BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER –EAD-2/SS/GSS/2018-19/918-924]

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:

1. Saraf Holdings Pvt. Ltd. **17, Dover Road,** **Kolkata – 700019**	**2. Surface Holdings Pvt. Ltd.** **17, Dover Road,** **Kolkata – 700019**	**3. Tower Properties Pvt. Ltd.** **17, Dover Road,** **Kolkata – 700019.**
4. Aradhita Saraf **"Anugrah", 9, New Road,** **Alipore, Kolkata-700027**	**5. Rama Devi Saraf** **"Anugrah", 9, New Road,** **Alipore, Kolkata-700027**	**6. Sujata Saraf** **"Anugrah", 9, New Road,** **Alipore, Kolkata-700027**
7. Dev Saraf **"Anugrah", 9, New Road,** **Alipore, Kolkata-700027**		

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/120-127/2014-15 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:-

> *"3. It is contended on behalf of the appellants that regulation 11(1) gets triggered only when the promoters along with persons acting in concert (PAC) with them have collected additional shares. In the present case, the inter-se transfer amongst the promoters and their PAC cannot be said to result in acquisition of additional shares and therefore, in the facts of present case, it cannot be said that regulation 11(1) got triggered.*
>
> *4. Admittedly, this argument of the appellants which goes to the root of the matter was not canvassed before the AO and hence the said argument could not be considered.*

5.Moreover, the Apex Court in the case of SEBI vs. Roofit Industries Ltd., reported in (2016) 194 Comp. Cas.186 (S.C.) has held that while imposing penalty under Section 15H & 15HA, the AO cannot apply the discretion provided under Section 15J of SEBI Act. However, the Apex Court subsequently in the case of Siddharth Chaturvedi vs. SEBI (Civil Appeal No. 14730 of 2015) has passed an order on March 14, 2016 stating that the decision of the Apex Court in case of Roofit Industries Ltd. (supra) deserves consideration at the hands of a larger Bench.

6. In these circumstances, we deem it proper to quash and set aside the impugned order and restore the appeal for fresh decision on merits.

7. Accordingly, impugned order dated January 16, 2015 is quashed and set aside and the matter is restored to the file of the AO for passing fresh order on merits and in accordance with law.

8. All contentions of both sides are kept open."

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 and information with regard to the following:-
    - *Name of seller (s) and acquirer (s)*
    - *Date(s) of acquisition of shares*
    - *Primary evidence of shareholding pattern of acquirer(s)*
    - *Evidence with regard to PACs, if any.*

3. 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 terms of reference of appointment of the AO has been retained and the alleged violations as decided in the order dated January 16, 2015 passed by the erstwhile Adjudicating Officer has been continued.

4. Further, the evidence relied upon in support of allegations is extract of the relevant page of the Letter of Offer dated June 10, 2013 with respect to a public announcement 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. While examining the said Letter of Offer, it was observed by SEBI that M/s. Saraf holdings Pvt. Ltd. along with M/s. Surface Holdings Pvt. Ltd., M/s. Tower Properties Pvt Ltd, Ms. Aradhita Saraf, Mr. Shyam Sunder Saraf (since deceased), Ms. Rama Devi Saraf, Ms. Sujata Saraf and Mr. Dev Saraf; were the '*erstwhile promoters'* of the target company. In the said Letter of Offer, the details of the '*erstwhile promoters'* shareholdings in the target company at relevant times were disclosed as following at the above referred page:

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*
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**

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	%	
			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%	Sudhir Kumar Jain	3.00	Not Done

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

a) There were *inter-se* transfers of shares amongst the *'erstwhile promoters'* during the Financial Years 1997-98, 1998-99, 2004-05 and 2005-06.

b) Their shareholding in the target company as on April 01, 1997 was 71.18%. During the Financial Year 1997-98, pursuant to *inter-se* transfer of 80,000 shares amongst them, constituting 10.87% of the equity and voting share capital of shares of the target company, they were required to make a public announcement within four (4) working days of acquisition under regulation 11(2) read with regulation 14(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "the Takeover Regulations"). However, no public announcement was made by them.

c) The shareholding of the '*erstwhile promoters'* in the target company as on April 01, 1998 was 73.22%. During the Financial Year 1998-99, pursuant to *inter-se* transfer of 2,55,000 shares amongst them, constituting 34.63% of the equity and voting share capital of the target company, they were required to make a public announcement within four (4) working days of this acquisition under regulation 11(1) read with regulation 14(1) of the Takeover Regulations. However, no public announcement was made by them.

d) The shareholding of the '*erstwhile promoters'* as on April 01, 2004 was 73.48%. During the Financial Year 2004-05, pursuant to *inter-se* transfer of 3,12,900 shares amongst them, constituting 42.50% of the equity and voting share capital of the target company, they were required to make a public announcement within four (4) working days of this acquisition under regulation 11(2) read with regulation 14(1) of the Takeover Regulations. However, no public announcement was made by them.

e) The shareholding of the '*erstwhile promoters'* as on April 01, 2005 was 73.75%. During the Financial Year 2005-06, pursuant to *inter-se* transfer of 70,700 shares amongst them, constituting 9.60% of the equity and voting share capital of the target company, they were required to make a public announcement within four (4) working days of this acquisition under regulation 11(2) read with regulation 14(1) of the Takeover Regulations. However, no public announcement was made by them.

6. In view of the above, it has been alleged in this case that the '*erstwhile promoters'* had failed to make public announcement under Regulation 11(2), 11(1), 11(2) and 11(2) read with regulation 14(1) of

Takeover Regulations with respect to the aforesaid acquisitions through *inter se* transfer of shares amongst them during the Financial Years 1997-98, 1998-1999, 2004-05 and 2005-06, respectively.

7. After receipt of records of these proceedings pursuant to communication- order dated April 02, 2018, taking into account aforesaid observations/directions of Hon'ble SAT, the allegations were inferred in view of the provisions of Takeover Regulations as applicable at relevant times. It was noted that, with regard to allegations of breach during the respective Financial Years, the applicable regulations of the Takeover Regulation provided as under:-

Financial Year 1997-98

"Consolidation of holdings
11. ……...
(2) No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise more than 51% of the voting rights in a company, unless such acquirer makes a public announcement to acquire share of such company in accordance with the Regulations…."

Financial Year 1998-1999

"**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 period of 12 months, unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations.

Financial Year 2004-2005 and 2005-2006

Before Amendment with effect from January 03, 2005-

"**Consolidation of holdings**
11. (1) ……..

(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…."

After the Amendment with effect from January 03, 2005-

"**Consolidation of holdings**
11.(1) ……

(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:"

8. The provisions of regulation 14(1), which remained the same at the time of all the aforesaid *inter-se* transfers, 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."

9. It was inferred that the allegations are made as the aforesaid acquisitions were not eligible for automatic exemption under then applicable regulation 3(1)(e) of the Takeover Regulations, since the conditions of such exemption were not fulfilled. In this regard, it was noted that the acquisition by way of *inter-se* transfer of shares amongst promoters were exempted from the obligation of making public announcement subject to conditions stipulated in regulation 3(1)(e) as applicable at relevant times. Those conditions were as follows :-

Prior to September 09, 2002-

(a) The transferor(s) as well as the transferee(s) have been holding individually or collectively not less than 5% shares in the target company for a period of at least three years prior to the proposed acquisition.

(b) They have been filing statements concerning their individual shareholding as required under regulation 6, regulation7 and regulation 8.

After September 09, 2002-

(a) The transferor(s) collectively as well as the transferee(s) collectively have been holding shares in the target company for a period of at least three (3) years prior to the date of acquisition;

(b) The provisions of Chapter II of the Takeover Regulations (i.e. Regulation 6,7 and 8) have been complied with by both transferor(s) and the transferee(s);

(c) The *inter se* transfer price should not exceed more than 25% of the price determined in terms regulation 20(4) and regulations 20(5) of the Takeover Regulations.

