

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Order Reserved On : 20.10.2015

Date of Decision : 20.11.2015

Appeal No. 281 of 2014

1. Mr. Gopalakrishnan Raman
2. Ms. Shanti Gopalakrishnan
3. M/s. Inland Dataforms Pvt. Ltd.
4. M/s. Insight Management Services Pvt. Ltd.

3/150, Ram Chaya,
Major Parameshwar Road,
Wadala,
Mumbai- 400 031

...Appellants

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051

...Respondent

Mr. Somasekhar Sundaresan, Advocate with Ms. Rinku Valanju,
Mr. Abishek Venkataraman and Mr. Dhaval Kothari, Advocates for
Appellants.

Mr. Kumar Desai, Advocate with Mr. Mihir Mody, Mr. Saurabh
Bachhawat and Ms. Shruti Chiniwar, Advocates i/b K. Ashar & Co. for
the Respondent.

**WITH
Appeal No. 280 of 2014**

Ms. Indumati Raman
B- 201, Kshitij, Great Eastern Links
Ram Mandir Road,
Goregaon (W)
Mumbai- 400 104

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051

...Respondent

Mr. J. J. Bhatt, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Mihir Mody, Mr. Saurabh Bachhawat and Ms. Shruti Chiniwar, Advocates i/b K. Ashar & Co. for the Respondent.

**WITH
Appeal No. 212 of 2014**

A. J. Patel HUF
32, Summerville,
Bhulabhai Desai Road,
Mumbai- 400 026

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051

...Respondent

Mr. Mustafa Doctor, Senior Advocate with Mr. Akshay Doctor,
Advocate i/b Desai & Diwanji for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Mihir Mody, Mr. Saurabh Bachhawat and Ms. Shruti Chiniwar, Advocates i/b K. Ashar & Co. for the Respondent.

**WITH
Appeal No. 213 of 2014**

Ms. Pragna S. Patel
604, Siyble Apartment
65 Worli Hill Road,
Mumbai 400 018

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051

...Respondent

Mr. Mustafa Doctor, Senior Advocate with Mr. Akshay Doctor,
Advocate i/b Desai & Diwanji for the Appellant.

Mr. Mihir Mody, Advocate with Mr. Saurabh Bachhawat and Ms. Shruti Chiniwar, Advocates i/b K. Ashar & Co. for the Respondent.

**WITH
Appeal No. 214 of 2014**

Shree A J Patel Charitable Trust
Churchgate House,
4th Floor, 32-34, Veer Nariman Road,
Mumbai- 400 001 ...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051 ...Respondent

Mr. Mustafa Doctor, Senior Advocate with Mr. Akshay Doctor,
Advocate i/b Desai & Diwanji for the Appellant.

Mr. Mihir Mody, Advocate with Mr. Saurabh Bachhawat and Ms. Shruti
Chiniwar, Advocates i/b K. Ashar & Co. for the Respondent.

**WITH
Appeal No. 215 of 2014**

Mr. Ashok J. Patel
GMM Pfaudler Limited
1001, Peninsula Towers,
G. K. Marg, Lower Patel
Mumbai- 400 013 ...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051 ...Respondent

Mr. Mustafa Doctor, Senior Advocate with Mr. Akshay Doctor,
Advocate i/b Desai & Diwanji for the Appellant.

Mr. Mihir Mody, Advocate with Mr. Saurabh Bachhawat and Ms. Shruti
Chiniwar, Advocates i/b K. Ashar & Co. for the Respondent.

**WITH
Appeal No. 216 of 2014**

Millars Machinery Company Pvt. Ltd.
Churchgate House, 4th Floor,
32-34 Veer Nariman Road,
Fort, Mumbai- 400 001

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051

...Respondent

Mr. Mustafa Doctor, Senior Advocate with Mr. Akshay Doctor,
Advocate i/b Desai & Diwanji for the Appellant.

Mr. Mihir Mody, Advocate with Mr. Saurabh Bachhawat and Ms. Shruti
Chiniwar, Advocates i/b K. Ashar & Co. for the Respondent.

**WITH
Appeal No. 217 of 2014**

Ms. Panna S. Patel
32, Pentacle,
Sophia College Lane
Mumbai- 400 026

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051

...Respondent

Mr. Mustafa Doctor, Senior Advocate with Mr. Akshay Doctor,
Advocate i/b Desai & Diwanji for the Appellant.

Mr. Mihir Mody, Advocate with Mr. Saurabh Bachhawat and Ms. Shruti
Chiniwar, Advocates i/b K. Ashar & Co. for the Respondent.

**WITH
Appeal No. 218 of 2014**

Ms. Palomita S. Patel
32, Pentacle,
Sophia College Lane
Mumbai- 400 026

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051

...Respondent

Mr. Mustafa Doctor, Senior Advocate with Mr. Akshay Doctor,
Advocate i/b Desai & Diwanji for the Appellant.

Mr. Mihir Mody, Advocate with Mr. Saurabh Bachhawat and Ms. Shruti
Chiniwar, Advocates i/b K. Ashar & Co. for the Respondent.

WITH
Appeal No. 219 of 2014

M/s. Skyline Millars Ltd.
Skyline Oasis Gate No. 2
C/2, 412-413, Skyline Wealthspace,
Premier Road,
Vidyavihar (West),
Mumbai- 400 086 ...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051 ...Respondent

Mr. Mustafa Doctor, Senior Advocate with Mr. Akshay Doctor,
Advocate i/b Desai & Diwanji for the Appellant.

