BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/AA/PR/2022-23/18843-18860

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

In respect of:

Sl.No	Name of the Entity	PAN
1	Bajranglal B. Maloo HUF	AAAHB8633E
2	Bajranglal Bankatlal Maloo	ACHPM5764C
3	Dinesh Maloo	AJDPM8140R
4	Lalchand B Maloo HUF	AAAHL2224F
5	Lalchand B Maloo	ACGPM0657D
6	Madhu Sunil Maloo	ACHPM5769R
7	Mahesh Maloo	AFXPM4524R
8	Murli S Maloo	ACGPM0665D
9	Nandlal Bankatlal Maloo	ACGPM0658N
10	Nandlal Maloo HUF	AAAHN6253N
11	Nirmala Devi Nandlal Maloo	ACHPM5770A
12	Premadevi Sobhagmal Maloo	ACVPM7333F
13	Sangeetadevi Lalchand Maloo	ACHPM5773D
14	Sarita M Maloo	ACVPM7332E
15	Shantidevi Bajranglal Maloo	ACHPM5772C
16	Shilpa Maloo	AIBPM3182A
17	Shobhagmal Maloo	ACGPM0656C
18	Sunilkumar Sobhagmal Maloo	ACGPM0659P

(*The aforesaid 18 entities are hereinafter being individually referred to as Noticee No. 1 to 18 respectively and collectively referred to as "**Noticees/promoters",** unless the context specifies otherwise)*

In the matter of Murli Industries Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI"** received a reference from the Income Tax Department (hereinafter referred to as "**IT Department"**) which included certain findings in the matter of Murli Industries Limited (hereinafter referred to as "**MIL"**). In view of the

observations made by the IT Department, SEBI conducted a preliminary investigation in the matter.

2. Based on the findings of the preliminary investigations, SEBI passed an ex-parte ad-interim order bearing no. WTM/KMA/ISD/320/12/2010 dated December 02, 2010 restraining certain entities including Noticee nos.1, 2, 4, 5, 7, 8, 10, and 18 from buying, selling or dealing in the securities of MIL which was thereafter confirmed with respect to the aforesaid Noticees, by confirmatory order bearing no. WTM/KMA/IVD/372/03/2011 dated March 23, 2011. Further, vide order dated March 16, 2012, SEBI held that the interim directions dated December 02, 2010 would continue till further directions against the aforesaid Noticees and the aforesaid Noticees/promoters of MIL were directed to ensure that their shareholding in MIL was not altered in any manner till the enforcement proceedings were completed. Subsequently, a detailed investigation was conducted by SEBI wherein it was observed that the Noticees failed to make public announcement under Regulation 11(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "**Takeover Regulations, 1997"**).

3. Based on the aforesaid findings of the investigation, SEBI initiated proceedings under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act"**) read with Regulation 44 of the Takeover Regulations, 1997 and Regulations 35 (1), (2) and (3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **"Takeover Regulations, 2011"**) with respect to 28 entities including the 18 Noticees who were promoters of MIL at the time of violation and 10 connected companies of MIL, alleging that they failed to make public announcement under Regulation 11 (2) of Takeover Regulations, 1997 after acquiring more than 75% of the equity capital of MIL as Persons acting in concert ("**PAC"**).

4. In view of the above, the Whole Time Member (hereinafter referred to as "**WTM")** of SEBI passed an order bearing no. WTM/RKA/EFD-DRA-I/75-102/2015 dated July 31, 2015 with respect to the 28 entities including the 18

Noticees, wherein it was held that the 28 entities failed to make public announcement within the stipulated time period i.e. within 4 days from December 15, 2006 as per the provisions of the Takeover Regulations, 1997 and they were *inter-alia*, directed to make public announcement to acquire shares of MIL in accordance with Takeover Regulation, 1997 within 45 days from the date of the order (from July 31, 2015).

5. Thereafter, SEBI observed that the 28 entities including the 18 Noticees, did not comply with the directions made vide WTM order dated July 31, 2015 and therefore, adjudication proceedings with respect to the 28 entities including the 18 Noticees were initiated by SEBI under section 15H (ii) and 15HB of SEBI Act, for failing to make a public announcement to acquire shares at a minimum price and for failing to comply with the directions made vide WTM order dated July 31, 2015, respectively. Accordingly, the competent authority appointed Ms. Maninder Cheema, Chief General Manager as Adjudicating Officer (hereinafter referred to as **"AO"**) under section 15-I of the SEBI Act read with Rule 4 of the SEBI (Procedure for holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **"Adjudication Rules, 1995"**) and the same was communicated to her vide communique dated June 28, 2019 to inquire into and adjudge under section 15H (ii) and 15HB of the SEBI Act for the violations alleged to have been committed by the 28 entities.

6. In view of the above, AO passed an order bearing reference no. Order/MC/DS/2020-21/8114-8141 dated June 30, 2020 with respect to these 28 entities including the 18 Noticees, holding them liable under the aforesaid provisions of law for the alleged violations. The AO made the following observation with respect to the provision of granting an opportunity of hearing to the Noticees and thereafter proceeded to pass the order based on material available on record:

> "*12. I note that out of 28 Noticees only 5 Noticees had replied to the SCN even after SCN was duly delivered to the Noticees. Further, I note that at paragraph 8 of the SCN, the Noticees were advised to furnish their reply, if any, towards the SCN within 14 days of its receipt, failing which, it shall be presumed that the*

Noticees have no reply to submit and the matter will be proceeded with on the basis of the material available on record. In the said para, Noticees were also advised to indicate whether they desire personal hearing in the matter. However, Noticee No. 6, 8, 12, 14 and 17 in their replies have not indicated their desire for personal hearing."