10. It was also noted that the issue arising out of *Roofit Industries Case* has been addressed by inserting explanation to section 15J of the SEBI Act, vide Part VIII of Chapter VI of the Finance Act, 2017. It was further noted that one of the promoters, namely, Mr. Shyam Sunder Saraf had expired on

December 06, 2014, and in view of the same erstwhile Adjudicating Officer had disposed of the proceedings *qua* him and his name has been omitted from the terms of reference of these proceedings.

11. Taking into account the above and direction in communication –order dated April 02, 2018, a show cause notice no. EAD/SS/GSS/11919/2018 dated April 18, 2018 was issued to the Noticees as mandated under rule 4(1) of the SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Adjudication Rules") read with the terms of reference of these proceedings as advised in communication - order dated April 02, 2018 and the Noticees were called upon to show cause as to why an inquiry should not be held against them in terms of rule 4 of the Adjudication Rules read with section 15I of the SEBI Act with regard to the aforesaid alleged failures and penalty be not imposed upon them under section 15H (ii) of the SEBI Act.

12. Authorized by all other Noticees, Mr. Gireesh S. Saraf, vide a letter dated May 01, 2018, submitted that pursuant to an order passed by Hon'ble NCLT Kolkata on October 25, 2017, Surface Holdings Ltd. and Tower Properties Pvt. Limited have got amalgamated/ merged into Wonder Finvest Pvt. Ltd. A copy of the NCLT order was also submitted in this regard. The Noticees also sought time to file reply to the SCN.

13. The Noticees filed their common reply dated May 31, 2018 and also availed opportunity of personal hearing granted to them in terms of Rule 4(3) of the Adjudication Rules on June 05, 2018. In their reply dated May 31,2018 the Noticees made submissions *inter alia* are as follows :-

i) The Noticees specifically deny that they have failed to make public announcement under regulation 11(2), 11(1), 11(2) and 11(2) read with regulation 14(1) of Takeover Regulations with respect to the acquisitions pertaining to the shares of the target company during the Financial Years 1997-98, 1998-1999, 2004-05 and 2005-06, respectively.

ii) The allegations in this case are totally vague and unspecific and do not spell out as to :
    a) who are the promoters (including the Noticees) who have acquired the shares and who are the promoters (including the Noticees) who have sold the shares;
    b) what is the date of acquisition;
    c) how entities/persons belonging to promoters (including the Noticees) have been cherry picked for making allegations;
    d) why all the persons/entities forming part of promoters have not been questioned ;

e) how there is additional acquisition of shares , when the transfer is by way of *inter se* transfer and the total pre and post- acquisition shareholding of the promoters (including the Noticees) have remained same. On this count alone, the allegations need to be dropped.

W.r.t. Alleged acquisitions made during FY-1997-98-

i) Admittedly, the promoters (including the Noticees) were holding 71.18% shares of the target company prior to the impugned acquisitions during the year financial year 1997-98. In order to consolidate group activities and in interest of shareholders and companies, it was necessary for the *'erstwhile promoters'* to sell few of their group companies viz. M/s Fleur Agriculture & Estates Pvt Ltd ('FAEPL') and M/s Navnirvan Agencies Ltd ('NAL').The said group companies *viz* FAEPL and NAL were holding total 80,000 shares in the target company, which the said group companies had transferred to other promoters *viz.* Mrs Rama Devi Saraf, Ms Aradhita Saraf, Mrs Sujata Saraf, Mr. Shyam Sunder Saraf , Mr Girish Kumar Saraf and M/s. Intel Industries & Commercial Ltd.

ii) Consequent to the aforesaid transfer of shares by group companies, the promoters (including the Noticees) acquired 80,000 shares (10.87%) in the target company through *inter se* transfer of shares amongst them. Post the said acquisition by way of *inter se* transfer the total shareholding of the promoters (including the Noticees) remained same at 71.18 %. Therefore, there was no additional acquisition of shares as contemplated under regulation 11 of the Takeover Regulations.

iii) In any event, since, prior to the impugned *inter se* transfer of 80,000 shares, the shareholding of the promoters (including the Noticees) was already above 51%, the issue of triggering the provisions of then prevalent 11(2) of the Takeover Regulations cannot and does not arise. From the reading of the said regulation as applicable at that time, it is clear that the same is applicable in a situation when the acquirer (along with persons acting in concert) crosses 51% shareholding for the first time. It is at that juncture, when the acquirer (along with persons acting in concert) crosses 51% for the first time, that the obligation of making public announcement is attracted. The provisions of the said regulation are not applicable to acquisitions wherein the acquirer (along with persons acting in concert) is already holding shares above 51%.

iv) In any event, the impugned *inter se* transfer of shares involving 80,000 shares was covered by provisions of regulation 3(1)(e), pertaining to exemption for *inter se* transfer

of shares amongst the promoters, since the Transferors and Transferees were holding collectively more than 5% shares of the target company. Therefore, the impugned *inter-se* acquisition was entitled for exemption.

W.r.t. Alleged acquisitions made during FY-1998-99

i) Admittedly the promoters (including the Noticees) were holding 73.22% shares of the target company prior to the impugned acquisitions during the financial year 1998-99.

ii) Mrs. Darshna Saraf –one of the promoters of target company- widow of Late Mr. Sushil Saraf wanted to sell her 2,55,000 shares. To help her out, other family members viz. Mr. Girish Kumar Saraf and Ms. Sujata Saraf purchased 2,22,000 shares and 33,000 shares, respectively, so that shares held by her remain within the family and amongst the erstwhile promoters. In the circumstances , the promoters (including the Noticees) acquired 2,55,000 shares (34.637%) in the target company during the Financial Year 1998-1999 through *inter se* transfer of shares amongst them. Post the acquisition by way of *inter-se* transfer, the total shareholding of the promoters (including the Noticees) remained same i.e. 73.22%. Therefore, there was no additional acquisition of shares as contemplated under Regulation 11 of the Takeover Regulations.

iii) In any event, the impugned *inter-se* transfer of shares involving 255,000 shares was covered by provisions of regulation 3(1) (e), since the Transferors and Transferees were holding collectively more than 5% shares of the target company. Therefore, the impugned *inter-se* acquisition was entitled for exemption.

W.r.t. Alleged Acquisition during FY - 2004-05-

i) Admittedly, the promoters (including the Noticees) were holding 73.48% shares of the target company prior to the impugned acquisitions during the Financial Year 2004-05.

ii) During this FY, M/s. Intel Industries & Commercial Ltd had transferred 18,900 shares to Ms Rama Devi Saraf and 50,000 shares to Mr. Harshvardhan Saraf (Minor) & M/s Navnirvan Agencies Ltd ('NAL') had transferred 20,000 shares to Mrs. Rama Devi Saraf and Girish Saraf had gifted 2,24,000 shares to his son Mr. Dev Saraf (minor).

iii) The promoters (including the Noticees), thus, acquired 312900 shares (42.50%) in the target company during this FY through *inter-se* transfer of shares amongst them. Post the said acquisition by way of *inter-se* transfer, the total shareholding of the promoters

(including the Noticees) remained same i.e. 73.48 %. Therefore, there was no additional acquisition of shares as contemplated under Regulation 11 of the Takeover Regulations.

iv) In any event, the impugned *inter-se* transfer of shares involving 2,55,000 shares was covered by provisions of regulation 3(1)(e), pertaining to exemption for *inter-se* transfer of shares amongst the promoters, since:

- The Transferors and Transferees were holding the shares of the target company for more than 3 years. Ms. Rama Devi Saraf being one of the Transferees was also holding shares for more than 3 years and Mr. Dev Saraf (Minor) and Mr. Harshvardhan Saraf (Minor) were the acquirer of shares for the first time as individuals. Mr. Dev Saraf received the shares by way of gift from his father, Girish Saraf. That as the constituent members of the promoter group, the others were also indirectly holding shares for a period more than 3 years. As per then SEBI Regulations, it is sufficient that one of the transferors / one of the transferees needs to hold the shares for a period of 3 years.
- Besides the said gift, all the other transfers were priced at ₹3 per share as per last traded value. The *inter-se* transfers were at a price of ₹3/- per share which is not exceeding ₹27.54 (the price calculated in accordance with Regulation 20(4) and 20(5) as also enumerated in the open offer letter). Therefore, the impugned *inter-se* acquisition was entitled for exemption.

v) In any event, provisions of Regulation11(2) of the Takeover Regulations were not applicable to the impugned acquisitions (which took place prior to January 3, 2005) at the relevant time as promoters (including the Noticees) were holding less than 75% of the shares or voting rights in the target company. Prior to January 3, 2005, Regulation 11(2) read as under :

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

vi) The said Regulation would be applicable only to those acquirers (who along with persons acting in concert) were holding 75% shares of the target company and not to those acquirers who held below 75% shares of the target company. Therefore, the Noticees cannot be alleged to have violated the provisions of Regulation 11 (2) (which

was prevalent prior to 3.1.2005), since the shareholding of the Promoters (including the Noticees) was admittedly below 75%.

