BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-2/SS/GSS/2018-19/910]

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

In respect of:

M/s. Saraf Holdings Pvt. Ltd.
17, Dover Road,
Kolkata – 700019.

In the matter of Comfort Fincap Ltd.

1. By an order dated March 21, 2016 Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT') had quashed and set aside an order no. ASK/RGA/AO/128/2014-15 dated January 16, 2015 passed by Shri A. Sunil Kumar, Adjudicating Officer of SEBI (the erstwhile Adjudicating Officer) and had restored the matter to the erstwhile Adjudicating Officer for passing fresh order on merits and in accordance with law in view of the following observations and directions:-

   "The dispute relates to two acquisitions made by the appellant on April 21, 2004 and October 04, 2005 in violation of the Takeover Regulations, 1997 framed by SEBI. It is not in dispute that in respect of the purchase made on April 21, 2004 the AO has erroneously applied the provisions of the amended Takeover Regulations, 1997 which came into force after April 21, 2004".

2. Thereafter, another Adjudicating Officer, Mr. Suresh Gupta, Chief General Manager ('AO') was appointed by SEBI on July 05, 2016 and the matter was referred to him on October 14, 2016. The AO had remitted back the matter to the concerned department seeking evidence in support of the allegations. Subsequently, vide a communication –order dated April 02, 2018 issued by a Deputy General Manager, SEBI, the matter has been transferred to the undersigned with direction that except for the change of the Adjudicating Officer the other terms and conditions of the original orders (whereby the erstwhile Adjudicating Officers were appointed) *'shall remain unchanged and shall be in full force and effect.'* and that the "*Adjudicating Officer shall proceed in accordance with the terms of reference made in the original orders read with this order"* (i.e. communication –order dated

April 02, 2018). From this communication/order, it was noted that the original terms of reference referred to erstwhile Adjudicating Officer as decided in the order dated January 16, 2015 have been retained and the alleged violations as found in that order have been continued.

3. The evidence relied upon in support of allegations is extract of the relevant page of the Letter of Offer with respect to an open offer dated February 27, 2013 made by Luharuka Commotrade Pvt. Ltd. (hereinafter referred to as 'Luharuka') to the shareholders of Comfort Fincap Ltd. (hereinafter referred to as 'the target company') having its shares listed at then existing Calcutta Stock Exchange, Uttar Pradesh Stock Exchange and Delhi Stock Exchange. It was noted that M/s. Saraf Holdings Pvt. Ltd. (hereinafter referred to as 'the Noticee') along with M/s. Surface Holdings,Tower Properties Pvt Ltd, Aradhita Saraf, Sham Sunder Saraf (since deceased), Rama Devi Saraf, Sujata Saraf and Dev Saraf; were part of the erstwhile promoter group of the target company (hereinafter referred to as '*erstwhile promoters'*). In the said Letter of Offer, the details of the *erstwhile promoters'* shareholdings in the target company at relevant times were disclosed as following:

Shareholdings			***Purchase during the year***	***Sale during the year***	***Mode of acquisition***	***Shareholdings***			***Status of compliance with SEBI (SAST) Regulations, other regulations under SEBI Act, & Statutory requirements, as applicable***
As on	***No. of shares***	***%***				***As on***	***No. of Shares***	***%***	
20.02.1997	*5,24,100*	*71.18*	*-*	*-*	*-*	*31.03.1997*	*5,24,100*	*71.18*	*NA*
01.04.1997	*5,24,100*	*71.18*	*80,000*	*-80,000*	*Inter-Se transfer*	*31.03.1998*	*5,39,100*	*73.22*	*No**
			15,000	*-*	*Off market Purchase*	*-*	*-*	*-*	*NA*
01.04.1998	*5,39,100*	*73.22*	*2,55,000*	*-2,55,000*	*Inter-Se*	*31.03.1999*	*5,39,100*	*73.22*	*No**
01.04.1999	*5,39,100*	*73.22*	*-*	*-*	*-*	*31.03.2000*	*5,39,100*	*73.22*	*NA*
01.04.2000	*5,39,100*	*73.22*	*1,900*	*-*	*Off market purchase*	*31.03.2001*	*5,41,000*	*73.48*	*NA*
01.04.2001	*5,41,000*	*73.48*	*-*	*-*	*-*	*31.03.2002*	*5,41,000*	*73.48*	*NA*
01.04.2002	*5,41,000*	*73.48*	*-*	*-*	*-*	*31.03.2003*	*5,41,000*	*73.48*	*NA*

