

SECURITIES AND EXCHANGE BOARD OF INDIA

INTERIM ORDER

UNDER SECTIONS 11(1), 11(4) AND 11B(1) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

IN THE MATTER OF PARSOLI CORPORATION LIMITED

Sr. No.	ACQUIRERS	PAN
1.	Mr. Zafar Yunus Sareshwala	ANYPS8494D
2.	Mr. Uves Yunus Sareshwala	AOFPS5856M

BACKGROUND

1. Parsoli Corporation Limited (hereinafter referred to as “**Target Company/ Parsoli**”) was incorporated under the relevant provisions of the Companies Act, 1956 and its shares are listed on the BSE Limited (hereinafter referred to as “**stock exchange/BSE**”). The Acquirers are the promoters of the *Target Company* and have been disclosed as part of promoter and promoter group in the shareholding pattern filed with the stock exchange as on September 2021. The Board of Directors of the *Target Company* are as under:

Table-1

Board of Directors of Target Company [Source: MCA website]			
Sr. No.	Name	Date of appointment	DIN/PAN Numbers
1.	Mr. Umar Uves Sareshwala	May 23, 2018	03282236
2.	Mr. Habib Zafar Sareshwala	May 23, 2018	03282280
3.	Mr. Amber Zaidi	July 02, 2020	06495209
4.	Ms. Nazima Irshadali Saiyed	October 06, 2017	07958783

5.	Saira Mohammed Afzal Khan	November 01, 2021	09376390
6.	Mr. Maheshkumar Amritlal Patel	October 10, 2019	AVHPP7565K
7.	Mr. Mohammed Alibhai Kothawala	August 22, 2017	ADUPK0440R

2. Pursuant to an investigation conducted by the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”), it was found that the *Target Company* and its promoters/directors namely Mr. Zafar Yunus Sareshwala, (Managing Director and CEO) and Mr. Uves Yunus Sareshwala (Joint Managing Director) (hereinafter referred to as “**Acquirers**” and collectively referred to as **entities/Noticees**”) were engaged in fraudulent activities *inter alia* by way of issuance of 80,800 fake share certificates, forging signatures of genuine investors on the transfer documents. The said entities further went on to the extent of verifying those fake share certificates and forging signatures, approving fraudulent transfer even when there were apparent deficiencies in the transfer documents. It was also observed that they have further indulged in dematerialization of those fake share certificates to effect transfers in favour of 22 promoter’s/front entities and thereby have defrauded its shareholders by transferring their shares in their own demat accounts on the basis of forged signatures and forged/duplicate share certificates. Having found that their fraudulent acts are backed by sufficient evidence which could be exposed, the said entities have endeavoured to compensate the shareholders by crediting back shares in their demat accounts through off market transactions. The *Target Company* and the Acquirers retained the specimen signature cards with themselves and did not consolidate all the matters and records related to share transfers at a single point and further have provided misleading /contradictory information to shareholders and to the Investigating Authority (hereinafter referred to as “**IA**”) of SEBI. They had also reportedly not co-operated in providing critical information during the investigation process.

3. Based on the outcome of the investigation, SEBI vide its Order dated July 27, 2010, (hereinafter referred to as “**SEBI Order**”) issued following directions against the *Target Company* and the Acquirers:

“12. In view of the foregoing, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11(4) and 11B thereof, hereby

- a. restrain Parsoli Corporation Ltd. (Permanent Account Number: AABCP9030F), Mr. Zafar Yunus Sareshwala (Permanent Account Number: ANYPS8494D) and Mr. Uves Yunus Sareshwala (Permanent Account Number: AOFPS5856M) from buying, selling or dealing in securities market in any manner whatsoever or accessing the securities market directly or indirectly for a period of seven years from the date of this Order (except for complying with directions mentioned at (c) below*
- b. restrain Mr. Zafar Yunus Sareshwala and Mr. Uves Yunus Sareshwala from holding the position of Director in any listed company for a period of seven years from the date of this Order;*
- c. direct Mr. Zafar Yunus Sareshwala and Mr. Uves Yunus Sareshwala to make a public offer through a merchant banker to acquire shares from public shareholders by paying them the value determined by the valuer in the manner prescribed in Regulation 23 of the SEBI (Delisting of Equity Shares) Regulations, 2009 and acquire the shares offered in response to the public offer, within three months from the date of this Order;*
- d. direct BSE to facilitate valuation of shares to be purchased as at (c) above, and compulsorily delist Parsoli Corporation Ltd., if the public shareholding reduces below the minimum level in view of aforesaid purchase.”*