***W..r.t. Alleged Acquisition during FY* - 2005-06**

i) Admittedly, the promoters (including the Noticees) were holding 73.75 % shares of the target company prior to the impugned acquisitions during the financial year 2005-06. During this Financial Year, Darshana Saraf had transferred 20,700 shares and Mr. Harshvardhan Saraf had transferred 50,000 shares to Tower Properties Pvt. Limited. The promoters (including the Noticees) thus, acquired 70,700 shares (9.60%) in the target company during the Financial Year 2005-06 through *inter-se* transfer of shares amongst them. Post the said *inter-se* transfer, the total shareholding of the promoters (including the Noticees) remained same i.e. 73.75 %. Therefore, there was no additional acquisition of shares as contemplated under regulation 11 of the Takeover Regulations.

ii) In any event the impugned *inter-se* transfer of shares involving 70,700 shares was covered by provisions of Regulation 3(1)(e), pertaining to exemption for *inter-se* transfer of shares amongst the promoters, since:

- The transferors and transferees were holding the shares of the target company for more than 3 years. Both the transferors and the transferees were 'Qualifying Promoters". That the transferor, Ms. Darshana Saraf was holding the shares of the target company for more than 3 years, and one of the transferors, Mr. Harshvardhan Saraf (minor) (son of Mrs Darshana Saraf) was not holding the shares of the target company for more than 3 years in his individual capacity. That, however, the transferee was holding shares for more than 3 years. Again as the transferor was a constituent member of the promoter group and as such promoters were holding shares for a period of more than 3 years.
- The *inter-se* transfers were at a price of ₹3/- per share which is not exceeding ₹28.26 (the price calculated in accordance with Regulation 20(4) and 20(5) as also enumerated in the open offer letter.) Therefore, the impugned *inter-se* acquisition was entitled for exemption.

14. The Noticees have denied that the impugned acquisitions were not eligible for exemption under regulation 3(1) (e), as applicable at the relevant time. They have also denied that the Noticees had not met the conditions of such exemption. The Noticees have further submitted in their replies

that undisputedly the impugned acquisitions were by way of *inter-se* transfer of shares amongst the promoters. On the basis of alleged non-compliance of technical requirements, the exemption cannot be denied, completely ignoring and overlooking the underlying spirit and substance of the impugned acquisitions.

15. The Noticees have denied that they are liable for penalty under section 15H (ii) of the SEBI Act. They have also submitted that while considering their aforesaid submissions, the following may also be noted :

a. That the Noticees have always acted transparently, honestly and *bona fidely*. They have a clean track record in terms of compliance. Till date, the Noticees conduct have never been found to have violated of any of the provisions of SEBI Act or Regulations. Further, save and except the SCN under reference, the Noticees have never received any Notice from SEBI in the past.

b. That as Takeover Regulations were enacted in the year 1997 and were amended from time to time, the Noticees were not aware of the changes as the company was not performing well and there was no legal expertise.

c. That there was neither change in promoters, nor was there a change in management or any significant change in voting rights. On 1 April 1997 promoters' holding was 71.18% and on 30th March, 2010 promoters' holding was 73.82%.

d. That the impugned *inter se* transfers were necessitated by the demise of Mr. Sushil Kumar Saraf (husband of Mrs. Darshana Saraf and brother of Mr. Girish Saraf) who was actually managing and running the target company. All other family members (who were part of the promoter group) were dormant promoters. Consequent to the demise of Mr. Sushil Kumar Saraf, the impugned transfers where *inter alia* undertaken to help out widow of Late Mr. Sushil Kumar Saraf and also as a part of family arrangement.

e. That Share Purchase Agreement ("SPA") dated 23.09.2010 for acquisition of shares of the target company was executed between the target company and Luharaka which made an open offer dated 17.01.2011 ("First Open Offer") to comply with the Takeover Regulations. Luharuka, had triggered First Open Offer under regulation 10 and 12 of Takeover Regulations, 1997 and had successfully completed the formalities of Open Offer.

f. That, in the said open offer Luharaka had revised the Offer Price from ₹18/- per share to ₹46 per share, since all trigger dates of erstwhile promoters' including Noticees' acquisitions were considered in arriving at the price for the Open Offer. Thus, the maximum price was paid to the shareholders of the target company. Further, the 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 considering the past acquisitions of the Noticees for the purpose of offer price.

g. That, thereafter, target company made preferential allotment of shares to promoter group including Luharuka group, which resulted in a further open offer in June 2013 (the "Second Open Offer"). SEBI had examined the Second Open Offer document that is the basis of the allegations in this matter.

h. That alleged *inter-se* transfers of shares among erstwhile promoters (including Noticees) were to settle some internal issues of family. The Noticees believed that *inter-se* transfer of shares among promoters does not attract Takeover Regulations as there is no change in the control of the target company and Regulation 3 of the Takeover Regulations expressly exempts the acquisitions by way of *inter-se* transfer of shares among promoters.

i. That at the time of making the open offer, the Noticees realized that they had failed to fulfil conditions of exemption under Regulation 3(4) of the Takeover Regulations. The Noticees believed the same has been regularized at the time of First Open Offer in January 2011 through adequate disclosures of *inter-se* transfer of shares among erstwhile promoters keeping SEBI informed of the same.

j. That 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 (ref: clauses 6.1.3 and 6.1.4 of the Letter of Offer w.r.t. First Open Offer). 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 thereon @ 10% p.a.

k. That at the time of this price determination by the Merchant Banker for the said First Open Offer, all information about *inter-se* transfer of shares among the erstwhile promoters was on record of SEBI. Indeed, Merchant Banker, 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 Noticees 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 inter-se transfer of shares among the erstwhile promoters into consideration while revising the open offer price, the Noticees were under *bona fide* belief that SEBI had taken *inter-se* transfer of shares among the erstwhile promoters on its record under regulation 3 of the Takeover Regulations and had concluded the same to be in order. Had it been the case of any violation, SEBI ought to have called upon the Acquirers to further revise the offer price.

l. That as per mutual understanding between Luharuka and the erstwhile Promoter Group (including the Noticees herein), Luharuka assumed all regulatory and compliance responsibilities of the erstwhile Promoter Group, including bearing of the past, and corresponding costs.

m. 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 Memorandum of Understanding (MOU) entered into between the said Luharuka and the erstwhile Promoter Group dated 11.09.2010 documented the same.

n. That 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.

o. That the First Open Offer dated 17.01.2011 had taken care of the regulatory requirement with regard to *inter-se* transfer of shares among the erstwhile promoters.

p. That the alleged *inter-se* acquisitions mentioned in the SCN were in fact voluntarily disclosed by the Noticees 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 Noticees were under a bona fide belief that the SEBI had taken the facts on record and had thus concluded that the acts of the Noticees 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 Noticees 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.

q. That, no prejudice is caused to public or minority shareholders of target company, pursuant to alleged non-compliance of provisions of regulation 11(1) and 11(2) r/w regulation 14 of Takeover Regulations. On the contrary the minority shareholders were more than adequately compensated.

r. That 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. Hereto annexed and marked as Exhibit G is the copies of Post offer public announcements to the equity shareholders of the target company in proof thereof.

s. That, no disproportionate gain or unfair advantage is accrued to the Noticees as a result of alleged transfers. Same has not been even alleged in the Notice.

