BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/KS/AE/2021-22/11266-11299]

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

IN RESPECT OF –

Noticee No.	Noticee Name	PAN
1	Shri Mukesh D Ambani	AADPA3705F
2	Shri Anil D Ambani	AADPA3703D
3	Smt. K D Ambani	AACPA5346H
4	Smt. Dipti D Salgaokar	ABKPS7317M
5	Smt. Nina B Kothari	AAHPK5415A
6	Shri R H Ambani	AALPA6303R
7	Shri Dattaraj Salgaokar	ABYPS1941H
8	Smt. Nita Ambani	AADPA3704E
9	Smt. Tina Ambani	AAEPA2345Q
10	Shri Akash M Ambani	AIBPA1587H
11	Shri Jayanmol Ambani	AJPPA3678N
12	Ms. Isha M Ambani	AIBPA1586G
13	Shri Vikram D Salgaokar	AXVPS0706M
14	Ms. Isheta D Salgaokar	BDLPS7706L
15	Ms. Nayantara B Kothari	AOTPK3112L
16	Fiery Investment & Leasing Pvt. Ltd. *	Not Available
17	Sanatan Textrade Pvt. Ltd. *	AAACS5556Q

18	**Orson Trading Pvt. Ltd. ***	**Not Available**
19	**Clarion Invts & Tradg Co. Pvt. Ltd. ***	**Not Available**
20	**Reliance Consolidated Enterprises Pvt Ltd. ***	**AAACM2825L**
21	**Real Fibres Ltd.***	**Not Available**
22	**Nikhil Investments Co. Ltd.***	**Not Available**
23	**Hercules Investments Ltd. ***	**Not Available**
24	**Pams Invts & Trad Co. Ltd. ***	**AAACP2092A**
25	**Jagishwar Invts & Trdg Co. Ltd. ***	**AAAfCJ0979**
26	**Jagadanand Invts & Trdg Co. Ltd. ***	**AAACJ0932H**
27	**Kankhal Trading LLP (Earlier known as : Kankhal Invts & Trdg Co. Ltd.)**	**AAACK1774A**
28	**Kedareshwar Invts & Trdg. Co. Ltd. ***	**AAACK1532A**
29	**Entity Communications Pvt. Ltd. *** on behalf of Akshar Trades (P) Ltd. ; Antarang Trader (P) Ltd. ; Antariksh Commercials (P) Ltd. ; Arundathi Trades (P) Ltd. ; Avada Trading Company Ltd. ; Chaitanya Commercials (P) Ltd. ; Deep Mercantile (P) Ltd.; Gaiety Mercantile (P) Ltd. ; Kalpavriksha Trading (P) Ltd. ;Neelam Mercantile (P) Ltd. ; Panchtirth Trading (P) Ltd. ; Platinum Commercials (P) Ltd. ; Prasiddhi Trading (P) Ltd. ; Shrusti Trading (P) Ltd. ; Spark Tradecom (P) Ltd. ; Sundale Merchandise (P) Ltd. ; Suprabhat Tradecom (P) Ltd. ; Vijeta Commercial (P) Ltd.	**AAACE0876H**
30	**Evershine Traders Pvt. Ltd. *** on behalf of Anusudha Tradecom (P) Ltd.; Bhagirath	**Not Available**

	Trader (P) Ltd.; Charishma Invt. (P) Ltd.; Cube Investments (P) Ltd.; Devpriya Mercantile (P) Ltd.; Eminent Commercials (P) Ltd.; Esteem Textiles Trading (P) Ltd.; Hexagon Trading & Invt (P) Ltd.; Khodiyar Trading & Invt (P) Ltd.; Kinnari Merchandise (P) Ltd.; Nirantar Merchandise (P) Ltd.; Nirupama Traders (P) Ltd.; Ranjana Traders (P) Ltd.; Smruti Mercantile (P) Ltd), Swarna Trading (P) Ltd.; Vanraj Merchandise (P) Ltd.	
31	**Anumati Mercantile Pvt. Ltd. *** on behalf of Yangste Trading (P) Ltd	**Not Available**
32	**Amur Trading (P) Ltd. ***	**Not Available**
33	**Tresta Trading (P) Ltd. ***	**Not Available**
34	**Reliance Realty Ltd. (Earlier Known as : Terene Fibres India (P) Ltd.)**	**Not Available**

** Merged into Reliance Industries Holding Private Limited*

(hereinafter collectively referred to as "Noticees")

IN THE MATTER OF RELIANCE INDUSTRIES LTD.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation into the alleged irregularities relating to the issue of 12 crore equity shares in January 2000 by Reliance Industries Ltd. (hereinafter referred to as "**RIL**") at a price of Rs. 75 per share to 38 allottee entities. The allotment was made consequent to the exercise of the option on warrants

attached with 6,00,00,000- 14% Non Convertible Secured Redeemable Debentures (**NCD**) of Rs. 50/- each aggregating to Rs. 300,00,00,000 (PPD IV) issued in the year 1994. From the disclosure filed under Regulation 8(3) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as "**Takeover Regulations**") by RIL to Bombay Stock Exchange (**BSE**) on April 28, 2000, it was observed that it had disclosed the above mentioned 38 allottee entities as Persons Acting in Concert **("PACs")** with the RIL promoters. From the aforesaid disclosures made by RIL it was observed that the shareholding of RIL promoters together with PACs had increased from 22.71% as on March 31, 1999 to 38.33% as on March 31, 2000. Out of these, 7.76% shares were acquired consequent upon a merger and thus were exempt under regulation 3(1) (j) (ii) of Takeover Regulations. However, 6.83% shares that were acquired by RIL promoters together with PACs in exercise of 3 crore warrants, were alleged to be in excess of ceiling of 5% prescribed in regulation 11(1) of Takeover Regulations.

2. It was alleged that the obligation not to make additional acquisition of more than 5% of voting rights in any financial year unless such acquirer makes a public announcement to acquire shares in accordance with the regulations under regulation 11(1) of Takeover Regulations arose on January 7, 2000, i.e. the date on which the PACs were allotted RIL equity shares on exercise of warrants issued in January 1994. Since the promoters and PACs have not made any public announcement for acquiring shares, it is alleged that they have violated the provisions of regulation 11(1) of Takeover Regulations.

3. In view of the above, adjudication proceedings were initiated under Section 15H of the SEBI Act, 1992 against 36 promoters and PACs, which includes the 34 Noticees and 2 other entities viz. Shri B H Kothari and Bhadreshyam Kothari, for the alleged violation of the provisions of regulation 11(1) of Takeover Regulations. Subsequently, Reliance Consolidated Enterprises Pvt Ltd vide its letter dated November 08, 2011 had *inter alia* stated that “B.H. Kothari” and “Bhadrashyam

Kothari" were one and the same individual person. Further, in this regard, I note that vide Adjudication Order dated September 30, 2020, the adjudication proceedings against (Late) Shri Bhadreshyam Kothari in the present matter have been abated as the entity had passed away on February 22, 2015.

APPOINTMENT OF ADJUDICATING OFFICER

4. Shri Piyoosh Gupta was appointed as the Adjudicating Officer (**AO**) by SEBI vide communique dated December 15, 2011 under Section 15-I of the SEBI Act, 1992 read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under Section 15H of the SEBI Act, 1992 the aforementioned violations alleged to have been committed by the Noticees. As per the records, it is noted that settlement applications had been filed in the matter with SEBI by certain Noticees on August 2011. Subsequently, the said settlement applications were rejected by SEBI on May 15, 2020 and the same was communicated to the authorized representatives of the Noticees vide SEBI's email dated May 18, 2020. The undersigned has been appointed as AO in the matter vide communique dated May 28, 2020.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show Cause Notices dated February 24, 2011 (*hereinafter referred to as '**SCN**'*) was issued by the erstwhile AO to the Noticees in terms of Section 15I of the SEBI Act, 1992 read with Rule 4 of Adjudication Rules for the violations as specified in the SCN.

6. From the available records, I note that vide letter dated March 14, 2011 and March 17, 2011, Reliance Consolidated Enterprises Pvt Ltd *inter alia* requested for inspection of documents on behalf of the Noticees. Vide the said letters an opportunity of personal hearing in the matter was also requested. In this regard, vide letter dated March 18, 2011, it was *inter alia* communicated to Reliance

Consolidated Enterprises Pvt Ltd that the relied upon documents based on which the SCN was issued was annexed to the SCN, and further an opportunity of personal hearing before the erstwhile AO was granted on April 20, 2011. I also note that certain other Noticees were granted an opportunity of personal hearing on April 21, 2011. Vide letter dated April 19, 2011, Reliance Consolidated Enterprises Pvt Ltd, on behalf of the list of Noticees annexed in its aforesaid letter, *inter alia* requested for the adjournment of the aforesaid hearings granted by the erstwhile AO, and also requested time till June 10, 2011 to file written submissions in the matter. Subsequently, vide Hearing Notice dated June 07, 2011, Reliance Consolidated Enterprises Pvt Ltd and the Noticees represented by it were granted opportunity of personal hearing on July 05, 2011. Vide letter dated June 10, 2011, reply was filed by Reliance Consolidated Enterprises Pvt Ltd and Entity Communications Pvt Ltd and the main contentions made therein are as follows –

PRELIMINARY ISSUES

i. *The Noticees are making **this preliminary submission** before the Hon'ble Adjudicating Authority raising fundamental and important preliminary issues relating to issues of powers and jurisdiction of SEBI which the Noticee believes should be adjudicated upon, before a reply on merits to the SCN is sought by the Adjudicating Officer*

ii. *It is submitted that the preliminary and fundamental issues raised herein relate inter-alia to the ability of SEBI to initiate adjudication proceedings after a significant lapse of time, retrospective application of provisions of the 1997 SAST Regulations which are questions of significance and the Noticee urges the adjudicating authority to consider and examine before a reply on merits is sought from the Noticees. The making of these submissions should not be construed as a waiver of all or any of Noticees' rights under equity, law or otherwise. The Noticees expressly reserve all their rights under equity, law and otherwise, including but not limited to filing a reply to the SCN on merits.*

iii. *The Noticees humbly submit that the SEBI ought to consider the preliminary submissions herein and should not proceed with the matter unless these preliminary issues are decided upon.*

Adjudication proceedings are time barred

iv. *The Noticees respectfully submit that the adjudication proceedings are barred by limitation.*

v. *It is true that the SEBI Act does not prescribe a period of limitation for the issue of a show cause notice and the commencement of adjudication proceedings. However, it is submitted that this does not mean that SEBI is empowered to initiate proceedings after an inordinate delay. It is further submitted that SEBI should act in a reasonable period of time. The Supreme Court in Citedal Fine Pharmaceuticals, Madras and Others v Government of India (AIR 1989 SC 1771) observed:*

*"In the absence of any period of **limitation it is settled that every authority is to exercise the power within a reasonable period**. What would be reasonable period would depend upon the facts of each case. Whenever a question regarding the inordinate delay in issuance of notice of demand is raised, it would be open to the assesses to contend that it is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the facts and circumstances of the case notice or demand for recovery was made within reasonable period. No hard and fast rules can be laid down in this regard as the determination of the question will depend upon the facts of each case"*

vi. *The Supreme Court in State of Punjab v. Bhatinda District Co-op Milk Union Limited held that where no period of limitation has been prescribed under the Act, the statutory authorities must exercise its jurisdiction within the reasonable period and the Apex Court has also decided that the reasonable period depends on the scheme of the Act concerned but in no case will it be more than five years.*

vii. *It is submitted that initiation of adjudication proceedings against the Noticees, seventeen years after the acquisition of the Warrants and eleven years after the acquisition of Shares is clearly unreasonable and is bad in law. Further, it is*

submitted that this inordinate delay is attributable to SEBI alone and no justifiable excuse exists for the same.

viii. *In this context, the Bombay High Court in Universal Generics Pvt. Ltd. v. Union of India (1993 ECR 190 (Bombay)), in a case where adjudication proceedings were sought to be initiated after expiry of ten years for breach of the Import Policy, 1984 by the Petitioner. The Bombay High Court while quashing the show cause notice, observed*

> *"In the first instance,* ***the respondents have no explanation why the adjudication proceedings were not completed for ten years. Secondly, imposition of penalty, if at all, after a lapse of ten years is not just and fair****. In these circumstances, in our judgment, to accede to the submission of the learned counsel that the respondents should be permitted to complete the adjudication proceedings cannot be accepted."(*Emphasis Supplied).

ix. *Further, in Bhagwandas S. Tolani v. B.C. Aggarwal and Others (AIR 1983 (12) ELT 44 (Bom)), where adjudication proceedings under the Foreign Exchange Regulation Act, 1973 were sought to be initiated by the Enforcement Directorate, eleven years after the alleged violation, the Bombay High Court quashed the proceedings. The Bombay High Court observed that:*

> *"In my opinion, the department is not entitled to take up old matters is this manner,* ***if the department's contentions as to limitation were to be accepted /that no limitation period applies, it would mean that the department can commence adjudication proceedings 10 years, 15 years or 20 years after the original show cause notice which cannot be permitted.*** *The position might have been different if there had been any default on the part of the petitioner or any act of omission or commission on his part which had resulted in this long period of delay. Then in such cases the petitioner could not be permitted to take advantage of his own wrong. This is not the department's case in the present matter. "(Emphasis Supplied).*

x. *Similarly, the Bombay High Court recently, in Cambata Industries (Pvt) Ltd v Additional Director of Enforcement ([2010] 99 SCL 262 (Bom) where adjudication*

proceedings were sought to be initiated by the Enforcement Directorate under Foreign Exchange Regulation Act, 1973 after an inordinate delay, observed that:

> ***"The absence of relevant record due to lapse of more than 30-35 years is also a factual aspect which needs to be taken into account. In our view, the respondents cannot be allowed to reopen the proceedings. If allowed it would cause serious detriment and prejudice to the petitioners.*** *The Department is not entitled to reopen old matters in this manner." (Emphasis Supplied).*

xi. *It is therefore humbly submitted that initiation of adjudication proceedings by SEBI seventeen years after the acquisition of the Warrants by the Noticee and eleven years after the acquisition of Shares, is unreasonable, time barred and the SCN ought to be set aside on this ground alone. It is also humbly submitted that initiation of adjudication proceedings after such an inordinate delay which is attributable to SEBI alone, causes grave prejudice to the Noticees as the Noticees have been deprived of full, fair and effective opportunity of presenting their case. This has also been recognized by the Hon'ble Securities Appellate Tribunal (hereinafter referred to as the "SAT") in Ashok Chaudhary v. SEBI (SAT Order dated November 5. 2008), wherein the SAT has held as under:*

"Long delays in issuing show cause notices to the delinquents will not subserve the purpose for which the Board has been set up. It would rather act against the interest of the securities market. Delays do not help anyone and besides depriving sometimes the delinquents of their right to defend themselves against the action sought to be taken against them, defeat the very purpose for which such notices are issued. It must be remembered that promptness in such matters will have a more deterring effect and advance the cause for which the enquiries are held."

xii. *The Noticees submit that the delay in issuing the SCN, which delay arises entirely on account of inaction by the SEBI, is unreasonable, arbitrary and causes substantial prejudice to the Noticees. Permitting the SEBI, a statutory authority, to initiate adjudication proceedings after such an inordinate delay is*

unreasonable, arbitrary and violative of the constitutional guarantee of non-arbitrariness under Article 14 of the Constitution of India.

xiii. *Therefore, it is submitted that the adjudication proceedings sought to be initiated against the Noticees ought be dropped, on this ground alone.*

The SCN is non-est and patently erroneous in as much as the Noticees have been charged with contravention of Section 15H of the SEBI Act which is not applicable

xiv. *The SCN has charged the Noticees with contravention of Section 15H of the SEBI Act. Section 15H of the SEBI Act provides for penalty* iriter-alia *for failure to make a public announcement in accordance with the 1997 SAST Regulations. It is humbly submitted that Section 15H of the SEBI Act is not applicable in the present case and therefore the charge in the SCN is patently erroneous. On this ground alone the SCN ought to be quashed and the adjudication proceedings sought to be initiated against the Noticees should be dropped.*

xv. *The Noticees were exempt from the requirements of Regulation 11(1) of the 1997 SAST Regulations as the allotment of Shares was made on a preferential basis which was exempt under Regulation 3(1)(c) of the 1997 SAST Regulations.*

xvi. *Therefore, it is submitted that initiation of adjudication proceedings against the Noticees under Section 15H of the SEBI Act is untenable. Further, the order of the whole time member dated December 15, 2010 appointing the adjudicating officer itself is patently erroneous as the order empowers the adjudicating officer to enquire into and adjudge violation of Section 15H of the SEBI Act, which, for the reasons stated above, is not applicable. As the order appointing the adjudicating officer is in relation to Section 15H of the SEBI Act, the order itself has been issued without basis and without application of mind. Consequently, the SCN, which is based on the order, ought to be set aside as the entire adjudication process has been vitiated.*

The SCN seeks to impose a greater penalty than applicable on the date of the alleged violation

xvii. *Strictly without prejudice the above, the SCN seeks to impose an enhanced penalty under Section 15H of the SEBI Act which was not applicable on the date of the alleged violation.*

Section 15H of the SEBI Act, as it existed on January 7, 2000, is extracted below: "15H. Penalty for non-disclosure of acquisition of shares and take-overs - If any person, who is required under this Act or any rules or regulations made thereunder, fails to,-

(i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or

(ii) make a public announcement to acquire shares at a minimum price; he shall be liable to a penalty not exceeding five lakh rupees'

xviii. *Pursuant to an amendment, with effect from October 29. 2002, the penalty that could be imposed under Section 15H of the SEBI Act was increased to Rs. 25,00,00,000/- or three times the amount of profits made out of failure to make the requisite disclosures, whichever is higher.*

xix. *In light of the rule against* ex post facto *laws enshrined in Article 20(1) of the Constitution of India, no person can be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. Thus, penal statutes and penal provisions of any statute cannot be retrospective in nature. The Supreme Court in* Rao Shiv Bahadur Singh *v.* State of Vindhya Pradesh *(AIR 1953 SC 394) and* Kedar Nath Bajoria *v.* State of West Bengal *(AIR 1953 SC 404), has upheld the rule against retroactive operation of penalties.*

xx. *The Noticees submit that the penalty imposed, if any, therefore, has to be as per the law prevailing on the date of the alleged breach of the 1997 SAST Regulations, which is the date of conversion of the Warrants, i.e. on January 7, 2000. On that date, the unamended Section 15H of the SEBI Act applied and provided for a maximum monetary penalty of Rs. 5,00,000/-. The SAT, in the matters of* D-link Holding Mauritius *v.* SEBI *(SAT Order dated November 1, 2004) and* Rameshchandra Mansukhani *v.* SEBI *(SAT Order dated February 7, 2005),*

has upheld the position that the amount of monetary penalty imposed would be governed by the applicable cap on the day of the alleged breach.

xxi. *In* D-link Holding Mauritius *v.* SEBI *(SAT Order dated November 1, 2004), the SAT held that* "[t]he *amendment to SEBI Act. 1992 did not contemplate that the enhanced penalties to be retrospective in effect*. The plain reading of the amendment would indicate that the amendment was to come into effect prospectively and not retrospectively. It is quite possible in some legislation that amendments are made with retrospective effect. But we do not find any such intention on the legislature from the perusal of the amendment.

xxii. A similar view was taken by the SAT in Rameshchandra Mansukhani NRI v. *SEBI (SAT Order dated February 7, 2005) where the SAT held that* "[i]t *is fairly conceded that there is nothing to show under the regulation that the regulation was amended with retrospective effect. Penalties unless specifically made retrospective must inevitably be only with effect from the date of amendment. Accordingly, we hold that at the relevant time the maximum penalty was Rs.5 lacs".*

xxiii. It is submitted that the reference in the SCN to the amended Section 15H of the SEBI Act as the basis for the imposition of the penalty is misconceived and based on an erroneous interpretation of the law. For these reasons, the SCN is liable to be dropped on this ground alone.