4. Being aggrieved of the SEBI Order, an Appeal No.146 of 2010 was preferred before the Hon’ble Securities Appellate Tribunal (hereinafter referred to as “**SAT/Tribunal**”). Having heard the parties, the Hon’ble SAT while affirming the findings made in the SEBI Order and dismissing the aforesaid appeal, vide its order dated January 12, 2011 (hereinafter referred to as “**First SAT Order**”) *inter alia* held that “*Fraud of the worst kind was perpetrated by Parsoli Corporation Ltd. and its promoters/directors on the shareholders of this company who were deprived of their shares and when*

caught, the directors compensated the shareholders by crediting shares in their demat accounts through off market transactions.”

5. Against the First SAT Order, appeals under Section 15Z of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “the **SEBI Act, 1992**”) was preferred before the Hon’ble Supreme Court of India bearing Civil Appeal Nos. 2927-2928 of 2011 and the Hon’ble Supreme Court of India, vide its order dated May 02, 2011 (hereinafter referred to as “**First Supreme Court Order**”) remanded the matter to the Hon’ble Tribunal with a direction to pass separate orders in each of the appeals. Subsequently, the Hon’ble SAT having heard the parties disposed of the appeal by dismissing the Appeal No. 146 of 2010 vide its Order dated August 12, 2011 (hereinafter referred to as “**Second SAT Order**”) and *inter alia* held that:

“13. In the case before us, the appellants had transferred 80,800 shares belonging to 252 shareholders in a fraudulent manner discussed hereinabove in great detail. In view of this grave misconduct of the appellants, the managing director and the joint managing director of Parsoli who did the mischief have been directed to make a public offer through a merchant banker to acquire shares from the public shareholders by paying them the price determined by the valuer in the manner prescribed in regulation 23 of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 (delisting regulations) and acquire the shares offered in response thereto. They have been directed to complete this process within three months. The consequential direction has also been issued that if as a result of the offer of shares by the public shareholders, the public shareholding of Parsoli comes below the minimum level required to be maintained, then it should be compulsorily delisted. The learned senior counsel has taken serious objection to these directions being issued under sections 11 and 11B of the Act. He has strenuously argued that these directions are ultra vires the provisions of sections 11(4) and 11B of the Act and that they are neither preventive nor remedial. According to the learned senior counsel, these directions are punitive in nature which could not be issued. Another facet of this argument is that debors the provisions of the delisting regulations, the Board has no powers to issue such directions. These arguments have no merit at all and deserve to be rejected at the threshold.

It is true that the directions that can be issued under sections 11 and 11B of the Act have necessarily to be preventive or remedial in nature and we are clearly of the view that these directions are preventive. The appellants had defrauded their shareholders as discussed hereinabove. While the shareholders were enjoying the warmth of their investments by holding the shares in physical form, their shares had been fraudulently transferred by the directors/promoters of Parsoli by forging their signatures and also on the basis of forged/duplicate share certificates. Could there be a more serious fraud relating to the securities market? The possibility that the appellants would not cheat/defraud their shareholders in future cannot be ruled out having regard to their conduct in the past. Obviously, the Board was concerned about the shareholders and the question is how to protect them from fraudsters. It is with a view to protect the interest of the shareholders generally that the impugned directions have been issued. Let us not forget that section 11(1) of the Act enjoins a duty on the Board to protect the interests of the shareholders and it would have failed in performing that duty if it had not intervened. The nature of the directions is such which would give an exit route to the shareholders. The two directors have been told to make a public offer to the shareholders of Parsoli and purchase the shares of those who offer at a price determined in accordance with the delisting regulations. The shareholders are not bound to offer their shares. This direction, in our view, is reasonable in the circumstances of the case as it gives an option to the shareholders to leave the company if they so choose. The argument that the shareholders could sell the shares in the market and go out is no answer because another set of shareholders would step in whose interests would be equally in jeopardy. Moreover, they are not likely to get a fair price in the market. This is the way the Board thought that the interests of the public shareholders could be protected. May be there could be another method as well to protect the shareholders but the one adopted by the Board by issuing the impugned directions cannot be said to be perverse or arbitrary so as to call for our interference. We cannot agree with the learned senior counsel for the appellants that this direction has no nexus with the alleged wrongdoing. The nexus is obvious which has been pointed out hereinabove. We are also of the view that the directions are preventive and remedial in nature and the Board was competent to issue the same. The learned senior counsel also pointed out during the course of the hearing that the financial burden on the second and third appellants would be to the tune of approx.