t. That, the Noticee No 1 has been misjoined as Noticee in this case as it has not transferred any shares at all.

u. That no loss is caused to investor or public shareholder on account of the said transfers, as these were in the nature of inter-se transfers. That, the Noticees have not adopted any unfair trade practice or unfair gain by virtue of said *inter se* transfers.

v. That there was no change in control and management of target company. The total shareholding of the Promoter Group on 01.04.97 was 71.18% and 30.03.2010 it was 73.18% of the total voting capital of CFL. Since the company was going through a financial crisis and did not have any proper professional help, necessary reports under Regulation 3(4) of the Takeover Regulations remained to be filed and had the same been filed, the alleged *inter se* transfers would have definitely been qualified for exemption as all the conditions precedent to an inter-se transfer are satisfied for these transfers.

w. That the Noticees seek to rely 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.*
>
> *Para31: Now, the question, of the penalty, by the Adjudicating Authority, in the facts and circumstances of the case, was warranted or not. We find that the allotment in question was undoubtedly covered under the exemption provided in regulation 3(1). There could not have been insistence by the Noticees-SEBI to comply with the requirements of regulation 3(4). It is also clear that when an acquisition is covered under regulation 3 the acquirer is required to report to the Board under the regulation 3(4) within the specified time, as referred above. In view of this undisputed position, merely because there was no Report filed, that itself cannot be read as serious defect or non-compliances of the said provisions. The Appellate Authority, after considering the material on record, including the events, referred in the pleadings, found that the respondents-company had no intention to suppress any material information from the Noticees or the shareholders."*

x. That the impugned acquisitions by way of *inter se* transfer of shares amongst the promoters were genuine and *bona fide* transactions devoid of any intent to make substantial acquisition (as

total shareholding of the promoters both pre and post the acquisitions remained constant) 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 acquisitions).

y. That the impugned acquisitions by way of *inter se* transfer of shares amongst the promoters pertain to a very old period (i.e. around 20 years old to 12 years old) and the public shareholders interest have not been compromised as the open offers have already been made by the subsequent acquirers of the target company as stated hereinbefore.

z. In the facts and circumstances, any imposition of penalty on the Noticees would be unjustified and unwarranted. In view of the foregoing submissions, it is humbly prayed that the SCN be discharged and no penalty be imposed.

16. On the schedule date of hearing, Mr. Vinay Chauhan, advocate appeared on behalf of the Noticees and made further submissions. Mr. Chauhan reiterated the preliminary objections raised in the written reply with regard to the dates of specific acquisitions, name of the acquirer and percentage of individual acquisition and further submitted that though for making the allegations, percentage of all the promoters have been clubbed in this case to determine the threshold, only few of the promoters have been charged without specifying as to who from amongst them were acquirers and who were the PACs with the respective acquirer in respect of each of the acquisitions. The learned advocate further submitted that the Noticees have already been under long drawn process of inquiry/ adjudication since the year 2013 for the alleged transactions which are very old as they pertain to the Financial years 1997-98 to 2005-2006 and they do not wish to undergo further inquiry afresh on account of this flaw in the allegations and wish to close the matter on the basis of their replies on merit and mitigating facts and circumstances as detailed in the written reply of the Noticees. Mr. Chauhan fairly conceded that the Noticees were part of the promoter group of the target company at the relevant times and could be considered to be acting in concert with regard to impugned *inter-se* transfers but the object and purpose of such acquisitions by them was not consolidation of shares but was for *bona fide* family arrangement as detailed in the replies of the Noticees. He further submitted that even if all the Noticees are assumed to be PACs with regard to any of the acquisitions, the *inter-se* transfer of shares from one of them to another in the respective Financial Year would not result in substantial acquisition of shares and change in control over the target company at the relevant times. Further, all those acquisitions were eligible for automatic exemption under regulation 3(1) (e) and if not for want of evidence showing proof of disclosures of their shareholding then exemption could be granted by SEBI under regulation 3(1) (*l*) by the Board. Relying upon order of Hon'ble SAT in the matter of *M/s. Ushdev Trade Ltd. vs.*

SEBI (SAT Appeal No 106 of 2010- 0rder dated 14.9. 10), he submitted that even if those acquisition were not exempted under regulation 3(1)(e), it could nevertheless be exempted by the Board under regulation 3(1) (*l*) had the Noticees filed an application in this regard. However, since the matter is considerably old and the management control of the target company has changed the Noticees are unable to trace the evidence with regard to compliance of conditions under regulation 3(1) w..r.t. disclosure requirements from the concerned stock exchange or target company. Learned advocate further pleaded that considering the same and the mitigating facts and circumstances as described in the reply the case does not warrant imposition of monetary penalty. It was also submitted by him that Regulation 11(2) as amended on January 03, 2005 was not applicable to impugned *inter-se* transfer of shares during Financial Year 2004-05 and sought time to make further submissions along with evidence in that regard.

17. Pursuant to the personal hearing, vide letter dated June 09, 2018 and e-mail dated June 12, 2018, the Noticees, while reiterating their earlier replies and submissions, made filed additional submissions with regard to the impugned *inter-se* transfer of 3,12,900 shares (42.50%) amongst the promoters during the FY-2004-05 *inter-alia* as following :

(a) The said *inter-se* transfer had taken place prior to amendment of 3.1.2005 in the following manner:-

(i) Mr Girish Kumar Saraf transferred 2,24,000 shares by way of Gift to his son, Master Dev Saraf on 5th March 2001 pursuant to a Gift deed dated 5th March 2001. The Noticees have submitted copy of the said Gift deed. The said transfer was also recorded in the Annual Report dated 26th July 2004 of the target company. The Noticees have also submitted balance sheet of Master Dev Saraf showing said transfer of 2,24,000 shares to him.

(ii) Intel Industries & Commercial Ltd sold 50,000 shares to Master Harshvardhan Saraf - during November 2002. The said transfer was recorded in the Annual Report dated 26th July 2004 of the target company. Relying upon copy of the balance sheet (from 1st April 2003 to 31st March 2004) of Master Harshvardhan Saraf, the Noticees have also submitted that it is shown that the opening balance of 50,000 shares of the target company shows that Master Harshvardhan Saraf had purchased those 50,000 shares before March 2003.

(iii) Intel Industries & Commercial Ltd sold 18,900 shares @ ₹ 3/- to Ms Rama Devi Saraf on 2nd Dec 2002 (Copy of bank statement of Mrs Rama Devi Saraf is submitted by the

Noticee). The said transfer was recorded in the Annual Report dated 26th July 2004 of the target company.

(iv) Navnirvan Agencies Ltd sold 20,000 shares @ ₹ 3/- to Ms Rama Devi Saraf on 28th Nov 2002 (Copy of bank statement of Mrs Rama Devi Saraf is submitted by the Noticees). The said transfer was recorded in the Annual Report dated 26th July 2004 of the target company.

The above transfer of shares to Ms Rama Devi Saraf referred to in para (iii) and (iv) is substantiated by the balance sheet of Ms Rama Devi Saraf for the financial Year 2002-03.

Therefore, for the said impugned *inter se* transfers the Noticees cannot be alleged to have violated the provisions of Regulation 11 (1) (which was prevalent prior to 3.1.2005), since the shareholding of the Promoters (including the Noticees) was admittedly below 75%.

(b) SEBI has miserably failed to discharge its primary burden on its part while leveling allegations since it has sweepingly alleged that impugned transfers took place during the financial year, without pointedly alleging as to the date when the impugned transfers took place during the Financial Year. Considering the same and also the fact that due to efflux of considerable time and change in management control of the target company, the Noticee is handicapped to submit proof, the benefit of doubt should be given to the Noticees.

(c) Undisputedly, all the impugned transfers are *inter-se* transfer of shares amongst the promoters. The same were genuine and *bona fide* transactions devoid of any intent to make substantial acquisition (as total shareholding of the promoters both pre and post the acquisitions remained constant) 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 acquisitions).