The SCN has sought to apply the provisions of 1997 SAST Regulations retrospectively

xxiv. The SCN charges the Noticees with contravention of Regulation 11(1) of the 1997 SAST Regulations. The SCN has sought to apply Regulation 11(1) of the 1997 SAST Regulations as amended on October 29, 2002 when the alleged violation occurred in January, 2000. Accordingly, the SCN seeks to give retrospective effect to the 1997 SAST Regulations. Such an exercise of power by SEBI is without jurisdiction and is ultra vires *the SEBI Act.*

xxv. The 1997 SAST Regulations have been issued by SEBI in exercise of its powers under Section 30 of the SEBI Act. The 1997 SAST Regulations are issued by

SEBI, a subordinate authority, exercising the delegated power of rule making conferred on it by the Union Parliament. Accordingly, the 1997 SAST Regulations issued by SEBI is a delegated legislation. ***It is a well-settled principle of law that a delegated legislation operates prospectively unless the parent statue empowers the rule making authority to enact rules/regulations and given them retrospective effect****.*

xxvi. *The Supreme Court has expressed this view in Commissioner of Income Tax v. Bazpur Co-operative Sugar Factory Limited* (AIR 1988 SC 1263), where it was held that *"[w]here any rule or regulation is made by any person or authority to whom such powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the courts that the person or authority exercising subordinate legislative functions cannot make a rule, regulation or bye-law which can operate with retrospective effect'.* Further, the Supreme Court, in the matter of *Process Technicians and Analysts' Union* v. *Union of India* (AIR 1997 SC 1288), *has held that in order to give retrospective effect to delegated legislation, the power to do so must be clearly and explicitly conferred by the parent enactment.*

xxvii. It is humbly submitted that Section 30 of the SEBI Act which empowers SEB1 to make regulations inter-alia *states:* "*The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act*". *Section 30 of the SEBI Act does not expressly or by implication empower SEBI to make regulations and apply them retrospectively.*

xxviii. In this context, a reference may be made to the decision of the Supreme Court in Ex. Captain K.C Arora v State of Haryana (AIR 1987 SC 1858) where the Court observed that *"it is, however, a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective effect. But the rule in general is applicable where the object of the statute is to affect the vested rights or to impose new burden or to*

impair existing obligations. Unless there, are words in the statute sufficient to show the intention of the legislature to effect existing rights, it is deemed to be prospective only. Provisions which touch a *right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment".*

xxix. *Further, the Supreme Court in Keshavan Madhava Menon v. State of Bombay* (AIR 1951 SC 128), held that *"[e]very statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation". This view is also supported by the decision of the Supreme Court in K. C. Arora v. State of Haryana (reported at AIR 1987 SC 1858), wherein it was held that "[i]t is, however, a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective effect. But the rule in general is applicable where the object of the statute is to affect the vested rights or to impose new burden or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only*".

xxx. *It is submitted that since the SEBI Act does not either expressly or by implication empower the SEBI to make delegated legislation with retrospective effect, retrospective application of the 1997 SAST Regulations to the acquisition of the Warrants on January 12, 1994 and the subsequent acquisition of the Shares, is* ultra vires *the SEBI Act.*

xxxi. *Further, the 1997 SAST Regulations has expressly been held to apply prospectively. The Bombay High Court, in Harinarayan Bajaj v. Union of India ([2009] 147 CompCas 579 (Bom)), has held that,* "Regulation 47 of the *Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997* ***nowhere provide for retrospective application of these Regulations*** *... The 1994 Regulations, on being repealed by the 1997 SAST Regulations, will be restricted to their operation as given in Regulation 47, which provides for repeal and savings, but insofar as the changes introduced by the 1997 SAST Regulations are concerned, particularly those provisions, which are substantive in nature and did not exist in the 1994 Regulations as spelt out in the*

comparative table in paragraph 29 of the aforesaid judgment, will have to be read in the context of the Regulations which stand substituted."

xxxii. *Given that such an exercise of power by SEBI is* ultra vires *the SEBI Act, it is submitted that the SCN ought to be set aside and the adjudication proceedings against the Noticees ought to be dropped.*

CONCLUSION

xxxiii. *For the foregoing reasons, the Hon'ble Adjudicating Officer ought to drop the proceedings against the Noticees for the following reasons:-*

xxxiv. *The adjudication proceedings are time barred and are hit by latches and delays;*

xxxv. *The principal charge against the Noticee under Section 15H of the SEBI Act is* ex-facie *patently erroneous as Section 15H of the SEBI Act does not apply. For the same reason, the order appointing the adjudicating officer based on which the SCN has been issued, is also patently erroneous and as a result the entire adjudication process has been vitiated.*

xxxvi. *The SCN seeks to impose greater penalties than those applicable on the date of the alleged violation; and*

xxxvii. *The Noticees are making these submissions in order that these fundamental issues are adjudicated upon as a preliminary matter by the Hon'ble Adjudicating Officer. We will be relying on judicial precedents in support of the submissions made herein. In this regard, we seek an opportunity to make legal submissions on the matter for which the Noticees will be represented by Counsel*.

xxxviii. *You are requested not to pass any order in relation to this interim application or on the merits of the SCN or otherwise proceed in the captioned matter without granting an opportunity of personal hearing.*

7. Subsequently, the Noticees filed settlement applications in the matter on August and September 2011. I note that a personal hearing was conducted before the erstwhile AO on October 17, 2011 wherein the authorized representatives appeared on behalf

of the Noticees *inter alia* submitted that the Noticees have filed consent applications in the present proceedings and at this stage the Noticees would not wish to make submissions on merits of the case. It was further submitted that the proceedings be kept in abeyance pending the final decision of the consent application. The Noticees also requested that the preliminary submissions dated June 10, 2011 filed by the Noticees be decided first before the matter is taken up for a decision on merits at the time when the matter is taken up for hearing on conclusion of the consent proceedings. It was further requested by the Noticees that the matter be taken up on another date since counsel for the Noticees are not available that day.

8. I note that the following entities viz. Uditi Mercantile Pvt Ltd and Pams Investments & Trading Co. Pvt Ltd had preferred appeal (Appeal No. 16 of 2012, and 22 of 2012) before the Hon'ble Securities Apellate Tribunal (SAT) in the matter wherein the grievance of the aforesaid appellants was that preliminary issues have been raised by the appellants vide their reply dated June 10, 2011 to the SCN relating to adjudication proceedings being time barred and being taken after unreasonable period. It was submitted by the appellants that initiation of adjudication proceedings by SEBI, seventeen years after the acquisition of warrants by the appellants and eleven years after the acquisition of shares, is unreasonable, time barred and the show cause notice ought to be set aside on this ground alone. In this regard, the Hon'ble SAT vide its Order dated April 08, 2013 issued the following directions –

> "*The appeals are disposed of with a direction that once the Board has taken a view on the consent proceedings preferred by the appellants, the adjudicating officer of the Board may decide the preliminary objection taken by the appellants in the adjudication proceedings in accordance with law.*"

9. As per the available records, it is noted that the settlement applications filed by the respective Noticees were rejected by SEBI and the same was communicated to the authorized representatives of the Noticees vide SEBI's email dated May 18, 2020. I note that the vide letter dated June 22, 2020, the appointment of the undersigned as AO in the present matter was communicated to the Noticees. Further, the Noticees

were granted opportunity to make their submissions, if any, in the matter. Vide letter dated July 10, 2020, the authorized representatives (**ARs**) of the Noticees *inter alia* requested for inspection of documents in the matter. Accordingly, vide letter dated July 14, 2020 the ARs of the Noticees were granted an opportunity of inspection of documents and were advised to communicate with the Enforcement Department of SEBI in this regard. It was further communicated to the Noticees that the inspection of only those documents which have been relied upon in the matter, shall be provided.

10. Vide their letter dated July 10, 2020 (referred *supra*), the ARs also stated that 17 Noticees viz. Noticee Nos. 16 to 26 and 28 to 33, have merged into Reliance Industries Holding Pvt Ltd. It was further informed that Noticee No. 27 viz. Kankhal Invts. & Trdg. Co. Ltd. has been converted into a limited liability partnership and is now known as Kaankhal Trading LLP; and further that Noticee No. 34 viz. Terence Fibres India (P) Ltd. is now known as Reliance Realty Limited.

11. I note that the ARs of the Noticees were provided inspection of documents relied upon for the purpose of the SCN in the present proceedings, on September 15, 2020. Subsequently, vide letter dated September 22, 2020, the ARs of the Noticees inter alia requested full inspection of all documents requested by them vide their letter dated September 14, 2020 to the Enforcement Department of SEBI, and copy of disclosure letter dated April 25, 2000 and disclosure letter dated April 28, 2001 addressed by RIL under the Takeover Regulations, and bearing stock exchange inward nos. 28985 and 41315 respectively. It was further requested that adequate time be granted thereafter to enable the Noticees to access the old records, hold meeting with their lawyers and file detailed reply in the matter. In this regard, vide email dated September 23, 2020 it was inter alia communicated to the ARs of the Noticees that all the documents that have been relied upon with respect to the charges against the Noticees have been provided to the Noticees. Subsequently, vide letter dated September 24, 2020, the ARs of the Noticees submitted their reply. The main contentions made therein are reproduced below –

1. Despite several repeated requests, we have not been provided with inspection of all documents in relation to the Show Cause Notice as more particularly set out in the correspondence referred above. Instead, SEBI has continued to take the position that only documents that the Noticees are entitled to inspect are the ones relied on in the Show Cause Notice. SEBI has further sought to justify the position on the basis of observations in certain decisions of the Hon'ble Securities Appellate Tribunal ("SAT") in the e-mail dated September 23, 2020.

2. We would like to reiterate that based on principles of natural justice and settled law in the context of ensuring a fair hearing in a proceeding before a judicial or quasi-judicial authority, including decisions of the Hon'ble Supreme Court of India, the Noticees are entitled to inspect all the material collected by SEBI in relation to the matters connected with the Show Cause Notice to be able to effectively respond to the Show Cause Notice.

3. Most importantly, in the present case, in the order dated February 4, 2019 (as modified by way of an order for speaking to the minutes dated February 20, 2019) in relation to Writ Petition (L) No. 300 of 2019 filed by Reliance Industries Limited before the Hon'ble Bombay High Court inter alia seeking inspection of all documents as presently sought for by the Noticees, including specifically Mr. Y. H. Malegam's report, it has been recorded that:

> *'The learned Senior Advocate for SEBI submitted that under the scheme of the Regulation and the ambit of the Internal Committee functioning, the Petitioner is not entitled to receive copy of the said report. The Internal Committee proceedings are initiated on the application filed by the Petitioner. The appropriate proceeding in respect of the subject of violation of Section 77(2) of the Companies Act is yet to take place. <u>It is submitted that the arguments advanced by the Petitioner may be of some relevance in respect of the proceedings as and when undertaken before the Adjudicatory Forum.</u>'*
>
> *In the same order, the Hon'ble Bombay High Court has also observed that:*

> *"As and when the adjudicatory proceedings takes place, the Petitioner may ask for copies of such documents in accordance with the procedure established to conduct the proceedings".*

4. We are therefore surprised by SEBI's refusal to provide the requested documents especially in light to the submissions having been made by the Learned Counsel appearing for SEBI before the Hon'ble Bombay High Court and the order of the Hon'ble Bombay High Court as above. A copy of the aforesaid order is enclosed for your ready reference.

5. In the matter of Price Waterhouse v. Securities and Exchange Board of India (Appeal No. 8 of 2011, dated June 1, 2011), the Hon'ble SAT dealt with the issue of right of a noticee to be provided access to material with SEBI, and the Hon'ble Presiding Officer, the Hon'ble Mr. Justice N. K. Sodhi (in a separate minority opinion), categorically held that:

> *"I am also of the view that fairness demands that the entire material collected during the investigations should be made available for inspection to the person whose conduct is in question. Whether it helps him or not is irrelevant. Equally immaterial is the fact that the authority is or is not relying upon the same. The authority may not rely on it but the delinquent could in support of his case. The reason is that every enquiry has to conform to the basis rule of natural justice and one of the elementary principles is that every action must be fair, just and reasonable. Withholding evidence whether exculpatory or incriminatory is neither fair nor just.'*

6. The Hon'ble SAT's decision (including the majority decision) was challenged by SEBI before the Hon'ble Supreme Court of India. In its order dated January 10, 2017, the Hon'ble Supreme Court categorically upheld the finding of the Hon'ble Mr. Justice N. K. Sodhi (as reproduced above) by holding that 'We further direct, that all documents collected during investigation shall be permitted to be inspected by the respondents.' In view of the decision of the Hon'ble Supreme Court of India, the observations made by

the Hon'ble Mr. Justice N. K. Sodhi (and not the observations in the majority opinion) in relation to the right to receive inspection of documents is the law.

7. The decisions referred in SEBI's e-mail dated September 23, 2020, i.e. Shruti Vora v. SEBI (Appeal (L) No. 28 of 2020) and Anand R. Sathe v. SEBI (Appeal No. 150 of 2020), which followed the decision in Shruti Vora, are in the context of completely different facts and circumstances (as set out below) and the observations in these decisions in relation to inspection rights are not in line with the law laid down per the above decision of the Hon'ble Supreme Court of India.

(a) In Shruti Vora, the Hon'ble SAT was dealing with a matter where investigation commenced in the year 2018 and the show cause notice was issued in November 2019. It was in this context that the Hon'ble SAT observed that such notice is issued not for adjudication purpose, but to decide whether an enquiry is required or not and accordingly held that 'The contention that the appellant is entitled for copies of all the documents in possession of the AO which has not been relied upon at the preliminary stage when the AO has not formed any opinion as to whether any enquiry at all is required to be held cannot be accepted'. No adjudication proceeding had been initiated at the relevant point and the adjudicating officer was required to look into issues which had not been examined by SEBI before and decide whether to initiate any enquiry or not.

(b) In the present case, SEBI has already arrived at a finding in April 2010 before issuing the Show Cause Notice. Further, SEBI has also commenced prosecution proceedings in relation to the subject matter of the Show Cause Notice, which is presently pending. The proceedings and the re-commencement of proceedings pursuant to the Show Cause Notice are based on various materials available with SEBI (and not just the documents mentioned in the Show Cause Notice issued in 2011).

In view of this, the decision in Shruti Vora, which deal with an entirely different set of facts and circumstances (preliminary enquiry stage of proceedings), do not apply in the present matter.

8. All allegations made by SEBI so far relate to the same transaction of issue of Non-Convertible Debentures (NCDs) in the year 1994 with warrants attached and acquisition of shares in the year 2000 pursuant to the said warrants. The Show Cause Notice was first issued almost 11 years after the said transaction. SEBI has been investigating and examining the matters for almost 20 years and has now also filed prosecution proceedings in relation to the subject matter of the Show Cause Notice. It is clear that all the documents requested have culminated in SEBI's conclusion regarding breach of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and initiation of the current adjudication proceeding. In view of the foregoing, the Noticees will not receive a fair hearing and will suffer prejudice if all the material in relation to contraventions alleged in the Show Cause Notice and its subject transactions is not made available to the Noticees.

9. The basis of commencement and re-commencement of proceedings against the Noticees under the Show Cause Notice (and the commencement of prosecution proceedings for the same some subject matter) are various reports, notes and opinions available with SEBI in relation to the aforesaid issue of NCDs and shares. Therefore, the Noticees would be denied a fair hearing if they are only provided documents referred to in the Show Cause Notice, or are provided only certain documents selectively, as it deprives the Noticees the opportunity to examine such material and prepare an effective and complete response to the allegations raised against it.

10. In view of the aforesaid, we request you to provide:
(i) full inspection of all documents as requested in paragraph 5 of our letter dated September 14, 2020; and

(ii) photocopies of documents mentioned in paragraphs 2.1 (i) and 2.1 (ii) of our letter dated September 22, 2020.

11. Once we are provided inspection of all documents, we will be able to submit our detailed, effective and complete response to the Show Cause Notice.

12. We reiterate that the nature of the information required for dealing with the Show Cause Notice issued to 74 Noticees pertain to issue of NCDs in the year 1994 and acquisition of shares in the year 2000 pursuant thereto. The records of the case are voluminous and are stored at our client's offices at more than one location. The offices of our client are closed for last six months. However, in view of the present proceedings, our client will endeavor to open its' offices for this limited purpose after carrying out sanitization and installing the requisite mechanism for prevention of Covid-19 as per the directives of the Government in that regard.

13. Our client expects to temporarily open its' offices in the week beginning October 5, 2020 and will require time till October 19, 2020 to peruse the available records in order to file response to the Show Cause Notice. This will however be without prejudice to our client's contention that Noticees are entitled to full inspection and further without prejudice to our client's contention that unless Noticees are provided with all the material and documents, they have been deprived of the opportunity of effectively dealing with these allegations in the SCN.

