

**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:

1. Mr. Susheel Somani (PAN:AAEPS1681B)
2. Mr. Rajendra Somani(PAN: AACPS9645M)
3. Ms. Mridula Somani (PAN: AAKPS2773A)
4. Ms. Vandana Somani (PAN: AMLPS2773A)
5. Mr. Surendra Somani (PAN: AAMPS3766R)
6. Mr. Adarsh Somani (PAN: ALZPS4257K)
7. Mr. Shurid Somani (PAN: AMFPS1861E)
8. Ms. Jaya Somani (PAN: ABNPS1776Q)
9. Mr. Hridai Somani (PAN: AAHPS1801N)
10. Kopran Lab Pvt Ltd (PAN: AAACK4406H)
11. SV Trading & Agencies Ltd (PAN: AABCS6163N)

In the matter of Svaraj Trading and Agencies Limited

BACKGROUND

1. An open offer was made by Ms. Rekha Soni, Mr. Harendra Gupta and Mr. Shankar Das Vairagi in terms of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "**SAST Regulations, 2011**") to the shareholders of Svaraj Trading and Agencies Limited (hereinafter referred to as "**STAL/Company**"), Target Company, through a public announcement dated September 03, 2012 for acquisition of 26,000 fully paid up equity shares of the face value of Rs.10 each, representing 26% of the total paid up equity share capital / voting rights of the Target Company at a price of Rs.75/- per share payable in cash. The shares of STAL are listed at BSE.
2. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") examined the draft letter of offer pertaining to the aforesaid open offer and observed that Mr. Susheel Somani, Mr. Rajendra Somani, Ms. Mridula Somani, Ms. Vandana Somani, Mr. Surendra Somani, Mr. Adarsh Somani, Mr. Shurid Somani, Ms. Jaya Somani, Mr. Hridai Somani, Kopran Lab Pvt. Ltd. and S V Trading & Agencies Ltd. (hereinafter referred to individually by **their name** and collectively as "**Noticees**") were promoters of the STAL as on June 30, 2012. It was further observed that Susheel Somani, one of the Noticee, acquired 31,680 shares of STAL on June 30, 2012 by way of inter se transfer of 20,000 (20%) shares and 11,680 (11.68%) shares of STAL from Shree Satyanarayan Properties Pvt Ltd(hereinafter, referred to as "**Satyanarayan**") and Kramer Pharmaceuticals Pvt. Ltd (hereinafter, referred to as "**Kramer**"), respectively. The said total acquisition of 31,680 or 31.68% shares of STAL by Susheel Somani is hereinafter, referred to as "**acquisition of shares**"
3. It was observed that the acquisition of shares led to increase in the individual shareholding of Mr. Susheel Somani in STAL from 350 (0.35%) shares to 32,030 (32.03%) shares i.e. by 31.68%. As this acquisition of shares entitled Mr. Susheel Somani

individually to exercise more than 25% of the voting rights of STAL, Susheel Somani was required to make public announcement as stipulated under regulation 3(1) read with regulation 13(1) of the SAST Regulations, 2011. However, no public announcement as stipulated under the aforesaid regulations was made by Susheel Somani and therefore, he was alleged to have violated provisions of regulation 3(1) read with regulation 13(1) of SAST Regulations 2011.