Shareholdings			Purchase during the year	Sale during the year	Mode of acquisition	Shareholdings			Status of compliance with SEBI (SAST) Regulations, other regulations under SEBI Act, & Statutory requirements, as applicable
As on	No. of shares	%				As on	No. of Shares	%	
01.04.2003	5,41,000	73.48	-	-	-	31.03.2004	5,41,000	73.48	NA
01.04.2004	5,41,000	73.48	3,12,900	-3,12,900	Inter-Se transfer	31.03.2005	5,43,000	73.75	No*
			2,000	-	Off market purchase	-	-	-	No
01.04.2005	5,43,000	73.75	70,700	-70,700	Inter-Se transfer	31.03.2006	5,43,000	73.82	No*
			500		Off market Purchase#	-	-	-	No
01.04.2006	5,43,000	73.82	-	-	-	31.03.2007	5,43,000	73.82	NA
01.04.2007	5,43,000	73.82	-	-	-	31.03.2008	5,43,000	73.82	NA
01.04.2008	5,43,000	73.82	-	-	-	31.03.2009	5,43,000	73.82	NA
01.04.2009	5,43,000	73.82	-	-	-	31.03.2010	5,43,000	73.82	NA
01.04.2010	5,43,000	73.82	-	-5,40,500	Pursuant to Share Purchase Agreement dated. 23.09.2010	23.09.2010	3,000 $	0.41	NA

Note: *NA means Not Applicable.*

** No Compliances/ documents have been provided to us.*

 # In the past, the Erstwhile Promoters of the Target Company have violated regulation 11(2) of the SEBI (SAST) Regulation, 1997. SEBI may initiate suitable action against them for the aforesaid non compliances.

The details of Off- market purchase in the year 2004 and 2005 are as under:

Date of Transfer	Name of Purchaser	No. of shares purchased	% to total capital	Name of Seller	Price (₹)	Compliance Status
21.04.2004	Saraf Holding Pvt Ltd	2,000	0.27%	Geeta Devi Naita	3.00	Not Done
04.10.2005	Saraf Holding Pvt Ltd	500	0.07%	Sudhi Kumar Jain	3.00	Not Done

4. Based on the above disclosures, the allegations in this matter have been made as following:-

   (i) The Noticee had acquired 2,000 shares through off-market transactions constituting 0.27% of the share capital of the target company on April 21, 2004. Consequent to this acquisition, the combined shareholding of the erstwhile promoter group in the target company increased from 73.48% to 73.75% in the financial year 2004-05.

   (ii) Noticee had further acquired 500 shares through off-market transaction constituting 0.07% of the share capital of the target company on October 04, 2005. Consequent to this acquisition, the combined shareholding of the promoter group in the target company increased from 73.75% to 73.82% in the financial year 2005-06.

5. It has been alleged in terms of reference that the Noticee was required to make a public announcement within four (4) working days of the aforesaid acquisitions under regulation 11(2) read with regulation 14(1) of SEBI (Substantial Acquisition of Shares and Takeovers), 1997 (hereinafter referred to as "the Takeover Regulations") However, no such public announcement was made by the Noticee consequent to any of its aforesaid acquisitions. Therefore, it has been alleged that the Noticee had failed to make the public announcement under regulation 11(2) read with regulation 14(1) of Takeover Regulations with respect to both the aforesaid acquisitions dated April 21, 2004 and October 04, 2005.

6. It is pertinent to mention that notwithstanding the terms of reference of my appointment as Adjudicating Officer as aforesaid, the matter must proceed afresh strictly '*in accordance with law*' as directed by Hon'ble SAT vide order dated March 21, 2016. Accordingly, to commence the proceedings in terms of rule 4(1) of the of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Adjudication Rules"), it was felt prudent to level charge on the Noticee with regard to the aforesaid two acquisitions dated April 21, 2004 and October 04, 2005 in accordance with the provisions of the Takeover Regulations as applicable for the respective acquisitions. It was noted that at the time of the respective acquisitions, the relevant regulations of Takeover Regulations are provided as under:-

   At the time of the first acquisition-

   "**Consolidation of holdings**

11. (1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15per cent or more but less than seventy five per cent (75%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, in any financial year ending on 31st March, unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations.