Mr. Mihir Mody, Advocate with Mr. Saurabh Bachhawat and Ms. Shruti
Chiniwar, Advocates i/b K. Ashar & Co. for the Respondent.

WITH
Appeal No. 220 of 2014

Mr. Tarak A. Patel
GMM Pfauldler Limited
1001, Peninsula Tower,
G.K. Marg, Lower Parel,
Mumbai- 400 013 ...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051 ...Respondent

Mr. Mustafa Doctor, Senior Advocate with Mr. Akshay Doctor,
Advocate i/b Desai & Diwanji for the Appellant.

Mr. Mihir Mody, Advocate with Mr. Saurabh Bachhawat and Ms. Shruti
Chiniwar, Advocates i/b K. Ashar & Co. for the Respondent.

**WITH
Appeal No. 221 of 2014**

Ms. Urmi Ashok Patel
32, Summerville,
Bhulabhai Desai Road,
Mumbai- 400 026

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051

...Respondent

Mr. Mustafa Doctor, Senior Advocate with Mr. Akshay Doctor,
Advocate i/b Desai & Diwanji for the Appellant.

Mr. Mihir Mody, Advocate with Mr. Saurabh Bachhawat and Ms. Shruti
Chiniwar, Advocates i/b K. Ashar & Co. for the Respondent.

**WITH
Appeal No. 222 of 2014**

Ms. Uttara Patel
32, Summerville,
Bhulabhai Desai Road,
Mumbai- 400 026

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051

...Respondent

Mr. Mustafa Doctor, Senior Advocate with Mr. Akshay Doctor,
Advocate i/b Desai & Diwanji for the Appellant.

Mr. Mihir Mody, Advocate with Mr. Saurabh Bachhawat and Ms. Shruti
Chiniwar, Advocates i/b K. Ashar & Co. for the Respondent.

**WITH
Appeal No. 223 of 2014**

Uttarak Enterprises Pvt. Ltd.
Churchgate House, 4th Floor,
32-34, Veer Nariman Road,
Fort, Mumbai- 400 001

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051

...Respondent

Mr. Mustafa Doctor, Senior Advocate with Mr. Akshay Doctor, Advocate i/b Desai & Diwanji for the Appellant.

Mr. Mihir Mody, Advocate with Mr. Saurabh Bachhawat and Ms. Shruti Chiniwar, Advocates i/b K. Ashar & Co. for the Respondent.

**WITH
Appeal No. 385 of 2014**

1. Gopichand Idandas
4, Gee Gee Villa,
Kasturi Renga Road, IInd Street,
Alwarpet,
Chennai-600 086
2. Sunil G. Duseja
4, Kasturi Estate, IInd Street,
Cathedral Road,
Chennai-600 086
3. Heeral Constructions Pvt. Ltd.
23, College Road, Nungambakkam,
Chennai- 600 086
4. Sushil G. Duseja
23, College Road, Nungambakkam,
Chennai- 600 086
5. Aanchal S. Duseja
23, College Road, Nungambakkam,
Chennai-600 086

...Appellants

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051

...Respondent

Mr. J. J. Bhatt, Advocate with Ms. Rinku Valanju, Advocate for Appellants.

Mr. Kumar Desai, Advocate with Mr. Manish Acharya, Advocate i/b Vigil Juris for the Respondent.

**WITH
Appeal No. 80 of 2015**

1. Shri Gopal Krishan Somani
21-B, Meher Apt, Altamount Rd.
Mumbai- 400 026

2. Gopal Krishan Somani (HUF)
21, Meher Apt, Altamount Rd.
Mumbai- 400 026
3. Shri Sanjay Somani
21-B, Meher Apt, Altamount Rd.
Mumbai- 400 026
4. Sanjay Somani (HUF)
21-B, Meher Apt, Altamount Rd.
Mumbai- 400 026
5. Ms. Shruti Somani
21-B, Meher Apt, Altamount Rd.
Mumbai- 400 026
6. M/s Alok Wires Pvt. Ltd.
154-A, Mittal Court, Nariman Point,
Mumbai- 400 021
7. Mebags Investment Services P. Ltd.
154-A, Mittal Court, Nariman Point,
Mumbai- 400 021

...Appellants

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051

...Respondent

Mr. J. J. Bhatt, Advocate with Ms. Rinku Valanju, Advocate for the Appellants.

Mr. Kumar Desai, Advocate with Mr. Mihir Mody, Mr. Saurabh Bacchawat and Ms. Shruti Chiniwar, Advocates i/b K. Ashar & Co. for the Respondent.

AND
Appeal No. 325 of 2015

1. Amul Sumatichandra Mehta
2. Yugesh Sumatichandra Mehta
3. Akul Yugesh Mehta
4. Jayendra Yugesh Mehta
5. Mrudula Amul Mehta
6. Maitri Amul Mehta
7. Rachna Amul Mehta

8. Sunali Yugesh Mehta
9. M/s Senator Investment Private Limited
10. M/s Touristor Investments Private Limited
(Now known as Touristor Premises Private Limited)
11. M/s Yug Investment Private Limited
12. Amul Sumatichandra Mehta-HUF

Address for Appellant Nos. 1, 5, 6, 7, 10, 12:-

71 Iona, 35/C2 Azad Road, Juhu
Mumbai- 400 049

Address for Appellant Nos. 2, 3, 4, 8, 11:-

201, Riveria, Gandhigram Road, Juhu,
Mumbai- 400 049

Address for Appellant No. 9:-

101, Riveria, Gandhigram Road, Juhu,
Mumbai- 400 049

...Appellants

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051

...Respondent

Mr. Nimay Dave, Advocate with Mr. Abhishek Borgikar, Advocate i/b Alliance Corporate Lawyers for Appellants.