This letter should not be considered or construed to be an admission by the Noticees of any statement, allegation or contention in the Show Cause Notice, and is without prejudice to any contentions, rights or remedies that the Noticees may have in relation to the Show Cause Notice under equity, law or otherwise, all of which are expressly reserved.

12. Accordingly, considering that the inspection of relied upon documents have already been granted, and the Noticees' request for additional time to submit reply, vide email dated September 25, 2020, the Noticees were granted time till October 19, 2020 as requested. Vide letter dated October 19, 2020, the Noticees submitted their reply, and the main contentions made therein are reproduced below –

1. We refer to the correspondence above resting with your email dated September 25, 2020 granting a final opportunity to the Noticees to file their reply to Show Cause Notice by October 19, 2020.

*2. At the outset and without prejudice to what is stated in this reply, the Noticees deny having violated any of the provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("**1997 SAST Regulations**"), as alleged in the Show Cause Notice or otherwise.*

3. At the further outset, it is submitted that nothing contained in the Show Cause Notice shall be deemed to have been admitted unless specifically admitted herein or for want of specific traverse. Each objection and submission is without prejudice to the other objections and submissions in this reply.

*4. **Background***

*4.1 The Show Cause Notice alleges that the promoters of Reliance Industries Limited ("**RIL**") along with the Noticees, as persons acting in concert, on January 7, 2000, had collectively acquired a 6.83% stake in RIL pursuant to the exercise of options on warrants attached to non-convertible debentures issued by RIL to the Noticees in January 1994 ("**Warrants**").*

4.2 Based on the disclosures made by RIL to the stock exchanges under the 1997 SAST Regulations, the Show Cause Notice alleges that the shareholding of the promoters of RIL together with the Noticees, as persons acting in concert, increased from 22.17% as on March 31, 1999 to 38.33% as on March 31, 2000. The Show Cause Notice further alleges that out of these shares, acquisition of 7.76% shares was exempt as it was acquired pursuant to a merger which was exempted under the 1997 SAST Regulations.

*4.3 Notwithstanding the fact that the 1997 SAST Regulations were not in force when the Warrants were issued to the Noticees in January 1994, the Show Cause Notice alleges that the acquisition of 6.83% shares in RIL pursuant to exercise of Warrants ("**Warrant Shares**"), was in excess of the prescribed thresholds under Regulation 11(1) of the 1997 SAST Regulations, triggering a requirement for making a public announcement for the shares of RIL under the 1997 SAST Regulations. As the Noticees failed to make a public announcement, the Show Cause Notice alleges that the Noticees have contravened Regulation 11(1) of the 1997 SAST Regulations.*

*4.4 Eleven (11) years after the Warrant Shares were allotted to the Noticees pursuant to exercise of Warrants issued in January 1994, the Show Cause Notice seeks to initiate adjudication proceedings against the Noticees for the alleged contravention of Regulation 11(1) of the 1997 SAST Regulations, under Rule 4 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 ("**Adjudicating Rules**"). Further, the Show Cause Notice directs the Noticees to show cause as to why penalty under Section 15H of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") ought not to be imposed on the Noticees.*

4.5 Noticees had filed a reply raising preliminary objections in June 2011 and had requested that the preliminary objections be decided by the Adjudicating Officer. Few of the Noticees filed Appeals before the Hon'ble Securities Appellate Tribunal, which were disposed of by an order dated April 08, 2013. Relevant paragraphs of the order dated April 08, 2013 are reproduced below:

2…… By its reply dated June 10, 2011 to the show cause notice, preliminary issues have been raised by the appellants relating to adjudication proceedings being time barred and being taken after unreasonable period. It is submitted by the learned senior counsels for the appellants that the initiation of adjudication proceedings by the Board, seventeen years after the acquisition of warrants by the appellants and eleven years after the acquisition of shares, is unreasonable, time barred and the show-cause notice ought to be set aside on this ground alone.

3. He (Mr. Khambatta appearing for SEBI) has specifically drawn our attention to para 13 of the affidavit wherein it is stated that this very issue has been raised by the appellants before the adjudicating officer also and ought to be left to be decided by the adjudicating officer. ……..It was, therefore, submitted that the adjudicating officer could not decide the preliminary issues as the appellants themselves submitted that the proceedings be kept in abeyance pending decision in the consent applications.

4. Having heard learned counsel for the parties and after perusing the record, we are of the view that this is not the stage where this Tribunal should intervene in the matter. The adjudicating officer was not in a position to give its ruling on the preliminary objections taken by the appellants themselves as the consent proceedings are pending and a request was made by the appellants that the matter may be taken up for hearing on conclusion of the consent

proceedings. We are given to understand that the consent proceedings are still pending. Once the consent proceedings are over, it is for the adjudicating officer to give its ruling on the preliminary objections taken by the appellants. We, therefore, decline to intervene in the matter at this stage. The appeals are disposed of with a direction that once the Board has taken a view on the consent proceedings preferred by the appellants, the adjudicating officer of the Board may decide the preliminary objections taken by the appellants in the adjudication proceedings in accordance with law.

4.6 By letters dated June 22, 2020 (received by Noticees on July 3, 2020), the adjudication proceedings against the Noticees were resumed. By our letters referred above, we inter alia requested for inspection of all documents, records, files with and internal notings of SEBI in respect of the Show Cause Notice.

4.7 Despite the law in this behalf settled by the Hon'ble Supreme Court of India in the recent PwC case, only the following documents were provided for inspection by SEBI to our representatives on September 15, 2020.

i. Photocopy of the disclosure letter dated April 25, 2000 addressed by Reliance Industries Limited under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (bearing stock exchange inward No. 28985);

ii. Photocopy of the disclosure letter dated April 28, 2001 along with annexures addressed by Reliance Industries Limited under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (bearing stock exchange inward No. 41315); and

*iii. Two documents annexed to the Show Cause Notice ("**said Annexures**"):*

(a) Annexure – 1: List of 38 allottee entities

(b) Annexure – 2: Photocopy of the disclosure letter dated April 28, 2000 along with annexures addressed by Reliance Industries Limited under Regulation 8 (3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (bearing stock exchange inward No. 31413)

4.8 By our letters dated September 16, 2020 and dated September 22, 2020, we requested SEBI to provide:

(i) Full inspection of all documents as requested in paragraph 5 of our letter dated September 14, 2020 in accordance with your obligations under law; and

(ii) Photocopies of documents mentioned in paragraphs 4.7 (i) and 4.7 (ii) above.

4.9 However, by your letter bearing reference No. EFD/DRA-1/rjb/tvb/RIL/15972/2020 dated September 23, 2020, we were informed that SEBI is relying upon only the said Annexures for the purpose of the Show Cause Notice.

4.10 The Noticees are, accordingly, submitting the present reply on the basis that except the said Annexures, no other documents are being referred to or relied upon by SEBI in the present matter, and without prejudice to Noticees' contention that SEBI has not granted inspection of all documents, records, files with and internal notings of SEBI in respect of the SCN thereby denying full opportunity to represent their case.

5. ***Adjudication proceedings are time -barred***

5.1 The Noticees respectfully submit that the adjudication proceedings are barred by limitation and/or unreasonable and unexplained delay and laches.

5.2 As aforesaid, SEBI has confirmed that it is relying upon only the said Annexures for the purpose of the Show Cause Notice. The only document relied upon by SEBI for the purpose of Show Cause Notice is the disclosure letter dated April 28, 2000 along with annexures addressed by RIL under Regulation 8(3) of the 1997 SAST Regulations (bearing stock exchange inward No. 31413). Therefore, it is only on the basis of this document filed by RIL in April 2000 and available in public domain since then, that SEBI issued the Show Cause Notice in February 2011, i.e. after a period of eleven (11) years.

5.3 It is submitted that initiation of adjudication proceedings (in 2011) against the Noticees, seventeen (17) years after the acquisition of the Warrants (in 1994) and eleven years (11) after the acquisition of Warrant Shares and filings done in that behalf (in 2000), is clearly unreasonable and is bad in law. There has been inordinate and inexplicable delay, which is not attributable to the Noticees.

5.4 Although the SEBI Act does not prescribe a period of limitation for the issuance of a show cause notice and the commencement of adjudication proceedings, it is submitted that it is settled law that initiation of adjudication proceedings after an inordinate and inexplicable delay is bad in law. The Hon'ble Securities Appellate Tribunal in (i) Mr. Rakesh Kathotia & Ors. v. SEBI (Appeal No. 7 of 2016 decided on May 27, 2019); (ii) Ashok Shivlal Rupani & Anr. v. SEBI (decided on August 22, 2019); and (iii) Sanjay Jethalal Soni v. SEBI (Appeal No.102 of 2019 decided on November 14, 2019), had set aside the penalty imposed by the Adjudicating Officer on the ground of inordinate delay in initiation of adjudication proceedings.

5.5 The Hon'ble Supreme Court of India in State of Punjab v. Bhatinda District Co-op Milk Union Limited [(2007) 11 SCC 363] observed that where no period of limitation has been prescribed under the act, the statutory authorities must exercise its jurisdiction within the reasonable period, and what shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors, and in this case found that revisional jurisdiction, should ordinarily be exercised within a period of three years having regard to the purport in terms of the subject legislation and in any event, the same should not exceed the period of five years.

5.6 In Universal Generics Pvt. Ltd. v. Union of India [1993 ECR 190 (Bombay)], adjudication proceedings were sought to be completed after expiry of ten (10) years for breach of the Import Policy, 1984. The Hon'ble High Court of Bombay while allowing the writ petition filed challenging the legality of the show cause notice, observed:

> *"It is also not in dispute that the respondents, in spite of direction given by the learned Judge to complete the adjudication proceedings, have not cared to do so for last about ten years. As the important goods are already cleared ten years before, the show cause notice seeking explanation of the petitioners as to why the imported goods should not be confiscated no longer survives for consideration. Shri Lokur, learned counsel appearing on behalf of the Department, submitted that the respondents should be permitted to complete the adjudication proceedings at least for the purpose of determining whether the petitioners are liable to pay any penalty amount. We are not inclined to accede to the submission for more than one reason. In the first instance, the respondents have no explanation why the adjudication proceedings were not completed for ten years. Secondly, imposition of penalty, if at all, after a lapse of ten years is not just and fair. In*

these circumstances, in our judgment, to accede to the submission of the learned counsel that the respondents should be permitted to complete the adjudication proceedings cannot be accepted. The petitioners are, therefore, entitled to relief."

5.7 In Bhagwandas S. Tolani v. B.C. Aggarwal and Others [AIR 1983 (12) ELT 44 (Born)], where adjudication proceedings under the Foreign Exchange Regulation Act, 1973 were sought to be re-initiated by the Enforcement Directorate, eleven (11) years after the issuance of show cause notice, the Hon'ble High Court of Bombay observed that:

" In my view, even without considering the case that adjudication proceedings had in fact been held, I am of the opinion that this is otherwise also a stale matter which cannot be allowed to be reopened, since to allow it to be reopened, would cause serious detriment and prejudice to the petitioner. The fact that the petitioner is not able to produce the formal order is immaterial; that there were earlier adjudication proceedings may be reasonably borne out by the fact that the department did nothing for 11 years. The department has failed to clarify the position as regard the directions given to the Reserve Bank of India and an adverse inference is required to be drawn from such failure even otherwise in respect of such stale matter. In my opinion, the department is not entitled to take up old matters is this manner. ***If the department's contentions as to limitation were to be accepted [that no limitation period applies], it would mean that the department can commence adjudication proceedings 10 years, 15 years or 20 years after the original show cause notice which cannot be permitted****. The position might have been different if there had been any default on the part of the petitioner or any act of omission or commission on his part which had resulted in this long period of delay. Then in such case, the petitioner could not be permitted to take advantage of his own wrong. This is not the department's case in the present matter."(Emphasis Supplied).*

5.8 It is submitted that initiation of adjudication proceedings by SEBI seventeen (17) years after the acquisition of the Warrants by the Noticee and eleven (11) years after the acquisition of Warrant Shares, is unreasonable, time barred, and on this ground alone, the Show Cause Notice ought to be set aside. The initiation of adjudication proceedings after such an inordinate delay causes grave prejudice to the Noticees as the Noticees have been deprived of full, fair and effective opportunity of presenting their case. This has also been recognized by the

Hon'ble Securities Appellate Tribunal in Ashok Chaudhary v. SEBI (SAT Order dated November 5, 2008), as under:

> *"Long delays in issuing show cause notices to the delinquents will not subserve the purpose for which the Board has been set up. It would rather act against the interest of the securities market. Delays do not help anyone and besides depriving sometimes the delinquents of their right to defend themselves against the action sought to be taken against them, defeat the very purpose for which such notices are issued. It must be remembered that promptness in such matters will have a more deterring effect and advance the cause for which the enquiries are held. "*

5.9 The Noticees submit that the delay in issuing the Show Cause Notice is unreasonable, arbitrary and causes substantial prejudice to the Noticees. Initiation of adjudication proceedings after such an inordinate delay is unreasonable, arbitrary and violative of the constitutional guarantee of non-arbitrariness under Article 14 of the Constitution of India and principles of equity and fairness. Please note that SEBI had filed a criminal complaint being SEBI MA 686 of 2020 before the Hon'ble SEBI Court, Mumbai inter alia for alleged violation of 1997 SAST Regulations and vide order dated September 30, 2020, the same was dismissed by the Hon'ble SEBI Court as being barred by limitation.

5.10 In view of the above, we submit that the adjudication proceedings sought to be initiated against the Noticees ought to be dropped, on this ground alone.

6. ***Without prejudice, the Show Cause Notice is misconceived and erroneous as Regulation 11 (1) of the 1997 SAST Regulations and Section 15 H of the SEBI Act are not applicable in the present case***

6.1 The Show Cause Notice alleges that on account of the Noticees having allegedly violated Regulation 11(1) of the 1997 SAST Regulations, the Noticees would be liable for monetary penalty under Section 15H of the SEBI Act, which provides for penalty inter-alia for failure to make a public announcement in accordance with the 1997 SAST Regulations.

6.2 The Noticees were exempt from the requirements of Regulation 11 (1) of the 1997 SAST Regulations as the allotment of Warrant Shares was made on a preferential basis, which was exempt under Regulation 3(1)(c) of the 1997 SAST Regulations at the time of issue of Warrant Shares.

6.3 Regulation 3(1)(c) of 1997 SAST Regulations (in effect in January 2000), clearly provided that acquisition of shares by way of preferential allotments were exempted from public offer requirements subject to specific conditions.

6.4 In this regard, Noticees also rely upon the following extract in the Report of Bhagwati Committee constituted by SEBI, which inter alia observed that the above provision provided an automatic exemption :

*"…The Committee noted that a majority of the **automatic exemption** cases are pursuant to acquisition through preferential allotment. While such allotments can be made only with the shareholders' approval, having regard to the low turnout of the minority shareholders in these meetings and the fact that effectively there is no exit option to the shareholders, the Committee felt that a re look is required at the automatic exemption in such cases…*

…The Committee recommends that the present exemption for preferential allotment be continued subject to the condition that any resolution for preferential issue should provide for postal ballot to enable greater shareholder participation." (Emphasis Supplied)

From the provisions of 1997 SAST Regulations and the Report of Bhagwati Committee, it is clear that the preferential allotments and schemes of merger were automatically exempt from making an open offer at the relevant time under specific exemptions for acquisitions pursuant to a preferential allotment and merger scheme as above.

6.6 It is further submitted that Regulations 3(3) and 3 (4) of 1997 SAST Regulations required only a prior notice and a post-acquisition report to be filed. It submitted that the Hon'ble Securities Appellate Tribunal has held that delay or non-compliance with Regulation 3(3) and Regulation 3(4) did not amount to exemption not being available. In J. M. Financial & Investment Consultancy Services Ltd v. SEBI (SAT order dated March 16, 2001) and in Diamond Projects v. SEBI (SAT order dated May 18, 2004), the Hon'ble Securities Appellate Tribunal has held that a breach of this filing requirement cannot affect the exemption under Regulation 3(1)(c) of 1997 SAST Regulations.

6.7 In view of this, it is submitted that Regulation 11 (1) of 1997 SAST Regulations is not applicable in the present case and the initiation of adjudication proceedings against the Noticees under Section 15H of the SEBI Act is untenable and erroneous. Therefore, on this

ground as well, the Show Cause Notice and the adjudication proceedings sought to be initiated against the Noticees ought to be dropped.

7. ***Reference to Section 15 H of the SEBI Act as amended in 2002 is misplaced.***

7.1 As submitted hereinabove, the initiation of adjudication proceedings against the Noticees under Section 15H of the SEBI Act is untenable.

7.2 Strictly without prejudice the above, it is submitted that the Show Cause Notice refers to Section 15H as amended in 2002 and seeks to impose the enhanced penalty under the amended provisions of the SEBI Act which was not applicable on the date of the alleged violation.

7.3 Section 15H of the SEBI Act, as it existed on January 7, 2000, is extracted below:

> *"15H. Penalty for non-disclosure of acquisition of shares and take-overs - If any person, who is required under this Act or any rules or regulations made thereunder, fails to,-*
>
> *(i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or*
>
> *(ii) make a public announcement to acquire shares at a minimum price;*
>
> *he shall be liable to a penalty not exceeding five lakh rupees."*

7.4 Pursuant to an amendment, with effect from October 29, 2002, the penalty that could be imposed under Section 15H of the SEBI Act was increased to Rs. 25,00,00,000/- or three times the amount of profits made out of failure to make the requisite disclosures, whichever is higher.

7.5 In light of the rule against ex post facto laws enshrined in Article 20(1) of the Constitution of India, no person can be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of commission of the offence. The penal statutes and penal provisions of any statute cannot be retrospective in nature.

7.6 Without prejudice to the contention that the Noticees have not violated any law, it is submitted that the penalty imposed, if any, has to be as per the law prevailing on the date of the alleged violation of the 1997 SAST Regulations, which is the date of conversion of the Warrants, i.e. on January 7, 2000. On that date, the un-amended Section 15H of the SEBI Act

applied and provided for a maximum monetary penalty of Rs. 5,00,000/-. The Hon'ble Securities Appellate Tribunal, in the matters of D-link Holding Mauritius v. SEBI (Order dated November 1, 2004) and Rameshchandra Mansukhani v. SEBI (Order dated February 7, 2005), has upheld the position that the amount of monetary penalty imposed would be governed by the applicable cap on the day of the alleged breach.