(2) No acquirer, who together with persons acting in concert with him has acquired, in accordance with the provisions of law, 75% of the shares or voting rights in a company, shall acquire either by himself or through persons acting in concert with him any additional shares or voting rights, unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations:…"

At the time of the second acquisition (Takeover Regulations as amended by SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2004, with effect from January 03, 2005).

"**Consolidation of holdings**

11. (1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15per cent or more but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, in any financial year ending on 31st March, unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations.

(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:.."

7. The timing of making the requisite public announcement under regulation 14(1) remained the same at the time of both the acquisitions and was provided as under:-

Timing of 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."

8. Prior to amendment dated January 03, 2005 regulation 11(2) obligated an acquirer, who together with PACs with him has acquired, in accordance with the provisions of law, 75%

of the shares or voting rights in a company, acquires any additional shares or voting rights to make the requisite public announcement. In this case, the first acquisition wherein the Noticee had acquired 2000 shares (0.27%) in the target company on April 21, 2004 and consequent to which the collective shareholding of the *erstwhile promoter group* increased from 73.48% to 73.75% in the financial year 2004-2005 was not covered in regulation 11(2). In fact, this acquisition was within the permissible creep-in limit of 5% under regulation 11(1); if all the erstwhile promoters were alleged to be persons acting in concert (PACs) with the Noticee with respect to this acquisition. As in this case, the aggregate shareholding of erstwhile promoter group is the basis of allegation, this acquisition is automatically exempted from compliance obligation under Regulation 11. Therefore, taking into account the direction of Hon'ble SAT as aforesaid, this acquisition cannot be charged in these proceedings.

9. As mentioned above, after the amendment of regulation 11, after January 03, 2005, any acquisition by an acquirer who together with PACs with him has acquired 55% or more but less than 75% of the shares and voting rights in a target company would trigger the obligation of making the public announcement under regulation 11(2). When the Noticee acquired 500 shares in the target company on October 04, 2005, the collective shareholding of the erstwhile promoter group increased from 73.75% to 73.82% (i.e. an increase by 0.07%). The allegation in the terms of reference in this regard is that consequent to this acquisition by the Noticee the combined shareholding of the promoter group in the target company increased from 73.75% to 73.82% in the financial year 2005-06 but "*the Noticee had failed to make a public announcement under regulation 11(2) read with regulation 14(1) with regard to its acquisition dated October 04, 2005"*. Accordingly, in terms of Rule 4(1) of the Adjudication Rules and as advised in the communication–order dated April 02, 2018 a show cause notice (hereinafter referred to as 'SCN') no. EAD/SS/GSS/11455/2018 dated April 12, 2018 was issued calling upon the Noticee to show cause as to why an inquiry should not be held against it in terms of rule 4 of the Adjudication Rules read with section 15I of the SEBI Act and penalty be not imposed upon it under section 15H (ii) of the SEBI Act with regard to this alleged violation.

10. Mr. Gireesh S. Saraf, vide a letter dated May 15, 2018, written on behalf of the Noticee sought further time to file reply to the SCN. After seeking further time, the Noticee filed its reply dated May 31, 2018 and also availed opportunity of personal hearing granted to it in terms of Rule 4(3) of the Adjudication Rules. On schedule date of hearing on June 05, 2018, Mr. Vinay Chauhan, Advocate appeared on behalf of the Noticee and reiterated the submissions made

in their written reply. Mr. Chauhan further added that the charge is with regard to increase in aggregate shareholding of erstwhile promoter group but only the Noticee has been picked for the proceedings. It was further submitted that as Noticee has already been under long drawn process of inquiry/ adjudication since the year 2013, it is willing to close the matter on the basis of its replies and submissions instead of going through fresh inquiry on this technical ground. He fairly conceded that the acquisition in question though miniscule would technically trigger the obligation of erstwhile promoter group who are PACs with each other and pleaded that the matter may disposed of considering the mitigating factors brought out in written reply/submissions of the Noticee. Relying upon the order of Hon'ble Securities Appellate Tribunal (SAT) in the matter of *M/s. Ushdev Trade Ltd. vs. SEBI (SAT Appeal No 106 of 2010- Order dated 14.9. 10)* he submitted that in view of the mitigating facts and circumstances of this case, the acquisition could have been exempted by the Board under regulation 3(1) (l) of the Takeover Regulations had the Noticee filed an application in that regard. He further submitted that considering the acquisition being technical, the case may not deserve higher penalty in view of this judgment of Hon'ble SAT.

