

## SECURITIES AND EXCHANGE BOARD OF INDIA

## ORDER

UNDER SECTIONS 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 32 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.

IN THE MATTER OF M/S KESAR PETROPRODUCTS LIMITED –

**Noticees:**

| SL.NO. | NAME OF THE NOTICEES  | PAN        |
|--------|-----------------------|------------|
| 1      | Shreyas Dinesh Sharma | BHDPS9985D |
| 2      | Shruti Dinesh Sharma  | DRKPS7975C |
| 3      | Dinesh Sharma         | ABIPS9306E |
| 4      | Raj Kumar             | AKKPS1106R |
| 5      | Shankarlal Sharma     | AHZPS4363E |
| 6      | Dinesh Sharma HUF     | AAFHD3451H |

**Background:**

1. Kesar Petroproducts Limited (“**KPL/Target Company**”) is a listed company, which was incorporated in the year 1990 under the Companies Act, 1956. The shares of KPL are listed on Bombay Stock Exchange Limited (“**BSE**”) (Listing date: April 9, 1991).

**Show Cause Notice dated January 31, 2017:**

2. Securities and Exchange Board of India (“SEBI”) had received a Report filed on November 28, 2012, by Shreyas Dinesh Sharma and Shruti Dinesh Sharma (“Acquirers”), under Regulation 10(7) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“SAST Regulations”). A perusal of the aforesaid Report indicated that it pertained to the acquisition of 35,00,000 (48.16%) equity shares in the Target Company by the Acquirers from one of the Promoters i.e. Shreyas Intermediaries Limited (“Transferor”) on November 9, 2012 (see Table I below).

| TABLE I – KESAR PETROPRODUCTS LIMITED [SOURCE: BSE WEBSITE] |                                 |                                       |                   |                                        |                   |
|-------------------------------------------------------------|---------------------------------|---------------------------------------|-------------------|----------------------------------------|-------------------|
| SR. No.                                                     | NAME                            | PRE – ACQUISITION AS ON<br>30.09.2012 |                   | POST – ACQUISITION AS ON<br>31.12.2012 |                   |
|                                                             |                                 | NO. OF<br>SHARES                      | %<br>SHAREHOLDING | NO. OF<br>SHARES                       | %<br>SHAREHOLDING |
| <b>A.</b>                                                   | <b>PROMOTER/ PROMOTER GROUP</b> |                                       |                   |                                        |                   |
| 1.                                                          | SHREYAS INTERMEDIATE LIMITED    | 35,00,000                             | 48.16             | 0                                      | 0.00              |
| 2.                                                          | SHREYAS DINESH SHARMA           | 0                                     | 0.00              | 17,50,000                              | 24.09             |
| 3.                                                          | SHRUTI DINESH SHARMA            | 0                                     | 0.00              | 17,50,000                              | 24.09             |
| 4.                                                          | DINESH SHARMA HUF               | 30,00,000                             | 41.28             | 30,00,000                              | 41.29             |
| 5.                                                          | RAJ KUMAR                       | 5,00,000                              | 6.88              | 5,00,000                               | 6.88              |
| 6.                                                          | SHANKARLAL SHARMA               | 1                                     | 0.00              | 1                                      | 0.00              |
| 7.                                                          | DINESH SHARMA                   | 1                                     | 0.00              | 0                                      | 0.00              |
|                                                             | <b>TOTAL</b>                    | 70,00,002                             | 96.32             | <b>70,00,001</b>                       | <b>96.35</b>      |
| <b>B.</b>                                                   | <b>PUBLIC SHAREHOLDING</b>      | 2,67,315                              | 3.68              | <b>2,65,349</b>                        | <b>3.65</b>       |
| <b>C.</b>                                                   | <b>TOTAL (A + B)</b>            | 72,67,317                             | 100.00            | <b>72,65,350</b>                       | <b>100.00</b>     |