7. Subsequently, 18 out of the 28 entities (being the Noticees in the present adjudication proceedings) appealed against the AO order dated June 30, 2020 and Recovery/Attachment Notice dated June 08, 2021 issued by the Recovery Officer before Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**Hon'ble SAT**"). Hon'ble SAT, in appeal no. 564 of 2021, vide its order dated August 31, 2021, *inter-alia,* quashed the AO order on the grounds of principles of natural justice and remitted the matter to the AO to decide the matter afresh after granting an opportunity of hearing to the appellants. The attachment order was also set aside. The observations of Hon'ble SAT in this regard are produced below:

"3. Having perused the impugned order, we are of the opinion that the impugned order is violative of the principles of natural justice. Rule 4(3) of the Rules of 1995 clearly requires the AO to issue a notice fixing a date for appearance and thereafter give an opportunity of hearing before passing the impugned order which in the instant case has not been done. Therefore, ***the impugned order cannot be sustained and is quashed. The attachment order is also set aside****. The appeal is allowed.*

4. We accordingly remit the matter to the ***AO to decide the matter afresh after granting an opportunity of hearing to the appellants****. In this regard, all the appellants will appear before the AO on September 13, 2021 and the AO will proceed accordingly in accordance with law"*

APPOINTMENT OF ADJUDICATING OFFICER

8. Pursuant to the aforementioned order dated August 31, 2021 of Hon'ble SAT, Ms. Maninder Cheema, Chief General Manager was further appointed as the Adjudicating Officer by competent authority vide order dated September 08, 2021 to inquire and adjudge under section 15H (ii) and 15HB of the SEBI Act

for the alleged violations with respect to the 18 Noticees qua which the proceedings were remanded. Thereafter, pursuant to the transfer of Ms. Maninder Cheema (hereinafter referred to as "**erstwhile AO**"), undersigned has been appointed as the Adjudicating Officer vide order dated June 06, 2022.

9. I note that as per the communique issued to the undersigned, the present adjudication proceedings only pertains to the 18 Noticees/promoters of MIL as the directions of Hon'ble SAT vide order dated August 31, 2021 were issued qua the appellants as discussed at paragraph 7. Further, it is observed that the remaining 10 entities out of the 28 entities dealt in the AO order dated June 30, 2020 were companies. The status of all the 10 companies as per the company master data on MCA website is shown as "strike off".

SHOW CAUSE NOTICE & HEARING

10. A common Show Cause Notice bearing reference no. EAD5/MC/DPS/32536/2019 dated December 09, 2019 (hereinafter referred to as "**SCN"**) was issued and duly served inter-alia to the Noticees by erstwhile AO in terms of section 15-I of the SEBI Act read with Rule 4 of the Adjudication Rules, 1995 calling upon them to show cause as to why an inquiry should not be held against them and why penalty, if any, be not imposed under section 15H (ii) of the SEBI Act for failing to make public announcement as required under Regulation 11 (2) of the Takeover Regulations, 1997 and under section 15HB of the SEBI Act for failing to comply with the directions of WTM order dated July 31, 2015.

11. Pursuant to the directions of Hon'ble SAT in its order dated August 31, 2021, the Noticees were to be heard afresh on September 13, 2021. However, the Noticees vide their letter dated September 08, 2021 sought an adjournment. Accordingly, vide hearing notice dated September 09, 2021, the hearing was rescheduled to September 14, 2021. The Noticees availed the said hearing and undertook to submit a reply to the SCN within 2 weeks.

12. The Noticees were again granted an opportunity of personal hearing on October 01, 2021. The Noticees submitted their reply to the SCN vide their letter dated September 30, 2021 and thereafter, availed the personal hearing opportunity on October 01, 2021. During the hearing, the Noticee submitted that they have filed a settlement application before SEBI and after disposal of the settlement application, in case it is rejected, the Noticees might make additional submissions.

13. The settlement division, vide email dated May 20, 2022 informed the office of erstwhile AO that the settlement application of the Noticee was rejected and that the same was communicated to the Noticees vide email dated May 19, 2022. Pursuant to the appointment of undersigned as AO in the present adjudication proceedings, the Noticees were granted another opportunity of being heard before me on June 23, 2022 in the interest of principles of natural justice vide hearing Notice dated June 10, 2022. The Noticees made written submissions vide their email dated June 22, 2022.

14. Thereafter, the Noticees availed the opportunity of personal hearing through their Authorized Representative ("**AR**") on June 23, 2022. During the hearing, the AR relied upon and reiterated the written submissions dated June 22, 2022 and September 30, 2021. The AR requested to consider the mitigating factors as mentioned in the written submissions and consider the delay from the date of occurrence of violation to passing of orders as a mitigating factor in view of Hon'ble SAT order dated February 23, 2021 in the case of Le Waterina Resorts & Hotels Ltd.