Mr. Kumar Desai, Advocate with Mr. Mihir Mody, Mr. Saurabh Bachhawat and Ms. Shruti Chiniwar, Advocates i/b K. Ashar & Co. for the Respondent.

CORAM: Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member

Per: Justice J.P. Devadhar

1. Dispute in all these appeals relate to the obligation cast on the promoter/promoter group to make yearly disclosure under Regulation 8(2) of Securities and Exchange Board of India (Substantial Acquisition

of Shares and Takeovers) Regulations, 1997 (“Takeover Regulations 1997” for short) and regulation 30(2) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“Takeover Regulations 2011” for short). Hence all these appeals are heard together and disposed of by this common decision.

2. In all these appeals, except in Appeal No. 385 of 2014, various Adjudicating Officers (“AO” for short) of Securities and Exchange Board of India (“SEBI” for short) have held that the obligation to make yearly disclosure under regulation 8(2)/30(2) as the case may be, is on each and every promoter and not on the promoter group and in case of failure to make such disclosure, each and every promoter is liable to pay penalty. However, in Appeal No. 385 of 2014 (Gopichand Idandas & Ors. vs. SEBI) it is held by the AO that where the shares are held by the promoter group, the obligation to make disclosure is on the promoter group and in case of failure to discharge that obligation, penalty is imposable on the promoter group and is recoverable from the promoters in the promoter group jointly and severally. It is not in dispute that in several other cases also, the AO’s of SEBI have held that under regulation 8(2)/30(2) as the case may be, the obligation to make yearly disclosure is on the promoter group and not on the individual promoter in the promoter group.

3. Since there is no uniformity amongst the AO’s of SEBI in determining the obligation to make yearly disclosure under the regulations in question, we called upon counsel for SEBI, to inform us as according to SEBI, the obligation to make yearly disclosure under the

regulations in question, in case of a promoter group is on the promoter group or on each promoter in the promoter group. However, to our surprise, counsel for SEBI, on instruction informed us that since the matters are pending before this Tribunal, instead of SEBI taking a definite stand, it would be in the interest of justice that this Tribunal resolves the issue by taking a view as it deems fit and proper. Thus, inspite of the fact that there are conflicting views taken by the AO's of SEBI, neither SEBI on its own has taken any steps to resolve the conflict nor SEBI is willing to clarify its stand while arguing before this Tribunal. It is improper on part of SEBI to take such indifferent attitude. Since the regulations in question are framed by SEBI, it is the duty of SEBI to ensure that there is consistency in implementing the regulations framed by it and that there is no uncertainty. It is unfortunate that SEBI wants that the orders passed by its AO's be upheld even though the said orders are mutually contradictory.

4. Although for deciding these appeals, it is not necessary to narrate facts of each case, for better appreciation of rival contentions, few facts in Appeal No. 281 of 2014 (Mr. Gopalkrishnan Raman & Ors. vs. SEBI) are set out herein below:-

- a) In the year 1952 Mr. P.A. Raman started a printing press under a partnership firm known as Inland Printers. In the year 1978 the said partnership firm was converted into a Private Limited Company and the shares of that company were held by Mr. P. A.

Raman, his two sons and wives of two sons and two family owned companies.

- b) Sometime in October 1993, the aforesaid Private Limited Company was converted into a Limited Company in the name of Inland Printers Limited.
- c) In April 1995, Inland Printers Limited came out with a public issue and thereafter, the shares of the said company were listed on the stock exchanges.
- d) In the year 2000, due to financial crunch and various other problems the operations of the company were closed. Moreover, due to non-compliance of the listing agreement, Takeover Regulations and non-payment of listing fees, the trading in the shares of the company were suspended in the year 2002. The shares of the company were reinstated for trading in November 2012 after the company complied with all the clauses of listing agreement.
- e) After the Takeover Regulations, 1997 came into force, it was obligatory on part of promoters/promoter group to make annual disclosures under regulation 8(2) of Takeover Regulations, 1997 disclosing their shareholding in the company within the stipulated time. However, such disclosures were not made under the Takeover Regulations, 1997. Even after the

Takeover Regulations 1997 were repealed and replaced by Takeover Regulations 2011, no disclosures were made under the Takeover Regulations, 2011 for the financial year ending on March 31, 2012 within the time stipulated therein.

- f) It is only when Tigerstone Trading Pvt. Ltd. evinced interest in acquiring shares of Inland Printers Ltd. from the promoter/promoter group it was realized that the appellants as promoters/promoter group of Inland Printers have not made yearly disclosures as provided under the 1997/2011 Regulations. Immediately thereupon, the appellants as the promoter group filed their disclosure of shareholding on April 10, 2012 in terms of regulation 8(2) of Takeover Regulations, 1997 for the years ended March 31, 1998 to March 31, 2011. Similarly, disclosures under regulation 30(1)&(2) read with 30(3) of the Takeover Regulations for the year ended March 31, 2012 was made on April 16, 2012 (delayed by 7 days).
- g) Thereafter, on March 1, 2013 appellants along with other shareholders entered into a Memorandum of Understanding (MOU) with Tigerstone Trading Pvt. Ltd. for sale of the shares held by them in Inland Printers Ltd. In accordance with the regulations framed by SEBI, a letter of offer was also made by

Tigerstone Trading Pvt. Ltd. for acquiring shares of Inland Printers Ltd.