4. It was further observed that the acquisition of shares by Mr. Susheel Somani, also led to increase in the collective shareholding of the Noticees, including Mr. Susheel Somani, from 29.42% to 61.10% i.e., by 31.68%. Prior to the acquisition of shares, the Noticees were already holding shares entitling them to exercise more than 25% of the voting rights of the STAL and the said acquisition of shares entitled the Noticees to exercise further 31.68% of the voting rights of the STAL, which was more than threshold limit of five per cent of the voting rights of STAL. On acquisition of shares, Noticees were required to make public announcement as stipulated under regulation 3(2) read with regulation 13(1) of the SAST Regulations, 2011. However, no public announcement as stipulated under the aforesaid regulations was made by the Noticees, and therefore, Noticees were alleged to have violated provisions of regulation 3(2) read with regulation 13(1) of SAST Regulations 2011.
5. SEBI appointed an Adjudicating Officer (reference also made to subsequent change in Adjudicating Officer, and hereinafter, referred to as “**erstwhile Adjudicating Officer**”) in the matter to inquire and adjudge the above said alleged violations and impose liable penalty under provisions of Section 15H(ii) SEBI Act, 1992.
6. Vide adjudication order ref. no. ASK/AO-18-29/2014-15 dated May 30, 2014, erstwhile Adjudicating Officer imposed following penalty, for alleged violations in point 3 and point 4 above:
 - a) Rs.15,00,000/- (Rupees Fifteen Lakhs only) on Mr. Susheel Somani under Section 15H(ii) of SEBI Act for violation of regulation 3(1) read with regulation 13(1) of SAST Regulations, 2011, and
 - b) Rs.15,00,000/- (Rupees Fifteen Lakhs only), jointly and severally on the Noticees under Section 15H(ii) of SEBI Act for violation of regulation 3(2) read with regulation 13(1) of SAST Regulations, 2011.
7. Mr. Susheel Somani filed appeal no. 273 of 2014 before the Hon’ble Securities Appeal Tribunal (hereinafter, referred to as “**SAT**”) against the penalty referred in point 6 a) imposed by erstwhile Adjudicating Officer. However, Mr. Susheel Somani, subsequently withdrew appeal no. 273 of 2014 and sought permission from hon’ble SAT to pay the penalty. In this regard, vide order of Hon’ble SAT dated March 1, 2016, Mr. Susheel Somani was allowed to withdraw his said appeal and pay the penalty. As per records, the penalty of Rs. 15 lakh imposed upon Mr. Susheel Somani for violation of regulation 3(1) read with Regulation 13(1) of SAST Regulations, 2011 was paid.

8. Noticees filed joint appeal no. 274 of 2014 before the Hon'ble SAT, against the penalty referred in point 6 b) above. In this regard, vide its order dated March 1, 2016, Hon'ble SAT, based on prima-facie observations, set aside the adjudication order dated May 30, 2014 and restored the matter to Adjudicating Officer for passing fresh order on merits and in accordance with law.

APPOINTMENT OF PRESENT ADJUDICATING OFFICER

9. Consequently, SEBI appointed an Adjudicating Officer under Section 19 of SEBI Act, 1992 read with section 15 I (1) of the said Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, to inquire into and adjudge the alleged violations against the Noticees, and if satisfied, to impose penalty, as the Adjudicating Officer thinks fit in terms of the 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 and the provisions of Section 15H (ii) of SEBI Act, 1992. Subsequently, in view of redistribution of the matters, instant matter was transferred to present Adjudicating Officer vide order dated May 18, 2017 to inquire and adjudicate under the provision of original appointment order.