Rs.30 crores. We do not know how this figure has been worked out but, be that as it may, the burden shall only be on the directors/promoters of Parsoli who have played the real mischief. One cannot cheat/defraud one's own shareholders and then claim that one is being burdened with a financial liability. If there is a financial liability, so be it as it is only incidental and the object is to protect the shareholders."

6. Once again being aggrieved by the Second SAT Order, the Acquirers had preferred Civil Appeal No. 9785 of 2011 before the Hon'ble Supreme Court of India and the appeal filed was dismissed by the Hon'ble Supreme Court of India vide its order dated December 02, 2011 (hereinafter referred to as "**Second Supreme Court Order**").
7. It is noted that the Acquirers despite having exhausted legal remedies available to them, have not taken steps to make public offer to acquire shares from the public shareholders in terms of directions issued in the SEBI Order dated July 27, 2010, which caused the initiation of adjudication proceedings against the Acquirers for failure to comply with the directions as issued in the SEBI Order. After taking into account material available on record and replies of the Acquirers, the Adjudicating Officer (hereinafter referred to as "**AO**") vide its order dated June 22, 2018 (hereinafter referred to as "**AO Order**") found the Acquirers guilty of the charge of non-compliance with the direction issued under the SEBI Order dated July 27, 2010 as the Acquirers/*Notices* have failed to make a public offer through a merchant banker to acquire shares of *Target Company* from public shareholders as directed in the SEBI Order and consequently, the AO imposed a monetary penalty on the Acquirers. The said AO Order further reiterated/confirmed that the onus of valuation remained on the Acquirers and did not shift to BSE and also the onus of complying with the aforesaid directions issued under the SEBI Order as recorded in paragraph 3 above continues to lie on the Acquirers of the *Target Company*.
8. It is also noted that subsequently, the Acquirers vide letter dated July 12, 2018 have submitted a public announcement for acquisition of up to 1,69,37,847 equity shares of INR 10/- each constituting 60.43% of the equity share capital of the *Target*

Company at a price of INR 0.25/-only per share and have submitted Detailed Public Statement (hereinafter referred to as “**DPS**”) vide their letter dated July 19, 2018 to SEBI. Subsequently, the Acquirers vide its letter dated July 25, 2018 filed a draft Letter of Offer (hereinafter referred to as “**DLoF**”) with SEBI through its Merchant Banker i.e., Nirbhay Capital Services Private Limited (hereinafter referred to as “**Merchant Banker / MB/ NCSPL**”).

9. Upon perusal of the DLoF, SEBI observed that a negative value of INR 3.41 of the share price of the *Target Company* has been arrived at by adopting calculations based on the share prices, financials, etc. for the year 2017 and 2018, whereas in terms of the SEBI Order dated July 27, 2010, the public offer was required to be made within three months from the date of the SEBI Order dated July 27, 2010 and thus the valuation of the shares to be acquired through public offer should have been arrived at by adopting calculations based on the share prices, financials, etc. for the year 2009 and 2010 in accordance with regulation 23 of the SEBI (Delisting of Equity Shares) Regulations, 2009 (hereinafter referred to as “**Delisting Regulations**”). Since the value of shares has resulted into a negative figure, a token value of shares was considered at INR 0.25/- per share by the *Target Company* and the Acquirers. In view of the above deficiencies noted in the valuation of shares, vide letter dated September 26, 2018 addressed to NCSPL, the MB of the Acquirers was advised (i) to comply with the SEBI Order dated July 27, 2010 and (ii) that offer price should be arrived at by adopting valuations based on the share prices, financials, etc. of the financial year 2009-10 in the manner prescribed in regulation 23 of the Delisting Regulations. Further, the MB was advised to ensure that the offer price so calculated in terms of the above mentioned regulation 23 and the financials, share prices etc. for Financial Year 2009-10 shall further include interest for the delay in making the public offer. The Acquirers were required to make the public offer at the price so arrived at after calculating the price of each share in terms of the relevant regulation by taking into account the appropriate year and further adding interest to the share price so determined for the delayed period of making such offer from the desired date of offer as per the Order dated July 27, 2010.