3. In the aforesaid Report, the Acquirers had indicated that the aforementioned acquisition attracted Regulation 10(1)(a)(i) of the SAST Regulations and therefore, they were exempt from making an Open Offer under the said Regulations.
4. Vide a letter dated November 30, 2012, SEBI had advised the Acquirers to clarify as to how they qualified for the exemption under Regulation 10(1)(a)(i) of the SAST Regulations. The Acquirers responded vide a letter dated December 18, 2012, whereby they informed SEBI that they were the Directors of the Transferor and had classified themselves as '*immediate relatives*' of the Transferor.
5. Upon an examination of the aforementioned reply, SEBI found the Acquirers along with '*persons acting in concert*' with them to have violated the provisions of Regulation 3(2) of the SAST Regulations, on account of having exceeded the permissible creeping acquisition limit of 5% in a financial year. Dinesh Sharma was alleged to have acted in concert with the Acquirers i.e. Shreyas Dinesh Sharma [Son of Dinesh Sharma] and Shruti Dinesh Sharma [Daughter of Dinesh Sharma] on account of being '*immediate relatives*'. Dinesh Sharma HUF, Raj Kumar and Shankarlal Sharma were deemed to be acting in concert with the Acquirers since as per Regulation 2(1)(q)(2)(iv) of the SAST Regulations, Promoters and members of the Promoter Group shall be deemed to be acting in concert unless the contrary is established. Accordingly, SEBI issued a Show Cause Notice dated January 31, 2017 (read with letters dated March 8, 2017 and April 13, 2017) ("**SCN**") to Shreyas Dinesh Sharma ("**Noticee No. 1**"), Shruti Dinesh Sharma ("**Noticee No. 2**"), Dinesh Sharma ("**Noticee No. 3**"), Raj Kumar ("**Noticee No. 4**"), Shankarlal Sharma ("**Noticee No.**

5”) and Dinesh Sharma HUF (“**Noticee No. 6**”) (Collectively referred to as “**Noticees**”) asking them to show cause as to why directions under Sections 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 (“**SEBI Act**”) read with Regulation 32 and 35 of SAST Regulations should not be issued against them for the violations alleged therein.

6. Regulation 2(1)(l), Regulation 2(1)(q)(2)(iv), Regulation 3 and Regulation 10(1)(a)(i) of the Takeover Regulations are reproduced below for ease of reference:

**“Definitions.**

2. (1) *In these regulations, unless the context otherwise requires, the terms defined herein shall bear the meanings assigned to them below, and their cognate expressions and variations shall be construed accordingly, -*

.....

*(l) “Immediate relative” means any spouse of a person, and includes parent, brother, sister or child of such person or of the spouse;*

.....

*(q) “Persons acting in concert” means, -*

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

.....

*(iv) Promoters and members of the Promoter Group;”*

### ***Substantial acquisition of shares or voting rights.***

**3. (2)** *No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations:*

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

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

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

### ***General exemptions.***

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

*(a) Acquisition pursuant to inter se transfer of shares amongst qualifying persons, being, -*

- (i) Immediate relatives;”*

## Hearing:

7. Subsequent to the issuance of the SCN, an opportunity of inspection of documents and personal hearing was granted to the Noticees on various occasions and such dates along with details of appearances/responses are listed out hereunder:
- a. **June 23, 2017:** A request for inspection of documents relied upon by SEBI in the SCN was made by Noticee No. 4 (vide letter dated April 24, 2017), which was acceded to by SEBI vide letter dated June 12, 2017. Accordingly, the authorised representative for Noticee 4 i.e. Vikas Bengani, undertook the inspection on June 23, 2017.
  - b. **September 25, 2017:** An opportunity of personal hearing was granted to the Noticees on September 25, 2017. The authorised representatives for Noticee Nos. 1–3 and 5–6, i.e. Mr. Joby Mathew and Ms. Manali More reiterated the submissions contained in Noticees' replies dated May 3, 2017 and May 12, 2017. The authorised representatives for Noticee No. 4, i.e. Vikas Bengani and Dr. S. K. Jain, reiterated the submissions contained in his reply dated July 10, 2017. The authorised representatives for the aforementioned Noticees also undertook to submit additional written submissions.
  - c. **October 25, 2018:** The authorised representatives for Noticee Nos. 1–3 and 5–6, i.e. Ms. Suchita More and Mr. Rajesh Pareek reiterated the submissions contained in their replies dated May 3, 2017, May 12, 2017 and September 25, 2017. The authorised representatives for Noticee No. 4 i.e. Vikas Bengani and Dr. S. K. Jain,

reiterated the submissions contained in his replies dated July 10, 2017 and October 13, 2017. The authorised representatives for the aforementioned Noticees also undertook to submit additional written submissions.

- d. **December 13, 2019:** The Noticees were advised to submit additional submissions for updating any relevant developments post the hearing. Noticee Nos. 1-3 and 5-6 submitted a common letter dated December 16, 2019, enclosing their additional / updated submissions. The authorized representative for Noticee No. 4, i.e. Vikas Bengani, submitted additional submissions vide email dated December 31, 2019.