11. The Noticee also filed post hearing written submissions in the matter vide its letter dated June 09, 2018.The replies/submissions of the Noticees are summarized as follows :-

    i) The Noticee had acquired a very miniscule number of shares (500 shares) through off-market constituting a merely 0.07% of the share capital of Target Company on 04.10.2005.The said acquisition of 500 shares was done by the Noticee to facilitate exit to a former employee since there was no trading on stock exchanges in the scrip during the relevant time and there was no liquidity. This was a gesture of a good employer to the employees to accommodate them at the time of their need of money in absence of any alternative exit to them.

    ii) That the Noticee could not keep track of the dynamically changing takeover code and missed the then recent changes in the regulations which brought down the open offer trigger for existing holding of promoters to 55% from earlier 75%. In this context it may be appreciated that it is common knowledge that percentages of acquisitions as contained in Regulation 11 were frequently changed/amended from time to time, making it exceedingly difficult for persons to keep track of the same.

iii) There was neither change in promoters, nor was there change in management or any significant change in voting rights. On 01.04.1997, promoter holding was 71.18% and on 30.03.2010, promoter holding was 73.82%. That there was neither change in promoters nor was there a change in management or any significant change in voting rights. The acquisition of 500 shares had increased the shareholding of promoter group by 0.07 % which is not substantial.

iv) The Noticee has always acted transparently, honestly and *bona fide*. The Noticee has a clean track record in terms of compliance. Till date, the Noticee's conduct has never been found to be violative of any of the provisions of SEBI Act or Regulations. Further, save and except the Notice under reference, the Noticee has never received any Notice from SEBI in the past.

v) That Share Purchase Agreement ("SPA") dated 23.09.2010 for acquisition of shares of the target company was executed between the target company and Luharuka. Luharuka made an open offer dated 17.01.2011 ("First Open Offer") to comply with the Takeover Regulations.

vi) When the Noticee exited from the target company in the year 2010 and Luharuka, triggered First Open Offer under regulation 10 and 12 of Takeover Regulations, 1997, Luharuka had successfully completed the formalities of Open Offer including payment of consideration to shareholders of Target Company. Luhuraka made public announcement under Regulation 14 of Takeover Regulations through Manager to Offer VC Corporate Advisors Pvt. Ltd. ('VCAL'). That, Luharaka had revised the Offer Price from ₹18/- per share to ₹46 per share, since all trigger dates of acquisitions of erstwhile promoters were also considered in arriving at pricing for the purpose of Open Offer. Thus, the maximum price was paid to the shareholders of Target Company in the Open Offer concluded in the year 2011. The Noticees submit that, interest at the rate of 10% was considered while arriving at Offer Price of ₹46/- per share for each fully paid up equity share of ₹10/- each.

vii) Thereafter, the target company made preferential allotment of shares to promoter group including Luharuka which resulted in a further open offer in June 2013 (the "Second Open Offer"). That as is evident from the Notice, SEBI has examined the

Second Open Offer document while issuing the Notice. Second Open Offer was made by at offer price of ₹ 22/- and not even a single public shareholder had tendered the shares in the open offer despite the offer price of ₹ 22/-.

viii) That in view of the said Memorandum of Understanding ('MOU'), Luharuka had taken into account in the First Open Offer various dates of acquisition of shares by the erstwhile promoters and factored it into the pricing of the offer in consultation with SEBI. Accordingly, in consultation with SEBI, First Open Offer price was calculated based on open offer trigger dates with reference to acquisition of shares by the erstwhile promoters and addition of interest there on @ 10% p.a.