7.7 In D-link Holding Mauritius v. SEBI (SAT Order dated November 1, 2004), the Hon'ble Securities Appellate Tribunal held that "…The amendment to SEBI Act, 1992 did not contemplate that the enhanced penalties to be retrospective in effect. The plain reading of the amendment would indicate that the amendment was to come into effect prospectively and not retrospectively. It is quite possible in some legislation that amendments are made with retrospective effect. But we do not find any such intention on the legislature from the perusal of the amendment". (Emphasis Supplied)

7.8 A similar view was taken by the Hon'ble Securities Appellate Tribunal in Rameshchandra Mansukhani NRI v. SEBI (SAT Order dated February 7, 2005) where the Tribunal held that "It is fairly conceded that there is nothing to show under the regulation that the regulation was amended with retrospective effect. Penalties unless specifically made retrospective must inevitably be only with effect from the date of amendment. Accordingly we hold that at the relevant time the maximum penalty was Rs.5 lacs".

7.9 In view of the above, it is submitted that the reference in the Show Cause Notice to the amended Section 15H of the SEBI Act is irrelevant, misconceived and erroneous interpretation of the law.

8. Conclusion

8.1 Accordingly, we submit that the Learned Adjudicating Officer ought to withdraw the Show Cause Notice and drop the proceedings against the Noticees for the following reasons:-

a. The adjudication proceedings are time barred and are hit by laches and delays;
b. Regulation 11 (1) of 1997 SAST Regulations did not apply in the case of the Noticees;
c. The principal charge against the Noticees under Section 15H of the SEBI Act is ex-facie patently erroneous as Section 15H of the SEBI Act does not apply; and
d. The Show Cause Notice refers to penalty provisions not applicable on the date of the alleged violation.

8.2 Noticees will be relying on judicial precedents in support of the submissions made herein. In this regard, we seek an opportunity to make legal submissions on the matter for which the Noticees will be represented by Counsel. You are requested not to pass any order in the matter without granting an opportunity of fair personal hearing.

8.3 The present reply is without prejudice to the Noticees' contention that they have not been granted full inspection of all documents and an opportunity to defend their case. The proceedings are being conducted in violation of natural justice.

8.4 This reply is without prejudice to all other rights and contentions of the Noticees, which are expressly reserved, and may be raised during the further course of the proceedings and personal hearings. All the rights of the Noticees in this regard are expressly reserved.

13. Subsequently, the Noticees were granted an opportunity of personal hearing on November 05, 2020 through video conference on webex platform due to pandemic. The following persons viz. Mr. Janak Dwarkadas, Senior Advocate; Mr. Rohan Rajadhyaksha, Advocate; Mr. Ashwath Rau, Advocate, AZB & Partners; Mr. Kashish Bhatia, Advocate, AZB & Partners; Mr. Vivek Shetty, Advocate, AZB & Partners; Ms. Cheryl Fernandes, Advocate, AZB & Partners; Mr. K. R. Raja, Director, Reliance Industries Holding Private Limited; Ms. Geeta Fulwadaya, Authorised representative; Mr. Sanjeev Dandekar, Authorised representative; and Mr. Amey Nabar, Advocate authorized representative attended the hearing on behalf of the Noticees wherein the submissions made by the Noticees vide their letter dated October 19, 2020 were reiterated. Further, a list of dates in respect of the Reply dated October 19, 2020 and List of Dates in respect of documents, along with the Compilation of Documents was shared by the ARs vide email on November 05, 2020. The aforesaid ARs requested two weeks' time for filing of written submissions post hearing. Accordingly, time till November 19, 2020 was granted to the Noticees for the same.

14. Vide email and letter dated November 19, 2020, the ARs submitted post hearing written submissions on behalf of the Noticees along with annexures. The main contentions made therein are reproduced hereunder –

A. Brief facts:

*1. On January 12, 1994, Reliance Industries Limited ("**RIL**") allotted 6,00,00,000 - 14% Non-Convertible Secured Redeemable Debentures ("**NCDs**") of Rs. 50 each aggregating to Rs. 300 crore, having warrants attached to it ("**Warrants**"), to 34 allottee entities. The Warrants were detachable and each Warrant entitled its holder to apply for equity shares of RIL. The NCDs and Warrants were issued after due approval from the shareholders and board of directors of RIL and the NCDs and Warrants were listed on the stock exchanges.*

*2. The issuance and allotment of NCDs and the Warrants (including the approval of the board and shareholders of RIL) was completed in January 1994, i.e. before the Securities and Exchange Board of India ("**SEBI**") notified the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("**1997 Takeover Regulations**"). In fact, the issue and allotment of the NCDs and Warrants was completed even before SEBI had notified the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1994 (the regulations which were replaced by the 1997 Takeover Regulations).*

3. On January 7, 2000, pursuant to the exercise of the option on the Warrants, the Board of Directors of RIL approved the allotment of 12 crore equity shares of RIL to the 38 holders of the Warrants.

*4. On April 28, 2000, RIL filed the disclosure under Regulation 8(3) of the 1997 Takeover Regulations and intimated stock exchanges that the holders of the Warrants were persons acting in concert ("**PAC**") with the promoters of RIL. A copy of the disclosure dated April 28, 2000 is annexed hereto as **Annexure-1**. This disclosure is also annexed to the SCN (defined herein below).*

*5. On April 16, 2010, the Noticees received a letter from SEBI stating that pursuant to a complaint, SEBI had conducted an investigation into alleged irregularities in the issue of 12 crore equity shares by RIL to 38 allottee entities in January 2000, consequent to the exercise of the option on Warrants. The letter inter alia alleged that promoters and persons having control over RIL and 38 allottee entities that were PAC during 1999-2000, had violated Regulation 11(1) of the 1997 Takeover Regulations. A copy of the letter dated April 16, 2010 is annexed hereto as **Annexure-2**.*

*6. By an order dated December 15, 2010, an Adjudicating Officer was appointed under Section 15(I) of the SEBI Act, 1992 ("**SEBI Act**") to enquire into and adjudicate the alleged violation of the 1997 Takeover Regulations by the Noticees.*

*7. A show cause notice was issued on February 24, 2011 ("**SCN**") by SEBI to the Noticees under Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995. The Noticees were called upon to show cause as to why inquiry should not be held and penalty not be imposed for alleged contravention of Regulation 11(1) of the 1997 Takeover Regulations. A copy of the SCN which was issued on February 24, 2011 is annexed hereto as **Annexure-3**.*

*8. Thereafter, the Noticees filed a reply on June 10, 2011 raising objections to the SCN, inter alia stating that: (a) the SCN was vitiated on grounds of gross and unexplained delay and laches on SEBI's part in issuing the SCN, 17 years after the issuance of the Warrants and 11 years after the acquisition of the equity shares by the Noticees; (b) the application of the 1997 Takeover Regulations to the issue of Warrants and subsequent conversion of Warrants into shares was misplaced and the 1997 Takeover Regulations could not be applied retrospectively; (c) the acquisition of equity shares was in any event exempted under Regulation 3(1)(c) of the 1997 Takeover Regulations; and (d) the SCN seeks to apply an enhanced penalty under Section 15H of the SEBI Act as amended on October 29, 2002 to an alleged infraction of the 1997 Takeover Regulations which took place on January 7, 2000, which is impermissible in law. The Noticees also called upon the Adjudicating Officer to first decide the aforesaid fundamental issues raised by the Noticees. A copy of the reply dated June 10, 2011 filed by the Noticees is annexed hereto as **Annexure-4**.*

9. The Noticees thereafter filed a consent application on August 5, 2011 in relation to the letter dated April 16, 2010 and the SCN on the basis of the SEBI Circular dated April 20, 2007.

*10. On account of the gross and unexplained delay by SEBI in issuing the SCN, 2 (two) of the Noticees, (i) Uditi Mercantile Private Limited; and (ii) Pams Investments & Trading Co. Pvt. Ltd. filed appeals (being Appeal No. 16 of 2002 and Appeal No. 22 of 2002) before the Hon'ble Securities Appellate Tribunal ("**SAT**") against the order dated December 15, 2010 by which the Adjudicating Officer was appointed in the matter. By the appeals, the aforesaid two Noticees sought:*

(a) quashing and setting aside of the order dated December 15, 2010, passed by the Executive Director, SEBI appointing an Adjudicating Officer to conduct proceedings under Chapter VI-A of the SEBI Act; and

(b) interim reliefs, being stay on the above order dated December 15, 2010 and any proceedings initiated pursuant thereto until disposal of the Appeal.

*The aforesaid appeals were disposed by a common order dated April 8, 2013 passed by SAT, with the direction that: "…once the Board has taken a view on the consent proceedings preferred by the appellants, the adjudicating officer of the Board may decide the preliminary objections taken by the appellants in the adjudication proceedings in accordance with law." A copy of the order dated April 8, 2013 passed by SAT in Appeal No. 16 of 2002 and Appeal No. 22 of 2002 is annexed hereto as **Annexure-5**. Accordingly, as per the aforesaid order dated April 8, 2013, the Adjudication Officer at the first instance is required to adjudicate upon the preliminary objections as raised by the Noticees.*

*11. On May 18, 2020, SEBI, by an email, rejected the settlement application filed by the Noticees. A copy of the email dated May 18, 2020 addressed by SEBI to the Noticees is annexed hereto as **Annexure-6**.*

*12. On June 22, 2020, SEBI addressed a letter to the Noticees (received on July 3, 2020), informing the Noticees that an Adjudicating Officer had been appointed to enquire into and adjudicate the alleged violation of the 1997 Takeover Regulations. The Noticees were granted a period of 7 days to make their submissions in response. A copy of letter dated June 22, 2020 issued by SEBI to the Noticees is annexed hereto as **Annexure-7**.*

*13. On July 16, 2020, SEBI filed a Criminal Complaint dated July 16, 2020 under Sections 24(1) and 27 of the SEBI Act, inter alia, in respect of the same alleged violations of the 1997 Takeover Regulations referred to in the SCN. This Criminal Complaint was dismissed by the Hon'ble (SEBI) Court on September 30, 2020 on account of being barred by limitation. A copy of the order dated September 30, 2020 is annexed hereto as **Annexure-8**.*

14. Between July 2020 and September 2020, the Noticees made several requests for inspection and copies of all documents, records and files with respect to the SCN. However, request made by the Noticees was rejected by SEBI, and on September 15, 2020, the Noticees were granted inspection merely of the intimations dated April 25, 2000 and April 28, 2001 from

*RIL to the stock exchanges under the 1997 Takeover Regulations and the two (2) documents annexed to the SCN. Copies of intimations dated April 25, 2000 and April 28, 2001 were not provided to the Noticees. All correspondences exchanged between SEBI and the Noticees on the issue of inspection is annexed hereto (and collectively marked) as **Annexure-9**.*

*15. On September 25, 2020, SEBI addressed an email to the Noticees' Advocate, granting time to file reply to the SCN by October 19, 2020. A copy of the email dated September 25, 2020 addressed by SEBI to the Noticees' Advocate is annexed hereto as **Annexure-10**.*

16. On October 19, 2020, the Noticees' Advocate replied to the SCN raising preliminary objections as well as an objection on the ground of violation of principles of natural justice as the Noticees had not been given full inspection of all documents in the power, custody and possession of SEBI on the subject matter of the alleged violations of the 1997 Takeover Regulations referred to in the SCN, which was contrary to settled law on the subject. The Noticees also requested for a personal hearing in the matter.

*17. Personal hearing was provided to the Noticees on November 5, 2020, pursuant to which the Adjudicating Officer granted the Noticees an opportunity to file their written submissions by November 19, 2020. During the course of the arguments, the Noticees had relied upon 2 (two) lists of dates and events, which are hereto annexed (and collectively marked) as **Annexure-11**.*

18. The Noticees are accordingly making these submissions without prejudice to Noticees' contention that SEBI has not granted inspection of all documents, records and files with, and internal notings of, SEBI in respect of the SCN, thereby denying full opportunity to the Noticees to represent their case. Further, these submissions are in addition to the correspondence resting with the letter dated October 19, 2020 and the submissions made at the personal hearing held on November 5, 2020, which shall be deemed to be a part of these submissions.

B. Submissions:

*19. **The SCN is vitiated by principles of limitation, delay and laches***

It is submitted that the adjudication proceedings are barred by limitation and/or unreasonable and unexplained delay and laches.

(a) The issue and allotment of the NCDs and Warrants was approved by the shareholders of RIL and by the board of directors of RIL, and the issue of these securities, including the right to acquire shares, was completed in the year 1994. Further, both the NCDs and the Warrants were listed and therefore, the fact of issue of these NCDs and Warrants was known to stock exchanges (which approved their listing and were provided the relevant resolutions) and the public. Thus, SEBI is deemed to have been aware of the fact of issue of these NCDs and Warrants from the year 1994.

(b) The only document relied upon by SEBI for the purpose of the SCN is the disclosure dated April 28, 2000 along with annexures addressed by RIL under Regulation 8(3) of the 1997 SAST Regulations (bearing stock exchange inward No. 31413). The issuance and acquisition of equity shares pursuant to the exercise of Warrants was admittedly intimated to the stock exchanges even in April 2000. Therefore, it is undisputable that the information relating to the issue of NCDs and Warrants was known publicly since 1994, and the information in relation to exercise of the Warrants and the issuance of equity shares by RIL upon conversion of the Warrants was public knowledge and therefore, to SEBI's knowledge, at least since the year 2000.

(c) Despite this, the SCN has been issued by SEBI after a gross and unexplained delay (i.e. after a period of 17 years from the issuance of the Warrants (in the year 1994) and 11 years from the acquisition of the equity shares upon conversion of Warrants (in the year 2000)). While the Noticees have also answered the SCN on merits, there is no explanation whatsoever in the SCN for it being issued after such an inordinate and gross delay. The issuance of the SCN after such an inordinate and gross delay would not only defeat the purpose of the SEBI Act and the 1997 Takeover Regulations but also prejudice the right to natural justice of the Noticees.

(d) Although the provisions of the Limitation Act, 1963 may not be applicable, as per settled law, a show cause notice cannot be issued after such a long and inordinate delay. Such a notice is barred by principles of limitation, delay and laches. In fact, as aforesaid, the Criminal Complaint dated July 16, 2020 filed by SEBI under Sections 24(1) and 27 of the SEBI Act, inter alia, in respect of the same alleged violations of the 1997 Takeover Regulations referred to in the SCN was dismissed by the Hon'ble (SEBI) Court by an order dated September 30, 2020 on account of it being barred by limitation.

(e) In support of the aforesaid proposition on limitation, delay and laches, the following judgments may be noted:

(i) State of Punjab v. Bhatinda District Co-op Milk Union Limited (2007) 11 SCC 363 (paragraphs 17 and 18)

(ii) Universal Generics Pvt. Ltd. v. Union of India 1993 ECR 190 (Bombay) (paragraph 2)

(iii) Bhagwandas S. Tolani v. B.C. Aggarwal and Others 1983 ELT 44 (Bom) (paragraph 8)

(iv) Mr. Rakesh Kathotia & Ors. v. SEBI (Appeal No. 7 of 2016 decided on May 27, 2019) – SAT (paragraphs 23 and 24)

(v) Ashok Shivlal Rupani & Anr. v. SEBI (Appeal No. 417 of 2018 decided on August 22, 2019) – SAT (paragraphs 6 to 9)

(vi) Sanjay Jethalal Soni v. SEBI (Appeal No.102 of 2019 decided on November 14, 2019) – SAT (paragraphs 11 to 14)

(vii) Ashok Chaudhary v. SEBI (Appeal No. 69 of 2008 decided on November 5, 2008) – SAT (paragraph 9)

(f) It is submitted that initiation of adjudication proceedings by SEBI seventeen (17) years after the issuance of the Warrants and eleven (11) years after the acquisition of shares upon exercise of Warrants, is unreasonable, time barred, and on this ground alone, the SCN ought to be set aside. The initiation of adjudication proceedings after such an inordinate delay causes grave prejudice to the Noticees as the Noticees have been deprived of a full, fair and effective opportunity of presenting their case.

(g) The delay in issuing the SCN is unreasonable, arbitrary and causes grave prejudice to the Noticees. Initiation of adjudication proceedings after such an inordinate delay is unreasonable, arbitrary and violative of the constitutional guarantee of non-arbitrariness under Article 14 of the Constitution of India and principles of equity and fairness.

(h) In view of the above, it is submitted that the adjudication proceedings sought to be initiated against the Noticees ought to be dropped, on this ground alone.

20. ***The provisions of the 1997 Takeover Regulations are not applicable to the issue of Warrants and conversion of Warrants***

(a) The issue and allotment of the NCDs and Warrants was approved by the shareholders of RIL and by the board of directors of RIL, and the issue of these securities, including the right to acquire shares, was completed before SEBI notified the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1994 on November 4, 1994 or the 1997 Takeover Regulations on February 20, 1997. Further, both the NCDs and the Warrants were listed and therefore, the fact of issue of these NCDs and Warrants was known to stock exchanges (which approved their listing and were provided the relevant resolutions) and the public.

(b) While the Warrants were exercised and shares allotted on January 7, 2000, the issue of NCDs and the Warrants was completed in January 1994 (i.e. before SEBI had notified the 1997 Takeover Regulations).

(c) Further, it is also relevant to note that the Explanation to Regulation 3(4) of the 1997 Takeover Regulations which provided that "the relevant date in case of securities which are convertible into shares shall be the date of conversion of such securities" came to be inserted with effect from September 9, 2002.

(d) In other words, the said provision was not in existence on January 7, 2000 when the Warrants were converted into equity shares of RIL. It is submitted that the said Explanation does not apply retrospectively and neither could the Noticees have anticipated when the Warrants were converted into equity shares on January 7, 2000 that such an Explanation would be inserted after more than two (2) years in the future on September 9, 2002.

(e) Therefore, the issue of Warrants and the allotment of shares on conversion of Warrants were not subject to the provisions of the 1997 Takeover Regulations.

21. ***The acquisition of shares by the Noticees was exempt under Regulation 3(1)(c) of the 1997 Takeover Regulations***

(a) Pursuant to the exercise of the Warrants, the equity shares of RIL were acquired by the Noticees on January 7, 2000. As on January 7, 2000, Regulation 3(1)(c) of the 1997 Takeover Regulations was a part of the 1997 Takeover Regulations (Regulation 3(1)(c) was deleted with effect from September 9, 2002).