REPLY OF THE NOTICEES TO THE SHOW CAUSE NOTICE

15. The submissions made by the Noticees in their replies vide letter dated September 30, 2021 and June 22, 2022 have been perused and the submissions made by them during the proceedings, inter-alia, are summarized as under-

    I. The SCN relied entirely upon the order dated July 31, 2015 passed by the WTM. The SCN is bad in law as it did not provide the Noticees any material to support the allegation of violation of section 15H (ii) of the

SEBI Act and therefore, the Noticees could not provide any defense to the allegation of violation of section 15H(ii) of the SEBI Act .

II. *The Noticees had not acquired any shares of the Company (Murli). As per the Order dated July 31, 2015, the aggregate holding of the promoters and promoter group along with the **PAC** was alleged to have gone up on account of the conversion of share warrants held by 5 connected Companies (who were Noticees 24 to 28 in WTM order) which shares pursuant to conversion were clubbed with the shareholding of the promoter and promoter group. The alleged connected companies (which were treated as PACs by the WTM) were struck off as defunct companies by the Registrar of Companies ("**ROC"**). The alleged violation for not making public announcement was only technical violation as the Noticees had not acquired any shares of the Company.*

III. *At the time of passing of WTM order, MIL was referred to BIFR under section 18 (1) of Sick Industrial Companies Act, 1985, for declaring it as a sick Industrial undertaking and various proceedings were initiated against MIL. The Noticees shareholding had already come down drastically from 54% as on September 30, 2010 to 30.66% on June 30, 2011 as a result of distress sales carried out by banks/financial institutions, pursuant to the invocation of the securities given by the promoters against the loans raised by the company.*

IV. *A winding-up petition being company petition no.9 of 2011 was filed by M/s Sunmax General Trading LL. Dubai (UAE) against the company before the Hon'ble High Court of Bombay, Nagpur Bench. The Hon'ble High court vide its order dated March 21, 2017 had appointed a provisional liquidator. Further in or around 2017, one Edelweiss Asset Reconstruction Company Limited had filed a company Petition No. 66 of 2017 under section 7 of the Insolvency and Bankruptcy Code, 2016 ("**IBC")** as a Financial Creditor against MIL to initiate Corporate Insolvency Resolution Process ("**CIRP").** The petition was admitted by the Hon'ble National Company Law Tribunal, Mumbai Bench (**"NCLT"**)*

*vide its order dated April 05, 2017 and Mr. Vijaykumar V. Iyer was appointed as the Interim Resolution Professional (**"IRP").** Thereafter, the Resolution Professional ("**RP")** filed a miscellaneous Application no. 689 of 2017 on December 22, 2017 under section 31 of the IBC seeking approval for the resolution plan to be submitted by one Dalmia cement (Bharat) Limited ("**Dalmia")** which provided for acquisition of equity shares from the existing shareholders and was approved by 100% vote share of the Committee of Creditors ("**COC**") on December 20, 2017 before the Hon'ble NCLT.*

V. *Subsequently, the Hon'ble High Court of Bombay vide its order dated November 2018, granted conditional leave to the Resolution Professional to continue with the CIRP subject to certain conditions. One of the conditions was the extension of the last date of submission of claims. The said Miscellaneous Application no. 689 of 2017 came to be disposed by Hon'ble NCLT by its order dated July 22, 2019 read with order dated July 03, 2019 and Hon'ble NCLT approved the aforesaid Resolution Plan. The order of the Hon'ble NCLT came to be challenged before the Hon'ble National Company Law Appellate Tribunal **("NCLAT")** by few of the Noticees and the workers of the company. All the appeals were dismissed by a common order dated January 24, 2020.*

VI. *The order dated January 24, 2020 was challenged by Noticee no. 5 before the Hon'ble Supreme Court of India in C.A. 3169-3170 of 2020 which was also dismissed by Hon'ble SC by its order dated November 20, 2020.*

VII. *After the commencement of CIRP process under IBC, the Noticees ceased to be in management control of the company and on completion of the CIRP process, they no longer were promoters or even shareholders of MIL.*

VIII. *The non-compliance of order dated July 31, 2015 is on account of the circumstances that followed on the passing of the confirmatory order of the WTM. The Noticees were occupied in preventing the company from*

going into liquidation and were in no position to make an open offer in compliance of the confirmatory order passed by the WTM.

IX. *The Noticees have already suffered on account of debarment order which was passed against them by the WTM.*

X. *The Noticees have not made any undue profit or avoided loss, they carry clean image and have never been found guilty of violating securities laws in the past and no loss has been caused to the investors.*

XI. *As per the amended Resolution Plan, the liquidation value payable to the shareholder of MIL was NIL. However, with a view to provide for all stakeholders to the extent possible, the Resolution Applicant, would purchase all equity shares of MIL held by the shareholders of MIL as of the Insolvency Commencement Date at the same price per share as used for determining the Lender Purchase Consideration paid for the purchase of the new equity shares from the consenting Secured Financial Creditors after the conversion of the SFC conversion amount into new equity shares. Further, an aggregate acquisition price of Rs. 42 lakh to the existing shareholders of MIL by the Resolution Applicant was provided towards the acquisition of all existing securities. Therefore, there was no obligation and/or liability of the Noticees towards any shareholders.*

XII. *Presently, the financial condition of all the Noticees is very precarious and are not in a position to either comply with the directions of WTM for making open offer or bear any burden of monetary penalty.*

ISSUES FOR CONSIDERATION

16. Considering the findings of investigation, the allegations made out in the SCN against the Noticees, the replies and submissions made by the Noticees and the documents/evidence available on record, I find that the following issues require consideration in the present case-

Issue No. I

Whether the Noticees failed to make the public announcement as required under Regulation 11(2) of the SEBI Takeover Regulations 1997, and failed to comply with the directions issued under SEBI Order No. WTM/RKA/EFD-DRA-I/75-102/2015 dated July 31, 2015?