**Replies dated May 3, 2017, May 12, 2017, October 26, 2018, November 5, 2018 and December 16, 2019 by Noticees No. 1-3 and 5-6:**

8. Gist of major submissions made by Noticees Nos. 1–3 and 5–6 vide the above mentioned correspondences, is as under:
- a. For various reasons, the Target Company was forced to suspend its manufacturing operations sometime in the month of November 2004 and on September 23, 2005. The Board of Industrial and Financial Reconstruction (“**BIFR**”) declared the Target Company as a sick undertaking. Thereafter, vide an Order dated April 28, 2006, the BIFR held that there was no viable rehabilitation proposal and hence, ordered the Target Company to be wound up. At that point in time, the Target Company had approximately 33,000 shareholders and subsequently, trading in the shares of the Target Company was suspended on BSE.

- b. On June 29, 2006, Shreyas Intermediate Limited (“**SIL**”), a public company promoted by Dinesh Sharma (Noticee No. 3) and whose shares are listed on BSE, submitted a proposal to the BIFR to take over the Target Company. The BIFR vide its Order dated August 17, 2007, accepted the proposal and ordered a Scheme of Rehabilitation (“**Scheme**”) of the Target Company by sanctioning a takeover by SIL. As per the approved Scheme, the Target Company had to bring in equity/unsecured loan of at least Rs.9 Crores after reducing the existing equity by 99%. Consequently, the Company passed a resolution for bringing in Rs.7 Crores as equity to be given by Dinesh Sharma and his related Companies. His associate/company i.e. SIL and Dinesh Sharma HUF brought in Rs.6.50 Crores. The shortfall was arranged by giving his shares then worth Rs.70 Lakhs in SIL to Raj Kumar, who instead gave money in tranches to the Target Company directly amounting to Rs.50 Lakhs. At that time, he was a Director in the Target Company having represented that he knew people in Finance Ministry and would help the promoters in taking the Target Company from BIFR.
- c. Shares were issued to Raj Kumar in the promoter quota and these shares could have been issued only to the promoters in accordance with the BIFR order.
- d. On November 09, 2012, SIL transferred 17,50,000 equity shares each in the Target company to Shreyas Dinesh Sharma and Shruti Dinesh Sharma, after giving due notice to BSE and after filing proper disclosures on how the transaction was exempt from takeover code. No consideration was paid for such transfer and hence, the transaction was not in the nature of purchase.

- e. Noticee No. 5 - Shankarlal Sharma is the father of Noticee No. 3 – Dinesh Sharma. Both Shreyas Dinesh Sharma and Shruti Dinesh Sharma have been promoter shareholders of SIL since 2004 and are son and daughter of Mr. Dinesh Sharma, who is one of the promoter of the Target Company and were also coparceners in Dinesh Sharma HUF, a promoter of the Target Company, at the time of the said transfer and they cannot but be considered as being closely related to SIL.
- f. Accordingly, Shreyas Dinesh Sharma and Shruti Dinesh Sharma are deemed to be part of the promoter group of the Target Company and Persons Acting in Concert (“**PACs**”) since April 2008 till the date of the transfer of shares by SIL.
- g. SIL is a promoter of the Target Company since 2008.
- h. SEBI order dated January 11, 2016, in the matter of Minimum Public Shareholding (“**MPS**”) in the Target Company, inter-alia, held that Shreyas Dinesh Sharma and Shruti Dinesh Sharma are deemed to be PACs with persons within the same category i.e., promoter and promoter group.
- i. While the Target Company disclosed SIL as a promoter in its filings with BSE, SIL, in its filings with BSE disclosed that Shreyas Dinesh Sharma and Shruti Dinesh Sharma were among its promoters. Thus, at the time of transfer of shares, the investing public were informed about the status of Noticees Nos.1 and 2 as members of the promoter group of the Target Company.

- j. The transfer of shares of the Target Company to Shreyas Dinesh Sharma and Shruti Dinesh Sharma by SIL on November 09, 2012 is an inter-se transfer among members of the promoter group and/or PACs and is thus exempt from the requirement of Public Announcement or Open Offer under Regulation 3 or 4 of the SAST Regulations.
- k. Noticee Nos. 1 and 2 had made disclosures to the stock exchanges indicating that the said transfer was inter-se among relatives and hence exempt under Regulation 10(1)(a)(i) of the SAST Regulations. However, while replying to SEBI letter dated November 30, 2012, the Noticee Nos. 1 and 2 inadvertently omitted to provide the explanation and SEBI did not seek any further clarification.
- l. However, almost 5 years after submitting the report, SEBI informed that the said transfer was not exempted from the requirements of Public Announcement or Open Offer.
- m. With regard to the judgement of Hon'ble Securities Appellate tribunal ("**SAT**") in the matter of Modipon Limited, the facts and circumstances are entirely different from the present case and it is erroneous to apply the observation of SAT in that case to an inter-se transfer. Further, the judgement was much before the current SAST Regulations were notified.
- n. BSE was informed before and after the transfer of shares as per the provisions of SAST Regulations and application was also made to SEBI vide letter dated November 28, 2012 along with requisite fee.