ix) That at the time of this price determination by Merchant Banker/Issue Manager for the said First Open Offer, all information about impugned acquisition was on record of SEBI. Indeed, Merchant Banker/Issue Manager, in consultation with SEBI, revised the offer price of shares for the open offer from the originally proposed price of ₹18/- to ₹ 46/- with a view to perform obligations of the Noticee (and other promoters) under the said MOU with regard to acquisition of shares by promoters. As SEBI had not directed the Merchant Banker/Issue Manager to take the impugned acquisition into consideration while revising the open offer price, the Noticee was under *bona fide* belief that SEBI had taken impugned acquisition on its record and had concluded the same to be in order. Had it been the case of any violation, SEBI ought to have called upon the Luharuka to further revise the offer price.

x) As per mutual understanding between Luharuka and the erstwhile promoter group (including the Noticee herein), Luharuka assumed all regulatory and compliance responsibilities of the erstwhile promoter group, including bearing of the past, and corresponding costs. That acquisition of shares was on *"as is where is basis"* by the acquirer assuming all the liabilities of the business as on the transaction date. A MOU entered into between the said Luharuka (Acquirer) and the erstwhile promoter group dated 11.09.2010 documented the same. The First Open Offer dated 17.01.2011 had taken care of the regulatory requirement with regard to acquisition of shares by the Noticee. The said First Open Offer with a price of ₹46/- ensured that the interest of the minority shareholders of the target company was taken into account for fair

valuation and due consideration of the minority shareholders by the acquirer on behalf of the erstwhile promoters.

xi) The alleged acquisition mentioned in the Notice were in fact voluntarily disclosed by the Noticee under the said First Open Offer (clause 5.5) and SEBI had approved the said First Open Offer without any demur and without any enforcement action at that point of time. Hence, the Noticee was under a *bona fide* belief that the SEBI had taken the facts on record and had thus concluded that the acts of the Noticee were in order as the same were compliant with the spirit of Regulations. Further, the Acquirer had satisfied the rigors of regulatory requirement on behalf of the Noticee by making an open offer at a price which is mandated under the Regulations. That the letter dated 15.12.2010 submitted by Manager to Offer with SEBI details the computation of Open Offer price in terms of regulation 20(5) of Takeover Regulations.

xii) No prejudice is caused to public or minority shareholders of the target company, pursuant to alleged non-compliance of provisions of regulation 11(2) r/w regulation 14 of the Takeover Regulations. On the contrary, the minority shareholders were more than adequately compensated.

xiii) Without prejudice to anything stated elsewhere, it is pertinent to note that no shares were offered/ tendered by the minority shareholders pursuant to both the open offers.

xiv) That, no disproportionate gain or unfair advantage is accrued to the Noticee as a result of alleged acquisition. Same has not been even alleged in the Notice. That no loss is caused to investor or public shareholder on account of the said acquisition of 500 shares. The Noticee has not adopted any unfair trade practice or unfair gain while acquiring the said 500 shares. Consequent to the said acquisition of 500 shares there was no change in control and management of the target company.

xv) The Noticee has relied upon the judgment of *Hon'ble Bombay High Court in SEBI Vs. Cabot International,* dated 03.03.2004 wherein it was held that:

> *"Though looking to the provisions of the statute, the delinquency of the defaulter may itself expose him to the penalty provision yet despite, that in the statute, minimum penalty is prescribed, the authority may refuse to impose penalty for justifiable reasons like the default occurred due to the bona fide belief that he was not liable to act in the manner prescribed by the statute or there was too technical or venial breach etc."*

xvi) The impugned acquisition of 500 shares was genuine and *bona fide* transaction devoid of any intent to make substantial acquisition (as quantum was exceedingly insignificant)or to acquire control of the target company (as the promoters continued to be remain in management and control of the Target company both pre and post the impugned acquisition). That the impugned acquisition pertains to a very old period (i.e. around 13 years old) and the public shareholders interest have not been compromised as the open offers have already been made, as stated hereinbefore, by the subsequent Acquirers of the target company. Though the Noticee as promoter had allegedly violated the provisions of '*Regulation 10'* by acquiring 500 shares for employee of the target company in the Financial year 2005-06, in the circumstances of this case, it had not prejudiced or jeopardized \ the interests of public shareholders of the target company – since no public shareholder was interested in tendering the shares and availing the exit despite the offer price being ₹46. Significantly, it may be noted that the impugned transfer between the Noticee and the employee of the target company had taken place at a price of ₹3 per share. In this context the Noticee has placed reliance upon following observations of Humble SAT in the matter of *M/s. Ushdev Trade Ltd. vs. SEBI (SAT Appeal No 106 of 2010- 0rder dated 14.9. 10)* wherein it was *inter alia* held that :-