Issue No. II

Does the violation, if any, attract monetary penalty under Section 15H (ii) and 15HB of the SEBI Act?

Issue No. III

If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

CONSIDERATION OF ISSUES AND FINDINGS

17. On consideration of the material available on record, the facts and circumstances of the case and the submissions of the Noticees, I record my findings hereunder:-

18. Before dealing with the main issues involved in the case, it is pertinent to deal with the preliminary issue raised by the Noticees with regard to the SCN. The Noticees have contended that the SCN relied entirely upon the WTM order and did not provide any material to support the allegations of violation of section 15H (ii) of the SEBI Act.

19. In this regard, I note from paragraph 11 (I) of the WTM order that, the Noticees have made their submissions on merits before the Ld. WTM. It is observed that the relevant and documents relied upon in the proceedings were already shared with the Noticees in the SCN issued by the WTM and the order has extensively dealt with the allegation of failure to make public announcement, pursuant to such submissions of the Noticee. Moreover, I note from the material available on record that during the adjudication proceeding before

the erstwhile AO and the undersigned, the Noticees did not seek any documents/ inspection of documents nor did they indicate lack of material to support their defense. In view of the above, I do not find merit in the contention of the Noticee that they did not have material to support their defense. Further, I also note that the Noticees have not challenged the order of WTM in appeal before the Hon'ble SAT.

20. After having dealt with the preliminary issue raised by the Noticees, I will now deal with the main issues before me for the present adjudication proceedings.

Issue No. I: Whether the Noticees failed to make the public announcement as required under Regulation 11(2) of the SEBI Takeover Regulations 1997, and failed to comply with the directions issued under SEBI Order No. WTM/RKA/EFD-DRA-I/75-102/2015 dated July 31, 2015.

21. The SCN alleged that the Noticees failed to make public announcement as required under Regulation 11(2) read with Regulation 14 of Takeover Regulation, 1997. The SCN relied on the WTM order dated July 31, 2015 wherein it was established that the Noticees (promoter group) along with 10 other connected companies i.e. Runicha Alloys and Steel Private Limited **("Runicha**"), Inco Infrastructure Private Limited ("**Inco**"), Ramji Agri Business Private Limited ("**Ramji**"), Ambaji Papers Private Limited ("**Ambaji**"), Kanhaiya Mining & Mineral Private Limited **("Kanhaiya**"), Krishnum Investments Private Limited ("**Krishnum**"), Lakhi Packaging Private Limited **("Lakhi**"), Taitan Management Services Private Limited ("**Taitan**"), Simple Mining & Power Private Limited ("**Simple**"), Ramkrishna Fabrication & Machineries Private Limited ("**Ramkrishna**") were acting as "persons acting in concert" ("PAC") in terms of Takeover Regulations, 1997 and held a combined shareholding of 85.18% of the equity capital of MIL as on December 15, 2006. In terms of Takeover Regulations, 1997, such shareholding of more than 75% of the equity capital of MIL obligated the Noticees to make a public announcement.

22. The Noticees in their reply dated September 30, 2021 and June 22, 2022 submitted that they had not acquired any shares of MIL. The shareholding of

the promoters along with the alleged PACs went up on account of conversion of the share warrants by five alleged to be connected companies (i.e. Krishnum Investments Private Limited ("**krishnum"),** Lakhi Packaging Private Limited ("**Lakhi**"), Taitan Management Services Private Limited ("**Taitan**"), Simple Mining & Power Private Limited ("**Simple**"), Ramkrishna Fabrication & Machineries Private Limited ("**Ramkrishna**"). The promoters shareholding (Noticees) pursuant to conversion of share warrants by the five connected companies was clubbed together as PAC. The Noticees further submitted that, the five alleged to be connected companies have been struck off by the ROC as defunct.

23. In this regard, I note from the Investigation Report and the WTM order that the five companies which converted their share warrants to equity shares of MIL were Runicha, Inco, Ramji, Ambaji and Kanhaiya and not the ones quoted by the Noticees in their submissions. I note that the Noticees have not made any submissions to disprove that they were not acting as PACs with the 10 connected companies while acquiring the equity shareholding of MIL through share warrant conversion. Moreover, the connection brought out in the WTM order to establish that the Noticees were acting as persons in concert with the 10 companies has not been challenged by the Noticees.

24. The Noticees have submitted that they have not acquired any shares of MIL and the obligation to make public announcement was triggered when the alleged 5 connected companies converted their warrants. In this regard, I note that it is irrelevant whether the Noticees/promoters acquired shares of MIL themselves for the purpose of determining the violations of Takeover Regulations, 1997. Regulation 2(1) (b) of Takeover Regulation 1997 defines an acquirer as any person who either directly or indirectly acquires shareholding of a company. In the present case, the Noticees are alleged to have indirectly acquired the shareholding of MIL while acting in concert with the 10 connected companies.