- h) While examining the said letter of offer it was noticed by SEBI that the appellants as also Inland Printers had failed to comply with the requirements contained in the Takeover Regulations, 1997 and Takeover Regulations, 2011 within the time stipulated therein. Hence show cause notices were issued to the appellants and after giving opportunity of hearing impugned order was passed imposing penalty of ₹ 5 lac on each of the appellants under Section 15A(b) of SEBI Act. Challenging the aforesaid order appellants have filed the present appeal.

5. Mr. Somasekhar Sundaresan, Mr. Mustafa Doctor, Senior Advocate, Mr. Nimay Dave and Mr. Rajesh Khandelwal, learned counsel appearing on behalf of respective appellants have advanced oral arguments and also have tendered written submissions. Their argument in nutshell is as follows:-

- a) Object of the Takeover Regulations is to intimate to the public the aggregate shareholding of the promoters or persons in control of a listed company, alongwith the shareholdings of the persons acting in concert with them respectively. Since SEBI accepts that disclosures made by any one of the promoters within the

promoters group amounts to discharging the obligation of the promoter group under regulation 8(2) and regulation 30(2) of 1997 & 2011 Regulations respectively, it must be held that the obligation to make disclosure under the respective regulation is a single obligation and consequently, failure to discharge that obligation would constitute a single offence. In such a case, penalty that could be imposed for violating a single offence is on the promoter group and penalty cannot be imposed depending on the number of constituents in the promoter group. In other words, it is submitted that the unitary penalty for the unitary obligation cannot be divided across the constituents of the promoter group.

- b) If the contention of SEBI that each and every individual, body corporate or other entity falling within the definition of “promoter” is obliged to make disclosures under the Takeover Regulations is accepted, then, it would lead to absurd consequences, because, once a declaration in relation to a promoter group is made by a constituent of the promoter group, then requiring each member of the promoter group to make same disclosures, independently, would serve no purpose but only multiply the disclosures inspite of

the fact that the said disclosures are already made by one of the promoters in the promoter group.

- c) Alternatively it is submitted that the term “promoter” defined under regulation 2(1)(h) of the Takeover Regulations, 1997 includes the promoter group as mentioned in Explanation-I to regulation 2(1)(h). Since the expression ‘promoter’ includes a ‘promoter group’, obligation to make disclosures under regulation 8(2)/30(2) as the case may be is on the promoter group and not on each promoter in the promoter group. Therefore, if the promoter group fails to make disclosures under regulation 8(2)/30(2) then, penalty is imposable on the promoter group as a whole and not on each and every promoter of the promoter group. In other words, it is submitted that since the obligation to make disclosure under regulation 8(2)/30(2) is on the promoter group, penalty that could be imposed is on the promoter group and to be recovered jointly and severally and therefore, the AO is not justified in imposing penalty on each promoter in the promoter group. As the AO of SEBI has failed to construe regulation 8(2)/30(2) in the proper perspective, the impugned orders are liable to be quashed and set aside.

- d) Relying on various provisions contained in the Takeover Regulations it is submitted that the entire scheme of the Takeover Regulations is to treat every group of 'persons acting in concert' as one collective whole for every single purpose, save and except when persons hitherto acting in concert part ways and cease to act in concert. Since regulation 8(2) and 30(2) in the respective Takeover Regulations treat every group of 'persons acting in concert' as one collective whole for every single purpose, AO is not justified in imposing penalty on every promoter in the promoter group.
- e) Contrary to the view taken in these appeals (except in Appeal No. 385 of 2014) in several cases the AO's of SEBI have taken diametrically opposite view and held that the penalty is imposable on the promoter group and has to be recovered jointly and severally from the promoters of the promoter group and not individually as has been done in the cases in hand.

6. Mr. J. J. Bhatt, learned counsel appearing on behalf of appellants in Appeal No. 385 of 2014 submitted as follows:-

- a) Dispute in Appeal No. 385 of 2014 relates to the penalty imposed on the promoter/promoter group for failing to make disclosures under regulation 30(2) of

the Takeover Regulations, 2011 for the financial year ended on March 31, 2012 belatedly by 110 days.

- b) In Appeal No. 385 of 2014, amongst the promoters, there were several sub groups and the five appellants in Appeal No. 385 of 2014 had formed an independent promoter group. This is evident from the fact that other promoters had filed complaints against the appellants in Appeal no. 385 of 2014, in the year 2013 when the appellants as an independent promoter group had sought to sell the shares of the company held by them.
- c) Appellants in Appeal No. 385 of 2014, in reply to the show cause notice, had individually replied that they formed an independent promoter group. However, without considering that plea, penalty of ₹ 15 lac is imposed on all the promoters (including the appellants) with a direction that the said penalty be recovered jointly and severally. Thus SEBI has considered all the promoters of the company as one promoter group, even though the appellants in Appeal No. 385 of 2014 had specifically pleaded that they form a separate promoter group. As a result, appellants in Appeal No. 385 of 2014 are required to pay penalty imposed on all the promoter/ promoter

group, even though the appellants herein form an independent promoter group.