> *"…..Since there was a violation of Regulation 10, the Board could have initiated proceedings against the appellant under Section 11B of the Act for issuing a direction to the latter to make a public announcement if it was satisfied that it was necessary in the interest of investors to do so. Admittedly, this course was not adopted. We are satisfied that even though the appellant violated the provisions of Regulation 10 of the takeover code, this violation, in the circumstances of the case, has not prejudiced or jeopardized the interest of the shareholders of the target company and cannot be said to be serious enough calling for an exorbitant penalty as imposed by the adjudicating officer. This is not a case where a non promoter has acquired a substantial chunk of shares in the target company changing its shareholding pattern and has gone away without making a public announcement. The acquisition by the appellant is within the promoter group which has not led to any change in control of the target company nor has its management changed. However Regulation 10 having been violated, penalty must follow as observed by the Supreme Court in Chairman, SEBI vs. Shriram Mutual Fund AIR 2006 SC 2287. Having regard to the overall facts and circumstances of this case and the provisions of Section 15 J of the Act, we are of the*

view that the ends of justice would be adequately met if the amount of penalty is reduced to Rs.5 lacs. We order accordingly."

xvii) It is clear that the alleged violation was a mere technical /venial breach and the same has not impacted/prejudiced the interests/rights of the public shareholders of the target company. Any imposition of penalty on the Noticee would be unjustified and unwarranted .In these facts and circumstances, it is humbly prayed that the Notice be discharged and no penalty be imposed.

12. I have considered the SCN, the submissions of the Noticee and the material available on record. In this case, it is an admitted position that consequent to acquisition of 500 shares (0.07%) of the target company at the price of ₹ 3/ per share by the Noticee through off-market transaction on October 04, 2005, the aggregate shareholding of erstwhile promoter group increased from 73.75% to 73.82%. From the wording of Regulation 11(2), it is clear that the obligation to make public announcement under the said Regulation gets triggered when an acquirer falling under the specified percentage range (55% or more but less than 75%) individually **or** collectively alongwith persons acting in concert (PACs) with him, acquires additional shares in the target company. In this case, though it has been alleged that on account of acquisition of the Noticee, the shareholding of erstwhile promoter group in the target company increased by 0.07% and this increase was in breach of regulation 11(2), the other promoters of the group are not made Noticees. However, it is a matter of record that the Noticee was part of erstwhile promoter group of the target company. The Noticee had been given reasonable opportunity to make submissions on the alleged charge which has been explained during inquiry and hearing in these proceedings. It has made oral /written submissions defending the alleged increase in the shareholding of erstwhile promoter group who were acting in concert with each other as homogeneous unit. The facts leading to the charge have been admitted by the Noticee for all promoters in the group. Thus, the principle of natural justice in this regard has been satisfied in this case. I, therefore, am of the view that the proceedings would not be vitiated on this ground. Therefore, the matter is proceeded with in view of the admissions of the Noticee during inquiry.

13. It is noted that when Luharuka acquired shareholdings and control from erstwhile promoters of the target company and made open offer on 17.01.2011 in discharge of its own obligations under the Takeover Regulations and not in discharge of any obligation of the entities of erstwhile promoters for their prior acquisition/s. The revision of offer price in the said open

offer was insisted by SEBI to provide best offer price to the public shareholders in the target company within the spirit of the Takeover Regulations. Ignoring the instant acquisition for revision of the offer price cannot be considered as discharge of the Noticee for its acquisition as contended by it. If it were to be so, the Board would not have initiated these proceedings.

14. In this case, the Noticee has admitted that its individual acquisition of 500 shares (0.07%) in the target company increased the promoter group shareholding holding and triggered the obligation under Regulation 11(2), the only question that needs to be examined as to whether any penalty should be imposed in the facts and circumstances of this case. In this regard, I note that Hon'ble Supreme Court in *Chairman, SEBI Vs. Shriram Mutual Fund [2006 (5) SCC 361]* held that – *"In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial……Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary.* It is also relevant to mention that after amendment in section 15J of the SEBI Act, vide Part VIII of Chapter VI of the Finance Act, 2017, it has been clarified that while the adjudging the quantum of penalty the adjudicating officer has discretion and such discretion should be exercised having regard to the factors specified in section 15J. Further, from the ratio of the Judgement of above referred case and penalty reduced by it in the case of *M/s. Ushdev Trade Ltd. vs. SEBI,* it is noted that the adjudicating officer is not bound to be always within the range specified in section 15H (ii) while imposing the penalty on a delinquent and he must exercise his discretion in imposing any penalty under section 15H (ii) having regard to the factors listed in section 15J.