25. In this regard, I find it relevant to determine if the aforesaid ten companies were connected to the Noticees and acted as PACs while acquiring the

shareholding in equity capital of MIL thereby acquiring more than 75% of the equity shareholding without making any public announcement to acquire shares from public. I find it relevant to quote the provisions of the Takeover Regulation, 1997 as relied upon in the present adjudication proceedings as under-

Takeover Regulation, 1997

Regulation 11(2):

"11. Consolidation of holdings

(1)……..

(2) ***No acquirer****, who together with* ***persons acting in concert*** *with him holds, fifty five percent (55%) or more but less than seventy five per cent (75%) of the shares or voting rights in a target company, shall acquire either by himself or through persons acting in concert with him any additional shares or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these regulations."*

Regulation 14 (1):

"The public announcement referred to in Regulation 10 or Regulation 11 shall be made by the merchant banker not later than four working days of entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein."

Regulation 2(1) (b) read with 2(1) (e) of Takeover Regulation 1997

"(b) "acquirer" means any person who, directly or indirectly, acquires or agrees to acquire shares or voting rights in the target company, or acquires or agrees to acquire control over the target company, ***either by himself or with any person acting in concert with the acquirer;"***

"(e) Persons acting in concert" comprises-

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

(2)……..”

26. In order to ascertain if the Noticees had common objective of substantial acquisition of shares of MIL pursuant to an agreement of understanding (whether formal or informal) with the 10 companies and thereby the Noticees acquired the shareholding of MIL beyond the threshold to trigger public announcement as PACs, I would refer to the considerations and findings made by Ld. WTM in the order dated July 31, 2015. I note the following from the WTM order dated July 31, 2015-

a) Prior to the preferential allotment of share warrants by MIL to Kanhaiya, Ramji, Runicha, Ambaji and Inco, these five companies had taken Inter Corporate Deposits (**ICD**) of Rs. 4.86 crore each from State Industrial and Investment Corporation of Maharashtra Limited **(SICOM)** subject to certain terms and conditions, inter-alia-

- Pledge of 5 Lac shares of MIL by each of Kanhaiya, Ramji, Runicha, Ambaji and Inco after conversion of share warrants;
- Prior to the pledge of 5 lac shares as aforesaid, the promoters of MIL were required to pledge 1.5 lac shares each of MIL(totalling 7.5 lac shares) with SICOM. These pledged shares were to be released after conversion of warrants and pledge of the said 5 lacs shares;
- Post-dated cheques (hereinafter referred to as "PDCs") towards principal and interest from the borrower companies;
- Personal guarantees of promoters/directors of borrower companies;

- Comfort letter dated December 1, 2006 of MIL (signed by company secretary of the MIL)
- PDCs towards principal and interest from Mr. Nandlal Maloo (promoter/MD of MIL)

b) As per the SICOM policy, ICDs can be extended to a company provided the exposure is supported by a Letter of Comfort from a group company which meets all SICOM norms. Noticee nos. 2, 5, 9, and 18 (part of the promoter group of MIL) together pledged 7.5 lakh shares of MIL as per the aforesaid condition. Further, PDCs and the comfort letters dated December 01, 2006 were provided in favour of the aforesaid five connected companies by Noticee no. 9 and MIL, respectively. Subsequently, all these five connected companies repaid the ICDs to SICOM after obtaining loan from Madhulika Leasehold Private Ltd. (now known as ANG Financial Consultants Pvt. Ltd., hereinafter referred to as "Madhulika"), which in turn had received funds from MIL without any collateral security.

c) The comfort letter was in the nature of guarantee to SICOM that in the event of failure of borrowers to pay or perform any of the terms and condition of the sanction, MIL will pay the same to SICOM together with interest, cost, charges and expenses without any objections. The comfort letter was unambiguous in content and provided complete comfort to SICOM in the event of failure of the borrowing entity. Both MIL and Noticee no. 9 gave the comfort letter and PDCs to SICOM knowing that the borrowers (the aforesaid five connected companies) did not have any business and were not in a position to first avail the ICDs and then repay them by any means. There is a clear element of assurance and guarantee extended to SICOM in case of failure of the borrower. Without having any connection with the borrowing entities, such an unambiguous comfort letter cannot be issued to the lender by anyone. The promoters were asked for an explanation regarding issuance of such comfort letters to SICOM on behalf of the aforesaid 5 companies and were provided with the comfort letter. The promoters failed to give a satisfactory explanation

before the WTM as to why such a letter was given to SICOM when MIL as an issuer of shares need not be concerned about the finances of the subscribers.

d) MIL had given Rs. 28,27,00,000/- as a loan to Madhulika without any collateral on November 30, 2007. However, Madhulika immediately transferred Rs.28,26,25,000/- on November 30, 2007 and December 1, 2007 to five connected companies namely, Kanhaiya, Runicha, Ramji, Inco and Ambaji. The proximity and amount of fund transfer corroborated that MIL had transferred funds to Madhulika to fund the aforesaid five connected companies rather than for procuring the plant and machinery as claimed by the promoters. Further, Madhulika never used the money towards the objectives stated by MIL and simply transferred the money to the five connected companies. In view of these facts and circumstances, Madhulika was used as a front entity to facilitate transfer of funds from MIL to the five allottees, i.e., the aforesaid five connected companies.