(b) Regulation 3(1)(c) provided that nothing in Regulations 10, 11 or 12 of the 1997 Takeover Regulations shall apply to a preferential allotment made in pursuance of the Companies Act,

1956. The exemption under Regulation 3(1)(c) applied to the acquisition of RIL equity shares pursuant to exercise of the Warrants.

(c) In this regard, Noticees also rely upon the following extract in the Report of Bhagwati Committee constituted by SEBI, which inter alia observed that the above provision provided an automatic exemption :

> *"…The Committee noted that a majority of the **automatic exemption** cases are pursuant to acquisition through preferential allotment. While such allotments can be made only with the shareholders' approval, having regard to the low turnout of the minority shareholders in these meetings and the fact that effectively there is no exit option to the shareholders, the Committee felt that a re look is required at the **automatic exemption** in such cases…*
> *…The Committee recommends that the present exemption for preferential allotment be continued subject to the condition that any resolution for preferential issue should provide for postal ballot to enable greater shareholder participation." (Emphasis Supplied)*

(d) From the provisions of 1997 Takeover Regulations and the Report of Bhagwati Committee, it is clear that the preferential allotments and schemes of merger were automatically exempt from making an open offer at the relevant time under specific exemptions for acquisitions pursuant to a preferential allotment and merger scheme as above merger scheme as above.

(e) The 1997 Takeover Regulations also provided for certain disclosures to be made before and after the acquisition of shares under Regulation 3(3) and Regulation 3(4). Even though it is not SEBI's case in the SCN that because the requisite disclosures under Regulation 3(3) and Regulation 3(4) were not made, the said exemption is not available, it is nevertheless submitted that such a contention on SEBI's part would be misconceived since it is settled law that the said exemption would be available even if the disclosure was not made.

(d) From the provisions of 1997 Takeover Regulations and the Report of Bhagwati Committee, it is clear that the preferential allotments and schemes of merger were automatically exempt from making an open offer at the relevant time under specific exemptions for acquisitions pursuant to a preferential allotment and merger scheme as above

(g) In view of this, it is submitted that Regulation 11(1) of 1997 Takeover Regulations is not applicable in the present case and the initiation of adjudication proceedings against the Noticees under Section 15H of the SEBI Act is untenable and erroneous. Therefore, on this

ground as well, the SCN and the adjudication proceedings sought to be initiated against the Noticees ought to be dropped.

22. The SCN refers to Section 15H as amended on October 29, 2002 in the context of an alleged infraction on January 7, 2000

(a) A bare reading of the SCN reveals that the alleged infraction of the 1997 Takeover Regulations was on account of allotment of shares on January 7, 2000. However, in paragraph 5 of the SCN, after referring to Section 15H of the SEBI Act as it stood upto October 29, 2002, SEBI has also referred to Section 15H of the SEBI Act as amended on October 29, 2002.

Section 15H of the SEBI Act as it stood upto October 29, 2002

"15H. Penalty for non-disclosure of acquisition of shares and take-overs - If any person, who is required under this Act or any rules or regulations made thereunder, fails to,-

(i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or
(ii) make a public announcement to acquire shares at a minimum price;
he shall be liable to a penalty not exceeding five lakh rupees."

<u>Section 15H of the SEBI Act as amended on October 29, 2002</u>

"15H. Penalty for non-disclosure of acquisition of shares and take-overs - If any person, who is required under this Act or any rules or regulations made thereunder, fails to,-

(i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or

(ii) make a public announcement to acquire shares at a minimum price;

(iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or

(iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer.

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."

(b) Whilst there is no question of violation of the 1997 Takeover Regulations, Section 15H of the SEBI Act as amended on October 29, 2002 can have no application to an alleged infraction which took place much prior to the said amendment on January 7, 2000. In this context, it is relevant to note that Article 20(1) of the Constitution of India provides as follows:

*"**No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence**." (Emphasis Supplied)*

(c) Accordingly, the application of Section 15H of the SEBI Act as amended on October 29, 2002 to the Noticees in the context of the alleged infraction dated January 7, 2000 would be ex facie unconstitutional and impermissible.

(d) Without prejudice to the contention that the Noticees have not violated any law, it is submitted that the penalty imposed, if any, has to be as per the law prevailing on the date of the alleged violation of the 1997 Takeover Regulations, which is the date of acquisition of shares upon exercise of the Warrants, i.e. on January 7, 2000. On that date, the un-amended Section 15H of the SEBI Act applied and provided for a maximum monetary penalty of Rs. 5,00,000/-.

(e) Further, it is settled law that amendments to the SEBI Act to enhance penalties are prospective (and not retrospective) and therefore, not applicable to alleged infractions committed prior to the date of the amendment. In support of the aforesaid proposition, the following judgments may be noted:

(i) D-link Holding Mauritius v. SEBI (Appeal No. 70 of 2004 decided on November 1, 2004) - SAT (paragraph 3); and

(ii) Rameshchandra Mansukhani v. SEBI (Appeal No. 151 of 2004 decided on February 7, 2005) - SAT (paragraphs 20 to 22)

(f) In view of the above, it is submitted that the reference in the SCN to the amended Section 15H of the SEBI Act is irrelevant, misconceived and erroneous.

*23. **The Noticees were not provided with a full inspection of documents in complete violation of the principle of natural justice***

(a) The Hon'ble Supreme Court has held that the principles of natural justice necessitate that inspection of all documents must be provided in order to give a fair opportunity for any noticee to defend itself.

(b) In SEBI Vs. Price Waterhouse & Co. and others (Civil Appeal Nos. 6003-6004 of 2012), the Hon'ble Supreme Court directed SEBI to provide all statements recorded and inspection of all documents collected during the course of investigation to the respondents.

(c) It is therefore submitted that the Noticees are entitled to seek inspection of all documents, records and files with, and internal notings of, SEBI in respect of the SCN including without limitation, the reports and papers in relation to the investigation conducted by SEBI (referred to in the SCN), and: (i) the Report submitted by Mr. Y. H. Malegam, Chartered Accountant appointed by SEBI; (ii) the Brief for Opinion prepared by SEBI for obtaining the written opinion of the Hon'ble Mr. Justice B.N. Srikrishna (Retd.); and (iii) the Written Opinion issued by Hon'ble Mr. Justice B.N. Srikrishna (Retd.) upon verification of facts and report by Mr. Y. H. Malegam.

(d) SEBI's reliance on the judgment of the Hon'ble SAT in Shruti Vora v. SEBI is

totally misconceived. In the present case, the SCN was preceded by a letter dated April 16, 2010 addressed by SEBI in which SEBI had stated that an investigation had been conducted in the year 2002 in relation to the alleged infraction by the Noticees of the 1997 Takeover Regulations referred to in the SCN and, inter alia, it had been found that there was a violation of the 1997 Takeover Regulations. It was only thereafter that the SCN had been issued.

(e) Therefore, since in SEBI's letter dated April 16, 2010, it had been concluded that there had been a violation of the 1997 Takeover Regulations, the Noticees were entitled to all documents which are incidental to or connected with SEBI's letter dated April 16,

2010. This distinguishing feature of the present case was entirely absent in Shruti Vora v. SEBI and therefore, the said judgment would not apply to the present case.

(f) Based on principles of natural justice and settled law in the context of ensuring a fair hearing in a proceeding before a judicial or quasi-judicial authority, including decisions of the Hon'ble Supreme Court of India, the Noticees were entitled to inspect all the material collected by SEBI in relation to the matters connected with the SCN to be able to effectively respond to the SCN.

24. In view of the aforesaid, it is absolutely necessary in the interest of justice, equity and good conscience that the Learned Adjudicating Authority be pleased to pass an order dismissing the adjudicating proceedings initiated against the Noticees by the SCN, especially in view of the settled position in law on the proposition of delay and laches as more particularly set out herein above.

15. Vide email dated December 07, 2020, the ARs of the Noticee informed that one of the Noticees viz. Mr. R. H. Ambani had passed away on July 27, 2020 at Ahmedabad, and copy of the Noticee's death certificate was enclosed. Subsequently, vide email dated December 14, 2020, clarification was sought from the ARs of the Noticees regarding the compliance of Regulations 3(1)(c), 3(3) and 3(4) of the Takeover Regulations in the context of the present matter. Further also the details of natural guardians of certain Noticees who were minor at the time of the alleged violations, and the comments, if any, of the said natural guardians was also sought. Vide email dated December 22, 2020, the ARs provided the reply to the aforesaid email dated December 14, 2020 and the main contentions made therein are as follows –

We refer to your email below, and write on behalf and under instructions from the Noticees, as under.

A. The scheme of Regulation 3(1)(c), Regulation 3(3) and Regulation 3(4) of SEBI Takeover Regulations, 1997:

1. Regulation 3(1)(c) of SEBI Takeover Regulations, 1997 (as it stood on January 7, 2000) provided as under:

"3 (1) Nothing contained in Regulations 10, Regulation 11 and Regulation 12 of these regulations shall apply to :

(c) preferential allotment, made in pursuance of a resolution passed under Section 81(1A) of the Companies Act, 1956 (1 of 1956)

Provided that,-

(i) board Resolution in respect of the proposed preferential allotment is sent to all the stock exchanges on which the shares of the company are listed for being notified on the notice board;

(ii) full disclosures of the identity of the class of the proposed allottee(s) is made, and if any of the proposed allottee (s) is to be allotted such number of shares as would increase his holding to 5% or more of the post issued capital, then in such cases, the price at which the allotment is proposed, the identity of such person(s), the purpose of and reason for such allotment, consequential changes, if any, in the board of directors of the company and in voting rights, the shareholding pattern of the company, and whether such allotment would result in change in control over the company are all disclosed in the notice of the General Meeting called for the purpose of consideration of the preferential allotment;"

2. *Regulation 3(3) of SEBI Takeover Regulations, 1997 (as it stood on January 7, 2000) provided as under:*

"(3) In respect of acquisitions under clauses (c), (e), (h) and (i) of sub-regulation (1), the stock exchanges where the shares of the company are listed shall, for information of the public, be notified of the details of the proposed transactions at least 4 working days in advance of the date of the proposed acquisition, in case of acquisition exceeding 5% of the voting share capital of the company."

3. *Regulation 3(4) of SEBI Takeover Regulations, 1997 (as it stood on January 7, 2000) provided as under:*

"(4) In respect of acquisitions under clauses(a), (b), (c), (e) and (i) of sub-regulation (1), the acquirer shall, within 21 days of the date of acquisition, submit a report along with supporting documents to the Board giving all details in respect of acquisitions which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him) would entitle such person to exercise 15% or more of the voting rights in a company."

4. *The above Regulations were applicable for acquisition pursuant to preferential allotment of equity shares and convertible instruments.*

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5. *If a convertible instrument was issued and allotted pursuant to a preferential allotment, after coming into effect of SEBI Takeover Regulations, 1997:*

   a. *The above filings under Regulation 3(1)(c) of the Regulations were required to be made by the Company issuing the convertible instrument.*

   b. *The pre-acquisition filing under Regulation 3(3) and the post-acquisition filing under Regulation 3(4) of the Takeover Regulations were required to be made by the acquirer.*

6. *The facts in the case of the Noticees are as follows:*

   a. *The convertible instrument namely the warrants were issued and allotted in January 1994. At that point in time, neither the SEBI Takeover Regulations, 1994 nor the SEBI Takeover Regulations, 1997 has come into force.*

   b. *In January, 2000, the warrants were converted into equity shares by the holders.*

7. *It is clear from the above that there was no issue and allotment of convertible instruments post the enactment of SEBI Takeover Regulations 1994 / SEBI Takeover Regulations, 1997.*

8. *When there is no issue and allotment of convertible instrument, there cannot be any question of filing of the above reports under Regulations 3(1)(c), 3(3) and 3(4) of the SEBI Takeover Regulations, 1997.*

9. *The SEBI Takeover Regulations, 1997, as it stood in January, 2000, envisaged filings only when convertible instruments were issued and allotted.*

10. *A mere conversion of a warrant into equity shares pursuant to a pre-existing right held since 1994 (at the cost of repetition, when neither the SEBI Takeover Regulations 1994 nor SEBI Takeover Regulations, 1997 had come into existence), did not trigger the filing requirements under Regulation 3.*

11. *Even otherwise, we beg to submit that in 1994:*

    a. The details of issue and allotment of convertible warrants was intimated to the stock exchanges in 1994 itself.

    b. The warrants were listed on the stock exchanges.

    c. The public as well as the shareholders of the Company were in full knowledge that before January 2000, these warrants were convertible into equity shares. It cannot be denied that the purpose of the filing is to make the public and the shareholders aware of the issuance.

12. *Further as explained below, there is no need to get confused with the following Explanation inserted in September 2002 to Regulation 3(3) and Regulation 3(4) of SEBI Takeover Regulations, 1997:*

"Explanation- For the purposes of sub-regulations (3) and (4), the relevant date in case of securities which are convertible into shares shall be the date of conversion of such securities."

13. *After insertion of the above Explanation in September 2002, the position on filing of reports under Regulation 3 was as follows:*

a. *When a convertible instrument is issued on preferential basis, the Company will make the filing under Regulation 3(1)(c) of the SEBI Takeover Regulations, 1997.*

b. *At the time of issue and allotment of convertible instrument, the acquirer was not required to make any filing under Regulation 3.*

c. *When the acquirer decides to exercise the conversion option:*

i. *Prior to the conversion, the acquirer has to file the pre-acquisition notice under Regulation 3(3); and*

ii. *Upon conversion and acquisition of equity shares, the acquirer has to file the post-acquisition report under Regulation 3(4).*

14. *Therefore:*

a. *Prior to the insertion of the Explanation in September 2002, the acquirer had to file the notice and the report at the time of acquiring the convertible instrument. The acquirer was not required to file any notice or report at the time of conversion.*

b. *After insertion of the Explanation in September 2002, the requirement of filing the notice under Regulation 3(3) and the report under Regulation 3(4) was shifted to the time when the acquirer actually exercises the conversion option and acquires the equity shares.*

15. *In the case of the Noticees:*

a. *No convertible instruments were acquired by the acquirers in January 2000 (they were acquired as early as in January 1994) – therefore there was no requirement to file the pre-acquisition notice under Regulation 3(3) and the post-acquisition report under Regulation 3(4) of the SEBI Takeover Regulations 1997.*

b. *The acquirers converted the warrants into equity shares in January 2000 – therefore there was no requirement to file the pre and post-acquisition notice / report for conversion. Had the acquirers converted the warrants into equity shares after September 2002, there would have been a requirement of filing the pre-acquisition notice under Regulation 3(3) and the post-acquisition report under Regulation 3(4) of the SEBI Takeover Regulations 1997.*

16. *It cannot be denied that the acquirers would not have been aware of an explanation which was to be inserted with effect from September 2002 and filed the pre-acquisition notice and post-acquisition report at the time of conversion of warrants into equity shares in January 2000.*

17. *Further, the legal position is, even assuming that the Explanation had been inserted in January 2000 itself but was to come into effect in September 2002, the acquirers were not required to filed the pre-acquisition notice and post-acquisition report at the time of conversion of warrants into equity shares in January 2000.*

B. Filing of forms by RIL and the then promoter group of RIL under Regulation 3(3) and Regulation 3(4) of SEBI Takeover Regulations, 1997:

18. *RIL had disclosed the details of issue and allotment of convertible warrants to the stock exchanges in 1994 itself. The warrants were listed on the stock exchanges.*

19. *It is clear from the above submissions that there was no need for the then promoter group of RIL to have filed any notice / report either under Regulation 3(3) or Regulation 3(4).*

20. *Accordingly, no notice / report has been filed till date under Regulation 3(3) and Regulation 3(4) of SEBI Takeover Regulations, 1997.*

C. Non-filing does not invalidate the exemption:

21. *Without prejudice to the above contentions, even assuming (without admitting) that the notice and report under Regulation 3(3) and Regulation 3(4) respectively had to be filed by the promoter group, any non-filing thereof does not take away the exemption from making an open offer. This is settled law as has been held in J. M. Financial & Investment Consultancy Services Ltd v. SEBI (Appeal No. 31 of 2000 decided on March 16, 2001).*

D. *As required by you, please find below details of the natural guardians of the following Noticees (who were minors), at the relevant time i.e. in January 2000*

Sr. No.	***Noticee***	***Natural Guardian***
1.	*Mr. Akash M Ambani*	*Mr. Mukesh D Ambani*
2.	*Mr. Jayanmol Ambani*	*Mr. Anil D Ambani*
3.	*Ms. Isha M Ambani*	*Mr. Mukesh D Ambani*
4.	*Mr. Vikram D Salgaokar*	*Mr. Dattaraj Salgaocar*
5.	*Ms. Isheta D Salgaokar*	*Mr. Dattaraj Salgaocar*
6.	*Ms. Nayantara B Kothari*	*Mr. Bhadrashyam Kothari*

16. Subsequently, vide email dated January 04, 2021, the ARs of the Noticees enclosed copy of letter dated January 04, 2021, wherein the following was submitted –

We write on behalf of, and under instructions from, Reliance Industries Holding Private Limited (representing the Noticees). We refer to the SCN, 2013 SAT Order and replies, submissions filed by the Noticees in the above matter.

1. *The SCN was issued to the Noticees on February 24, 2011 on the basis of disclosures made by RIL to the stock exchanges in the year 2000 and alleged that the Noticees, as persons acting in concert, had collectively acquired a 6.83% stake on January 7, 2000 in RIL, pursuant to the exercise of options on warrants, issued by RIL to the Noticees in January, 1994.*

2. *Seventeen years after the acquisition of the Warrants (in 1994) and eleven years after the acquisition of Shares and filings done in that behalf (in 2000), the SCN sought to initiate adjudication proceedings against Noticees in respect only of the alleged contravention of Regulation 11(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("**1997 Takeover Regulations**").*

3. *Entity Communications Pvt. Ltd. (representing few of the Noticees) filed a reply on June 10, 2011 raising preliminary objections to the SCN, inter alia stating that the SCN was vitiated on grounds of the gross and unexplained delay and laches on SEBI's part in issuing the SCN, 17 years after the issuance of the Warrants*

and 11 years after the acquisition of the equity shares by the Noticees. Noticees requested that the preliminary objections be decided by the learned Adjudicating Officer.