(d) The impugned *inter-se* transfers happened under peculiar facts and circumstances, wherein (Late) Mr. Sushil Saraf, who was handling the affairs of the target company, untimely expired at the young age of 38 years in the year Nov 1995. Consequently, his younger brother Mr. Girish Saraf, who, at the relevant time, had just finished his graduation studies and had to step in and take over the reins from Late Mr Sushil Saraf. Post the death of Late Mr. Sushil Saraf, staff/employees of the target company left and Mr. Girish Saraf who was then very raw and inexperienced , in handling business and compliances etc. faced lot of hurdles. Coupled with the aforesaid the whole promoter group family came under financial distress and certain group companies had to be sold (viz. M/s Fleur Agriculture & Estates Pvt. Ltd. and M/s Navnirvan Agencies Ltd. who were involved in first set of *inter se* transfers in FY 1997-98). At the relevant

time the Target Company, which was listed on Calcutta Stock Exchange, UP Stock Exchange & Delhi Stock Exchange, was not doing well. It may be appreciated that all the impugned *inter-se* transfers were either necessitated by external circumstances or were in the nature of family arrangements.

(e) Merely because, the Noticees are not in a position (*inter-alia* due to considerable lapse of time) to demonstrate that they had complied with the conditions of exemption for *inter-se* transfer of shares, same cannot be a ground for penalizing the Noticees ignoring the "substance" of the transaction. Further, the surrounding circumstances involving the alleged acquisitions and its impact if any on the interests of public shareholders in terms of exit opportunity etc. has also to be taken into account. In this context, the Noticees have placed reliance on the observations of Hon'ble SAT in the matter of *M/s. Ushdev Trade Lt vs. SEBI (SAT Appeal No 106 of 2010- 0rder dated 14.9. 10)* wherein it was *inter alia* held that :-

"The appellant was also issued a notice dated May 29, 2008 pointing out the violation of Regulation 10 read with Regulation 14(1) of the takeover code and it was called upon to show cause why an enquiry should not be held against it for the imposition of monetary penalty. The precise charge against the appellant as levelled in the show cause notice reads as under:

"It is observed that you have acquired 18.74% shares from UCSPL through off-market transaction, as submitted by your promoter Shri. Prateek Gupta. Since the instant acquisition done by you is more than 15% of the total paid up equity share capital of the company, therefore, you were required to make a public announcement in terms of Regulation 10 read with Regulation 14(1) of SEBI (Substantial Acquisition of Shares and Takeovers), Regulations, 1997 (hereinafter referred to as "SAST") which was not made by you. Therefore, it is alleged that you have violated the aforementioned provisions of SAST….."

The appellant attended a personal hearing on March 18, 2010 and submitted that the purchase of shares was an inter se transfer of shares within the promoter group and the appellant was under a bona fide belief that the open offer would not get triggered. It was also submitted that the appellant was not aware that exemption from the provisions of the takeover code had to be obtained for this transfer. The appellant also furnished the details of its acquisition of shares of the target company. After considering the show cause notice and the submissions made by the appellant, the adjudicating officer by his order of April 29, 2010 levied a monetary penalty of ` 72,14,000 on the appellant under Section 15H (ii) of the Act for the violation of Regulation 10 read with Regulation 14(1) of the takeover code. It is this order which is now under challenge in this appeal. 4. We have heard the learned counsel for the parties who have taken us through the records.

The fact that Ushdev Commercial transferred 18.74 per cent of the equity share capital of the target company to the appellant in an off market transaction is not in dispute. It is also not in issue that Ushdev Commercial and the appellant are promoters of the target company. It is, thus, clear that the transfer of shares was from one promoter to the other. Regulation 10 of the takeover code which is said to have been violated by the appellant (shorn of the unnecessary details) provides that no acquirer shall acquire shares or voting rights which entitle the acquirer to exercise fifteen per cent or more of the voting right in a company unless the acquirer makes a public announcement to acquire shares of that company in accordance with the takeover code. The primary object of this provision is to give an exit opportunity to the existing shareholders of the target company in such an eventuality. However, Regulation 3 exempts certain transfers of shares from the provisions of Regulation 10 and one such exemption relates to inter se transfer of shares amongst promoters. Regulation 3 (1)(e)(iii)(b) as it stood at the relevant time read as under:-

"Applicability of the regulation. *3(1) nothing contained in regulations 10, 11 and 12 of these regulations shall apply to:*

(a) xxx (b) xxx (c) xxx (d) xxx (e) inter se transfer of shares amongst –

(i) xxx

(ii) xxx

(iii) (a) xxx (b) Promoters:

Provided that the transferor(s) as well as the transferee(s) have been holding shares in the target company for a period of at least three years prior to the proposed acquisition.

……"

Since the acquisition by the appellant was by way of transfer of shares from one promoter to another, it would have been exempt from the provisions of Regulation 10 provided that the transferor and the transferee fulfilled the requirements of the proviso to Regulation 3(1) (e) (iii) reproduced above. The proviso requires that the transferor and the transferee should have held the shares for a period of three years which they did not. Even though the transfer in the instant case was not strictly covered by the exemption clause, it could, nevertheless, be exempted by the Board under Regulation 3(1) of the takeover code had the appellant filed an application in this regard. 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."

(f) The Noticees have reiterated that the impugned transfers were *inter-se* transfer of shares amongst the promoters. Even though the *inter-se* transfers were not strictly covered by the exemption clause, it could, nevertheless, be exempted by the Board under Regulation 3(1) of the Takeover Regulations.

(g) Consequent to exit of Noticees from the target company in the year 2010, open offer was made by the Luharuka to the public shareholders of the target company in the year 2011. While calculating the open offer price of ₹ 46/- (including the interest component), the alleged trigger dates by the Noticees was reckoned by SEBI, as is also evident from the Letter of Offer. As per the report pertaining to "Post Offer Public Announcement to the shareholders" dated 14.2.11 filed by the Merchant Banker, not even a single public shareholder had tendered the shares in the open offer despite the offer price of ₹ 46/-.

(h) Subsequently, in the year June 2013 another open offer was made by Luharuka at offer price of ₹ 22/-. As per the report pertaining to "Post Offer Public Announcement to the shareholders" dated 11.7.13 filed by the Merchant Banker, not even a single public shareholder had tendered the shares in the open offer despite the offer price of ₹ 22/-.

(i) Thus, the Noticees though alleged to have violated the provisions of Regulation 11, in the circumstances of the case, it had not prejudiced or jeopardized the interest of the public shareholders of the target company -since no public shareholders were interested in tendering the shares and availing the exit despite the offer price being at ₹46/- .Significantly, it may be noted that the impugned transfers between the promoters had taken place at a price of ₹ 3/-.

(j) 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 Noticees was within the promoter group which has not led to any change in control or management of the target company.

(k) Aforesaid facts and circumstances weigh heavily in favour of the Noticees, as it is clear that the allegations are with regard to mere technical/venial breaches and the same have, in fact, not impacted/prejudiced the interests/ rights of the public shareholders of the target company.

18. I have considered the allegations, the response of the Noticees and relevant material relied upon in this case. It is noted that the only evidence relied upon in support of the allegation is the extract of the relevant page of the Letter of Offer with respect to the open offer made by Luharaka as reproduced hereinabove. From the extract of disclosures in aforesaid Letter of Offer, which has been relied upon in support of the charge in this case, it is noted that Luharaka had disclosed two types of acquisitions on the relied upon page of its Letter of Offer dated June 10,2013; first, the *inter-se* transfers amongst certain unspecified promoters and, second; the off-market purchase of shares by one of the promoters viz ; M/s. Saraf Holdings Pvt. Ltd., (the Noticee number 1 herein) on April 21, 2004 (2000 shares) and October 04, 2005 (500 shares). However, with regard to these two types of transactions, two separate and independent proceedings had been initiated and commenced. One, the instant proceedings against few of the promoters and another only against Noticee No.1 alone with regard to its off- market purchases alleging consequential increase in collective shareholding of all the erstwhile promoters. The second proceedings are, accordingly being dealt with in separate order.