PERSONAL HEARING AND WRITTEN SUBMISSIONS

10. Vide notice of hearing dated August 2, 2017, Noticees were informed about appointment of Adjudicating Officer subsequent to the order of Hon'ble SAT dated March 01, 2016, and vide the said Notice of hearing, Noticees were also provided an opportunity of personal hearing on August 23, 2017. From the Noticees, Mr. Susheel Somani, Mr. Rajendra Somani, Ms. Mridula Somani, Ms. Vandana Somani, Mr. Surendra Somani, Mr. Adarsh Somani, Mr. Shurid Somani, Ms. Jaya Somani and Mr. Hridai Somani vide their e-mail dated August 21, 2017 made following key submissions and request:
- *I was not served with any show cause notice in the present matter and directly a hearing notice was issued, therefore I humbly request your goodself to kindly intimate me, whether your goodself is relying upon the erstwhile show cause dated January 03, 2014 issued against me in the captioned matter or your goodself will be issuing a fresh show cause notice. I further, request your goodself to provide me with the copy of all the documents, which your goodself wish to rely upon.*
 - *The captioned matter dates back to the year 2014 and related the papers/documents concerning to the same are currently not stored with me, thus it will take some time for me to retrieve the documents and prepare for the present hearing and submit an additional reply if any.*
 - *Therefore in light of the aforesaid, I humbly request your goodself to kindly adjourn the present hearing and grant me an additional 4 weeks time, after the clarification is provided by your goodself as requested in para 2 above, to prepare and submit additional submissions(if any) and schedule the hearing thereafter.*
11. Noticees were provided with following clarification / information vide e-mail dated August 21, 2017:
- *As mentioned in the Hearing Notice dated August 02, 2017, the present proceedings are in continuation of the SEBI Show Cause Notice dated January 03, 2014.*
 - *As regards request for " copy of all the documents, which your goodself wish to rely upon", it is mentioned that as the instant proceedings are continued proceedings, the relied upon documents are already with Noticees and no further additional material/ allegation is available, and thus no fresh show cause notice is being issued in the subject matter.*

- You may take this opportunity to provide any additional submissions that you would like to make in the subject matter of the SCN dated January 03, 2014, which the Adjudicating Officer will take on records, and in this regard, the additional information/ submissions/ reply to the SCN may be submitted by September 11, 2017.

12. In view of the request from the said Noticees to adjourn the hearing to a later date, hearing was adjourned to September 22, 2017, and the same was informed to Noticees vide notice of hearing dated August 24, 2017. Noticees, through their authorised representatives availed the hearing on September 22, 2017, wherein oral submissions were made on behalf of the Noticees, and also permission was sought to file written submissions, which was granted. Subsequently, vide letter dated October 6, 2017, Noticees through their authorised representatives, made written submissions in the matter which include following key submissions:

"Noticees deny alleged violations of the SAST Regulations against the Noticees.

W.r.t allegation that Noticees failed to make public announcement as stipulated under Regulation 3(2) of SAST Regulations, 2011 as there was an alleged increase in the collective shareholding of the Noticees from 29.42% to 61.10%, following key submissions were made:

A. MR. SUSHEL SOMANI ALONG WITH OTHER MEMBER OF PAC HAS NOT VIOLATED REGULATION 3(2) READ WITH REGULATION 13(1) OF SAST REGULATIONS, 2011

- *The shareholding of the promoter group of STAL was 61.1% from the year 2008 to September 3, 2012, and the same has neither increased nor decreased.*
- *Noticees were all part of the promoter group of STAL. Satyanarayan and Kramer continued to remain promoters of the STAL till September 3, 2012 and only because they had transferred their holding to Mr. Susheel Somani (one of the co-promoter), that in no manner, can be interpreted to mean that they were not part of promoter group subsequent to the relevant date. Please note it is a established position of law that, a promoter only because has sold his shares or his holding has not remained what was before, does not make him a part of public shareholder or a non-promoter entity.*
- *Said transfer of 31.68% shares between Satyanarayan, Kramer and Mr. Susheel Somani in STAL on the relevant date was an inter se transfer between promoters not challenged by SEBI, the collective holding of the promoter group remained unchanged at 61.1% shares in STAL.*
- *Satyanarayan and Kramer were promoters of STAL being companies under the management and control of the Noticees on the relevant date. For instance in Satyanaran Noticee 1 to 6 and 8 were indirectly holding majority of shareholding. Similar was the case for Kramer also.*
- *In spite of the inter se transfer of the 31.68% shares of STAL between Satyanarayan, Kramer and Mr. Susheel Somani, the collective shareholding of the Noticees (i.e., Promoter Group) remained unchanged and constant at 61.10%. Therefore, the provisions of Regulation 3(2) of the SAST were not triggered by the said inter se transfer of shares and the Noticees herein were not liable to make a public announcement.*
- *There was no change in the collective holding of the Noticees and the allegation contained in the said Show Cause Notice that the collective shareholding of the Noticees including Mr. Susheel Somani had increased from 29.42% to 61.1% i.e., by 31,68% is based upon an erroneous appreciation of the facts, law and records.*
- *It further to be noted that, Noticees in their submission dated February 28, 2014 had relied upon share holding pattern of the STAL, submitted to BSE Ltd. Reflecting the*