4. *Being aggrieved by the time barred and highly belated initiation of the proceedings, Noticees filed Appeals, being Appeal No. 16 of 2012 and No. 22 of 2012 before the Hon'ble SAT. Noticees impugned the initiation of adjudication proceedings and appointment of Adjudicating Officer, inter alia on the following grounds:*

"a. It is submitted that the passing of the Impugned Order and the initiation of the adjudication proceedings are barred by limitation and/ or principles analogous thereto inasmuch as whereas, the Warrants were issued in 1994 and were converted on January 7, 2000, the Impugned Order has been passed in December 2010, after a delay of almost 16 years from the time the Warrants were issued in January 1994; 10 years from the conversion of Warrants in January 2000 and 9 years after the information in this regard was specifically provided to the Respondent in February, 2002. It is trite law that where no period for limitation has been prescribed in a statue for initiation of any proceedings, the same ought to be initiated within reasonable time.

b. It is submitted that a delay in initiation of proceedings is bound to give scope for bias, malafide and misuse of power. It is submitted that on account of the inordinate delay in initiating these proceedings, the present proceedings are not maintainable and therefore liable to be quashed and set aside.

c. It is submitted that the passing of the impugned Order and the initiation of the adjudication proceedings after a delay of almost 16 years itself amounts to depriving a noticee of an opportunity of fair trial and the constitutional right of natural justice inasmuch as a noticee may not be in a position to present an appropriate defence on the ground of the delay since essential witnesses for the transactions may not be available, crucial evidence in support of the case would have been lost/ destroyed/ not traceable and the memories of various witnesses as well as persons associated with the issuance / conversion of the Warrants would have faded. It is submitted that the test to be applied while determining

whether there is any denial of natural justice would be to question whether the ability of delinquent to make full answer and defense and to have a fair hearing is compromised. In the present case, considering the inordinate delay in passing of the Impugned Order and initiation of adjudication proceedings causes grave prejudice to the Appellants' right of natural justice and compromises with the Appellants' right to have a fair hearing. It is therefore submitted that the passing of the Impugned Order and the initiation of the adjudication proceedings amount to gross violation of natural justice and on this ground alone, the Impugned Order ought to be quashed and set aside.

d. It is submitted that the Impugned Order gives no justification or explanation for the delay in initiating the adjudication proceedings against the Appellants and it would therefore be unfair and unreasonable to permit the Respondent to continue the proceedings against the Appellants. It is submitted that permitting the Respondent to continue the proceedings against the Appellants would amount to gross miscarriage of justice and inference with the Appellants' constitutional rights. It is submitted that on the ground of the Impugned Order failing to give any justification or explanation for the delay, the impugned Order ought to be quashed and set aside.

e. It is submitted that passing of the Impugned Order and the initiation of the adjudication proceedings after such an inordinate delay amounts to colorable exercise of power by a quasi-judicial authority. It is further submitted that the Impugned Order is illegal, bad in law and perverse for inter alia the reasons stated herein and ought to be quashed and set aside." (Emphasis supplied)

5. *We now refer to the Order dated April 08, 2013 (2013 SAT Order) passed by the Hon'ble SAT by which the above appeals were disposed off. For sake of convenience, we reproduce below relevant parts thereof.*

> *"2…… By its reply dated June 10, 2011 to the show cause notice, preliminary issues have been raised by the appellants relating to adjudication proceedings being time barred and being taken after unreasonable period. It is submitted by the learned senior counsels for the appellants that the initiation of adjudication proceedings by the Board,*

seventeen years after the acquisition of warrants by the appellants and eleven years after the acquisition of shares, is unreasonable, time barred and the show-cause notice ought to be set aside on this ground alone.

3. On the other hand, Shri. Darius Khambatta learned Advocate General, appearing on behalf of the Board, has referred to the submissions made in the affidavit of the Respondent-Board to oppose admission of the Appeals. He has specifically drawn our attention to para 13 of the affidavit wherein it is stated that this very issue has been raised by the appellants before the adjudicating officer also and ought to be left to be decided by the adjudicating officer. Our attention was also drawn to the minutes of the personal hearing which took place on October 17, 2011 before the adjudicating officer when the appellants were asked to make their submissions, and this is what is recorded in the minutes :-

> *"The Noticees submit that consent applications have been filed in relation to the present proceedings, and at this stage, the Noticees would not wish to make submissions on merit of the case. The Noticees submit that the proceedings be kept in abeyance pending the final decision of the consent application. The Noticees also requested that the preliminary submissions dated June 10, 2011 filed by the Noticees be decided first before the matter is taken up for a decision on merits at the time when the matter is taken up for hearing on conclusion of the consent proceedings. The Noticees further requested that the matter be taken up on another date since counsel for the Noticees are not available today."*

It was, therefore, submitted that the adjudicating officer could not decide the preliminary issues as the appellants themselves submitted that the proceedings be kept in abeyance pending decision in the consent applications.

4. Having heard learned counsel for the parties and after perusing the record, we are of the view that this is not the stage where this Tribunal

should intervene in the matter. The adjudicating officer was not in a position to give its ruling on the preliminary objections taken by the appellants themselves as the consent proceedings are pending and a request was made by the appellants that the matter may be taken up for hearing on conclusion of the consent proceedings. We are given to understand that the consent proceedings are still pending. Once the consent proceedings are over, it is for the adjudicating officer to give its ruling on the preliminary objections taken by the appellants. We, therefore, decline to intervene in the matter at this stage. The appeals are disposed of with a direction that once the Board has taken a view on the consent proceedings preferred by the appellants, the adjudicating officer of the Board may decide the preliminary objections taken by the appellants in the adjudication proceedings in accordance with law." (Emphasis supplied)

6. *In view of the disposal of consent proceedings, the adjudication proceedings against the Noticees were resumed by letters dated June 22, 2020 (received by Noticees on July 3, 2020). By our various correspondence referred above, we inter alia requested for inspection of all documents, records, files and internal notings of SEBI in respect of the SCN. SEBI provided inspection only of the annexures to the SCN, being stock exchange filings done by RIL in the year 2000 and informed that SEBI is relying upon only the said annexures for the purpose of the SCN*

7. *Noticees thereafter filed reply dated October 19, 2020 to the SCN. Noticees referred to the 2013 SAT Order and reiterated their preliminary submissions inter alia that (i) the adjudication proceedings are barred by limitation, (ii) the initiation of adjudication proceedings (in 2011) against the Noticees seventeen years after the acquisition of the Warrants (in 1994) and eleven years after the acquisition of Shares and filings done in that behalf (in 2000) is clearly unreasonable and is bad in law and (iii) the adjudication proceedings sought to be initiated against the Noticees ought be dropped, on this ground alone.*

8. *Noticees appeared during the oral hearing held on November 5, 2020 and in view of the 2013 SAT Order, argued their case on the preliminary issues. Noticees submitted and the Adjudicating Officer is expected to decide and give his ruling on the preliminary issue in compliance with the 2013 SAT Order. Noticees filed their written submissions on November 19, 2020, once again making a reference to the 2013 SAT Order and reiterating the aforesaid preliminary submissions. Noticees reiterated that as per the 2013 SAT Order, "the Adjudication Officer at the first instance is required to adjudicate upon the preliminary objections as raised by the Noticees".*

9. *We submit that the 2013 SAT Order is final and binding. In compliance of the 2013 SAT Order, it is incumbent upon the Adjudicating Officer to first give a decision on the preliminary issues. Please note that in compliance with the 2013 SAT Order, Noticees have filed replies and made oral submissions primarily on the preliminary issues. Arguments were made on behalf of the Noticees on merits of the matter without prejudice to: (a) the preliminary objections raised, which relate to your jurisdiction and go to the root of the matter under adjudication; and (b) the submission that such preliminary objections must first be decided. This was done only upon your indicating that no further opportunity would be given for personal hearing in the matter*

10. *From a perusal of the 2013 SAT Order, it emerges that the Tribunal did not think it fit to intervene in this matter at that stage and give its ruling on the preliminary objections raised by the Noticees in view of the pendency of the consent proceedings and on account of the request made by the Noticees to the Adjudicating Officer that the matter be taken up for hearing only upon conclusion of the consent proceedings.*

11. *The 2013 SAT Order was passed in the following conspectus of facts:*

    a. As on that day, the consent proceedings were pending,

    b. Had these consent proceedings culminated in a settlement, the matter would be at an end, and there would be no occasion for the Adjudicating Officer to deal with the SCN any further.

It was obvious that in the event only of the consent proceedings not resulting in a settlement that the occasion to pass an order by the Adjudicating Officer would arise.

12. *Correctly interpreted and read in the context of the direction contained in paragraph 4 of the 2013 SAT Order, no discretion was left to the Adjudicating Officer whether he should or should not decide the preliminary objections at the threshold*

13. *It is our respectful submission that the preliminary objections with regard to delay, laches, denial of natural justice and colourable exercise of power in issuing the SCN are based on incontrovertible and unassailable facts. In view thereof, it is respectfully submitted that the preliminary objections must and ought to be decided preliminary to any adjudication of the merits since otherwise:*

    a. the word "preliminary" will lose all significance; and
    b. the direction contained in paragraph 4 of the 2013 SAT Order would be defeated.

    Besides, since the preliminary objections go to the root of the matter, the same must and ought to be decided as a preliminary issue.

14. *In the above circumstances, may we earnestly request you to render a ruling on the preliminary objections, which if decided in favour of the Noticees will put an end to the entire proceeding and if not, leave it open to the Noticees to pursue their remedies under law. We look forward to receiving a confirmation in this behalf as soon as possible.*

15. *All the rights of the Noticees in this regard are expressly reserved.*

CONSIDERATION OF ISSUES AND FINDINGS

17. I have carefully examined the material available on record, and the submissions made by the Noticees. The issues that arise for consideration in the present case are:

I. Whether the Noticees have violated the provisions of regulation 11(1) of Takeover Regulations?

II. Does the violation(s), if established, attract monetary penalty under Section 15H of SEBI Act, 1992?

III. If yes, what would be the monetary penalty that can be imposed upon the Noticees, taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992 read with Rule 5(2) of the Rules?

FINDINGS

18. Before I proceed with the matter, it is pertinent to mention the relevant legal provisions alleged to have been violated by the Noticees and the same are reproduced below:

Takeover Regulations

"Consolidation of holdings

11 (1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than seventy five per cent (75%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5 per cent of the voting rights, in any financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations."

19. Before I proceed to deal with the matter on merits, I would like to address certain preliminary issues raised by the Noticees. The Noticees have drawn my attention to a decision of the Hon'ble SAT vide its order dated April 08, 2013, with respect to the arguments of the Noticees in regard to delay in initiation of adjudication proceedings. In this regard, I note that Hon'ble SAT in its order dated April 08, 2013, with regard to the preliminary issues raised by the Noticees vide their reply dated June 10, 2011 had directed as follows – "*The appeals are disposed of with a direction that once the Board*

has taken a view on the consent proceedings preferred by the appellants, the adjudicating officer of the Board may decide the preliminary objection taken by the appellants in the adjudication proceedings in accordance with law". In this regard, I note that the Noticees in the said letter have contended that the SCN has been issued after unreasonable and inordinate delay i.e. after a period of 17 years from the issuance of the Warrants (in the year 1994) and 11 years from the acquisition of the equity shares upon conversion of Warrants (in the year 2000). On perusal of the written submissions of the Noticees vide letter dated November 19, 2020, I note that the Noticees have, in support of their arguments on delay, have submitted copy of the Order dated September 30, 2020 passed by the Hon'ble Special Court of the Judge under the SEBI Act,1992 at Bombay, wherein it is inter alia mentioned that *"As per the assertions in complaint, it reveals that SEBI received a complaint on 21/1/2002 from one Mr. S. Gurumurthy alleging therein that the accused no. 1 Reliance Industries Ltd. (RIL) and its associate companies and its directors committed the fraud and references are made in the complaint regarding the irregularities in the preferential issues of non-convertible debentures/ shares to the entities associated with the promoters of proposed accused no. 1 Company (RIL) and Unit Trust of India (UTI)."* In this regard, I note that there are various other aspects pertaining to the investigation relating to several other violations spanning from the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market), Regulations, 1995, and Section 77(2) and 77A of the Companies Act, 1956, to the alleged violation of Regulation 11(1) of the Takeover Regulations in the matter. Though the present proceedings are restricted only to the allegation of the violations of the Regulation 11(1) of Takeover Regulations, however I note that the investigations touch upon even other allegations as referred above. I find it relevant to note that the investigation generally is a detailed process involving analysis of various data, gathering of evidences, etc. that shall stand the test of legal scrutiny at various judicial fora. This, generally, consumes considerable time and efforts depending on the number of entities involved, the complexity of the transactions, correspondences with the entities involved etc. I note that pursuant to submission of the investigation report and further examination relating to the various

issues involved in the matter as stated above, the various enforcement actions including the present adjudication proceedings for alleged violation(s) of the Takeover Regulations was approved on September 15, 2010.

20. In this regard, I note that in the case of *SRG Infotech Ltd. & Ors vs. Securities and Exchange Board of India* (2014 SCC OnLine Del 1684 : (2015) 217 DLT 771), the Delhi High Court held that only after the examination of the facts is complete and submitted to the Board for initiation of action and approval for filing a complaint under Section 26 does the limitation period, if any, begin to run. In the present case, as mentioned above the various enforcement actions including the present adjudication proceedings for alleged violation(s) of the Takeover Regulations was approved by the Competent Authority on September 15, 2010, after detailed examination. Consequently, the SCN was issued to the Noticees in the instant matter on February 24, 2011. Thereafter, hearing opportunities were granted by the erstwhile AO on April 20, 2011, April 21, 2011, July 05, 2011 and October 17, 2011. It is also noted that the personal hearing in respect of the Noticees was held before the erstwhile AO on October 17, 2011. I thus note that the Noticees had been granted multiple opportunities of personal hearing before the erstwhile AO. Further, certain Noticees had filed reply pertaining to preliminary issues in the matter on June 10, 2011. Subsequently, the Noticees had opted for settlement of the matter in August, 2011. Accordingly, the matter had been kept in abeyance in accordance with the securities law and also considering the undertakings given and requests made by the Noticees. Finally, the Noticees were not agreeable to the terms of the settlement arrived at in accordance with the Regulations and hence, the settlement applications were rejected on May 15, 2020 and communicated to the Noticees on May 18, 2020, pursuant to which the present proceedings have resumed. Therefore, there is no delay, if any, on the part of the SEBI in initiation of the adjudication proceedings. As mentioned previously, the undersigned was appointed as AO vide communique dated May 28, 2020. The same was communicated to the Noticees vide letter dated June 22, 2020. Further, in the interest

of natural justice the Noticees have been provided opportunities to make their submissions in the instant proceeding.

21. 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*."

22. It is noted that in the instant matter the Noticees have been alleged to have failed to make public announcement to acquire shares of RIL and deprived the shareholders of their statutory rights / opportunity to exit from the Target Company and therefore they breached the provisions of Takeover Regulations. Such charges against the Noticees make the instant matter grave. 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."*

23. In this context, I would also like to refer the observations of Hon'ble Supreme Court of India in the matter of ***State vs. R. Vasanthi Stanley*** reported in AIR 2015 SC 3691 wherein the Apex Court has held that "…*serious economic offence or for that matter*

the offence that has the potentiality to create a dent in the financial health of the institutions, is not to be quashed on the ground that there is delay in trial…".

24. In any event, even the delay, as argued, is not relevant to the present proceeding as the violation is a substantive violation in the nature of an "economic offence". The SEBI Act, 1992 as enacted inter alia provided that SEBI had to undertake the performance of such functions and exercise of such powers under the provisions of the Capital Issues (Control) Act, 1947. The violations of that Act, were considered to be economic offences under the Economic Offences (Inapplicability of Limitation) Act, 1974. However, with the repeal of the Capital Issues (Control) Act, 1947 w.e.f. 25th May, 1992 there was no clarity with regard to the classification of securities laws offences as economic offences. However, in *N Narayanan v Adjudicating Officer, SEBI*, 2013 (12) SCC 152 and *Sahara India Real Estate Corporation Ltd. & Ors. v SEBI*, 2013 (1) SCC 1, the Hon'ble Supreme Court has recognised that substantive offences under securities laws are economic offences, including civil proceedings in relation thereto, and that they must be dealt with sternly. After all, there is no good reason to confine the expression "economic offence" to only criminal prosecutions considering that the term offence can be said to include even proceedings for adjudication of civil penalty in view of the law laid down by the Hon'ble Supreme Court in *Standard Chartered Bank & Ors. v Directorate of Enforcement & Ors.*, 2006 (4) SCC 278 and followed by the Hon'ble Bombay High Court in *Textoplast Industries & Anr. v Additional Commissioner of Customs*, 2011 SCC OnLine Bom 837 and *Amritlakshmi Machine Works & Ors. v Commissioner of Customs (Import), Mumbai*, 2016 (2) BomCR 481 (FB).

25. Economic Offences, are generally strictly construed, and not subject to delay [*Omprakash Gulabchandji Partani v Ashok Ruprao Ulhe & Anr.*, 1993 (3) BomCR 611] or limitation [*V. K. Agarwal, Asst. Collector of Customs v Vasantraj Bhagwanji Bhatia & Ors*., AIR 1988 SC 1106] and accordingly any delay, if at all, in the initiation of substantive securities laws offences is not fatal. [*Sudhir Gupta v State & Ors.*, 2014 (126) SCL 43 (Del)]. A legislative recognition of securities fraud, insider trading and especially takeover violation being considered as economic offences can be inferred

from the enactment of the Fugitive Economic Offenders Act, 2016 which includes these offences as 'scheduled offences'. Further, even money laundering relating to these very violations are considered as economic offences [as per the Prevention of Money Laundering Act, 2002, and *Shibamoy Dutta & Ors. v Manoj Kumar*, 2016 SCC Online Cal 62].

26. Hence from the various ongoing judicial and legislative developments, it is noted that it is no longer *res integra* that substantive violations relating to securities fraud, insider trading and takeover violations under the SEBI Act, 1992 are 'economic offences'. If stringent criminal proceedings for substantive violations cannot be defeated on mere grounds of delay, it would be absurd to hold that civil adjudication, which are not constrained by strict rules of procedure, for the same violation would be foreclosed on the ground of limitation or delay. Thus, delay will not *ipso facto* be fatal in respect of the present proceeding.

27. Further, the Noticees have committed a serious violation against the investors which has a public flavor, whereas the delay, if any, by SEBI is of no consequence where public interest outweighs the requirement of adjudication.

