

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. EAD/KS/VB/AO/02/2017-18]**

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

In respect of

**Dr. Chandra Kumar Jain**

(PAN: AAFPJ9823K)

In the matter of M/s Genus Prime Infra Limited.

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**FACTS OF THE CASE**

1. An Open Offer was made by Mr. Rajendra Kumar Agarwal, Mr. Jitendra Kumar Agarwal and Mr. Amit Agarwal in terms of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "**SAST, 2011**") to the shareholders of Genus Prime Infra Ltd (hereinafter referred to as the "**GPIL**" or "**Company**"), through a public announcement dated July 01, 2014 for acquisition of 36,59,110 shares of the company representing 26% of the paid up capital of the company.
2. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") while examining the offer document found that Vivekshil Dealers Pvt Ltd, Kailash Industries Ltd, Genus Paper and Board Ltd and Dr Chandra Kumar Jain, being Promoters of GPIL had failed to comply with the provisions of Regulation 3(2) of the SAST, 2011.

### **APPOINTMENT OF ADJUDICATING OFFICER**

3. Shri Prasad Jagdale was appointed as Adjudicating Officer vide an order dated November 13, 2015 under section 15 I(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the “**Adjudication Rules**”) to inquire into and adjudge under section 15H(ii) of the SEBI Act,1992 for the alleged violations of provisions of Regulation 3(2) of the SAST, 2011 by the Promoters of GPIL, including Dr Chandra Kumar Jain (hereinafter referred to as ‘**Noticee/Dr C K Jain**’). Pursuant to the transfer of Shri Prasad Jagdale, Shri Suresh Gupta was appointed as Adjudicating Officer and thereafter, the Adjudication proceedings have been transferred to me vide Order dated May 18, 2017.

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

4. A Show Cause Notice (hereinafter referred to as “**SCN**”) dated June 08, 2017 was issued to the Noticee under Rule 4(1) of the Adjudication Rules communicating the alleged violations of the SAST, 2011. The Noticee was also called upon to show cause as to why an inquiry should not be initiated against him in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15H(ii) of SEBI Act, 1992 for the alleged contravention of SAST, 2011.
5. The details in respect of violation/ non-compliance of Regulation 3(2) of the SAST, 2011 by the Noticee are as given below:-

- a) It was observed that Vivekshil Dealers Pvt. Ltd., one of the promoters of GPIL had purchased the shares of GPIL during the period August 22, 2013 to September 23, 2013 (hereinafter referred to as '**Relevant Period**'). The details of purchases by Vivekshil Dealers Pvt. Ltd are as tabulated below

<b>Date of transaction</b>	<b>Shareholding of Promoters before date of transaction (No. &amp;%)</b>	<b>No. of Shares acquired by Vivekshil Dealers Pvt Ltd</b>	<b>Shareholding of Promoters after date of transaction (No. &amp; %)</b>
22.08.2013	94,47,731 (67.13%)	65,000	95,12,731(67.60%)
23.08.2013- 17.09.2013	95,12,731 (67.60%)	2,60,500	97,73,231(69.44%)
18.09.2013	97,73,231 (69.44%)	97,400	98,70,631(70.10%)
19.09.2013- 20.09.2013	98,70,631 (70.10%)	1,95,900	100,66,531(71.52%)
23.09.2013	100,66,531 (71.52%)	87,000	101,53,531(72.14%)

- b) It was observed that Vivekshil Dealers Pvt. Ltd., Kailash Industries Ltd., Genus Paper and Board Ltd. and Dr C K Jain (the noticee) were forming part of Promoters of GPIL for the quarter ending June, 2013. It was alleged that Kailash Industries Ltd., Genus Paper and Board Ltd. and Dr C K Jain (the noticee) were persons acting in concert (hereinafter referred to as "**PAC**" or "**person(s) acting in concert**") with the acquirer Vivekshil Dealers Pvt. Ltd. by virtue of being promoters of GPIL.
- c) From the table give above, it was observed that during the relevant period Vivekshil Dealers Pvt. Ltd. along with PAC namely Kailash Industries Ltd, Genus Paper and Board Ltd. and Dr C K Jain had purchased 7,05,800 shares constituting 5.01% of shareholding of the company within a financial year which resulted in the increase of the shareholding of promoters of GPIL from 67.13% to 72.14% entitling them an additional holding exceeding five per cent of the voting rights.