- d) Since the AO has failed to consider the plea that the appellants formed an independent promoter group, it is submitted that the order impugned in Appeal No. 385 of 2014 be quashed and set aside with a direction to SEBI to impose such penalty as it deems fit on each promoter group independently.

7. Mr. Desai learned Advocate appearing on behalf of SEBI, on the other hand submitted as follows:-

- a) The obligation to make disclosures by the promoters of a company under Chapter-II of the Takeover Regulations, 1997 and Chapter-V of the Takeover Regulations, 2011 are irrespective of triggering regulations 10, 11, 12 of the Takeover Regulations, 1997 or regulation 3 & 4 of the Takeover Regulations, 2011 on account of acquisition of shares or voting rights by the promoters of the company. In other words, whether regulation 10, 11, 12 of Takeover Regulations 1997, or regulation 3 & 4 of Takeover Regulations, 2011, are triggered or not the promoters of a company are required to make annual disclosures under regulation 8(2)/30(2) of the aforesaid Regulations respectively.

- b) The obligation to make yearly disclosure under regulation 8(2) of the Takeover Regulations, 1997 is on every promoter or every person having control over the company but not on persons acting in concert with the promoter or every person having control over the company because, that obligation of the persons acting in concert has to be discharged by the respective promoter/person having control over the company. Since every promoter of a company was obliged to make yearly disclosures of shareholding to the company under the Takeover Regulations, penalty is imposable on each promoter if there is failure to comply with those obligations and hence no fault can be found with the decision of SEBI in imposing penalty on every promoter of the respective companies.
- c) The obligation to make a disclosure and ministerial act of filing the declaration on behalf of the persons obliged to make a declaration is not to be confused with the obligation to make a disclosure. The form provided by SEBI for making the disclosures postulates that the disclosure could be made by any of the authorized signatory to the person required to make disclosure. The form and content cannot govern

the substantive provisions of the regulations or the interpretation of the regulations.

- d) The expression 'promoter' defined under the regulations framed by SEBI do not include the 'promoter group'. The definition of 'promoter' separately provides as to who would be included within the meaning of the expression 'promoter group' in cases where the promoter is a corporate entity and where the promoter is an individual.
- e) The expression 'promoter' defined under the regulations framed by SEBI, does not include PAC within the meaning of promoter and the shareholding of a PAC who is not a promoter has to be disclosed alongwith the shareholding of the promoter.
- f) Under the regulations framed by SEBI, if the obligation to make disclosure is on the individual, then, the liability to pay the penalty for non-disclosure would be on the individual. If the obligation to make disclosure is joint then the liability to pay the penalty would be joint. If the obligation to make disclosure is joint and several, then the liability to pay penalty would be joint and several. Thus, the question as to whether the liability to make disclosure is individual

or joint or joint and several depends on facts of each case.

- g) Under regulation 8(2) of Takeover Regulations, 1997 a promoter or every person having control over a company (who may be a promoter or a person other than a promoter for example CEO, COO, CFO etc.) is required to disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him in the company, to the company within 21 days from the financial year ending 31st March every year. The said declaration is also required to be made by the said persons within 21 days of the record date of the company for purpose of declaration of dividend.
- h) Under Section 13(2) of the General Clauses Act, 1857, words in any Central Act or Regulation shall include their plural and vice versa. Thus, the word ‘promoter’ in regulation 8(2) would include promoters. Therefore, the obligation to make yearly disclosure would be on each and every promoter of the company. In support of the above contention reliance is placed on the decision of the Apex Court in case of Collector of Customs v/s M/s United

Electrical Industries Ltd. reported in AIR 1999 SC 3796.

- i) When, the regulations in question specifically use the word 'promoter', appellants are not justified in reading that expression as 'promoter group'. In interpreting a statutory provision it is not permissible to add words to the statute unless without such addition the provision of statute to be interpreted is rendered meaningless. In support of the above contention reliance is placed on decisions of the Apex Court in case of State of Maharashtra v/s Nanded-Parbhani Z.L.B. M.V. Operator Sangh reported in (2000) 2 SCC 69 and in case of Kanai Lal Sur v/s Paramnidhi Sadhukhan reported in AIR 1957 S.C. 907.

- j) Fact that the prescribed form permits an Authorized Representative to file a declaration for and on behalf of the person/s on whom the obligation is cast to make such disclosure does not mean that the obligation to make the declaration is on the Authorized Representative. The form cannot govern the operative part of the rule, regulation or section and in case of any conflict, rule, regulation or the section shall prevail. In support of the above contention reliance is placed on the decision of the Apex Court in case of

Aphali Pharmaceuticals Ltd. v/s State of Maharashtra
reported in (1989) 4 SCC 378.

- k) In the declaration made in Appeal No. 280 & 281 of 2014, the persons mentioned therein are not only promoters but also persons having control over the company and are persons acting in concert with each other. Therefore, each of the promoters had an independent obligation to make disclosures within the time prescribed and for failure to do so, the AO has imposed nominal penalty which cannot be faulted.
- l) In a given case it is possible that all promoters and persons acting in concert have authorized one individual who may be one of the promoters to act as their authorized signatory to file the necessary declarations under Regulation 8(2) of Takeover Regulations, 1997 on their behalf. In such a case the said authorized signatory would be required to make declaration after obtaining the information from each of the promoter as to the number and percentage of their respective shareholdings as on the relevant date. For example, in case of a company having four promoters, out of which two promoters are directors of the company and each promoter is acting in concert and/or is deemed to be acting in concert with his wife

and children who are also shareholders of the company along with others, then, each promoter would be required to give a declaration giving the number and percentage of shares or voting rights held by each promoter (that will include his wife and children) along with the names of the other persons acting in concert with him within 21 days from the financial year ending on 31st March of every year.