28. Considering the facts and circumstances of the matter, *in toto,* as aforesaid, I find it difficult to accept the arguments of the Noticees that there was delay on the part of SEBI, and consequently I find no merit in the arguments of the Noticees in this regard.

29. Further, before moving forward, I would like to deal with the contention raised by the Noticees with regard to supply of documents. The Noticees have contended that they had sought inspection of all documents, records, files with and internal notings of SEBI in respect of the SCN including without limitation reports and papers in relation to the investigation conducted by SEBI, and certain report/ opinion obtained in the matter. In this regard, the Noticees has quoted the judgement of the Hon’ble Supreme Court in the matter of, SEBI Vs. Price Waterhouse & Co. and others (Civil Appeal Nos. 6003-6004 of 2012). In the present matter, the *SCN inter alia* contains the allegation that the Noticees have acquired 6.83% shares of RIL consequent to exercise of option on

warrants attached with Non-Convertible Secured Redeemable Debentures (NCD), which was in excess of ceiling of 5% prescribed in Regulation 11(1) of Takeover Regulations, without making any public announcement for acquiring shares and, thus, have violated the provisions of Regulation 11(1) of Takeover Regulations. I note that the allegations against the Noticees are clearly delineated in the SCN and all the relevant documents that have been relied upon in the SCN have been provided to the Noticees as enclosures to the SCN. In this regard, I note that the SCN provided the list of the 38 allottee entities acting as PACs and the copy of the filing under Regulation 8(3) of the Takeover Regulations by RIL to the stock exchanges as annexure to the SCN. I note that in the present proceeding reliance is being placed on only those documents, which have been provided to the Noticees. Further, I note that the Hon'ble SAT, in its order dated February 12, 2020, in the matter of *Shruti Vora vs. SEBI* had made the following observations:*"Reliance was also made of a decision of the Supreme Court in Union of India and Others vs E. Bashyan (1988) 2 SCC 196 which has no bearing to the controversy involved in the present context, in as much as, the said decision relates to a disciplinary proceedings wherein the Supreme Court observed that the inquiry report was required to be made available to the delinquent. An inquiry report is totally distinct and different from an investigation report. The inquiry report considers all the materials in the inquiry proceedings which form the basis of the final order and therefore the said report is required to be made available to the delinquent. In the instant case, the show cause notice relies upon certain documents which have been made available. Thus the investigation report is not required to be supplied".*

"The learned counsel has also placed reliance upon a minority view of this Tribunal in Price Waterhouse vs Securities and Exchange Board of India decided by this Tribunal in Appeal No. 8 of 2011 on June 1, 2011 wherein it was observed that fairness demands that the entire material collected during the course of investigation should be made available for inspection to the person whose conduct was in question and hat

said material should also be supplied. In our opinion, the said minority view is directly against the decision of the Supreme Court in Natwar Singh case (supra)".

"A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon."

30. I note that the Noticees have contended that the observations in the case of Shruti Vora v. SEBI are in the context of completely different facts and circumstances and do not apply in the present matter. In this regard, I note that in Shruti Vora matter, the Hon'ble SAT has clearly mentioned that "*the AO is required to supply the documents relied upon while serving the show cause notice. This is essential for the person to file an efficacious reply in his defence*". Thus, I note that all documents relied upon for the present proceedings have been shared with the Noticees as per the ratio mentioned in the Shruti Vora matter in the backlight of principles of natural justice.

31. Further, the Hon'ble SAT in the matter of *Anant R Sathe Vs SEBI* (Appeal No. 150 of 2020) vide Order dated July 17, 2020 has reaffirmed the principle elucidated in the judgment of Shruti Vora's case, which was reproduced herein above and ruled that *"the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence".*

32. In view of the above, since all the documents which are relevant and relied upon in the instant proceedings have been provided to the Noticees, I am of the opinion that principles of natural justice have been duly complied with in the instant proceedings and no prejudice in filing reply has been caused to the Noticees.

33. In view of the above, I note that the preliminary objections raised by the Noticees have been decided in terms of the directions of the Hon'ble SAT in its order dated April 08, 2013 (Appeal No. 16 of 2012 with Appeal No. 22 of 2012). Having decided the preliminary objections raised by the Noticees, now I proceed to deal with the merits of the matter.

Issue I) Whether the Noticees have violated the provisions of Regulation 11(1) of Takeover Regulations?

34. From the facts of the present matter, I note that 12 crore equity shares of Rs.10/- each were allotted by RIL to 38 allottee entities on January 07, 2000. The allotment was made consequent to the exercise of the option on warrants attached with 6,00,00,000 - 14% NCD of Rs. 50/- each aggregating to Rs. 300,00,00,000 (PPD IV) issued in the year 1994.

35. I note that the allegation against the Noticees is to the effect that 6.83% shares that were acquired by RIL promoters together with PACs in exercise of option on warrants attached with Non-Convertible Secured Redeemable Debentures (NCD), which was in excess of ceiling of 5% prescribed in Regulation 11(1) of Takeover Regulations, without making any public announcement for acquiring shares. Thus the Noticees are alleged to have violated the provisions of Regulation 11(1) of Takeover Regulations.

36. I note that RIL in its disclosure dated April 28, 2000, made under Regulation 8(3) of the Takeover Regulations to BSE, has disclosed the above mentioned 38 allottee entities as PACs with the promoters. In this regard, I note that the term "acquirer" has been defined in Regulation 2(1)(b) of the Takeover Regulations as -

> "*"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;".*

Thus, I note the promoters along with the allottees together are the acquirers in the present matter.

37. I further note that as per the filings of RIL under Regulation 8(3) of Takeover Regulations, the shareholding of RIL promoters together with PACs had increased from 22.71% as on March 31, 1999 to 38.33% as on March 31, 2000. Out of these, 7.76% shares were acquired consequent upon a merger and thus were exempt under Regulation 3(1) (j) (ii) of Takeover Regulations.

38. However, I note that 6.83% shares that were acquired by RIL promoters together with PACs consequent to exercise of option on warrants attached with Non-Convertible Secured Redeemable Debentures (NCD), which was in excess of ceiling of 5% prescribed in Regulation 11(1) of Takeover Regulations. Thus, I note that the obligation to make a public announcement, to acquire shares, in accordance with Regulation 11(1) of Takeover Regulations arose on January 7, 2000 i.e. the date on which the PACs were allotted RIL equity shares on exercise of warrants issued in January 1994. However, in this regard, I find that the promoters and PACs have not made any public announcement for acquiring the impugned shares. Thus, I note that the Noticees have been alleged to have not complied with Regulation 11(1) of the Takeover Regulations.

39. I note that there are no disputes with respect to the facts on acquisition of shares or on PACs. The Noticees have *inter alia* contended that the provisions of the Takeover Regulations are not applicable to the issue of warrants and conversion of warrants in the present case. The Noticees have contended that the issue and allotment of the NCDs and warrants was approved by the shareholders of RIL and by the board of directors of RIL and the issue of these securities, including the right to acquire shares was completed before the 1994 Takeover Regulations or the 1997 Takeover Regulations.

40. In this regard, I note that the warrants were issued in the year 1994 much before their coming into existence of the Takeover Regulations. At the same time, I note that the entire scheme of Takeover Regulations rest on the pedestal of ‘control’. It is a common

knowledge that a company limited by shares, of the kind under consideration, is controlled by shareholding. It is a basic principle in corporate form of organizations that the voting rights depend on shareholding; i.e., "*one share one vote"* is the principle to be borne in mind. As long as an investor remains and continues as a warrant holder, apparently he gains no voting rights. In this regard, I find it relevant to note that the term "member" as defined in Section 2(27) of the Companies Act, 1956 which reads as "*..in relation to a company, does not include a bearer of a share-warrant of the company issued in pursuance of section 114;"*. Further I note that all rights pertaining to a member, upon his name entering the register of members maintained by a company under Section 150 of the Companies Act, 1956, start accruing.

41. In this regard, I find it pertinent to note Section 41 of the Companies Act, 1956 (Section 2(55) of Companies Act, 2013) that deals with definition of the term 'member' which reads as below –

> ***41. DEFINITION OF "MEMBER"***
>
> *(2) Every other person who agrees in writing to become a member of a company and whose name is entered in its register of members, shall be a member of the company.*

42. In the present matter, I note that RIL vide its board resolution dated January 07, 2000 had allotted equity shares in question in pursuance to conversion of warrants. Thus, by subscribing to the convertible warrants, the warrant holders agree in writing to become shareholders/members upon conversion. Thus, I note that as equity shareholders, the PACs acquired all rights vested in a "member" on and from the date of allotment of the equity shares which is January 07, 2000 in the present matter.

43. I note the arguments of the Noticees that the issue and allotment of the NCDs and warrants was completed even before SEBI had notified the Takeover Regulations, 1994 (the regulations which were replaced by the Takeover Regulations,1997). In this regard I note that the impugned provisions of the Takeover Regulations, 1997 that gave rise to the present proceedings, were very much in existence in 2000 i.e. when

allotting shares to the warrant holders. As has been mentioned elsewhere in this order and at the cost of repetition I note that a company limited by shares, of the kind under consideration, is controlled by shareholding. It is a basic principle in corporate form of organizations that the voting rights depend on shareholding; i.e., “one share one vote” is the principle to be borne in mind. Since allotment was done much after the coming into force of the Takeover Regulations, I find it obligatory on the part of RIL to comply with the attendant provisions of law. Therefore, the arguments of the Noticees that Takeover Regulations are not applicable in the present proceedings are devoid of any merits. Therefore, I am not inclined to accept the arguments in this regard.

44. I further note that the words *'shares or voting rights entitling him to exercise'* used in the Regulation 11(1) of the Takeover Regulations clearly suggest that its provisions apply when a person acquires or agrees to acquire shares which entitle him to exercise voting rights or he acquires or agrees to acquire voting rights in or control over the target company. The equity shares by their very nature generally carry voting rights unless agreed otherwise and the voting rights are built in when the equity shares are issued.

45. I note that in the case of *Santosh Mani v. New Delhi Young Men Christian Assn.,78 (Del)*, it was observed that applicants for membership of a company do not acquire any right to interfere in the management affairs of the company. They have to wait till at least they are enrolled as members. Before that they have the right to seek enforcement of their right to be members.

46. In the matter of Ch. Kiron Margdarshi v. SEBI – [2001] 33 SCL 349, Hon’ble SAT held that :-

"What attracts the regulation is the acquisition of shares / voting rights which will entitle the person acquiring the shares to exercise voting rights beyond certain limits is specifically provided in the regulations, ……

If the acquisition entitles an acquirer to exercise ten percent or more of the voting rights in a company, then only the regulation would be attracted. <u>It is not the manner in which</u>

the shares are acquired. It is the effect that triggers action. If the acquisition has no impact on the voting rights, regulation is not attracted." (Emphasis Supplied).

47. As discussed previously, the warrants, by their very nature, do not entitle its holders to exercise voting rights in a company nor do they *per se* confer any power or authority of control over a target company. The warrants contain an option in favour of the holder to get the shares of the issuer company. Such option by itself does not entitle voting rights or control in favour of the holder. When the warrant holder exercises option to subscribe to equity shares he agrees to acquire shares that entitle him to voting rights in the target company. In this regard, I would like to rely on the observations of the Hon'ble SAT in the matter of *Raghu Hari Dalmia & Others vs SEBI* (Appeal no. 134 of 2011) wherein vide its order dated November 21, 2011, it was held that *"..the word 'acquire' implies acquisition of voting rights through a positive act of the acquirer with a view to gain control over the voting rights*". I therefore note that the allottees had to opt in for shares, thus constituting a positive act on the part of the Noticees with a view to gain control over the voting rights (emphasis supplied). Thus, I note that as the promoters and PACs acquired the shares and voting rights on January 07, 2000, the same is the date of acquisition in the present case, and the obligation to make public announcement arises as a consequence thereof. Thus, as discussed above I also note that there is a positive action in terms of allotment of shares by RIL in 2000 when the Takeover Regulations, 1997 were very much in place (emphasis supplied). From the above, I note that there were positive actions both by the acquirers and the target company, calling for public announcement in terms of Regulation 11(1) of Takeover Regulations.

48. In this regard, the Hon'ble SAT in the matter of *Sohel Malik Vs. Securities and Exchange Board of India* vide its order dated October 15, 2008 held that:

> *"…it is the acquisition of voting rights that triggers the provisions regarding public announcements and public offers contained in the Regulations. Acquisition of securities without voting rights, including convertible warrants as in the present appeal, will not, by itself, necessitate any public announcement or public offer."*

49. In the above case, the Hon'ble Tribunal further held that:

> *"…It is true that information about issue of warrants became public with the holding of the BoD meeting of 16.12.2006 but that cannot be taken as information about issue of shares. The issue of shares was contingent on the warrant holder exercising the option to convert the warrants and cannot be taken as a mere formality. It was, in fact, an event quite distinct from the issue of warrants. Therefore, the reference date for computing the offer price should be 28.6.2008, the date of the BoD meeting when the shares were allotted and not 16.12.2006…."*

50. Similarly, in the matter of *Eight Capital Master Fund Ltd and others Vs. Securities and Exchange Board of India* in Appeal No. 111 of 2008, Hon'ble SAT, in its order dated July 22, 2009 held that:

> *"Undoubtedly, the compulsorily convertible debentures were allotted to the appellants by the BoD in their meeting on July 21, 2006 and even though these debentures were shares for the purposes of the takeover code, they did not carry any voting rights on that date. The BoD meeting of July 21, 2006 did not, therefore, authorise the preferential allotment of shares carrying voting rights. The voting rights which triggered the takeover code were acquired by the appellants only on January 26, 2008 when the period of 18 months expired and the compulsorily convertible debentures got converted automatically and the BoD in their meeting on that day allotted equity shares to the appellants …. the BoD authorised the preferential allotment to the appellants …."*

Thus, I find no merit in the contentions of the Noticees that the provisions of Takeover Regulations are not applicable to the present case.

51. The Noticees have also contended that the Explanation to Regulation 3(4) of the Takeover Regulations which provided that *"the relevant date in case of securities which are convertible into shares shall be the date of conversion of such securities"* came to be inserted with effect from September 9, 2002. It was further submitted that the said provision was not in existence on January 7, 2000. The Noticees have thus contended that the issue of warrants and issue of shares on conversion of warrants were not subject to the provisions of the Takeover Regulations. In regard to the argument of the Noticees that the explanation to Regulation 3(4) was inserted only in 2002 that is much after the conversion of warrants into equity shares is of no avail. I note that generally explanation aids in interpretation of laws and does not create any new obligation. In this regard I rely upon the observations of the Hon'ble Supreme Court of India, in the matter of *Sundaram Pillai V Pattabiraman* (1985 AIR 582, 1985 SCR (2) 643) wherein the objects of an "explanation" have been clarified as under :-

> " *The next question is as to what is the impact of the Explanation on the Proviso which deals with the question of wilful default. It is now well settled that an explanation added to a statutory provision is not a substantive proviso, in any sense of the term but as the plain meaning of the word itself shows, it is merely meant to explain or qualify certain ambiguities which may have crept in the statutory provision. From a conspectus of the authorities, it is manifest that the object of an Explanation to a statutory provision is-*
> *(a) to explain the meaning and intendment of the Act itself;*
> *(b) …*
> *(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful;*
> *(d) an Explanation cannot in any way interfere with or change the enactment or any part …*
> *(e) it cannot, however, take away a statutory right with which any person, under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same. "*

In view of the above principles as enshrined by the Hon'ble Supreme Court of India, I find no merits in the contentions of the Noticees.

52. Further I note that the Noticees have contended, vide their reply dated November 19, 2020, that the acquisition of shares by the Noticees was exempt under Regulation 3(1)(c) of the Takeover Regulations. It was further contended by the Noticees that

Regulation 3(1)(c) provided that nothing in Regulations 10, 11 or 12 of the Takeover Regulations shall apply to a "preferential allotment" made in pursuance of a resolution under Section 81(1A) of the Companies Act, 1956, and that the exemption under Regulation 3(1)(c) applied to the RIL equity shares pursuant to exercise of the warrants.

53. Further, I note that the Noticees, vide email dated December 22, 2020, have contended that there was no issue and allotment of convertible instrument post the enactment of the SEBI Takeover Regulations 1994 / SEBI Takeover Regulations 1997, and accordingly there cannot be any question of filing of reports under Regulations 3(1)(c), 3(3) and 3(4) of the Takeover Regulations. I note that the date of conversion into shares, as has been explained in detail elsewhere in this order, is material. As discussed previously, the date of acquisition of shares was January 07, 2000, during which time the Takeover Regulations were very much in force.

54. I further note that as per Regulation 3(1)(c) of the Takeover Regulations (omitted since September 09, 2002), preferential allotments were exempt from the obligation to make open offer in terms of Regulation 11 of the Takeover Regulations, provided the conditions stipulated therein were complied with (emphasis supplied). Regulation 3(1)(c) of the Takeover Regulations, as it existed then are reproduced hereunder for ease of reference –

> *"3. (1) Nothing contained in regulations 10, 11 and 12 of these regulations shall apply to:*
>
> *...*
>
> *(c) preferential allotment, made in pursuance of a resolution passed under Section 81 (1A) of the Companies Act, 1956 (1 of 1956):*
>
> *Provided that,*
>
> *(i) Board Resolution in respect of the proposed preferential allotment is sent to all the stock exchanges on which the shares of the company are listed for being notified on the notice board;*

(ii) full disclosures of the identity of the class of the proposed allottee (s) is made, and if any of the proposed allottee (s) is to be allotted such number of shares as would increase his holding to 5% or more of the post issued capital, then in such cases, the price at which the allotment is proposed, the identity of such person(s), the purpose of and reason for such allotment, consequential changes, if any, in the board of directors of the company and in voting rights, the shareholding pattern of the company, and whether such allotment would result in change in control over the company are all disclosed in the notice of the General Meeting called for the purpose of consideration of the preferential allotment."