shareholding of the Noticees from 2008 to 2012. The said shareholding pattern establishes the consistent and unchanging collective shareholding of the Noticees who were the part of the promoter group before and after the inter se transfer and / or the relevant date. The said shareholding pattern merely demonstrates that the share holding of the Promoter Group remained constant at 61.1% before and after inter se transfer.

- For the reasons mentioned hereinabove, there was no change in the collective share holding pattern of the Promoter Group which includes the Noticees, hence not necessitating a public announcement as envisaged under Regulation 3(2) of the SAST Regulations, hence, imposition of penalty under section 15H(ii) of the SEBI Act 1992 does not arise.

B. NOTICEES ARE EXEMPT FROM MAKING A PUBLIC ANNOUNCEMENT UNDER REGULATION 3(2) AS PER REGULATION 10(1)(A)(II) OF SAST REGULATIONS, 2011

- Without prejudice to foregoing submissions, even if it were to be considered that the allegations in the SCN is accepted, the fact remains that the said transfer was inter se between the promoters which is exempt as per Regulation 10(1)(a)(ii) of SAST Regulations, 2011 from an obligation to make an open offer after complying with certain conditions.
- From the aforesaid regulation 10(1)(a)(ii) of SAST Regulations, 2011, it is amply clear that if there is an inter se transfer between the promoters then the acquirer is automatically exempt from making a public announcement as per regulation 3(2) of SAST Regulations, 2011 provided the persons (both the transferor and transferee) should be named as promoters in shareholding filed by the target company in terms of listing agreement or this regulation for not less than 3 years prior to proposed acquisition, which is the case in present matter.
- It is further provided in proviso (ii) to Regulation 10(1) of the SAST Regulations that the exemption under Regulation 10(1) SAST Regulations can only be availed when both the transferor and the transferee have made the requisite disclosures as set out in Chapter V of the aforesaid Regulations i.e, Regulation 29(2) read with Regulation 29(3) of the SAST Regulations, 2011.
- The transferor i.e, Satyanarayan and Kramer as well as transferee i.e, Mr. Susheel Somani had filed disclosure to SEBI after the acquisition of said 31,680 shares, but there was an inadvertent delay on their part. The said delay arose on account of a bonafide belief that since there was no change in the collective shareholding in the promoter group, Noticees were not hit by Regulation 3(1) and 3(2) of the SAST Regulations, 2011. However, both the transferor and transferee sought an expert opinion on the same and when it was brought to their notice that they were required to comply with the Regulation 29(2) and 29(3) of the SAST Regulations, 2011, they immediately filed disclosure before the SEBI on July 10, 2012.
- For the alleged inadvertent delay in filing the disclosure, SEBI had passed three separate orders against Mr. Susheel Somani, Sayanarayan and Kramer on May 30, 2014 whereby Rs. 1,00,000/- were imposed on each of them. Said penalty was paid.
- Without prejudice to submissions made in para 'A', Noticees humbly submit that they may be allowed to avail exemption under Regulation 10(1)(a)(ii) and that no penalty may be levied on them for alleged violation of Regulation 3(2) read with Regulation 13(1) of the SAST Regulation, 2011 as they have already made disclosure under Regulation 29(2) read with Regulation 29(3) of the SAST Regulation, 2011 and have also paid the penalty for delay in making such disclosures.
- While deciding the appeal no. 274 of 2014, Hon'ble SAT in its order dated March 01, 2016 has made observation in paragraph 4 and 5 as follows:

“4. During the course of arguments, counsel for the appellant brought to our notice an order passed by adjudicating officer of SEBI on May 30, 2014. From the said order, it prima facie appears that Mr. Susheel Somani had made requisite disclosures which would entitle Mr. Susheel Somani to avail exemption under Regulation 10 of the Takeover Regulations, 2011 and in that event the obligation on part of the appellants to make public announcement would not arise.