- o. In view of the above, the Noticee Nos. 1-3 and 5-6 submitted that the transfer of 35 lakh shares from SIL to Shreyas Dinesh Sharma and Shruti Dinesh Sharma was an inter-se transfer among the members of the promoter group and PACs and therefore exempt from the requirements of making a Public Announcement and Open Offer under SAST Regulations and requested SEBI to discharge them from the instant proceedings.

**Replies by Noticee No. 4 dated April 24, 2017, July 10, 2017, October 13, 2017, November 15, 2018 and December 31, 2019:**

- 9. Vide the above-mentioned correspondences, Noticee No. 4 *inter alia* submitted as under:
  - a. The SCN is conspicuously silent on the repeated complaints made by him to SEBI on non-delivery of 50 Lakh equity shares (originally 5 Lakh equity shares) by the Target Company and the harassment caused to him by SEBI's inaction on his complaints.
  - b. Vide complaint dated February 23, 2015, to SEBI, he had cited instances of irregularities committed by the Target Company and its Promoters particularly in maintaining MPS and illegal transfer of shares by SIL to Shreyas Dinesh Sharma and Shruti Dinesh Sharma who are son and daughter respectively of Dinesh Sharma, promoter of the Target Company and SIL. The complaint was based on the fact that the gift made by SIL of 35 Lakh equity shares of the Target Company was made with a sole intention to defeat the Order dated June 4, 2013 passed by

SEBI in respect of MPS requirement by listed companies. Hence, there were multiple violations committed by the Target Company and SIL in collusion with Dinesh Sharma.

- c. Raj Kumar has never been a promoter of the Target Company as erroneously alleged in the SCN and his name has been removed from promoter group in the shareholding pattern filed for the quarter ended March 2017.
- d. He had applied for 5 Lakh equity shares of the Target Company in the 'public' category vide application form dated July 28, 2009 and had paid Rs.50 Lakhs by 3 cheques dated July 30, 2009, August 12, 2009 and August 31, 2009. Admittedly, the Target Company allotted 5 Lakh equity shares to Raj Kumar vide letter dated September 12, 2009 and subsequently informed him vide a letter dated May 27, 2010 that the aforesaid allotment was in the 'public' category.
- e. In addition, as per Section 113 of the Companies Act, 1956 (applicable at that relevant time), the Target Company was bound to deliver the share certificates within 3 months of the date of allotment of the shares and the Company deliberately failed to do so. In spite of several verbal/written requests, the Target Company failed to deliver the original share certificates and also failed to pay dividend declared thereon.
- f. Raj Kumar has made multiple complaints with SEBI through SCORES system regarding non-receipt of the share certificates.

- g. BSE has considered the matter between Raj Kumar and the Target Company to be sub-judice based on fictitious complaint by a dubious individual.
- h. The shares allotted to Raj Kumar were applied in the public category and he has complained to BSE for wrongful categorisation as a promoter of the Target Company.
- i. The role of Raj Kumar, in making complaints to SEBI against irregularities committed by the Target Company and its promoters, was of a whistle-blower.
- j. SEBI should take action against the Target Company, Dinesh Sharma and Shreyas Dinesh Sharma for devising scheme to cover up irregularities including violation of MPS norms by gifting shares to Shreyas Dinesh Sharma and Shruti Dinesh Sharma.
- k. Raj Kumar has no relationship with the Company and its promoters whatsoever and knows them only as an investor.
- l. The Target Company has accepted that Raj Kumar does not fall under promoter category and re-categorized him as public shareholder in quarterly filings from March 2017 onwards.
- m. Despite being a whistleblower and victim of the misdeeds of the promoters, Raj Kumar was made a party to the SCN.

- n. Accordingly, SEBI was requested to drop the proceedings initiated against Raj Kumar.

**Brief Background:**

10. The Target Company was incorporated in 1990 and was taken over by the current promoters pursuant to BIFR order dated August 17, 2007. Accordingly, 65 lakh shares of the company were allotted to SIL and Dinesh Sharma HUF, who were shown as promoters since June 2008. The shareholding pattern of the company as on June 2008 showed promoter shareholding of 96.05% and the same continued till June 30, 2010. Promoter shareholding increased to 96.32% for the quarter ended September 2010 on account of allotment of 5 lakh shares to Raj Kumar during the said quarter.
11. Rule 19A was inserted in Securities Contracts (Regulation) Rules, 1957 with effect from June 04, 2010, inter-alia, requiring every listed company other than a public sector company, to maintain public shareholding of at least 25%. Companies not in compliance with the same was given 3 years to comply with the requirement. Accordingly, listed companies, who were not in compliance with the MPS norms, were required to meet the same by June 03, 2013 by following any of the methods specified by SEBI in this regard.
12. As per the shareholding pattern filed by the Target Company for the quarter ended September 30, 2012, the promoter shareholding in the Target Company stood at 96.32%. On November 09, 2012, one of the promoters, viz. SIL, transferred 17.50

