownership. 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.

40. As per Section 15A (b) of the SEBI Act, the Noticees are 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-J 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 Noticees. 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 Noticees. I note from the submissions made by the Promoter Noticees and also from records that the violation is not repetitive in nature.

41. I find that that the erstwhile promoters did not comply with the provisions of Regulation 30(2) read with 30(3) of the Takeover Regulations, 2011 for the financial year ended March 31, 2012 within the stipulated time on one occasion, and that the delay was of 20 days. I further find from the submissions made by the erstwhile promoters that the delay in filing to be made under Regulation 30(2) read with 30(3) of the Takeover Regulations, 2011 happened for the financial year ended March 31, 2012, as

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<sup>1</sup> Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Prt II Section 1 dated March 31, 2017, wef April 26, 2017

they were not aware that under the Takeover Regulations, 2011, which were introduced only on September 23, 2011, the time limit of filing of annual disclosures by the promoters had changed from twenty one days under Takeover Regulations 1997 to seven working days under Takeover Regulations, 2011. As a result, they had continued to make the disclosure as was the case under the Takeover Regulations, 1997, and, it was only upon filing of the disclosure by the company to the stock exchange that they realized the changes in the regulations as aforesaid. I do not find this argument tenable. *Ignorantia legis neminem excusat*, and as promoters of listed company, the erstwhile promoters were expected to be up-to-date with regards to changes in the regulatory environment as regulations are in public interest.

42. The Promoter Noticees had a responsibility to comply with the disclosure requirements in accordance with their spirit, intention and purpose. Delayed compliance with disclosure requirements by its promoters undermines the regulatory objectives and jeopardizes the achievement of the underlying policy goals.

**ORDER**

43. After taking into consideration all the facts and circumstances of the case, I impose the following penalty on **the Promoter Noticees** under Section 15 A(b) of SEBI Act, 1992, which will be commensurate with the violations committed by them. The promoter Noticees shall be **jointly and severally liable** to pay the below mentioned monetary penalty:

Name of the Promoter Noticee	Regulation Violated	Penalty (Rs.)
<b>Mr. Gopal Krishan Somani</b>	30(2) r/w. 30(3) Takeover	Rs.2,00,000/- (Rupees Two
<b>GopalKrishan Somani (HUF)</b>	Regulations, 2011	Lakh only)
<b>Mr. Sanjay Somani</b>		
<b>Sanjay Somani (HUF)</b>		
<b>Ms. Shruti Somani</b>		
<b>Alok Wires Pvt. Limited</b>		
<b>Mebags Investment Services Pvt. Limited</b>		

44. 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

45. 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):	

46. 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: July 24, 2017**  
**Place: Mumbai**

**Anita Kenkare**  
**Adjudicating Officer**