e) Further, it was observed by WTM that all the connected companies were being managed by one Mr. Amit Raja, Chartered Accountant. The IT Department during its survey had found various records of these connected companies in the premises of Mr. Amit Raja clearly indicating that Mr. Raja's relationship with these companies was not merely in his professional capacity as auditor and consultant. He was also maintaining consolidated details of ten connected companies as if they were part of same group and being managed by him only. Out of these ten connected companies, five connected companies mentioned in the preceding paragraphs were funded by MIL through Madhulika. MIL and its promoters arranged for funding to these connected companies who had subscribed to warrants of MIL by using same modus operandi, clearly shows that these connected companies were acting in concert with each other while subscribing to the preferential allotment of warrants.

f) Further, from the extracts of the bank account statements of Ramkrishna Fabrication & Machineries Pvt. Ltd. (**Ramkrishna**) it was found that MIL had consistently been providing funds to it. In the calendar year 2007 alone, MIL had transferred a total of Rs.1,82,50,000/- to Ramkrishna, the explanation for which have been given by neither the promoters of MIL nor Ramakrishna. Therefore, Ramkrishna was connected to the promoters of MIL.

g) These connected companies were unable to produce any substantial evidence in support of their arguments that they were unaware of trading done by other connected companies in the scrip of MIL. The connection of these connected companies/their promoters/directors/shareholders is already established with MIL /its promoters/directors, in the WTM order. Five of these connected entities used the funds provided by Madhulika for repayment of loan to SICOM. It was already established that SICOM had sanctioned the loan to the five connected entities on the basis of the comfort letter/guarantee/collateral/PDCs provided by MIL and its promoters and the loan so obtained was utilized by the five connected companies towards subscription and conversion of share warrants.

h) The IT Department during its survey recovered consolidated details of these companies from the premises of Mr. Amit Raja along with financial and various other documents. Moreover, there is a commonality in the directorship of Mr. Lalit Loya (director of Runicha, Krishnumand Ramji), Mr. Chenaram C. Rar (director of Runicha, Ambaji), Mr. Nilesh Jain (director of Runicha, Ramkrishnaand Taitan), Mr. Shivshakti B. Dhoot (director of Incoand Simple), Mr. Bhawarlal Khariya (director of Runichaand Lakhi). These connected companies and their directors have financial transactions with each other. Further, none of the connected companies, except Ramkrishna had undertaken any major business activity and whatever activities could undertake, were linked to MIL or its connected entities.

i) The facts that the ten connected companies mentioned at paragraph 21 had common directorship, phone number, address, email address, and fund transfers amongst them, lead to the conclusion that these entities were connected to each other. This is further corroborated by the fact that all these connected companies were being managed by their common auditor, Mr. Amit Raja. MIL had made preferential allotment of warrants to these connected entities and had also furnished comfort letters and PDCs so as to enable the connected companies to obtain ICDs from SICOM for subscription and conversion of warrants. Thus, the promoters (Noticees) acting in concert with the connected companies had cornered substantial shareholding in MIL. In view of these circumstances of the case, the said connected companies have demonstrated meeting of minds and common objective or purpose of substantial acquisition of shares, etc. of MIL.

j) Under the facts and circumstances discussed hereinabove, it is established that the whole scheme was devised and employed by the promoters of MIL to corner/ acquire substantial shares of MIL acting in league with the connected entities. Thus, the commonality of objective and understanding of all the Noticees to acquire substantial shares of MIL is established. Considering the facts and circumstances of this case, all the Noticees are squarely covered within the definition of “persons acting in concert" under regulation 2(1) (e) of the Takeover Regulations, 1997.

k) On December 15, 2006, when the aforesaid 5 connected entities converted the shares warrants allotted to them by MIL, the promoters (Noticees) shareholding reduced to 55.35% from 74.90% of the equity of MIL and when combined with the shareholding of the 10 connected companies, it became 85.18% of the total equity shareholding of MIL. Thus, Noticees attracted the obligation to make public announcement as mandated under regulation 11(2) of the Takeover Regulations, 1997 within the time period stipulated under Regulation 14 thereof.

27. From the considerations and findings of the WTM order as discussed above, it is established that the promoters of MIL and MIL itself played a significant role in ensuring that the 5 connected companies (Runicha, Inco, Ramji, Ambaji and Kanhaiya) received funds from SICOM and thereby convert their share warrants into equity shareholding of MIL. Further that the 10 companies were connected to each other based on common Auditor (Mr. Amit Raja), common directors, phone numbers, addresses and transactions with each other etc. Therefore, it is established that the Noticees along with the ten connected companies were PACs for the purpose of Takeover Regulations, 1997 and attracted the obligation to make public announcement. I note that the Noticees, in their submissions before me, have not made any contrary submissions which disproves the findings of WTM order, in order to show that Noticees were not connected to the 10 companies or/and that they did not acquire the equity shareholding of MIL as PACs. Further, I note from the submissions of the Noticee that no public announcement has been made by the Noticees. In view of these facts and circumstances, I find that all the Noticees have violated regulation 11(2) read with regulation 14 of the Takeover Regulations, 1997.

28. The SCN further alleged that the Noticees failed to comply with the directions issued under WTM order dated July 31, 2015 i.e. to make public announcement within a period of 45 days from the date of the order. In this regard, I note that as per material available on record and the submission of the Noticees, they (Noticees) have not complied with the directions made in WTM order. The Noticees also made submissions to show subsequent events which led to the non-Compliance of directions made in WTM order.