lakh (24.08%) shares to Shreyas Dinesh Sharma and another 17.50 lakh (24.08%) shares to Shruti Dinesh Sharma, son and daughter of one of the promoters of the Target Company, viz. Dinesh Sharma. The shareholding of Shreyas Dinesh Sharma and Shruti Dinesh Sharma were disclosed under the promoter category in the shareholding patterns filed for the quarters ended December 2012 and March 2013.

13. SEBI vide an interim order dated June 04, 2013, inter-alia, issued directions freezing voting rights and corporate benefits in respect of excess promoter holdings in respect of companies including the Target Company, which were not in compliance with MPS requirements.
14. The Target Company, in the shareholding pattern disclosed for the quarter ended June 30, 2013, demonstrated compliance with the MPS requirements by disclosing the shareholdings of Shreyas Dinesh Sharma and Shruti Dinesh Sharma under public category, thereby showing a reduced promoter holding of 48.16%.
15. SEBI passed a Confirmatory Order against the Target Company on January 11, 2016, for non-compliance with requirement of MPS, inter-alia, observing that the shareholding Shreyas Dinesh Sharma and Shruti Dinesh Sharma ought to have been classified and disclosed under the 'promoter and promoter group' of the Company, as done in the disclosures of shareholding pattern for quarters ended December 2012 and March 2013. Thereafter, a Final Order dated September 5, 2017, was passed by SEBI vacating the directions imposed by the Interim Order after, inter-alia, observing that Shreyas Dinesh Sharma and Shruti Dinesh Sharma are part of the promoter group and the company has since achieved the MPS, albeit by

adopting a method not prescribed or approved by SEBI. SEBI also directed initiation of adjudication proceedings against the Target Company, its Directors and Promoters for delay in compliance with the MPS requirement.

16. As per the latest shareholding pattern filed by the Target Company, shareholdings of Shreyas Dinesh Sharma and Shruti Dinesh Sharma have been shown under promoter / promoter group category.
17. The extant proceedings have been initiated for alleged violation of provisions of Regulation 3(2) of SAST Regulations in connection with the acquisition of 17.50 lakh shares each by Shreyas Dinesh Sharma and Shruti Dinesh Sharma from SIL on November 09, 2012.

#### **Issues for consideration**

18. Main issues that arise for consideration in the matter are:
  - a. Whether the transfer by SIL of 17,50,000 shares each to Shreyas Dinesh Sharma and Shruti Dinesh Sharma attracted provisions of Regulation 3(2) of SAST Regulations?***
  - b. If yes, whether the said acquisition is exempt under Regulation 10 of SAST Regulations from the obligation to make an open offer?***

- c. If not, who are the persons responsible to comply with the requirements under Regulation 3(2) of SAST Regulations and what kind of directions are warranted against them?**
- d. Whether Raj Kumar also attracts obligation / liability under Regulation 3(2) of SAST Regulations, in respect of the transaction referred to in Para (a) above?**

## **Findings**

Whether the transfer by SIL of 17,50,000 shares each to Shreyas Dinesh Sharma and Shruti Dinesh Sharma attracted provisions of Regulation 3(2) of SAST Regulations?

19. The acquirers in the transaction under examination viz. Shreyas Dinesh Sharma and Shruti Dinesh Sharma are respectively son and daughter of Dinesh Sharma, and were also admittedly coparceners in Dinesh Sharma HUF at the time of acquisition.
20. Regulation 3(2) of SAST Regulations prohibits an acquirer, who together with persons acting in concert with him, has acquired and holds in shares or voting rights in excess of 25% in a target company, from acquiring additional shares or voting rights in the company entitling them to exercise more than 5% of the voting rights within a financial year, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company. Regulation 3(3) clarifies that for the purpose of Regulation 3(2), individual shareholding of the acquirer exceeding the stipulated thresholds shall also attract the obligation to make an open offer

irrespective to whether there is change in the aggregate shareholding of the PACs. Regulation 2(1)(q) of SAST Regulations defines 'persons acting in concert' to, inter-alia, include promoters and members of the promoter group, immediate relatives, directors of companies and associates of such directors including immediate relatives etc. By virtue of being son and daughter of Dinesh Sharma, who is disclosed as a promoter of the Target Company and also SIL, I find that the entities disclosed forming part of the promoter group of the Target Company including Dinesh Sharma HUF shall be considered as 'persons acting in concert' with Shreyas Dinesh Sharma and Shruti Dinesh Sharma for the purpose of Regulation 3(2) of SAST Regulations. Since the acquirer along with PACs held more than 25% of shareholding and voting rights in the Target Company prior to the acquisition and the individual acquisition of shares from SIL by Shreyas Dinesh Sharma and Shruti Dinesh Sharma exceeded 5% during a financial year, I find that the obligation to make an open offer under Regulation 3(2) is attracted in the extant matter.