19. Thus, in these proceedings, I proceed to deal only the impugned *inter-se* transfers and possible violation, if any, of regulation 11 of the Takeover Regulations by the Noticees as alleged. From the wording of the regulation 11 of the Takeover Regulations as applicable at the relevant times, it is clear that compliance obligation under regulation 11(1) and (2), as the case may be, is fastened on the '*acquirer*' or the '*persons acting in concert*' with the '*acquirer*' and the event is acquisition of shares which would entitle such acquirer to exercise more than specified percentage of shares or the voting rights in a target company. Further, the obligation to make public announcement is connected with the date of the acquisition/agreement to acquire as stipulated under regulation 14. Thus, for charging any Noticee under regulation 11, it must be specifically alleged as to who is (i) the acquirer; (ii) who is person acting in concert with the acquirer with regard to his acquisition; (iii) the percentage of shareholding/voting rights of the acquirer and such PACs consequent to the acquisition in question; and (iv) date of acquisition/ agreement to acquire.

20. From the Letter of Offer issued by Luharaka it is noted that in the said Letter of Offer it had not given any such details and has also not made any clear disclosures about the details as required with regard to the alleged *inter-se* transfers of shares; unlike in case of off-market purchases by Noticee

No.1. With regard to the *inter-se* transfers it was, in fact, disclosed that: - *'No Compliances/documents have been provided to us'*. It is noted from records that when the concerned department asked the evidence/ information as required in the matter, from the target company, BSE and CSE, respectively; the target company submitted that it had been taken over by Luharaka in 2011 and at present it did not have any information as asked. BSE had informed that the target company was listed on March 25, 2013 and any information prior to its listing was not available with it. CSE, vide its e-mails dated July 21,2017 and March 12,2018, had informed that the matter being very old dating back to around 13-20 years, it was not able to retrieve/trace any records despite diligent and persistent efforts on its part. Thus, the allegation lacked material particulars.

21. In this case, it has been alleged that '*members of the erstwhile promoter group'* i.e. the Noticees carried out *inter-se* transfer of shares of the target company during the Financial Years 1997-98 (80,000 shares i.e. 10.87%), 1998-99 (2,55,000 shares i.e. 34.63%), 2004-05(3,12,900 shares i.e. 42.50% and in 2005-06 (70,700 shares- 9.60%) which resulted in violation of regulation 11(2), 11(1), 11(2) and 11(2) read with regulation 14 in respective Financial Years. It is noted that the above essential ingredients of regulation 11 read with 14 have neither been alleged nor have they been brought on record until the Noticees filed their reply during the inquiry in these proceedings giving details and certain documents with regard to the respective acquisitions. As noted above, the compliance obligation under Regulation 11 would get triggered only if the acquisition of the acquirer individually or collectively along with shareholding of persons acting in concert with him breaches the prescribed threshold. In this case, it has not been specifically alleged as to who from amongst the Noticees was the acquirer and who was/were the *person/s acting in concert* with him. While the Noticee No.1, (who had, admittedly, not acquired any shares through impugned *inter-se* transfers), has been made a Noticee in this case but another entity *viz*; Intel Industries & Commercial Ltd., one of the promoters from the erstwhile promoter group, who had actually acquired shares through *inter-se* transfer during the Financial Year 1997-98 has not been made a Noticee. Further, the allegation has been made on the basis of percentage of shares acquired rather than on the basis of breach of threshold limits stipulated in regulation 11. The charge is, thus, unclear and ambiguous in these respects and are on the basis of non-specific disclosures in the aforesaid Letter of Offer and the same could be fit for disposal on these grounds in view of the judgment of Hon'ble Supreme Court in the case of *Canara Bank Vs. Debasis Das (2003) 4SCC 557* wherein it was pronounced that the allegation should be clear, specific and unambiguous and should be on reasonable basis as held in following words:-

"……the first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. …..". To comply with the principles of natural justice and to serve the show cause notice containing precise and unambiguous charge is the obligation of the quasi-judicial body and any order stands vitiated if it is passed on the basis of a vague show cause notice.

22. The Noticees have brought out relevant details and evidence during the inquiry in these proceedings and have fairly conceded to continue the proceedings for disposal on merits on the basis of their replies and submissions. In this case, the Noticees was part of erstwhile promoter group and have filed common replies and have made common made submissions defending the increase of in shareholding of erstwhile promoter group who were acting as homogeneous unit. The facts leading to the charge have been admitted by one on behalf of all the other Noticees in the group. Further, the liability for non -compliance of obligation under Regulation 11 is joint and several. Therefore, I am of the view that principles of natural justice would be complied with if the case is disposed of on the basis of admissions by the Noticees and facts and circumstances brought on record during the inquiry/ hearing and the proceedings would not be vitiated in view of the above flaws in the charge.

23. The impugned *inter -se* transfer of shares amongst the entities of erstwhile promoter group of the target company are admitted. In this regard, the scheme of Takeover Regulations is clear and unambiguous. Relevant Regulations are triggered on acquiring or agreeing to acquire shares by a person which will, taken together with shareholding of persons acting in concert, entitle them to exercise voting rights beyond the thresholds stipulated in the Regulations. It is a matter of common knowledge that in such *inter-se* transfer of shares, the total post-acquisition shareholding of all promoters including transferor-promoter and transferee-promoter may remain the same. However, post- such *inter-se* transfer of shares to any promoter the total shareholding of transferee promoter/s taken together with shareholding promoters who are acting in concert being under homogeneous group/league of such promoter/s (except the seller/s who is/are exiting the group by transferring his/their shares) may increase beyond the prescribed threshold. The Takeover Regulations treat such substantial acquisition of shares which would increase the shareholding of transferee promoters along with shareholding of other promoters beyond threshold as trigger of obligations. Since such acquisitions retain the identity of pre-existing status with remaining promoters, the Takeover Regulations provide for automatic exemption to such acquisitions. However, to strike a balance between investors' interest *vis- a- vis* the compliance obligation of such promoters, the exemption is subject to certain conditions precedent. If those conditions are not

satisfied, the compliance obligation under Regulation 11 is triggered. Under Regulation 11, the obligation is upon the acquirers including persons acting in concert with therm. With regard to acquisition by way of *inter-se* transfers amongst promoters, the promoters (except the transferor) can be treated as *'persons acting in concert'* with transferee promoter/s can in view of the definition of the expression *"persons acting in concert"* under regulation 2(1) (e) of the Takeover Regulations which provides an inclusive definition. First part of the definition enunciates general and common, principle-based, definition and the second part provides list of relations- connection when a person shall be deemed to be acting in concert with an acquirer and such deemed presumption can be rebutted by such person by proving the contrary. The word *'promoter'* is not included in deeming provisions of second part of the definition and thus, such concerted and cooperated action of a promoter can be shown under first part of the definition in Regulation 2(1)(e)(1) which provides that *"person acting in concert"* comprises, -

(1) persons who, for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal),directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the target company or control over the target company.
(2) ....."

24. For the purpose of interpretation of this regulation, the recommendation of Justice Bhagwati Committee made in its report dated January 18, 1997, wherein it is stated that - *"To be acting in concert with an acquirer, persons must fulfill certain "bright line" tests. They must have commonality of objectives and a community of interests which could be acquisition of shares or voting rights beyond the threshold limit, or gaining control over the company and their act of acquiring the shares or voting rights in a company must serve this common objective. Implicit in the concerted action of these persons must be an element of cooperation. And as has been observed, this cooperation could be extended in several ways, directly or indirectly, or through an agreement - formal or informal."* The guiding principles to determine as to whether a person is acting in concert with the acquirer or not have been laid down by Hon'ble SAT in various judgments such as *Modipon Ltd v. SEBI & others, (decided on July 31, 2001), Naagraj Ganeshmal Jain v P.Sairam (2001) 33 SCL 295 Kishore Rajaram Chhabria V SEBI (order dated August 01,2003, Rajesh Toshniwal Vs. SEBI(* order dated June 1, 2012) and *Ram Piari Vs. SEBI* (Order dated November 20, 2017); by Hon'ble Bombay High Court in *K. K. Modi Vs SAT (2002) 35 SCL 230* (BOM.) and by Hon'ble Supreme Court in the case of *Technip SA (2005)5SCC 465 and Daiichi Sankyo Company Ltd. vs. Jayaram Chigurupate and Others (2010) 7 SCC 449.*