The said purchase requires making an open offer as per SAST, 2011. However, the acquirer Vivekshil Dealers Pvt. Ltd. along with PAC namely Kailash Industries Ltd., Genus Paper and Board Ltd. and Dr C K Jain had failed to make an open offer for acquiring shares of GPIL as required under Regulation 3(2) of the SAST, 2011

6. The noticee vide email dated June 19, 2017 submitted that he was in the process of filing a reply and thus requested that the time for filing the reply be extended by three weeks. The request was acceded to. Thereafter, vide letter dated July 18, 2017, the Noticee replied to the SCN and *inter alia* made the following submissions:

- a) *Before dealing with the allegations, I may point out that I was one of the promoter and director of Genus Prime Infra Ltd ("the Company"). Sometime around 2013; I decided to exit from the Company. Accordingly I started selling my shareholding in the company during Jan -Mar 2013 .In fact consequent to sale of shares by me during above said period, my shareholding came down to 7.19% in the quarter ending June 30, 2013 and thereafter it finally became zero on September 24, 2013. I had also tendered my resignation form the board of the Company with effect from 14th August, 2012. Consequent to my exit, the Company had also removed my name from the list of promoters of the Company. At the relevant time, I was not acting in concert with anybody including the other promoters of the Company.*
- b) *It may be noted that as on 21.8.13 shareholding of Vivekshil Dealers Pvt. Ltd, Kailash Industries Ltd, Genus Paper & Board Ltd was 67.13.%. The breakup of the same is as follows:*

<b>Name</b>	<b>No of shares</b>	<b>%age</b>
<i>Vivekshil Dealers Pvt Ltd</i>	<i>1411405</i>	<i>10.03</i>

<i>Kailash Industries Ltd</i>	<i>7500</i>	<i>0.05</i>
<i>Genus Paper &amp; Board Ltd</i>	<i>8028826</i>	<i>57.05</i>
<b>Total</b>		<b>67.13%</b>

- c) *As on 21.8.13, my shareholding in the Company was 791902 shares (5.627%.) Thus, only Vivekshil Dealers Pvt Ltd, Kailash Industries Ltd, Genus Paper and Boards Ltd have been treated as persons acting in concert. Rightly my shareholding has not been taken along with that of others, since I was not person acting in concert with others. Further, during the period I have not acquired any shares of the Company. It is only Vivekshil Dealers Pvt. Ltd who has acquired the shares. Admittedly, it has not been alleged that I am person acting in concert with others. In view of the aforesaid, it is incomprehensible as to how it has been alleged that I have violated provisions of Regulation 3(2) of Takeover Regulations.*
- d) *It appears that I have been roped in on the assumption that I am person acting in concert with others. The said assumption is completely erroneous and also quite contrary to factual position. Further, the said allegation also militates against the charge of increase in shareholding from 67.13% (which does not include my shareholding) to 72.14% (which does not include my shareholding).*
- e) *I deny that I was person acting in concert with others. In fact in the past in all the disclosures filed by me with stock exchanges under the Takeover Regulations, had not disclosed that I was acting in concert with others. All along my shareholding was reflected individually and independently*
- f) *Since I wanted to exit the Company I had been selling my shares in the Company during the relevant period. Therefore, the question of my acting in concert with*

*anybody including Others cannot and does not arise since my intent of exiting the Company and the act of selling the shares was at loggerheads with the concept of acting in concert which is in context of objective of acquiring shares/voting rights in the target company or control over the target company.*

*g) It is categorically submitted that I had no common objective/ purpose with others to acquire shares/voting rights in the Company or control over it. On the contrary, I have sold shares, and acquirer and sellers cannot be alleged to be "persons acting in concert". It is submitted that the Notice fails to demonstrate that I had any common objective or purpose with the others which could be pursuant to an agreement or understanding, which is an essential criteria as per the provisions of the Takeover Regulations. Further, there is nothing on record to demonstrate that there was any meeting of minds between me and the others leading to shared common objective of acquiring substantial shares of the Company. Therefore, I cannot be lumped with others for alleging violation of provisions of Regulation 3(2) of Takeover Regulations, consequent to acquisitions made by them, independent of me and without acting in concert with me. Further, for the breach of provisions of Regulations 3(2) of Takeover Regulations by Others (who are persons acting in concert) I cannot held responsible and liable, since I was not "person acting in concert" with them.*