*Whether the said acquisition is exempt under Regulation 10 of SAST Regulations from the obligation to make an open offer?*

21. The acquirers, in the filings made to SEBI pursuant to the acquisition, claimed that the acquisition was exempt under Regulation 10(1)(a)(i) of the SAST Regulations. I note that Regulation 10(1)(a)(i) of the SAST Regulations exempts acquisition pursuant to inter se transfer of shares amongst immediate relatives, from the obligation to make an open offer under Regulation 3 and 4 of the Regulations. The term 'immediate relatives' is defined in Regulation 2(1)(l) of SAST Regulations to

mean “any spouse of a person, and includes parent, brother, sister or child of such person or of the spouse”. Since the extant acquisition has been made from SIL, a company, the said transaction cannot be said to have been made amongst ‘immediate relatives’ and hence, the transaction shall not be eligible for exemption under Regulation 10(1)(a)(i) of SAST Regulations.

22. The Noticees, in their replies, have also stated that the transaction was exempt as it was made amongst promoter group entities and / or PACs. I note that Regulation 10(1)(a)(ii) & (iv), inter-alia, exempt the obligation from open offer in case of an acquisition pursuant to inter se transfer of shares amongst promoters or PACs provided they are named and disclosed as such in the shareholding pattern or in the filings made under listing agreement / listing regulations, as the case may be, for a period of three years prior to the acquisition. In the extant matter, Shreyas Dinesh Sharma and Shruti Dinesh Sharma were not disclosed as promoters in the shareholding pattern of the Target Company prior to the acquisition. Disclosure of Shreyas Dinesh Sharma and Shruti Dinesh Sharma as promoters of SIL and disclosure of SIL as promoter of the Target Company would not, in my view, satisfy the specific requirement of ‘disclosure as promoters in the shareholding pattern filed by the Target Company’ to be eligible for the exemption under Regulation 10(1)(a)(ii). Further, Shreyas Dinesh Sharma and Shruti Dinesh Sharma had not been disclosed as PACs for a minimum period of three years prior to the acquisition of shares by them as required under Regulation 10(1)(a)(iv). In view of the above, I find that the acquisition of 17,50,000 shares each of the Target Company by Shreyas Dinesh

Sharma and Shruti Dinesh Sharma are not covered under the exemptions provided in Regulation 10 of the SAST Regulations.

*Who are the persons responsible to comply with the requirements under Regulation 3(2) of SAST Regulations and what kind of directions are warranted against them?*

23. Regulation 3(2) of the SAST Regulations, cited at Para 6 above, provides that no acquirer who, together with PACs, holds shares or voting rights in a target company in excess of 25%, shall acquire additional shares or voting rights in excess of 5% in a financial year unless, the acquirer makes a public announcement of an open offer for acquiring shares of such target company.
24. Regulation 2(1)(a) of SAST Regulations defines acquirer as “*any person who, directly or indirectly, acquires or agrees to acquire whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over a target company*”. In the instant case, Shreyas Dinesh Sharma and Shruti Dinesh Sharma has acquired 17,50,000 shares (24.08%) each from SIL, the promoter of group entity. Accordingly, Shreyas Dinesh Sharma and Shruti Dinesh Sharma, being the acquirers, incur obligation to make the public announcement of an open offer under Regulation 3(2) of SAST Regulations.
25. Further, Dinesh Sharma, father of the acquires, viz., - Shreyas Dinesh Sharma and Shruti Dinesh Sharma, is an immediate relative of the acquirers and forms part of the promoter group of the Target Company and SIL. Shankarlal Sharma, father of Dinesh Sharma, has also been disclosed as a promoter group entity of the Target Company

and SIL. The acquirers were coparceners in Dinesh Sharma HUF at the time of the acquisition of shares and Dinesh Sharma HUF has been disclosed as part of the promoter group. Accordingly, I find that Dinesh Sharma, Dinesh Sharma HUF and Shankarlal Sharma are deemed PACs with the acquirers and hence, they shall also be jointly and severally liable in respect of the obligations under the SAST Regulations flowing from the acquisition of 48.16% shares in the target Company by the acquirers.