25. In view of the above, a promoter could be considered as an acquirer or not would depend on the question as to whether he is a person who acquires or agrees to acquire shares etc. Identification is thus action related. Further, there is no blanket prohibition on the promoters acquiring shares in the target company. A promoter can be an acquirer or a *'person acting in concert'* provided he is found to be covered within the scope of the definition under regulation 2(1) (e). Whether a promoter is also an acquirer or person acting in concert would depend on the facts of each case. In this case, certain Noticees such as Noticees No. 4 to 7 and Mr. Shyam Sunder Saraf (*since deceased*) were relatives and could be covered in the deeming provision of Regulation 2(1)(e) (2) of the Takeover Regulations. Be whatever it may, any promoter who co-operates with acquirer-promoters and shares common objective to acquire substantial shares or control in a target company shall be a person acting in concert. The evidence of actual concerted acting by such promoters is normally difficult. Therefore, the Courts have held that the standard of proof required to establish such concert on behalf of the promoters is one of probability. Such concerted action may be established if, having regard to their common interest, conduct, relation, position, information available in public domain, etc, their common objective and interest can be inferred. Thus, the promoters who, considering their conduct or co- operative action, etc. can be shown to be acting as homogeneous unit they should be taken as *'persons acting in concert'* unless proven otherwise. Once this is shown on the basis of probability, the burden of proving otherwise shifts on such promoters.

26. In this case, the Noticees, admittedly, belonged to the erstwhile promoter group and some of them are relatives amongst themselves. It is also matter of record that their shareholding was always disclosed as promoter group holding as homogeneous unit at the relevant times to the stock exchange and also in the Annual Report of the target company relied upon by them. The Noticees have not been able to show that any of them had difference in objective and purpose than the transferee –promoter/s. In fact, by their own submissions before the Hon'ble SAT as mentioned in its order dated March 21, 2016 and also during the instant proceedings, the Noticees have conceded that they all were promoters and were *'persons acting in concert'* amongst themselves. I, therefore, find that the promoters who acquired shares by way of *inter-se* transfers in this case and the remaining promoters of the erstwhile promoter group (other than those who transferred their entire shareholdings) would be responsible to fulfil the compliance obligation under Regulation 11 unless the impugned acquisitions are exempted under Regulation 3 of the Takeover Regulations. Since the liability for non -compliance of obligation under Regulation 11 is joint and several, in my view, the proceedings would not be vitiated, if any of the transferee - promoters is left out as contended by the Noticees.

27. Now, I proceed to deal with merits of the case in view of the directions of Hon'ble SAT and submissions of the Noticee. In view of the facts and material brought on record, the question that needs to be answered is whether the respective acquisitions by way *inter-se* transfers attracted regulation 11 as applicable at the relevant times. From the submissions made by/ on behalf of the Noticees it is noted that, admittedly, as on April 01, 1997, the shareholding of the erstwhile promoter group was 71.18% out of which FAEPL and NAL, the group companies of erstwhile promoter group were holding total 80,000 shares (10.87%) in the target company and remaining shareholding (60.31%) was held by the promoters other than these transferors. Admittedly, on transfer of these 80,000 shares (10.87%) by these two promoter group entities to other entities of erstwhile promoter group *viz.* Mrs Rama Devi Saraf, Ms Aradhita Saraf, Mrs Sujata Saraf, Mr. Shyam Sunder Saraf (*since deceased*) , Mr Girish Kumar Saraf and M/s. Intel Industries & Commercial Ltd. by way of *inter-se* transfer amongst promoters , the total shareholding of the promoters (other than the said transferors) as group increased from 60.31% to 71.18% on account of acquisition of these additional 10.87% shares. This was clearly beyond the threshold limit of 51% as stipulated in then applicable Regulation 11(2). The contention that the Noticees were not covered under regulation 11(2) as they were already holding more than 51% shares does not hold good. It is settled position that the applicability of Takeover Regulations needs to be objectively considered and not only on mere technicalities. The scheme of Takeover Regulations clearly shows that Regulations 10, 11 and 12 of the Takeover Regulations apply in different fields however, there may be case where to some extent they may overlap (also held by Hon'ble Supreme Court in the case of *Swedish Match Ab & Anr vs Securities & Exchange Board,* decided on 25 August, 2004). Regulation 11 deal with consolidation of holdings. Under the then existing Regulation 11 (1), an acquirer (including *persons acting in concert* with him) holding not less than 10% but not more than 51% of the shares or voting rights in a target company could not acquire any additional shares in that company unless he makes public announcement. In terms of Regulation 11(2) no acquirer (including *persons acting in concert* with him) shall acquire any additional shares in a target company which entitles him to exercise more than 51% of the voting rights in the said company. If the contention of the Noticees were to be accepted, it would mean that an acquirer holding 10 % to 51% would be covered under regulation 11(1) and an acquirer holding more than 51% would be not under any obligation when he acquires additional shares in a target company. If such an argument is accepted, then Regulation 11(2) will not apply in any given case and such position would defeat the very existence and purpose of Regulation 11(2). In my view, such a postulation has not been envisaged at all in the Takeover Regulations. In furtherance of implementing the intent and purpose of Regulation 11, its provisions

must be given harmonious and purposive interpretation. Such intent and purpose is providing exit opportunity to the public shareholders at the best offer price in cases where persons holding more than 51% shares in a target company acquire substantial shares so as to further consolidate their shareholding and/or control in the target company. Such acquirer cannot escape this statutory obligation under Regulation 11(2) on the basis of technicalities as sought to be contended in this case.. I, therefore, find that the acquisition of 80,000 shares by erstwhile promoter group entities as aforesaid was covered under then applicable Regulation 11(2) and the Noticees would trigger the compliance obligation therein unless the acquisition is exempted under Regulation 3.

28. During Financial Year 1998-99, Mrs. Darshna Saraf –one of the promoters of target company- widow of Late Mr. Sushil Saraf sold her 2, 55,000 shares (34.63%) to other promoters and family members viz. Mr. Girish Kumar Saraf (2, 22,000 shares) and Ms. Sujata Saraf (33,000 shares).Prior to this *inter-se* transfer amongst the promoters, the aggregate shareholding of the erstwhile promoters was 73.22% as on April 01, 1998. Thus, when Mrs. Darshna Saraf sold her entire 34.63% shareholding in the target company to these two promoters and exited, the shareholding of remaining promoters who were acting in concert increased from 38.59% to 73.22% on the date of acquisition during this Financial Year. This acquisition would entitle the remaining promoters acting in concert to exercise more than 5% voting rights over and above whatever they already held. Regulation 11(1) as applicable at that time allowed an acquirer holding 15% or more but less than 75% shares in a target company to acquire maximum 5% in any period of 12 months, without being under obligation to make requisite public announcement. Since the acquisition in question was for more than said creep-in limit of 5%, the remaining promoters were under obligation to make the requisite public announcement unless the said acquisition was exempted under Regulation 3.

29. As on April 01, 2004, the aggregate shareholding of the erstwhile promoters in the target company was 73.48%. It has been alleged that during the Financial Year 2004-2005, there was an *inter-se* transfer of 3, 12, 900 shares (42.50%) amongst the erstwhile promoters. The Noticees have shown on the basis of evidence such as Income Tax Returns/ balance sheet of respective acquirers and their bank statements that the alleged 3, 12, 900 shares were acquired by way of *inter-se* transfers in the following manner:
    (a) Pursuant to a gift deed dated March 05, 2001, Mr. Girish Saraf had gifted 2, 24,000 shares to his minor son Mr. Dev Saraf.

(b) Intel Industries and Commercial ltd. had sold 50,000 to Harsvardhan Saraf in November 2002 and 18,900 shares for ₹ 56,700/- to Ms. Rama Devi Saraf on December 02, 2002.

(c) Navnirvan Agency Ltd. sold 20,000 shares for ₹ 60,000/- to Ms. Rama Devi Saraf on November 28, 2002.