*h) In the instant case, merely because I was one of the promoter of the Company and the others were also promoters of the Company, it cannot be automatically concluded that I was person acting in concert with them. Factual position on ground in terms of disclosures made in the past, action of selling and exiting from the Company, while others were acquiring shares of the Company cannot be ignored and overlooked*

i) *I reiterate that I was not acting in concert with others, when Vivekshil Dealers Pvt. Ltd was acquiring the shares of the Company during 22.08.2013 to 23.09.2013. Facts will bear out that, my sales during the period 21.08.2013 to 24.09.2013 which culminated in my complete exit from the Company are at cross purposes with "the shared common objective or purpose between two or more persons of substantial acquisition of shares etc. of the target company" which is heart of concept of "persons acting in concert". Based on the aforesaid factual position it can never be construed that I was person acting in concert with others. Since I was not person acting in concert with Others, the issue of alleged violation of provisions of Regulation 3(2) of Takeover Regulations cannot and does not arise.*

j) *The Noticee has quoted the following judgments in his submissions*

i. *Hon'ble SAT Order dated July 31,2001 in matter of Modipon Ltd vs SEBI*

ii. *Hon'ble SAT Order dated February 02, 2010 in matter of Triumph International Finance India Ltd*

iii. *Hon'ble Supreme Court Order dated July 8, 2010 in the matter of Daiichi Sankyo Company Ltd vs Jayaram Chigurupati and Others*

7. In the interest of natural justice, an opportunity of hearing was provided to the Noticee on July 20, 2017 vide hearing notice dated July 04, 2017. Mr Vinay Chauhan, Advocate and Mr KC Jacob, Advocate appeared as the Authorized Representatives (AR) on behalf of the Noticee and reiterated the submissions given in the reply to the SCN. During the hearing, the AR undertook to submit additional information / documents on or before July 27, 2017.

8. Thereafter, vide letter dated July 25, 2017, the Noticee *inter alia* made the following additional submissions:

- a) *SCN proceeds on erroneous presumption that I am "person acting in concert" with other entities viz. Vivekshil Dealers Pvt Ltd , Kailash Industries Ltd & Genus Paper & Boards Ltd . Fact is I was not "person acting in concert" with the said entities. Record will bear out that I had been selling the shares much prior ( since January 2013) to the period when the impugned acquisitions have been made by Vivekshil Dealers Pvt Ltd , Kailash Industries Ltd , Genus Paper & Boards Ltd ( all persons acting in concert), which finally culminated in my shareholding being nil as on September 24, 2013. My said conduct itself runs counter to the concept of "persons acting in concert" wherein the dominant purpose has to be "acquiring shares of the target company" or "acquiring control of the target company". Persons who are buying the shares and persons who are selling the shares can never be "persons acting in concert" in terms of Takeover Regulations.*
- b) *Since I was not person acting in concert with Vivekshil Dealers Pvt Ltd . Kailash Industries Ltd , Genus Paper & Boards Ltd, the burden of their acquisitions cannot be fastened on to me to allege the violation of provisions of Regulation 3(2) of Takeover Regulations.*

#### **CONSIDERATION OF ISSUES AND FINDINGS**

9. I have carefully perused the oral and written submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :
- a) Whether the Noticee was required to make a Public Announcement of Open offer under the provisions of Regulation 3(2) of the SAST, 2011 and whether the Noticee had violated the provisions of Regulation 3(2) of the SAST, 2011?