Whether Raj Kumar attracts obligation / liability under Regulation 3(2) of SAST Regulations, in respect of the acquisition of shares by Shreyas Dinesh Sharma and Shruti Dinesh Sharma?

26. As per the submissions made by the Noticees and the records available, I note that the Target Company was taken over by the current promoters of the company, i.e. Dinesh Sharma, his family and related entities, pursuant to BIFR order dated August 17, 2007. Consequently, the Company passed a resolution for bringing in Rs.7 Crores as equity to be given by Dinesh Sharma and his related Companies. His associate / company i.e. SIL and Dinesh Sharma HUF brought in Rs.6.50 Crores and Dinesh Sharma HUF and SIL had been disclosed as promoters in the shareholding pattern filed since June 2008. Subsequently, Raj Kumar was allotted 5 lakh shares on September 10, 2009 and he has also been disclosed under promoter category in the shareholding pattern since then till December 2016. He has been disclosed in the public category in the shareholding patterns filed by the company since March 2017.

27. Noticee Nos. 1-3 and 5-6, in their replies, have indicated that shares were issued to Raj Kumar in the promoter quota. Raj Kumar has submitted that he was only an investor in the company and was never a promoter of the target Company. In support of his argument, Raj Kumar has submitted copy of a letter dated June 14, 2012 addressed to BSE Ltd (with a receipt stamp of BSE Ltd), intimating BSE regarding his wrongful categorisation as part of the promoter group and requesting BSE to instruct the Target Company to regroup him and put him in the general category. I note that while the copy of the Board resolution allotting the shares, filed along with Form 2 is silent on whether the allottee - Raj Kumar belongs to the promoter group, letter dated May 27, 2010 filed by the Target Company to BSE in the matter of listing of additional capital, inter-alia, refers to the allotment as made to '*individual public namely Mr. Raj Kumar*'.
28. I note that whether Raj Kumar is part of the promoter group or not is under dispute. The shares allotted to him have been disclosed to have been made under 'promoter quota' pursuant to the BIFR order. While he has been disclosed under the promoter category in the shareholding patterns from September 2010 to December 2016, he has been taking a stand and representing to BSE and the company since June 2012 that he is not part of the promoter group and has been wrongfully categorized so. The company has re-categorized him under 'public category' in the shareholding pattern since March 2017 onwards. However, I note that, for the purpose of the extant proceedings, the point to be decided is whether Raj Kumar could be deemed to be a PAC with respect to the acquisition of 35 lakh shares by Shreyas Dinesh Sharma and Shruti Dinesh Sharma from SIL, irrespective of whether he is / was part of the promoter group.

29. From various submissions of the Noticees, I note that there has been a long standing dispute between Raj Kumar and other Noticees. Both parties have lodged complaints against each other before SEBI and also before other forums including criminal complaints. Further, according to the submission of Raj Kumar, he has also not been provided with the share certificate in respect of the 5 lakh shares allotted to him. I observe that Raj Kumar has raised various complaints against the Noticees before BSE and SEBI vide letters dated April 30, 2012, June 14, 2012 and SCORES complaint dated June 19, 2012, for non-receipt of the share certificates. I have also examined copy of complaint dated July 30, 2012 filed by SIL against Raj Kumar for non-payment of dues. In short, I observe that there has been serious disputes and differences between Raj Kumar and the promoters of the Target Company, even before the acquisition of shares by Noticee Nos. 1 and 2 in the Target Company on November 09, 2012.
30. Regulation 2(1)(q)(1) of SAST Regulations defines 'persons acting in concert' as *"persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company."* (emphasis supplied). Further, Regulation 2(1)(q)(2) of the Regulations, inter-alia, provides that persons falling within the promoter and promoter group shall be deemed to be PACs with other persons within the same category, unless the contrary is established.

31. In the extant matter, Raj Kumar was disclosed in the 'promoter/promoter group category' in the shareholding pattern filed by the Target Company and was re-categorized as public shareholder in the shareholding patterns filed from March 2017 onwards. Thus, during the relevant period when the acquisition under reference was made (i.e. November 2012), Raj Kumar was disclosed as a promoter / promoter group entity. However, the submissions made by Raj Kumar as well as other Noticees, unambiguously indicate that there have been serious disputes between Raj Kumar and other promoter group entities leading even to lodgement of criminal complaints. Further, the allotment of shares to Raj Kumar itself is being contested by the promoter group of the Target Company and Raj Kumar has allegedly not been given possession of the share certificates.
32. Considering these and the observations cited at Para 28, 29 and 31 above, I note that the facts and records before me do not indicate any common objective or purpose or cooperation among Raj Kumar and other Noticees in the said acquisition of 35 lakh shares by Shreyas Dinesh Sharma and Shruti Dinesh Sharma from SIL or in exercise of control over the target company. Further, in light of the observations cited above, I do not find Raj Kumar and the Acquirers viz. Shreyas Dinesh Sharma and Shruti Dinesh Sharma, to be deemed PACs in respect of the said acquisition, merely by virtue of Raj Kumar being disclosed under 'promoter/promoter group category' during the relevant period, since there is sufficient evidence to the contrary. In view of the above, I find that Raj Kumar did not incur any obligation under Regulation 3(2) of SAST Regulations in respect of the acquisition of 35 lakh shares by Shreyas Dinesh Sharma and Shruti Dinesh Sharma.