5. Since the above order was not available at the time of passing of the impugned order and since the said order goes to the root of the matter, in our opinion, it would be just and proper to set aside the impugned order and restore the matter to the file of the adjudicating officer for passing fresh order on merits and in accordance with law”

- *Noticees have not violated any provisions of law and / or acted in an illegal manner. Without prejudice, and in the event, that SEBI come to conclusion that there have been any lapses on the part of the Noticees, considering the fact that no harm has been caused to any investor and / or that no complaints have been filed against any of the Noticees at any Stock Exchange or SEBI in respect of trading in STAL. It is humbly prayed that a lenient and sympathetic view be taken in the present matter and the said SCN be discharged without any further restraint, penalty and / or any other coercive order.*

CONSIDERATION OF ISSUES AND FINDINGS

13. Having examined the background of the case including SCN, written submissions of Noticees, submissions, if any, made in the personal hearing, the issues that arise for consideration in the present case are:
 - a) Whether the Noticees had violated the provisions of regulation 3(2) read with regulation 13(1) of the SAST Regulations, 2011?
 - b) Does the violation, if any, attract monetary penalty under section 15H(ii) of SEBI Act?
 - c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?
14. Before going forward it would be relevant to refer to the 3(2) read with regulation 13(1) of the SAST Regulations, 2011, which state following:

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:

Provided that such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding.

Explanation.— For purposes of determining the quantum of acquisition of additional voting rights under this sub-regulation,—

(i) gross acquisitions alone shall be taken into account regardless of any intermittent fall in shareholding or voting rights whether owing to disposal of shares held or dilution of voting rights owing to fresh issue of shares by the target company.

(ii) in the case of acquisition of shares by way of issue of new shares by the target company or where the target company has made an issue of new shares in any given financial year, the difference between the preallotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition."

"Timing.

13. (1) The public announcement referred to in regulation 3 and regulation 4 shall be made in accordance with regulation 14 and regulation 15, on the date of agreeing to acquire shares or voting rights in, or control over the target company."

Issue a) – Whether the Noticees had violated the provisions of regulation 3(2) read with regulation 13(1) of the SAST Regulations, 2011?

15. Noticees in their submissions dated October 6, 2017 contended that *"In spite of the inter se transfer of the 31.68% shares of STAL between Satyanarayan, Kramer and Mr. Susheel Somani, the collective shareholding of the Noticees (i.e, Promoter Group) remained unchanged and constant at 61.10%. Therefore, the provisions of Regulation 3(2) of the SAST were not triggered by the said inter se transfer of shares and the Noticees herein were not liable to make a public announcement"*, and it is also mentioned that *"the collective shareholding of the Noticees including Mr. Susheel Somani had increased from 29.42% to 61.1% i.e, by 31,68% is based upon an erroneous appreciation of the facts, law and records.*
16. It is an undisputed fact that Noticees were promoters of STAL and were acting in concert for acquisition of shares involving inter-se transfer of shares between Mr. Susheel Somani and two other promoters viz, Satyanarayan and Kramer. Noticees have been reiterating in their submissions that promoter group holding remain constant, unchanged over a period of time including prior and after acquisition of shares, and it is noted that this fact is not in dispute in present case.
17. Considering the important fact that promoters viz, Satyanarayan and Kramar were the transferors when they transferred their entire holding to Mr. Susheel Somani, they cannot be held PAC with Mr. Susheel Somani along with Noticees for acquisition of shares. Further, mere contention that the promoter group holding in STAL remained constant and unchanged at 61.1% is irrelevant, as it is common understanding that when transfer is happening within entities of promoter group, the total promoter group holding will remain unchanged. It is pertinent to note the fact that Noticees viz, Susheel Somani along with other Noticees as PAC viz, Mr. Rajendra Somani, Ms. Mridula Somani, Ms. Vandana Somani, Mr. Surendra Somani, Mr. Adarsh Somani, Mr. Shurid Somani, Ms. Jaya Somani, Mr. Hridai Somani, Kopran Lab Pvt. Ltd. and S V Trading & Agencies Ltd had