- b) Does the violation, if any, attract monetary penalty under Section 15H (ii) of the SEBI Act?
- c) If yes, what is the quantum of penalty to be levied?
10. Before moving forward, it is pertinent to refer to the relevant provisions of the SAST, 2011 which read as under:-
- 3(2) No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.*
11. Upon perusal of submissions and documents available on record, I find that during the relevant period Vivekshil Dealers Pvt. Ltd. had purchased 7,05,800 shares of GPIL constituting 5.01% of shareholding of the company within a financial year thereby increasing the shareholding of Promoters of GPIL from 67.13% to 72.14%. Thus, the Acquirer (along with PAC) was required to make an open offer for acquiring shares of GPIL as required under Regulation 3(2) of the SAST,2011.
12. I find from the replies of the Noticee as well as the shareholding pattern of the Promoters and the Promoter Group as available on the BSE website that the Noticee was a part of the Promoter/ Promoter group and had continued to be one at the time of acquisition of shares (amounting to 5.01%) by Vivekshil Dealers Pvt. Ltd. during the

relevant period. It is noted from the submissions of the Noticee that his shareholding became zero on September 24, 2013 and the company has discontinued disclosing the name of the Noticee under the category of promoters only from the Quarter ended September 2013.

13. In this context, I would like to rely upon the observations of Hon'ble Securities Appellate Tribunal (SAT) in the matter of Rajesh Toshniwal v. SEBI & Ors (Appeal No. 139 of 2011 decided on June 01, 2012). SAT observed "*The next issue to be considered is whether the entire promoter group has to be considered as a homogenous unit and, therefore, acting in concert in the acquisition of shares. It is the basic principle of corporate law that promoter group is a homogenous class. It is the normal practice to club the entire promoter group into one class unless otherwise proved by the acquirer. The acquirers have always filed their shareholding as belonging to the promoter group. In the disclosures made to the stock exchanges and the Board, the promoters' shareholding consisted of the group as a whole.....*".
  
14. In the present case, the Noticee in his reply has submitted that he was not acting in concert with anybody including the other promoters of the Company and has also submitted the disclosures filed by him with stock exchanges under the SAST, 2011, which show that he was filing the disclosures individually and independently and had not disclosed in the aforesaid disclosures that he was acting in concert with others. After perusing the disclosures made by the Noticee under Regulation 29(2) of SAST,2011, I note that the Noticee has been continuously disclosed as part of the promoter/ promoter group but has not been disclosed as persons acting in concert with other promoters of the company.

15. Now, it has to be determined whether the Noticee can be considered as a person acting in concert or a person deemed to be acting in concert. As the expression 'Person acting in concert' is linked to the term 'acquirer' it is necessary to understand first as to who is an 'acquirer'. According to Regulation 2 (1) (a) of the SAST,2011, Acquirer means;

*“acquirer” means any person who, directly or indirectly, acquires or agrees to acquire whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over a target company.*

Therefore, an acquirer essentially has to acquire shares/voting rights/control in a target company.

16. In view of the aforesaid definition of 'Acquirer', whether the promoters of GPIL are acquirers or not would depend on the question as to whether they have acquired or agreed to acquire shares etc. in GPIL. Identification is thus primarily action related. In the instant case there is no dispute as to the acquisition of shares by one of the promoters viz., Vivekshil Dealers Pvt. Ltd. who had acquired 7,05,800 shares constituting 5.01% of shareholding of the company within a financial year. Thus, Vivekshil Dealers Pvt. Ltd. is an acquirer as per law thereby there is an acquisition of shares of GPIL.

17. The next term to be understood is "Person Acting in Concert". In this regard it is relevant to refer to the definition of PAC as contained in Regulation 2(1)(q) of the SAST Regulations,2011 which is reproduced below:-

*2(1)(q)-“persons acting in concert” means*

*1) persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company.*

*2) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established,—*

*(i).....*

*(ii).....*

*(iii).....*

*(iv) promoters and members of the promoter group;*

*.....*

18. The definition of PAC can be divided into two portions, viz,
- a) The first portion contains the basic ingredients that are required to classify one as a PAC.
  - b) The second portion is a deeming portion to the definition of PAC as contained in the first portion.
19. On a perusal of the first portion of the definition of the term PAC, it is understood that the key elements to determine a person as a PAC are as follows:-
- i. There must be a common objective or purpose
  - ii. There must be an agreement or understanding
  - iii. The persons must co-operate with each other