29. In this regard, the Noticees submitted that at the time of passing of WTM order, MIL was referred to BIFR under section 18 (1) of Sick Industrial Companies Act, 1985, for declaring it as a sick Industrial undertaking and various proceedings were initiated against MIL. I note that, this submission has already been considered by Ld. WTM in July 31, 2015 order before issuing directions to the Noticees to make public announcement. I also note that the Noticee has failed to show as to how such reference to BIFR was a

bar on the Noticees to make public announcement and thus, I do not find merit in considering this submission for adjudging the present proceeding.

30. Noticees also submitted that a winding up petition (Petition No. 09 of 2011) was filed against MIL before Hon'ble Bombay High Court wherein a provisional liquidator was also appointed in 2017. In this regard, I note that the winding up petition appears to have been filed before the Hon'ble High Court in 2011 whereas the Noticees were required to make the public announcement in 2006 itself. Further, I note from the orders of Hon'ble High Court as available in the public domain that MIL being respondent in the winding up petition failed to appear before the Hon'ble High Court on December 09, 2011 as well as on several other instances pursuant to the issuance of notice in the said proceedings by the Hon'ble High Court. The Hon'ble High Court made the following observation in this regard in its order dated February 07, 2017-

"Considering this fact as well as the fact that the petitions are filed in year 2011 and 2012 and pending before this Court for quite some time and on the ground that the learned counsel for the respondent is not present before this Court, to give last opportunity, the petitions be posted after two weeks"

31. Therefore, due to absence of MIL in the said proceedings, there were no significant development in the winding up proceedings until the appointment of official liquidator on March 21, 2017. In this regard I note that, the WTM order directed the Noticees to make a public announcement within 45 days from the July 31, 2015 order i.e. by September 14, 2015. Under these circumstances, there was no bar on the Noticees in making public announcement.

32. Further, the Noticee submitted that in 2017, an application for corporate insolvency resolution process was also filed wherein the resolution plan by resolution applicant-Dalmia Cement (Bharat) Limited got approved by Hon'ble NCLT vide its order dated July 22, 2019 read with July 03, 2019. Thus, in view of these circumstances, the Noticees ceased to be in management of the company and on completion of the CIRP they were no

longer the promoters or even shareholders of MIL and were not able to comply with the directions issued under the WTM order dated July 31, 2015 to make public announcement for acquiring shares of MIL.

33. I note that the CIRP application was filed in 2017 and it was only in 2019 that the resolution plan got approved. In these circumstances, I do not find any merit in these submissions of the Noticees that, due to subsequent events they were unable to comply with WTM directions. Therefore, I find that the violation of Section 15 HB for non-compliance of WTM order is established.

Issue No. II: Does the violation, if any, attract penalty monetary penalty under Section 15H (ii) and 15HB of the SEBI Act?

34. The failure of the Noticees in making the public announcement as required under Regulation 11(2) read with Regulation 14 of the SEBI Takeover Regulations 1997, and failure to comply with the directions issued under WTM order dated July 31, 2015 is established in the aforesaid paragraphs. Hence, I am of the view that imposition of monetary penalty is warranted on the Noticees under Section 15H(ii) and 15HB of the SEBI Act, text of which are reproduced as under:

SEBI Act:

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 thereunder, fails to,—*

(i) *……..*
(ii) *make a public announcement to acquire shares at a minimum price; or*
……
he shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

Penalty for contravention where no separate penalty has been provided.

15HB*. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be* ***liable to a penalty which shall***

not be less than one lakh rupees but which may extend to one crore rupees.

Issue No. III If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

35. While determining the quantum of penalty under Section 15H(ii) and 15HB of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:

> *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.*

36. The material available on record does not indicate specific quantum of unfair gain made by the Noticees or the loss caused to the investors on account of public announcement not being made and by failing to comply with the directions issued under SEBI orders dated July 31, 2015. However, I note that the Noticees deprived the shareholders the exit opportunity at the best offer price which would have been determined in terms of Regulation 20 of the Takeover Regulation, 1997. In terms of Regulation 20 (4) of the Takeover Regulations, 1997, the open offer price should have been around Rs. 410 and the total consideration amount for making the open offer would have been around Rs. 78 crore. The failure to make a public announcement enable the Noticees to avoid providing the aforesaid amount for the open offer and caused commensurate opportunity of loss to the investors at that time.

37. The Noticees have submitted remote reasons as to why they were not able to comply with the directions issued in 2015, which have already been discussed above, however, the fact remains that the violation first occurred in 2006 and has continued since then and the Noticees have gained at the cost of investors.

38. The Noticees have submitted that the Resolution Applicant- Dalmia acquired all the then existing securities of MIL and paid an aggregate acquisition price of Rs. 42 Lakh to the then existing shareholders of MIL wherein the price of the shares was same as used for determining the Lender Purchase Consideration paid for the purchase of the new equity shares. Therefore, there was no obligation and/or liability of the Noticees towards any shareholders.