combined holding of 29.4% in STAL before acquisition of shares, and upon acquisition of shares, holding of Noticees in STAL rose to 61.1% in STAL. Hence, it is clear that there has been rise of 31.68% in holding of Noticees in STAL, which is above the benchmark 5% change in holding, requiring Noticees to make open offer under provisions of Regulation 3(2) read with Regulation 13(1) of SAST Regulations, 2011.

18. Further, Noticees have contended that “*Without prejudice to foregoing submissions, even if it were to be considered that the allegations in the SCN is accepted, the fact remains that the said transfer was inter se between the promoters which is exempt as per Regulation 10(1)(a)(ii) of SAST Regulations, 2011 from an obligation to make an open offer **after complying with certain conditions**. Noticees while submitting this argument that acquisition of shares in present matter was exempted from open offer under Regulation 10(1)(a)(ii) of SAST Regulations, 2011, have also accepted that “.....**the exemption under Regulation 10(1) SAST Regulations can only be availed when both the transferor and the transferee have made the requisite disclosures as set out in Chapter V of the aforesaid Regulations i.e, Regulation 29(2) read with Regulation 29(3) of the SAST Regulations, 2011.**” (Emphasis added).*”
19. Noticees, further in their submissions have inter-alia stated that “*the transferor i.e, Satyanarayan and Kramer as well as transferee i.e, Mr. Susheel Somani had filed disclosure to SEBI after the acquisition of said 31,680 shares, **but there was an inadvertent delay on their part.....** For the alleged inadvertent **delay in filing the disclosure, SEBI had passed three separate orders against Mr. Susheel Somani, Sayanarayan and Kramer on May 30, 2014 whereby Rs. 1,00,000/- were imposed on each of them. Said penalty was paid.....**Without prejudice to submissions made in para ‘A’, Noticees humbly submit that they may be allowed to avail exemption under Regulation 10(1)(a)(ii) and that no penalty may be levied on them for alleged violation of Regulation 3(2) read with Regulation 13(1) of the SAST Regulation, 2011 as they have already made disclosure under Regulation 29(2) read with Regulation 29(3) of the SAST Regulation, 2011 and have also paid the penalty for delay in making such disclosures. (Emphasis added)*”
20. Noticees have brought forward that hon’ble Securities Appellate Tribunal (SAT) while hearing appeal 274 of 2014 filed by Noticees against adjudication order dated May 30, 2014 against the Noticees passed by erstwhile Adjudicating Officer, in its order dated March 1, 2016, “*based on submissions of Noticees through their counsel, prima-facie observed that the requisite disclosures were made by Noticees which would entitle Noticees to avail exemptions under Regulation 10 of Takeover Regulations, 2011 and in that event the obligation on part of the appellants to make public announcement would not arise* “. The Hon’ble SAT remanded back the matter for passing fresh Adjudication Order on merit.
21. It is pertinent to note that above carries prima-facie observations of hon’ble SAT based on submissions of Noticees (through their counsel). Further, it is also important to note that hon’ble SAT remanded the matter to the AO to deal with this matter afresh on merit of the case, and for the same it is important to carefully consider the facts of the case and arguments brought out by Noticees in support of their claim that they were exempt from making open offer.
22. The said provisions under Regulation 10(1)(a)(ii) of SAST Regulations, 2011, states as following:

10. (1) The following acquisitions shall be exempt from the obligation to make an open offer under regulation 3 and regulation 4 subject to fulfilment of the conditions stipulated therefor,—

(a) acquisition pursuant to inter se transfer of shares amongst qualifying persons, being,—

(i)

(ii) persons named as promoters in the shareholding pattern filed by the target company in terms of the listing agreement or these regulations for not less than three years prior to the proposed acquisition;

Provided that for purposes of availing of the exemption under this clause,—

(i) If the shares of the target company are frequently traded, the acquisition price per share shall not be higher by more than twenty-five per cent of the volume-weighted average market price for a period of sixty trading days preceding the date of issuance of notice for the proposed inter se transfer under sub-regulation (5), as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, and if the shares of the target company are

infrequently traded, the acquisition price shall not be higher by more than twenty-five percent of the price determined in terms of clause (e) of sub-regulation (2) of regulation 8; and

(ii) the transferor and the transferee shall have complied with applicable disclosure requirements set out in Chapter V.

23. It is noted that the exemptions under Regulation 10(1)(a)(ii) of SAST Regulations, 2011 are applicable to the cases as presented by the Noticees in this case, wherein there has been an inter-se transfer of promoter holdings, however, it is also noted that the same are subject to fulfilment of conditions as mentioned above. Hence, it will be appropriate to dwell on the effect of the provisions in depth here as it forms the crux of the issue at hand.
24. It is seen that the wordings of the above mentioned proviso (ii) clearly states the condition that “*the transferor and the transferee shall have complied with applicable disclosure requirements set out in Chapter V*”. Hence, this condition is a pre-requisite for exemptions that can be availed by Noticees in present case, for making an open offer.
25. It is noted that, on account of inter-se transfer of shares between transferors viz, Satyanarayan and Kramer and transferee viz, Mr. Susheel Somani, both the transferors and transferee were required to comply with disclosures requirement under Chapter V of SAST Regulations, 2011. These compliances relate to disclosure of acquisition and disposal of holding and are enshrined in regulation 29(2) and (3) of the SAST Regulations, 2011, the extract of the same are as follows:-

“Disclosure of acquisition and disposal.

29.(2) Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.

29 (3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—

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

26. As per material on record and also as per admission of Noticees, there were delay on their part in making the required disclosures under Chapter V, Regulation 29(2) and (3) of the SAST Regulations, 2011. The alleged non-compliances of provisions of Regulation 29(2) and (3) of the SAST Regulations, 2011 has already been adjudicated upon by erstwhile Adjudicating Officer. In this regard, vide separate adjudication orders dated May 30, 2014, non-compliance of Regulation 29(2) and (3) of the SAST Regulations, 2011 was established and penalty of Rs. One Lakh each was imposed on Satyanarayan, Kramer and Mr. Susheel Somani. It is a matter of record that the aforesaid adjudication orders were uncontested, and also penalty of Rs. One lakh each imposed on Satyanarayan, Kramer and Mr. Susheel Somani were paid.
27. Going back to the argument of the Noticees that they were exempted from making open offer, it is clear that one of the conditions for availing exemptions under regulation 10(1)(a)(ii) of SAST Regulations, 2011 for making open offer, was compliance with disclosures requirement under Chapter V of SAST Regulations, 2011. It is noted that this condition have not been fulfilled, as required disclosures under chapter V, regulation 29(2) and 29(3) of SAST Regulations, 2011, were made belatedly by seven days when the regulations require the same to be made within two working days.
28. It is pertinent to note that it is not enough that the disclosures have been made, the disclosures are required to be made in terms and in compliance with the regulatory provisions of the SAST Regulations, 2011. In case of failure to make requisite timely disclosures, the consequences of non-compliance has to follow, and justifications for non-compliance, including inadvertent nature of delay, etc, are futile.
29. Given the above, the very basis of the exemption under Regulation 10(1)(a)(ii) of SAST Regulations, 2011 as claimed by the Noticees does not survive. Hence, it is clear that Noticees by failing to make open offer, have violated the provisions of Regulation 3(2) read with Regulation 13(1) of SAST Regulations, 2011.