20. In the instant case, I note that the Noticee, in his reply, has submitted that he had no common objective / purpose with others to acquire shares/voting rights in the Company or control over it. The Noticee has further submitted that he had started selling the shares of GPIL during Jan - Mar 2013 and his shareholding came down to 7.19% in the quarter ending June 30, 2013 and thereafter it finally became zero on September 24, 2013. I note from the shareholding pattern of GPIL under the category "Promoter and Promoter Group" as available on the BSE website that during the quarter ended on June 30, 2013, the shareholding of the Noticee, as rightly pointed out by him, has come down to 10,11,850 shares amounting to 7.19% of the share capital of GPIL. Thereafter, for the quarter ended September 2013 the name of the Noticee is not appearing under the category of Promoter and Promoter Group. Vide Email dated August 08, 2017 the Authorised Representative of the Noticee has submitted daily sale/ purchase details of Noticee from February 01, 2013 to September 29, 2013 sought during the personal hearing held on July 20, 2017 . The contents of the aforesaid email clearly show that the Noticee had only been selling shares during the aforesaid period without a single acquisition. Further, the Noticee in its reply has also submitted that he had tendered his resignation from the Board of the Company with effect from August 14, 2012. I note from the Annual report for the financial year 2011-2012 the name of the Noticee has been removed from the list of directors. Also, the Directors' Report for the said financial year also carries a note of appreciation for the services rendered by Dr C K Jain when noting the resignation. Thus, the above indicates that the Noticee could not have had any say in the Board decision of GPIL thereafter.

21. In this context, I note that the Noticee in his reply has drawn my attention to the Order dated February 2, 2010 passed by the Hon'ble Securities Appellate Tribunal in the matter of Triumph International Finance India Ltd. (SAT Appeal No 183 of 2009) wherein Hon'ble Tribunal has inter alia held that:

*".....before two or more persons can be said to be acting in concert with each other they must have a common objective and that common objective should be substantial acquisition of shares. The shares then should be acquired pursuant to an agreement or an understanding which could be formal or informal. Sub section (2) of clause 2(l)(e) of the takeover code then gives us the list of persons who shall be deemed to be acting in concert with each other. Before a charge of acting in concert is levied, it has to be alleged that the delinquent had a common objective pursuant to an agreement or understanding with another person for substantial acquisition of shares of the target company".*

*".....Association between persons is one thing but their acting in concert with a common objective to acquire substantial number of shares in a company in pursuance to an understanding or an agreement between them is altogether different.*

*.....Close business association between two or more persons does not by itself make them persons acting in concert"*

22. From the above judgment of Hon'ble Securities Appellate Tribunal, I note that in the instant case, the Noticee was required to have a common objective with Vivekshil Dealers Pvt. Ltd. and that common objective had to be substantial acquisition of shares etc. However, the Noticee being one of the promoters of company, had only sold the shares held by him. Further, from the material available on record, I do not

find any agreement or understanding for the acquisition of shares in question among the promoters especially with the Noticee. I also note that there is nothing on record to show that the Noticee along with other promoters have co-operated with each other for the acquisition of the said shares.

23. Further, I note that Hon'ble Bombay High Court in the case of K. K. Modi vs. Securities Appellate Tribunal [(2003) 113 COM. Cases 148 Bom.] had observed that

*“A seller of shares of the Target Company cannot therefore be a person acting or deemed to be acting in concert with the acquirer for acquisition of shares. In the present case the Appellants concern is not to acquire the shares but to sell its existing shareholding in MRL in pursuance of the public offer. The legal position stated by Shri Doctor is correct. It is absurd to hold that the seller of shares also can be considered as a person acting in concert with the acquirers, whose sole aim is to acquire shares.”*

24. It is pertinent to note that Hon'ble Supreme Court in the case of Daiichi Sankyo Co. Ltd. observed that *“The idea of “person acting in concert” is not about a fortuitous relationship coming into existence by accident or chance. The relationship can come into being only by design, by meeting of minds between two or more persons leading to the shared common objective or purpose of acquisition or substantial acquisition of shares, etc. of the target company. It is another matter that the common objective or purpose may be in pursuance of an agreement or an understanding, formal or informal; the acquisition of shares, etc. may be direct or indirect or the persons acting in concert may cooperate in actual acquisition of shares, etc. or they may agree to cooperate in such acquisition. Nonetheless, the element of the shared common*