39. Further, the Noticees have cited Hon'ble SAT order dated February 23, 2021 in the case of *Le Waterina Resorts & Hotels Ltd. vs. SEBI* and made submissions before me to take into consideration the delay in the instant matter as a mitigating factor for arriving at the quantum of monetary penalty. Hon'ble SAT has observed that –

> *"12. We are further of the opinion that the AO in the instant case has imposed penalty without considering the various factors stipulated under section 15J and should also take into consideration that the violation, if any, is of the year 2010 when the alleged transfers were made and the show cause notice was issued after a gap of seven years in 2017. Delay in our opinion becomes a mitigating factor for quantifying the penalty under the relevant provisions."*

40. In this regard, I note that the alleged violations pertain to December, 2006. These violations were brought out pursuant to an investigation undertaken by SEBI based on a reference received from Income Tax Department in November, 2009. During the investigation, an interim order dated December 02, 2010 was issued by SEBI against the 10 PAC companies (companies as mentioned at paragraph 21) and promoters of MIL namely, Noticee 1, 2, 4, 5, 7, 8, 10, and 18. Thereafter, SEBI passed confirmatory order dated March 23, 2011 against the aforesaid Noticees and 4 of the 10 PAC companies (Krishnum, Lakhi, Simple, and Taitan). Further, vide order dated March 16, 2012, SEBI directed that the interim directions issued in the matter would continue till further directions. Subsequently, final order was passed by Ld. WTM vide order dated July 31, 2015 against 28 entities (18 Noticees and 10 PAC companies) wherein they were directed to make public announcement within 45 days from the date of the order. However, it was observed that the

directions of the said order were not complied and fresh adjudication was initiated in 2018 for imposition of penalty. The adjudication officer issued SCN dated December 09, 2019 and order was passed on June 30, 2020. This order was remanded by Hon'ble SAT order dated August 31, 2021 as discussed at paragraph 7. Thereafter, to adjudge the present proceedings, erstwhile AO was appointed vide order dated September 08, 2021 and undersigned was appointed as AO vide order dated June 06, 2022 as discussed at Paragraph 8. Pursuant to the appointment of AO (erstwhile and present), several hearing opportunities were given to the Noticees and a settlement application was also filed by the Noticee which was subsequently rejected as discussed at paragraph 11 to 14.

41. In this context, I find it relevant to refer to the order passed by Hon'ble SAT in the case of Metex Marketing Pvt. Ltd. vs. SEBI (order dated June 4, 2019) wherein Hon'ble SAT held that: "*This Tribunal has consistently held that in the absence of any specific provision in the SEBI Act or in the Takeover Regulations, the fact that there was a delay on the part of SEBI in initiating proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation."*

42. In this regard, it is relevant to refer here the observations of Hon'ble SAT in the matter of Ranjan Varghese Vs. SEBI (Appeal no.177 of 2009 and Order dated April 08, 2010), as under: -"*The fact that the appellants acting in concert with each other had made the acquisitions which triggered the Takeover Code, it was incumbent upon them to make a public announcement which, admittedly, they have failed to do so.* ***This failure has seriously prejudiced the public investors/shareholders of the company who have been deprived of their valuable right to exit by offering their shares to the acquirer****. We cannot lose sight of the fact that one of the primary objects of the Takeover Code is to allow the public shareholders an exit route when the target company is either taken over by an acquirer or an acquirer makes a substantial acquisition therein."*

43. In view of the above, I note that neither there is any unreasonable delay in the initiation of present adjudication proceedings nor in the issuance of SCN. The adjudication proceedings came into existence only because the Noticees did not comply with the directions made in WTM order. I note that although the violations pertain to 2006, numerous events and developments, as discussed at paragraph 40, contributed to the time taken in passing this order. I note that the Noticees themselves have contributed to the time taken in passing this order due to their continued non-compliance of SEBI directions. Therefore, I find it difficult to accept the arguments of the Noticees that delay should be considered as a mitigating factor in deciding the quantum of penalty.

ORDER

44. After taking into consideration all the facts and circumstances of this matter, all the replies and submissions of the Noticees and other documents, as available on record, I, in exercise of powers conferred upon me under section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs. 10,00,00,000/- (Rupees Ten Crore Only) upon Noticee 1 to 18 under section 15 H (ii) of the SEBI Act and Rs. 1,00,00,000/- (Rupees One Crore only) upon Noticee 1 to 18 under section 15 HB of the SEBI Act. The total penalty of Rs. 11,00,00,000/- (Rupees Eleven Crore only) shall be paid jointly and severally by the Noticees 1 to 18 i.e. 1) Bajranglal B Maloo HUF, 2) Bajranglal Bankatlal Maloo, 3) Dinesh Maloo, 4) Lalchand B Maloo HUF, 5) Lalchand B Maloo, 6) Madhu Sunil Maloo, 7) Mahesh Maloo, 8) Murli S Maloo, 9) Nandlal Bankatlal Maloo, 10) Nandlal Maloo HUF, 11) Nirmaladevi Nandlal Maloo, 12) Premadevi Sobhagmal Maloo, 13) Sangeetadevi Lalchand Maloo, 14) Sarita M Maloo, 15) Shantidevi Bajranglal Maloo, 16) Shilpa Maloo, 17) Sobhagmal Maloo, 18) Sunilkumar Sobhagmal Maloo.

45. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favor of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR

through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link

ENFORCEMENT → Orders → Orders of AO → PAY NOW

46. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051. The Noticees shall provide the following details while forwarding DD/ payment information:

    a) Name and PAN of the entity (Noticee)
    b) Name of the case / matter
    c) Purpose of Payment – Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

47. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter-alia, by attachment and sale of movable and immovable properties.

48. Copies of this Adjudication Order are being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules.

August 30, 2022
Mumbai

Dr. Anitha Anoop
Adjudicating Officer