- m) The obligation to make disclosures under Chapter II of the Takeover Regulations, 1997 and the obligation to make an open offer under Chapter III of the Takeover Regulations, 1997 are separate and distinct. The obligation to make disclosures under Chapter II are to be complied with by every person who is required to make the disclosure, where as the obligation to make an open offer under Chapter III is a joint and several obligation of the persons required to make the open offer. Therefore, the obligation to make disclosure cannot be compared with the obligation to make open offer under the Takeover Regulations.
- n) The definition of promoter does not include PAC with the promoter. The definition of the word ‘acquirer’, however, includes persons acting in concert and the

definition of person acting in concert includes persons deemed to be acting in concert. Therefore, the obligation to make yearly disclosure by every promoter under the Takeover Regulations has to be discharged by each and every individual promoter of the company.

- o) Obligation to make a declaration under regulation 8(2) of Takeover Regulations, 1997 is cast on the promoter individually, whereas, obligation to make an open offer under regulation 10, 11, 12 of the Takeover Regulations, 1997 are on the acquirer and the persons acting in concert with him jointly and/ or severally as specified under regulation 22(19) of Takeover Regulations, 1997. Therefore, the obligation under Chapter II cannot be compared with the obligation under Chapter III of the Takeover Regulations.
- p) Regulation 28(1) of Takeover Regulations, 2011 provides that the declaration to be made under Chapter V shall be aggregate shareholding/voting rights of the acquirer or promoter of the Target Company or every person acting in concert with him. Regulation 28(1) does not deal with or provide as to whether the obligation to make the necessary

disclosure is on every acquirer or promoter or PAC individually or jointly or jointly and severally.

- q) Obligation to make a public announcement and to make an open offer under Chapter III of Takeover Regulations, 1997 ought not to be confused with the obligation to make disclosures under Chapter II of Takeover Regulations, 1997. Similarly, making a public announcement under Chapter II of Takeover Regulations, 2011 ought not to be confused with the obligation to make disclosure under Chapter V of Takeover Regulations, 2011.
- r) Under regulation 30(2) of Takeover Regulations, 2011, the obligation is on each promoter to make a disclosure of the shares and voting rights together with PAC with him. Therefore, it is the individual liability of each promoter and not joint and several as sought to be contended by the appellants.
- s) Intention, motive, mens-rea are irrelevant for the purpose of considering penalty to be levied for breach of disclosure requirement. Relying on the decision of the Apex Court in case of *Swedish Match v/s SEBI* reported in (2004) 11 SCC 641 and in case of *Chairman SEBI v/s Shriram Mutual Fund* reported in (2006) 5 SCC 361 it is submitted that penalty is

attracted as soon as there is contravention of the regulations framed by SEBI.

- t) There is material difference between regulation 8(2) of Takeover Regulations, 1997 and regulation 30(2) of Takeover Regulations, 2011. Under regulation 8(2), a promoter or every person having control over a company is required to make disclosure whereas, under regulation 30(2) the promoter together with persons acting in concert with him is required to make disclosure. Under regulation 8(2) what is to be disclosed by the promoter is the number and percentage of shares or voting rights held by him and by person acting in concert with him, whereas, under regulation 30(2) what is to be disclosed is the aggregate shareholding and voting rights. Under regulation 8(2) disclosure is to be made within 21 days from the end of each financial year, whereas, under regulation 30(2) disclosure is to be made within 7 days from the end of each financial year. Under regulation 8(2) disclosure is to be made to the company, whereas, under regulation 30(2) read with regulation 30(3), the disclosure is to be made to every stock exchange where the shares of the Target Company are listed and at the registered officer of the Target Company.

- u) In these group of matters, some appellants had made declarations individually and other appellants had made declarations as promoter group. Therefore, in some cases penalty has been imposed individually and in some cases penalty is imposed on the promoter group jointly and severally and hence no fault can be found with the decisions impugned in these appeals.
- v) Penalty imposed in all these cases is nominal compared to the delay in making disclosures and hence no interference is called for.

Accordingly, it is submitted that all the appeals deserve to be dismissed with costs.

8. We have carefully considered the rival submissions.

9. Basic dispute in all these appeals is, where the promoters of a listed company includes a promoter group, whether under regulation 8(2) and regulation 30(2) of the 1997/2011 Takeover Regulations respectively, the obligation to make yearly disclosure is on the promoter group or the obligation is on every promoter covered under the promoter group.

10. Regulation 8(2) of the Takeover Regulations, 1997 provides that 'A promoter' shall make yearly disclosure to the company within the time stipulated therein. Regulation 30(2) read with regulation 30(3) of

the Takeover Regulations, 2011 provide that ‘The promoter’ shall make yearly disclosure to the company and to the stock exchange within the time stipulated therein. As per regulation 2(1)(h), the expression ‘promoter’ in the Takeover Regulations, 1997 means and includes any person belonging to the promoter group specified in Explanation-I thereto. Similarly, Takeover Regulations, 2011, defines the expression ‘promoter’ to have the same meaning assigned to it under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (‘ICDR Regulations, 2009’ for short) and includes a member of the promoter group. Thus, both under the Takeover Regulations, 1997 and under the Takeover Regulations, 2011, wherever the expression ‘promoter’ is used, that expression would include any person/member belonging to the promoter group.