*objective or purpose is the sine qua non for the relationship of “person acting in concert” to come into being.”*

25. In view of the above and based on the material available on record with respect to three key elements, as mentioned above, for classifying one as PAC, , I agree with the submission of Noticee that his complete exit from the Company was at cross purposes with "the shared common objective or purpose between two or more persons of substantial acquisition of shares etc. of the target company" as he was selling the shares of GPIL and it can be concluded that Noticee was not acting in concert with Vivekshil Dealers Pvt. Ltd. or other promoters of GPIL in the context of acquisition of the shares in question in terms of the first portion of the definition of the term PAC.

26. From the Second portion of the definition of the PAC, it is understood that promoters and members of the promoter group are one of the categories of persons who shall be deemed to be persons acting in concert with other persons unless the contrary is established. In this regard, I note that Hon'ble Bombay High Court in the case of K. K. Modi vs. Securities Appellate Tribunal [(2003) 113 COM. Cases 148 Bom.] had observed that:

*“a co-promoter of the target company, by reason of his being a co-promoter cannot be said to be a person acting in concert with the acquirer who also happens to be one of the promoters of the target company, unless the evidence on record clearly establishes that the promoters share the common objective or purpose of substantial acquisition of shares or voting rights for gaining control over the target company with the acquirer.”*

27. I further note that the Hon'ble Supreme Court in the matter of Daiichi Sankyo Co. Ltd. has observed that

*"...Regulation 2(1)(e)(2) defines "person acting in concert". It is a deeming provision. It has to be read in conjunction with regulation 2(1)(e)(1) which states that person acting in concert comprises of persons who in furtherance of a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company....."*

*"...A fortiori, a person deemed to be acting in concert with others is also a person acting in concert. In other words, persons who are deemed to be acting in concert must have the intention or the aim of acquisition of shares of a target company. It is the conduct of the parties that determines their identity. Whether a person is or is not acting in concert with the acquirer would depend upon the facts of each case. In order to hold that a person is acting in concert with the acquirer or with another person it must be established that the two share the common intention of acquisition of shares of some target company....."*

28. Taking benefit out of the *ratio decidendi* given in the above mentioned Judgments, I note that the provisions of Regulation 2 (1) (q) (2) of SAST, 2011 defining person acting in concert being a deeming provision, must be read in conjunction with Regulation 2(1) (q)(1) of SAST, 2011 which states that persons acting in concert comprise of 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 company or control over the target company.

29. Persons who are deemed to be acting in concert must together have some intention or aim of acquisition of shares of Target Company. It is also lucid from the above mentioned Judgment of the Hon'ble Bombay High Court that a seller of shares of a Target Company cannot therefore be a person acting or deemed to be acting in concert with the acquirer for acquisition of shares. Thus, the Noticee cannot be classified as PAC even by the second portion of the definition of the term PAC.
30. Considering the above, it is established that Vivekshil Dealers Pvt. Ltd. along with other PAC (other than the noticee) are the acquirers of 5.01% of the share capital of GPIL. Since it is primarily the intention, action and relationship of a person that determine whether a person is acting in concert with the acquirer, it can be safely concluded in the present matter that the Noticee, despite forming part of the same promoter/promoter group during the relevant period did not act in concert with the Acquirer for a common objective of acquiring the shares of GPIL. In view of the foregoing I am of the opinion that the alleged violation does not stand established and therefore does not attract any monetary penalty under Section 15H (ii) of the SEBI Act.

#### **ORDER**

31. In view of my findings noted in the preceding paragraphs, I hereby dispose of the Adjudication Proceedings initiated against Shri Chandra Kumar Jain vide SCN dated June 08, 2017.

32. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to Shri Chandra Kumar Jain and also to the Securities and Exchange Board of India.

**Date: August 21 , 2017**  
**Place: Mumbai**

**K SARAVANAN**  
**GENERAL MANAGER &**  
**ADJUDICATING OFFICER**