15. In this case, the Noticee had acquired a miniscule quantity (500 shares) consequent to which the shareholding of erstwhile promoters had increased marginally (i.e. 0.07%).The acquisition price was ₹3/ per share. It had sold its shareholding pursuant to the Share Purchase Agreement dated September 23, 2010 to Luharuka at a price of ₹ 6.50/ per share. Thus, the gain on 500 shares acquired by it in violation of Regulation 11(2) is ₹1,750/- only. From the material available on record, any loss suffered by the public shareholders is not ascertainable and nothing in that regard has been alleged either. The violation is, admittedly, not serious as the Board has not deemed this case fit for directing open offer under section 11B of the SEBI Act read with Regulation 44 of the Takeover Regulations and was satisfied that the mater may be proceeded with under section 15H(ii). I am, therefore, satisfied that the violation in this case has not prejudiced or jeopardized the interest of public shareholder of the target

company and is not serious. There is no allegation and charge that the Noticee has committed repeated default and nothing in that regard has been found in the facts and circumstances of the case.

16. It is also pertinent to take into account that the acquisition in question pertains to year 2005. This is not a case where a non-promoter has acquired a substantial shares in the target company. The change in shareholding of erstwhile promoters is marginal (0.07%) and acquisition did not result in change in control. The Noticee had probability of getting exemption if it made application seeking exemption under Regulation 3(1) (l) before acquiring the shares. Subsequently, the management of the target company had changed and exit opportunity was provided by Luharuka to the public shareholders of the target company after it acquired control from the erstwhile promoters including the Noticee. In the said open offer, the offer price was revised from ₹18/- to ₹ 46/- taking into consideration the prior acquisition by other promoters and interest @10% but not this acquisition of the Noticee. This shows that SEBI had not found this acquisition material enough for revising the offer price in the open offer made by Luharuka. The open offers made by Luharuka have not received positive response from the public shareholders. Further, from the disclosures made in the said Letter of Offers, it is observed that the acquisition in question was not in a clandestine manner rather it was disclosed at relevant times and also in the aforesaid Letters of Offer.

17. As mentioned above, since Regulation 11(2) has been violated, penalty has to follow in this case also in view of observations of Hon'ble Supreme Court and Hon'ble SAT as refereed hereinabove. I note that in the *Ushdev Trade Ltd.* case, one of the promoters had acquired substantial shares (18.74%) and the said acquisition had triggered his obligation under Regulation 10 of the takeover Regulations. It is also relevant to note that while pronouncing guiding principles for imposition of penalty in such cases, Hon'ble SAT, in *M/s. Ushdev Trade Ltd.,* case reduced the penalty of ₹ 72,14,000/- imposed by the adjudicating officer to ₹5 lac. Taking into account the aforesaid factors under section 15J and the guiding principles laid down by Hon'ble SAT in the *Ushdev Trade Ltd.*, I hereby impose a penalty of ₹ 5 lakh in respect of increase of shareholding of erstwhile promoter group of the target company in violation of Regulation 11(2). The liability in this regard is joint and several and applicable to the entities in erstwhile promoter group. The Noticee has conceded to the obligation of the entities in erstwhile promoter group. Further, in view of the ratio laid down by Hon'ble SAT in the case of *Mr. Gopalakrishnan Raman and Ors. Vs. SEBI* decided on November 20, 2015

wherein it was held that obligation of a promoter under the Takeover Regulations has also to be discharged by the promoter group at the relevant time.

18. Therefore, the aforesaid penalty amount shall be paid/remitted by the Noticee alone or by *erstwhile promoters* jointly 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:

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

19. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD-DRA-I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C-4A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051."

1	Case Name	
2	Name of the 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)	

20. In terms of Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee and also to SEBI.

Date: July 17, 2018
Place: Mumbai

Santosh Shukla
Adjudicating Officer