11. Since regulation 8(2) of the Takeover Regulations, 1997 and regulation 30(2) & 30(3) of the Takeover Regulations, 2011, use the expression ‘promoter’, we quote those regulations which read thus:-

8(2) A promoter or every person having control over a company shall, within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that company to the company.

30(2) The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.

30(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the end of each financial year to,-

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

12. Dispute in all these appeals is, whether the expression ‘A promoter’ or ‘The promoter’ used under the respective regulations, would require every promoter of the listed company to make yearly disclosure or whether the disclosure in case of a promoter group could be made by any promoter covered under the promoter group.

13. Since the expression ‘promoter’ used under the Takeover Regulations includes the ‘promoter group’, the obligation to make yearly disclosure cast on the ‘promoter’ under regulation 8(2) and under regulation 30(2) of the respective Takeover Regulations would

necessarily mean that the promoter group is also obliged to make yearly disclosure under the aforesaid regulations. In other words, the obligation to be discharged by the promoter would also have to be discharged by the promoter group. To illustrate, if there are five promoters in a listed company and three of them fall within the promoter group, then as per the Takeover Regulations, the obligation to make yearly disclosure would be on the two individual promoters as well as the promoter group consisting of three promoters.

14. Argument of SEBI is that in view of the General Clauses Act the word ‘promoter’ in the Takeover Regulations would include ‘promoters’ and therefore, the obligation to make yearly disclosure under the Takeover Regulations is on the individual promoter including the promoters included in the promoter group. In other words, the submission is that in case of a promoter group, the obligation to make yearly disclosure is not on the promoter group but on every promoter in the promoter group. There is no merit in the above contention, because, by defining the expression ‘promoter’ in the Takeover Regulations, it is expressly made clear that any obligation cast on the promoter would also be the obligation cast on the promoter group. Therefore, when the Takeover Regulations expressly provide that the expression ‘promoter’ shall include the ‘promoter group’, SEBI is not justified in contending that in view of the provisions contained in the General Clauses Act, the obligation to make yearly disclosure is on every promoter in the promoter group and not on the promoter group.

15. In this context it would be relevant to refer to regulation 2(1)(h) of the Takeover Regulations, 1997 which defines the expression ‘promoter’. The said definition to the extent relevant reads thus:-

“Definitions

2(1) *In these regulations, unless the context otherwise requires:-*

a to g....

(h) *“Promoter” means -*

(a) *any person who is in control of the target company;*

(b) *any person named as promoter in any offer document of the target company or any shareholding pattern filed by the target company with the stock exchanges pursuant to the Listing Agreement, whichever is later;*

and includes any person belonging to the promoter group as mentioned in Explanation I:

Provided *that a director or officer of the target company or any other person shall not be a promoter, if he is acting as such merely in his professional capacity.*

Explanation I: For the purpose of this clause, “promoter group” shall include:

(a) *in case promoter is a body corporate –*

(i) *a subsidiary or holding company of that body corporate;*

(ii) *any company in which the promoter holds 10 percent or more of the equity capital or which holds 10 percent or more of the equity capital of the promoter;*

(iii) *any company in which a group of individuals or companies or combinations thereof who holds 20 percent or more of the equity capital in that company also holds 20 percent or more of the equity capital of the target company; and*

(b) *in case the promoter is an individual -*

- (i) *the spouse of that person, or any parent, brother, sister or child of that person or of his spouse;*
- (ii) *any company in which 10 percent or more of the share capital is held by the promoter or an immediate relative of the promoter or a firm or HUF in which the promoter or any one or more of his immediate relative is a member;*
- (iii) *any company in which a company specified in (i) above, holds 10 percent or more, of the share capital; and*
- (iv) *any HUF or firm in which the aggregate share of the promoter and his immediate relatives is equal to or more than 10 percent of the total.”*

16. If the argument of SEBI that under the Takeover Regulations, every promoter of a listed company is obliged to make yearly disclosure is accepted then it would mean that every person/member included within the meaning of ‘promoter’ would be required to make yearly disclosure. In that event, it would mean that where the promoter is a body corporate, then, the subsidiary or holding company of that body corporate as well as other entities which are brought within the meaning of ‘promoter’ would be required to make yearly disclosure even if such subsidiary or holding company or other entities do not hold any shares of the Target Company. Similarly, accepting the argument of SEBI would mean that where the promoter is an individual, then, the spouse of that person or any parent, brother, sister or child of that person or of his spouse who are brought within the meaning of the word ‘promoter’ would also be required to make yearly disclosure even if they do not hold shares of the Target Company. Object of requiring the promoters of a listed company to make yearly disclosures is to inform the investors, the number and percentage

of shares or voting rights held by the promoter/promoter group along with the PAC's at the end of each financial year and also at the record date of the company for declaration of dividend and it is not intended that every entity included within the meaning of 'promoter' should make yearly disclosure. If the argument of SEBI is accepted it would mean that every entity which is considered to be a promoter under the Takeover Regulations would be required to make yearly disclosure even if that entity does not hold any shares of the Target Company. Therefore, such an argument of SEBI which leads to absurd consequences cannot be accepted.