Issue b) - Does the violation, if any, attract monetary penalty under section 15H(ii) of SEBI Act?

30. After considering the submissions of Noticees, it is noted that contentions raised by the Noticees are without merit in the context of the facts and circumstances of the matter in hand. The alleged violation of regulation 3(2) read with regulation 13(1) of SAST Regulations, 2011 against the Noticees, have been established. Hence, Noticees are liable for monetary penalty under section 15H(ii) of SEBI Act, which states as following:-

“Penalty for non-disclosure of acquisition of shares and takeovers.

15H. *If any person, who is required under this Act or any rules or regulations made hereunder, fails to,—*

(i)

- (ii) make a public announcement to acquire shares at a minimum price; or
 - (iii).....
 - (iv).....
- he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.”

Issue c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

31. While determining the quantum of penalty under section 15H(ii), it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-
“15J - Factors to be taken into account by the adjudicating officer
While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-
 - (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
 - (b) the amount of loss caused to an investor or group of investors as a result of the default;
 - (c) the repetitive nature of the default.”
32. The material made available on record neither reveals nor specify disproportionate gains/ unfair advantage made by the Noticees, nor it reveals the specific loss suffered by the investors due to not making open offer by the Noticees. Further, there is no material on record to indicate that such default was repetitive.
33. In present case, it would be also appropriate to rely upon the observations of Hon'ble SAT in its order dated September 14, 2010, in the matter of *Ushdev Trade Limited v. SEBI*, Appeal no. 106 of 2010, wherein it observed that“.....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 the 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.....”.
34. The very fact that the Noticees have failed to make open offer when they were required to do so under provisions of SAST Regulations, 2011, warrants that penalty shall be imposed for such violation, however, further taking into consideration the facts and circumstance of the case and mitigating factors as mentioned above, a justifiable penalty needs to be imposed upon the Noticees to meet the ends of justice.

ORDER

35. In view of the above, after taking into consideration all the facts and circumstances of the case, and after considering the factors enumerated in section 15J of the SEBI Act, a penalty is imposed, in exercise of powers conferred under section 15I(2) of SEBI Act of Rs.15,00,000/- (Rupees Fifteen Lakh only) under provisions of Section 15H(ii) of SEBI Act upon the Noticees viz, Mr. Susheel Somani, Mr. Rajendra Somani, Ms. Mridula Somani, Ms. Vandana Somani, Mr. Surendra Somani, Mr. Adarsh Somani, Mr. Shurid Somani, Ms. Jaya Somani, Mr. Hridai Somani, Kopran Lab Pvt. Ltd. and S V Trading & Agencies Ltd for violation of provisions of Regulation 3(2) read with Regulation 13(1) of SAST Regulations, 2011. The Noticees shall be jointly and severally liable to pay the said monetary penalty.
36. The Noticees shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through e-payment facility into Bank Account, the details whereof are as follows:-

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

37. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department 1, Division of Regulatory Action - III [EFD1-DRA-III], SEBI Bhavan, Plot No.C4-A, ' G ' Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under;
1. Case Name :
 2. Name of Payee:
 3. Date of payment:
 4. Amount Paid:
 5. Transaction No:
 6. Bank Details in which payment is made:
 7. Payment is made for: (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)
38. In terms of rule 6 of the SEBI Adjudication Rules, copies of this order is being sent to the Noticees and also to the SEBI.

Date: December 27, 2017
Place: Mumbai

Jeevan Sonparote
Adjudicating Officer