30. It is noted that these acquisitions had taken place in the Financial Year 2002-03 and not in the Financial Year 2004-05. Thus, the allegation that the Noticees triggered violation of Regulation 11(2) in the Financial Year 2004-05 does not stand. Regulation 11(2) of Takeover Regulations as amended by amendment dated January 03, 2005 was not applicable as alleged. Further, violation of 11(2) as it existed prior to this amendment dated January 03, 2005 was also not applicable with regard to this acquisition as the Noticee were holding less than 75% shares in the target company since the obligation in that Regulation would have triggered when an acquirer along with persons acting in concert holding 75% or more shares in target company acquired additional shares. In this case, pursuant to the transfer of 3, 12,900 shares (42.50%) by few promoters to other promoters as aforesaid, the shareholding of acquirers and *persons acting in concert* with them increased from 30.98% to 73.48%. This increase, in fact, would breach the threshold limit of then applicable Regulation 11(1) which provided as under :-

"11(1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than 75 per cent 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 per cent 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."

31. Accordingly, unless exempted under Regulation 3, the Noticees would be under obligation to make the requisite public announcement under above regulation 11(1) if charged. In this case, no such charge has been made.

32. As on April 01, 2005, the shareholding of the erstwhile promoter group was 73.75%. During Financial Year 2005-2006, there was an *inter-se* transfer of 70,700 shares (9.60%) of the target company amongst the erstwhile promoters wherein two of the promoter group entities *viz*; Ms. Darshana Saraf had transferred 20, 7000 shares and Mr. Harshvardhan Saraf had transferred 50,000 shares to Tower Properties Pvt. Limited. Prior to this acquisition, the shareholding of acquirer-promoters along with that of the other promoters acting in concert (except the transferors in these transactions) was 64.15% and pursuant to this acquisition there shareholding increased for 60.15%

to 73.75%. According to the then applicable Regulation 11(2) an acquirer, holding together with *persons acting in concert* with him 55% or more shares but less than 75% shares in a target company, was under obligation to make the requisite public announcement, if he acquired any additional shares in the target company. Thus, the acquisition by way of this *inter-se* transfer of 9.60% shares in the target company would trigger the obligation of the Noticees to make the public announcement under Regulations 11(2) unless exempted under Regulation 3.

33. Now it needs to be examined whether the acquisitions that would have triggered the compliance obligations as found hereinabove were exempted under Regulation 3. In this regard, it is noted that the acquisition by way of *inter-se* transfer of shares amongst promoters, were exempted regulation 3(1)(e)(iii) from the stipulated obligation under Regulations 10, 11, 12, subject to following conditions as applicable at relevant times :-

Prior to September 09, 2002-

(a) The transferor(s) as well as the transferee(s) have been holding individually or collectively not less than 5% shares in the target company for a period of at least three years prior to the proposed acquisition.

(b) They have been filing statements concerning their individual shareholding as required under regulation 6, regulation7 and regulation 8.

After September 09, 2002-

(a) The transferor(s) collectively as well as the transferee(s) collectively have been holding shares in the target company for a period of at least three (3) years prior to the date of acquisition;

(b) The provisions of Chapter II of the Takeover Regulations (i.e. Regulation 6,7 and 8) have been complied with by both transferor(s) and the transferee(s);

(c) The *inter se* transfer price should not exceed more than 25% of the price determined in terms regulation 20(4) and regulations 20(5) of the Takeover Regulations.

34. In this case, there is no dispute as to the fact that the Noticees were holding individually and collectively more than 5% shares in the target company and they all had been holding shares in the target company for more than 3 years at the relevant times. The acquisition price in all the *inter-se* transfers (except in case of gift) was ₹3/- per share which was far less than the price calculated in terms regulation 20(4) and regulations 20(5) of the Takeover Regulations as determined, disclosed

and offered to public shareholders in the Letters of Offers in respect of public announcements made by Luharuka in 2011 and 2013 in which the offer price was revised considering the prior alleged acquisitions of the Noticees. Thus, the Noticee have not taken any price advantage against the interests of the public shareholders. The only question thus, remains to be examined whether the Noticees had complied with conditions with regard to disclosures under applicable provisions of Regulations 6, 7 and 8. In this regard, it is matter of record that no evidence could be brought on record as the concerned stock exchanges and the target company have not been able to provide any information with regard to the acquisition in question and disclosure of shareholding in view of efflux of considerably long time since 1997 (i.e. more than 21 years). Further, it is settled position that where there is an exemption provision in the statute, the onus to prove conditions precedent is on the person claiming such exemption so as to show that the exemption applies. In this regard, it is matter of record that the management control of the target company had changed in the year 2011 and considering that the transaction in questions or very old, the Noticees are incapacitated to procure and produce necessary evidence to substantiate their claim that they had complied with the disclosure requirements under regulations 6, 7 and 8 as applicable to them. As the entire case has emerged from the Letters of Offer of Luharuka, it is relevant to refer to Letters of Offers of Luharuka relied upon by the Noticees. It is noted therefrom that in its both Letters of Offers Luharuka had disclosed that the target company had not complied with its disclosure obligations under regulation 8(3). It had further disclosed that erstwhile promoters had complied with provisions of regulations 6 and 8 as applicable to them. In this regard, the following disclosures in respect of the compliance by the Noticees were made in the Letter of Offers of Luharuka:-

Letter of Offer dated 17.01.2011

"5.1.7. The promoters/promoter group of the Target Company have complied with the Regulation 6 applicable as on 20.02.1997 and Regulation 8 of the Regulations since 1997 till date."

Letter of Offer dated 19.06.2013

"5.1.9. *The Erstwhile Promoters/Promoter Group of the Target Company have duly complied with the regulation 6 applicable as on 20.02.1997 and Regulation 8 of the SEBI (SAST) Regulations, 1997since year ended 31.03.1997."*

35. It is pertinent to mention that while examining the aforesaid Letter of Offers, SEBI took cognizance of the above disclosures and initiated adjudicating proceedings against the target company for its non-compliance of Regulation 8(3) which culminated in passing of an order dated March 20, 2014. SEBI did not initiate adjudication proceedings against the Notices for any non-

compliance of Regulations 6, 7 and 8 taking cognizance of the above disclosures about compliances by the Noticees. Thus, the legitimate expectation in this case would be to hold that the Noticees have made the requisite disclosures in compliance with their obligations under Regulations 6, 7 and 8. Holding the Noticees ineligible for exemption on account of non- compliance of Regulation 8(3) by the target company in this regard would be technical and venial approach. It is also relevant to mention that though the acquisitions, as found in this case, were conscious act of transfer of shares by one acquirer to another, it is not a case where change in control had taken place or substantial shares were acquired from the market or active acquisition of fresh shares to the detriment of the interests of public shareholders. The *inter-se* transfers were *bona fide* and had taken place as a part of family arrangement involving transfer by way of gift and otherwise wherein shares already held by one or more of the group has been transferred to other entity/ies of the same group without having any impact upon interests of public shareholders. No blameworthy conduct on the part of the Noticees has been alleged and/or brought on record. While the ratio of judgement of Hon'ble SAT in the matter of *M/s. Ushdev Trade Ltd vs. SEBI (SAT Appeal No 106 of 2010- Order dated 14.9. 10)* would also apply in the instant case, for the purpose of enforcement, the facts of this case are different from those in *Ushdev Trade Ltd.* case as in that case the conditions of exemption were not fulfilled by the promoters while in this case the conditions of exemption with regard to disclosure obligations of the Noticees are complied with.

36. Considering the facts and circumstances of this case, in my view, the case does not warrant imposition of any monetary penalty on the Noticees under Section 15H (ii) of the SEBI Act. The SCN is disposed of accordingly.

37. As two of the Noticees viz; Surface Holdings Ltd. and Tower Properties Pvt. Limited have got amalgamated/ merged into Wonder Finvest Pvt. Ltd. pursuant to an order dated October 25, 2017 passed by Hon'ble NCLT Kolkata, in terms of Rule 6 of the Adjudication Rules, copy of this order is sent to Wonder Finvest Pvt. Ltd., other 5 Noticees and also to SEBI.

Date: July 17, 2018 **Santosh Shukla**
Place: Mumbai **Adjudicating Officer**