17. Under the Takeover Regulations if it was intended that every promoter of a listed company must make yearly disclosure, then, regulation 8(2) or regulation 30(2) would have commenced with the words 'Each promoter' or with the words 'Every promoter'. It is relevant to note that in case of a person having control over the company, regulation 8(2) specifically provides that 'every' person having control over the company shall make yearly disclosure. Very fact that the word 'every promoter' is not used in case of a promoter and the fact that the expression 'promoter' is defined to include 'promoter group', it becomes clear that the obligation to make yearly disclosure under the Takeover Regulations is on the promoter/promoter group and not on every promoter in the promoter group of the listed company. Therefore, the argument of SEBI that every promoter must make yearly disclosure under the Takeover Regulations being contrary to the plain language used in the Takeover Regulations, cannot be accepted.

18. Under the Takeover Regulations since the ‘promoter’ is required to disclose the number and percentage of shares or voting rights held by him and by person acting in concert with him, it is apparent that even in case of a promoter group, the promoter group has to disclose the number and percentage of shares held by each promoter in the promoter group as also the number and percentage of shares held by the PAC of each promoter in the promoter group. Argument of SEBI that the expression ‘promoter group’ cannot read into the expression ‘promoter’ is ex-facie untenable in view of the fact that the expression ‘promoter’ defined under the respective Takeover Regulations includes the ‘promoter group’.

19. Fact that regulation 8(2), used the word ‘him’, it cannot be inferred that the obligation to make yearly disclosure is on every promoter individually. As the said regulation commences with the word ‘A promoter’, it would be grammatically correct to use the word ‘him’ in relation to the obligation to be discharged by a promoter. Since the expression ‘promoter’ in the Takeover Regulations includes the promoter group, it would have to be held that in case of a ‘promoter group’ the obligation to make yearly disclosure is on the promoter group and not on each promoter in the promoter group.

20. Apprehension of SEBI that for any one promoter in the promoter group to know the shareholding of other promoters in the promoter group as also the shares held by the PAC’s of respective promoter in the promoter group would be difficult and therefore, every promoter must be

held liable to make yearly disclosure is without any merit, because, firstly, use of the word 'A promoter' instead of the word 'every promoter' clearly indicates that the disclosure could be made not only by promoter but also by a promoter group. Secondly, by including every person/member in the promoter group within the meaning of 'promoter' it is made clear that the obligation cast on the promoter has also to be discharged by the promoter group. Thirdly, all the entities covered under the promoter group though treated as 'promoter', every such entity may not be holding shares of the Target Company and in that case, if contention of SEBI is accepted it would mean the every promoter covered under the Takeover Regulations must make yearly disclosure even though some of the promoters never held any shares of the Target Company. Having included persons/members of the promoter group within the meaning of 'promoter' under the Takeover Regulations, SEBI cannot now contend that it would be difficult for a promoter in the promoter group to know the shares held by other promoters in the promoter group and their PAC before making disclosure and therefore, every promoter must be directed to make yearly disclosure. Therefore, it is just and reasonable to hold that under the Takeover Regulations the obligation to make yearly disclosure is on the promoter or the promoter group as the case may be.

21. Various decisions relied on by counsel for SEBI in support of contention that the regulations in question have to be read as it is and not by adding words to it have no relevance to the facts of present case, because, in the Takeover Regulations the expression 'promoter' includes

the ‘promoter group’ and consequently there is no question of adding ‘promoter group’ into the word ‘promoter’ because it is already included. Similarly, various other decisions relied by the counsel for SEBI have no relevance in the facts of present case, because, on a plain reading of the regulations in question, it is evident that in case of a listed company if the shares are held by a promoter group, then yearly disclosure has to be made by the promoter group in the manner set out under the respective Takeover Regulations.

22. It is true that the language used in that regulation 8(2) of the Takeover Regulations, 1997 differs from the language used in regulation 30(2) of the Takeover Regulations, 2011. However, under both the regulations the basic object is to ensure that at the end of every financial year, the investors in the Target Company are informed about the number and percentage of shares or voting rights held by the promoter/promoter group and the object is not to make it mandatory for every promoter in the promoter group to make individual yearly disclosure even if that promoter neither held nor holds any shares of the Target Company.

23. To sum up, the obligation to make yearly disclosure under regulation 8(2) and regulation 30(2) of the Takeover Regulations framed by SEBI in the year 1997 & 2011 respectively is on the promoter/promoter group. If the promoters of a listed company are individual promoters then the obligation is on the individual promoters and in case there is a ‘promoter group’ then the promoter group is required to make yearly disclosure. If the promoter group fails to disclose the shares or

voting rights held by the promoters in the promoter group as also their PAC's within the time stipulated under the Takeover Regulations, then, penalty is imposable on the promoter group and the said penalty would be recoverable jointly and severally from the promoters in the promoter group who held shares or voting rights in the Target Company with their PAC's. In all these appeals the AO's of SEBI have not considered the question as to whether the appellants are individual promoters or they constitute 'promoter group' under the respective Takeover Regulations. Even in Appeal No. 385 of 2014 the AO of SEBI has not verified the correctness of the argument advanced by the appellant to the effect that they form an independent promoter group.

24. In these circumstances, we set aside the orders passed by the AO of SEBI and restore the appeals to the file of SEBI for passing fresh order on merits and in accordance with law.

25. All the appeals are disposed of in the above terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member