55. As can be seen from above, for preferential allotments to be exempt from the obligation of making public announcement, the same needs to comply with the conditions stipulated in Regulation 3(1)(c) of the Takeover Regulations. In this regard, I note that the Hon'ble SAT in the case of *Arya Holding Ltd V. P. Sri Sai Ram*, *Adjudicating Officer* (2001) 31 SCL 549, held as under –

*"…….. **it is clear from the provisions of regulation 3(1)(c) cited above that an acquisition pursuant to a preferential allotments simplicitor will not be eligible for exemption unless the requirements stipulated in clauses (i) and (ii) are complied with.** In this context it is pertinent to mention that since the law specifically provided that the exemption is subject to compliance of certain requirements specified there in, to avail the exemption it is absolutely necessary to comply with the specified requirements. It is therefore necessary to examine whether the appellants had fulfilled the requirements of clauses (i) and (ii) of regulation 3(1)(c)".* (emphasis supplied)

56. In the case of Luxury Foams Ltd. v. SEBI (Order dated 20.03.2002), the Hon'ble SAT held as under:

"It is to be noted that regulation 3 provides exemption from complying with the requirements of regulation 10, 11, 12 in respect of certain type of acquisitions stated in the said regulation. The requirement of compliance in terms of regulation

10, 11, 12 is by the acquirer. So if the acquirer is keen to avail of the exemptions, it is for him to satisfy as to whether the preconditions required to be complied with to avail exemption have been complied with or not. It is to be noted that the impugned order, is directed against the Appellants on account of their failure to comply with requirements of regulation 10 etc., and not directed against the company for not fulfilling the preconditions so as to qualify the preferential allotment to be exempted."

57. On a combined reading of Regulation 3(1) and Regulation 11 of Takeover Regulations, I note that the options available are two, viz, (i) inform the shareholders with all the prescribed details in the notice/ explanatory statement of the general meeting called for the purpose of consideration of the preferential allotment in order to obtain the approval of the shareholders. If the shareholders agree to such a preferential allotment of shares, with adequate and due disclosures, there is exemption from public announcement. Otherwise, (ii) the acquirers together with PACs have to make public announcement to acquire shares in accordance with the regulations. In effect, I note that the Noticees have neither complied with in obtaining the approval of shareholders supplying them with the prescribed details nor have they come out with a public announcement till date. Thus, I note that the Noticees have been enjoying all rights attached to the impugned acquisition without complying with the relevant law.

58. The allotment of shares in the year 2000 has to confirm to the law prevailing as in the year 2000 and the Noticees cannot claim ignorance of the law i.e. the Takeover Regulations. Any prior resolution of share-holders is nothing more than a grant of authority to the Board of Directors, and if it is not in conformity with the law, due to subsequent changes in law when the same is required to be used, then either the resolution must not be used at all or should be reconfirmed in accordance with law. I note that nothing prevented the Noticees from approaching SEBI for clarity in respect of options attached to warrants given in 1994 but for which, prior to 1997, allotment had not yet happened or for them to approach the share-holders to seek the appropriate resolutions so as to confirm or ratify the existing resolution with appropriate

disclosures and thus satisfy the requirement of giving Notice to the general body of share-holders inter alia about the 'identity' of the allottees, as required under Regulation 3(1)(c) of the Takeover Regulations. Clearly doing so, would have revealed the 'identity' of the intended allotees. Thus, the failure to file the disclosures under Regulation 3(1)(c) of the Takeover Regulations was not just a technical violation but a deliberate concealment of important facts from the share-holders, for if such a resolution existed or if the Noticees had any desire of even subsequently informing share-holders about the identity before the allotment that they were the intended share-holders, they would have done so and claimed exemption. As discussed previously, compliance with the requirements of Regulation 3(1)(c) is necessary to claim exemption from making public announcement under Regulation 11(1) of the Takeover Regulations. Thus, the resulting failure to make the public announcement and the non-compliance of the open offer obligation being absolute and continuing in nature, was in violation of the requirement of Regulation 11(1) of the Takeover Regulations.

59. In this context it is noted that the Hon'ble Supreme Court in *Nirma Industries v SEBI* [2013 (8) SCC 20] has held that "*the takeover code is meant to ensure fair and equal treatment of all shareholders in relation to substantial acquisition of shares and takeovers and that the process does not take place in a clandestine manner without protecting the interest of the shareholders*."

60. The Hon’ble Supreme Court further held that –

"Regulation 10 mandates that no acquirer shall acquire shares or voting rights which entitle such an acquirer to exercise 15% or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the Regulations. The Takeover Code then prescribed a detailed procedure for making a public announcement and the manner in which the offer price is determined at which the shares are offered to public shareholders. Regulation 11 provides that no acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15% or more but less than 55% of the shares or voting rights in a company, shall acquire, either by himself

or through or with persons acting in concert with him additional shares or voting rights entitling him to exercise more than 5% of the voting rights unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations. "

61. The Noticees have also referred to the Bhagwati Committeee Report in their replies to buttress their claim that preferential allotments are eligible for automatic exemption. In this regard, I note that the Bhagwati Committee Report also emphasizes the need for effective exit option to shareholders in the context of low turnout of minority shareholders in shareholder's meetings. Thus, the recommendation basically is to provide an exit option to shareholders and the same principle has necessitated the compliance of Regulation 3(1) of Takeover Regulations. I thus note there is no incongruence between the report and the regulations to the limited extent of providing exit to shareholders. In this regard, I further note that the conditions for exemption as mentioned above were very much in force at the time when the cause of action arose.

62. It is settled law that where law provides for any exception to/exemption from, a general mandate, then the conditions stipulated by law for such exception/exemption are required to be strictly complied with. Extract from the case of Commissioner of *Central Excise, New Delhi vs. Hari Chand Shri Gopal and Ors.* decided by the Hon'ble Supreme Court on 18.11.2010 - MANU/SC/0955/2010 reads as follows:

> *"22. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved*."

63. I note that the Noticees have also contended that the issue and allotment of convertible warrants were disclosed to the stock exchange in 1994 itself and further the warrants were listed on the stock exchanges. Further, the Noticees have also, *inter alia,* contended that the issuance and acquisition of equity shares pursuant to the exercise

of warrants was intimated to the stock exchanges even in April 2000, and therefore the information relating to the issue of NCDS and warrants, and subsequent exercise of warrants was known publicly. In this regard, I note that such disclosures cannot be a substitute for specific requirements under the provisions of Regulation 3(1)(c) of Takeover Regulations as mentioned previously. Further in this context, I would like to rely on observation of Hon'ble SAT in *Premchand Shah and Others V. SEBI* dated February 21, 2011, wherein it was held that *".....When a law prescribes a manner in which a thing is to be done, it must be done only in that manner.....".* I note that the above actions do not absolve the Noticees from making a public announcement in the instant case.

64. The Noticees have also contended that SEBI had filed a criminal complaint before the Hon'ble Special Court of the Judge under the Securities and Exchange Board of India Act,1992 at Bombay (hereinafter referred to as "Hon'ble Special Court"), *inter alia,* for alleged violation of the Takeover Regulations, and vide Order dated September 30, 2020, the same was dismissed by the Hon'ble Special Court as being barred by limitation. In this regard, I note that the said prosecution proceedings are different from the present adjudication proceedings. I also note that in any event, it is settled law that prosecution and adjudication proceedings are independent of each other and that the adjudicating authority is not bound by the findings of the Ld. Hon'ble Special Court and *vice versa*. Incidentally, I note that the order passed by the Hon'ble Special Court has been impugned before the Hon'ble High Court of Bombay by SEBI in Criminal Revision proceedings.

65. From the reply of the Noticees, I note that admittedly there has been no compliance with Regulation 3(1)(c) of the Takeover Regulations. Owing to the above non-compliance, I note that the Noticees cannot claim that their acquisition was exempted under the said provision from making open offer.

66. I also note that the Noticees have not made the pre-acquisition filing under Regulation 3(3) of Takeover Regulations and post-acquisition filing under Regulation 3(4) of Takeover Regulations. The said filings have not been made till date.

67. From the above, I note that the impugned acquisition by the Noticees was not exempted under Regulation 3(1)(c) of the Takeover Regulations. I note that compliance with Regulations 3(1)(c), 3(3) and 3(4) of Takeover Regulations are necessary to avail of exemption from open offer obligation under provisions of Regulation 11(1) of the Takeover Regulations.

68. In the absence of exemption, the acquisition was illegal for failure to make a public announcement of the open offer (*Vaman Madhav Apte & Ors. v SEBI*, 2019 SCC OnLine SAT 76; and *Vaman Madhav Apte & Ors. v SEBI*, MANU/SCOR/15644/2019). It is an admitted fact that the Noticees did not make the public announcement as per the mandatory requirement of Regulation 11 of the Takeover Regulations and the open offer being a consequential and necessary part thereof, which was absolute in nature. Such a failure is a continuing violation till discharge.

69. It is settled law that an acquisition in violation of Regulation 11 is *ipso facto* null and void, that it is an absolute bar in law unless the requirement to give a public announcement of an open offer is made. [*Aska Investment Ltd. v Grob Tea Co. Ltd*., 2004 SCC Online Cal 623 following: *Karamsad Investment Ltd. v Nile Ltd*., 2002 (108) CompCas 58 (AP)]. The acquisition of shares which gives rise to voting rights thereon is a continuous contravention of the bar in law contained in Regulation 11 as the Acquirers and Persons acting in Control are not '*entitled'* in law to lawfully exercise the voting rights based on such a null and void acquisition. This cannot be considered as anything but a continuing failure to give the public announcement of the open offer as required under Regulation 11(1) of the Takeover Regulations.

70. In the instant case, the violation was not one which was committed once and for all but that which continues till date. The violation is a disobedience of the statutory provisions by which the acquisition of securities giving the Noticees enhanced control by the exercise of voting rights, etc and these are violations which are continuing so long as the voting rights are acquired in violation of the letter and spirit of the law.

71. I note that the SEBI Act, 1992 is a social welfare legislation for the protection of investors and it is the paramount duty to interpret its provisions and to adopt such an interpretation that would further the purposes of law and if possible, eschew the one which frustrates it. [*SEBI v Ajay Agarwal*, 2010 (3) SCC 765]. Hence, it is necessary to uphold the obligation to give a public announcement of open offer to investors at large which obligation has not been complied with till date. Acceptance of any argument for not making a public announcement of an open offer would tantamount to total disregard to the concerns of the public share-holders as the violation is not one of mere procedural nature but goes against the very grain of the statue under consideration [*Bhagirath Kanoria & Ors. v State of M.P.*, 1984 (4) SCC 222].

72. The Hon'ble Supreme Court in the matter of *AO, SEBI Vs Bhavesh Pabari*; (2019) 5 SCC 90, has held that in case of continuing offence, *the liability continues until the rule or its requirement is obeyed or complied with*. In the instant case, liability of making upon offer continues even today.

73. Thus, in view of the above, I hold that the Noticees by not making a public announcement have violated and have been continuing to violate the provisions of Regulation 11(1) of the Takeover Regulations.

74. It is observed that the following Noticees viz. Mr. Akash M Ambani, Mr. Jayanmol Ambani, Ms. Isha M Ambani, Mr. Vikram D Salgaokar, Ms. Isheta D Salgaokar, and Ms. Nayantara B Kothari were minors at the time of the commencement of the aforesaid violation i.e. January 07, 2000. As per the reply dated December 22, 2020 of the authorized representatives, following persons are the natural guardians of the aforesaid Noticees at the relevant time –

Sr. No.	Noticee	Natural Guardian
1.	Mr. Akash M Ambani (Noticee No. 10)	Mr. Mukesh D Ambani (Noticee No. 1)
2.	Mr. Jayanmol Ambani (Noticee No. 11)	Mr. Anil D Ambani (Noticee No. 2)

3.	Ms. Isha M Ambani (Noticee No. 12)	Mr. Mukesh D Ambani (Noticee No. 1)
4.	Mr. Vikram D Salgaokar (Noticee No. 13)	Mr. Dattaraj Salgaocar (Noticee No. 7)
5.	Ms. Isheta D Salgaokar (Noticee No. 14)	Mr. Dattaraj Salgaocar (Noticee No. 7)
6.	Ms. Nayantara B Kothari (Noticee No. 15)	Mr. Bhadrashyam Kothari

75. I note that the provision of Section 8 of the Hindu Minority and Guardianship Act, 1956, are as follows –

"8. Powers of natural guardian.—

(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant."

76. I note that the respective Noticees who are the Natural Guardians of the aforesaid minor Noticees are responsible not only on their own behalf but also on behalf of the minors.

77. Further, I note that Mr. B H Kothari who is the natural guardian of Noticee No. 15 had passed away on February 22, 2015 and accordingly the present proceedings against Mr. Kothari have been abated vide adjudication order dated September 30, 2020. As a consequence no penalty is imposed on Noticee No. 15.

78. Further, vide email dated December 07, 2020, the authorized representative of the Noticees informed that Noticee No. 6, viz. Mr. R H Ambani had passed away on July 27, 2020. In this regard, I note that the Hon'ble Supreme Court in its Order in the case of *Girija Nandini vs. Bijendra Narain Choudhury* (AIR 1967 SC 2110) has stated that in case of personal actions, i.e. the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives, and in such cases the maxim "actio personalis moritur cum persona" (personal action dies with the death of the person) would apply. In the present case, I note that the ARs had

submitted a copy of the Death Certificate (Sl. No.: 231202, Book No.: 2313, Registration No.: 867, Certificate No. D202010336962), dated August 10, 2020 issued by the Ahmedabad Municipal Corporation, certifying the death of the Noticee No. 6 on July 27, 2020. The adjudication proceedings against Noticee No. 6, who has since deceased, shall stand abated, and thus the SCN issued *qua* the Noticee i.e. Mr. R H Ambani is disposed of.

Issue II & III) **Does the violations, if established, attract monetary penalty under Section 15H of SEBI Act, 1992?** ***If yes, then what would be the monetary penalty that can be imposed upon the Noticees, taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992 read with Rule 5(2) of the Rules?***

79. I note that the Hon'ble Supreme Court of India in the matter of ***SEBI vs. Shri Ram Mutual Fund*** held that "*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow.*"

80. Thus, the violation of Regulations 11(1) of the Takeover Regulations makes the Noticees liable for penalty under Section 15H of the SEBI Act, 1992. The text of Section 15H of the SEBI Act, 1992 as on date reads as under –

> **SEBI Act, 1992**
>
> **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) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or*
>
> *(ii) make a public announcement to acquire shares at a minimum price, or*
>
> *[98][(iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or*
>
> *(iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer,]*

he shall be liable to a penalty [99][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].

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[98] Inserted by the SEBI (Amendment) Act, 2002, w.e.f. 29-10-2002.

[99] Substituted for the words "twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher" by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014. Prior to substitution, as substituted by the SEBI (Amendment) Act, 2002, w.e.f. 29-10-2002 it read as under: "not exceeding five lakh rupees"

81. I note that the amount of profits made out of such failure has not been brought out in the available records for computing the amount of penalty in terms of Section 15H of the SEBI Act, 1992.

82. The Noticees have in their reply to the SCN have contended that para 5 of the SCN after referring to Section 15H of the SEBI Act, 1992 as it stood upto October 29, 2002, has also referred to Section 15H of the SEBI Act, 1992 as amended on October 29, 2002. In this regard, it was argued that Section 15H of the SEBI Act, 1992 as amended on October 29, 2002 can have no application to an alleged infraction which took place much prior to the said amendment. In this regard, I note that the facts pertaining to this case have been elaborated earlier and hence for the sake of brevity, not repeated here. I note that the Noticees have not made a public announcement to acquire shares till date and have never given open offer although the same was triggered by virtue of their acquisition as discussed above. In view of the aforesaid, the pre-amendment and the post amendment provisions of Section 15H of the SEBI Act, 1992 have rightly been mentioned in the SCN. It is thus clear that under Section 15H of the SEBI Act, 1992, it is the failure to make a public announcement which is punishable, which has never been complied with till date in the present case. The statutory minimum penalty introduced in 2014 has retrospective effect in view of the law laid down in the matters *Maya Rani Punj v Commisioner of Income Tax*, [AIR 1986 SC 293] following the

Constitutional bench judgements of *K. Satwant Singh v. State of Punjab*, [AIR 1960 SC 266]. In respect of the present case where the Noticees have continued to not comply with the statutory obligation to make the public announcement; in such cases the higher penalty as per the amended law (as on date) would apply [*S. S. Thakur & Ors v SEBI*, 2014 (186) CompCas 134 (Del)] and the prohibition against ex post facto laws contained in Article 20(1) of the Constitution shall not apply in view of the law laid down by the Hon'ble Supreme Court in the case of *Mohan Lal v State of Rajasthan*, 2015 (6) SCC 222. I therefore find it necessary to impose the enhanced penalty as provided under the amended provision of the SEBI Act, 1992.

83. Further, in regard to the provisions of Section 15J of the SEBI Act, 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.

84. With regard to the above factors to be considered while determining the quantum of penalty, I note that no quantifiable figures or data are available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default committed by the Noticee. However, the fact remains that the Noticees by their failure to make public announcement, deprived the shareholders of their statutory rights/ opportunity to exit from the company.

ORDER

85. Accordingly, taking into account the aforesaid observations and in exercise of power conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose the following penalty, to be paid jointly and

severally, under Section 15H of SEBI Act, 1992 for violation of Regulation 11(1) of Takeover Regulations on the below mentioned Noticees –

Noticee Name	**Penalty**
Shri Mukesh D Ambani (Noticee No. 1 and on behalf of minor Noticees Nos. 10 and 12)	Rs. 25,00,00,000/- (Rupees Twenty Five Crore Only)
Shri Anil D Ambani (Noticee No. 2 and on behalf of minor Noticee No. 11)	
Smt. K D Ambani (Noticee No. 3)	
Smt. Dipti D Salgaokar (Noticee No. 4)	
Smt. Nina B Kothari (Noticee No. 5)	
Shri Dattaraj Salgaokar (Noticee No. 7 and on behalf of minor Noticee Nos. 13 and 14)	
Smt. Nita Ambani (Noticee No. 8)	
Smt. Tina Ambani (Noticee No. 9)	
Reliance Industries Holding Pvt Ltd (into which Noticee Nos. 16 to 26 and 28 to 33 have merged into)	
Kankhal Trading LLP (Earlier known as : Kankhal Invts & Trdg Co. Ltd.) (Noticee No. 27)	
Reliance Realty Ltd. (Earlier Known as : Terene Fibres India (P) Ltd.) (Noticee No. 34)	

86. The aforesaid Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

87. The aforesaid Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department - DRA-1), 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 also provide the following details while forwarding DD / payment information:

    a) Name and PAN of the 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

88. 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, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

89. In terms of Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticees and also to Securities and Exchange Board of India.

Date: April 07, 2021 **K SARAVANAN**

Place: Mumbai **ADJUDICATING OFFICER**