### Other allegations / complaints raised by the Noticees

33. I note that the Noticee Nos. 1-3 and 5-6 have raised various allegations against Noticee No. 4 in the submissions made by them. Noticee No. 4 has also raised allegations against the Target Company and its promoters in the matter. I note that the said matters fall outside the purview of the SCN and thus the current proceedings and hence, the same have not been specifically addressed in this order. However, the Noticees are free to raise the matters falling under SEBI's domain, separately with SEBI.

### **Conclusion**

34. I have observed that Shreyas Dinesh Sharma and Shruti Dinesh Sharma had collectively acquired 48.16% shareholding in the Target Company from its promoter-SIL. Since the shareholding of the acquirers together with PACs including promoter group (excluding Raj Kumar) was 89.44%, i.e. more than 25% at time of the acquisition and the acquisition was of 48.16% of the shareholding, i.e. in excess of the 5% limit specified in Regulation 3(2) of SAST Regulations, the acquisition has attracted the requirements specified under the said Regulation. Further, as discussed at Para 21 and 22 above, the said acquisitions are not exempt under Regulation 10 of the SAST Regulations. Hence, I find that there is a violation of the relevant provisions of SAST Regulations.
35. As a normal rule, a direction to make an open offer shall be issued to the entities who had failed to do so. However, SEBI can deviate from the normal rule and issue any

other direction if the facts and circumstances of the case so requires. As discussed at Para 10-12 above, the said acquisition, in effect, did not alter the total shareholding of the promoters and the promoter group, which remained unchanged at 96.32% both before and after the said acquisition. Further, the acquirers were the son and daughter of Dinesh Sharma and coparceners in Dinesh Sharma HUF, which had been disclosed as a promoter of the Target Company since June 2008. Further, the acquirers had been disclosed as promoter group entities of the transferor i.e. SIL, which in turn had been disclosed as a promoter of the Target Company since June 2008. Thus, the said acquisition did not result in an effective change in the control of the Target Company. Further, I find that the acquisition was, in fact, an inter-se transfer among promoter group entities, which did not qualify for exemption under Regulation 10(1)(a)(ii) for want of disclosure of the acquirers' name in the shareholding pattern for three years. Incidentally, it is noted that the said acquisition was followed by reclassification of the acquirers as public shareholders, as part of its attempt to comply with MPS requirements.

36. In light of the above facts, I find that the instant case does not warrant a direction to make a public announcement and open offer. Hence, I am inclined to pass other directions as appropriate for the violation, as laid down in Regulation 32 of the SAST Regulations. While so considering the appropriateness of the directions, I am inclined to view the Acquirers, i.e. Noticee Nos. 1 and 2 and the PACs viz. Noticee Nos. 3, 5 and 6 equally liable as the entities are deemed PACs being part of the same family; falling within the definition of immediate relatives; and were coparceners in Noticee No. 6, who have acted together in the said acquisition of shares.

## Directions

37. I, in exercise of the powers conferred on me under Sections 11(1), 11(4) and Section 11B of the SEBI Act read with Regulation 32 of the SAST Regulations, hereby direct as under:
- a. Shreyas Dinesh Sharma [PAN:BHDPS9985D], Shruti Dinesh Sharma [PAN:DRKPS7975C], Dinesh Sharma [PAN:ABIPS9306E], Dinesh Sharma HUF [PAN: AAFHD3451H] and Shankarlal Sharma [PAN: AHZPS4363E] shall not access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly for a period of one year from the date of this Order.
  - b. SCN against Raj Kumar [PAN: AKKPS1106R] is disposed of without any further directions.
  - c. This order shall come into force with immediate effect.
  - d. A copy of this order shall be served on the recognized Stock Exchanges, Depositories and Registrar and Share Transfer Agents for their information and necessary compliance.

**Place: Mumbai**  
**Date: March 09, 2020**

**G. MAHALINGAM**  
**WHOLE TIME MEMBER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**