10. It is noted that the MB in its correspondences with the BSE had mentioned that Aryaman Financial Services Limited (hereinafter referred to as “**AFSL**”) has been appointed as the valuer and AFSL is yet to accept the assignment. The Acquirers then made their submissions vide letter dated January 07, 2019 and February 05, 2019 and emails dated February 06, 2019, February 25, 2019 and March 05, 2019 stating that the unusual trading volume in the month of March 2010 be investigated and that the current public offer for the *Target Company* be allowed to be made as per the offer document filed by the MB of the *Target Company*.
11. SEBI vide its letter dated April 12, 2019 addressed to one of the Acquirers i.e., Mr. Zafar Yuns Sareshwala had informed the Acquirers that their submissions regarding investigation of the unusual trading volume in the month of March 2010 have no merit for the reasons that the snap investigation conducted by the NSE and the BSE did not indicate any concentration by trading member/clients contributing to the price variation and *prima facie* no connection of top clients with the *Target Company* was observed and hence, that the obligation to make the public offer to acquire shares of the *Target Company* was triggered on the date of the SEBI Order i.e. July 27, 2010. Accordingly, the offer price should be arrived at only by adopting valuations based on the share prices, financials, etc. of the financial year 2009-10, along with the interest for the delay, by the valuer in the manner prescribed in regulation 23 of the Delisting Regulations. Further, vide separate letters each dated April 12, 2019, SEBI advised the MB, AFSL and the BSE to coordinate amongst each other and to comply with the SEBI Order issued against the Acquirers. In view of the fact that AFSL was yet to accept the valuation assignment, as brought out above, SEBI vide letter dated April 12, 2019, advised AFSL to confirm the acceptance of the valuation assignment. In response, AFSL vide letter dated May 02, 2019 informed that it had not signed any mandate to act as the valuer in the said public offer.
12. Thereafter, SEBI vide email dated May 31, 2019 also advised the BSE to confirm:
- (i) whether the assignment has been accepted by the valuer appointed by the BSE;
 - (ii) status of compliance of the SEBI Order, by which the BSE was directed to

facilitate valuation of shares to be acquired/purchased in the public offer. The BSE in its reply dated June 07, 2019 had *inter-alia* submitted that despite follow up emails sent to the *Target Company*, the acceptance of letter of appointment by AFSL is yet to be submitted to the BSE.

13. Since, AFSL (the BSE empanelled valuer) had not accepted the assignment as brought out above, Varma & Varma, Chartered Accountants Firm was appointed as Independent Valuer (hereinafter referred to as “**Independent Valuer**”) by SEBI to compute the fair value of the shares of the *Target Company* and the intimation of the said appointment was sent to the Independent Valuer on June 26, 2019 who confirmed its acceptance vide its letter dated July 05, 2019. Upon acceptance by the Independent Valuer, SEBI vide letter dated July 12, 2019, advised the MB to ensure the availability of the necessary information/documents to the Independent Valuer for carrying out the valuation assignment. Vide letter dated July 28, 2019, the Acquirers informed SEBI that being aggrieved with the aforesaid SEBI communications dated April 12, 2019, they had preferred an Appeal No. 293 of 2019 before the Hon’ble SAT.
14. It is observed that subsequent to their appointment, the Independent Valuer (i.e., Varma & Varma) through its several emails had requested the MB of the *Target Company* to provide the requisite documents/information that are vital for the valuation of the share price to ensure the completion of the public offer as directed in the SEBI Order. The Independent Valuer had *inter-alia* sought Audited Financial Reports from F.Y. 2008 to F.Y. 2019, Quarterly Financial for F.Y. 2009 to F.Y. 2011, details of Share Price Movement one year prior to July 27, 2010 and from July 27, 2010 to March 31, 2012. The MB in turn had sought the requisite information from the Acquirers and the *Target Company*, however, in spite of several exchange of communications, the requisite information was not provided to the Independent Valuer by the Acquirers and the *Target Company*.
15. In view of such a glaring recalcitrant approach shown by the Acquirers and the *Target Company* in providing relevant information to the Independent Valuer, SEBI

vide letter dated October 09, 2019, sent an advisory (hereinafter referred to as “**First Advisory**”) to the Acquirers with a copy to the MB of the *Target Company*, asking them to co-operate with the Independent Valuer and provide the requisite information/ documents immediately, failing which SEBI would be constrained to initiate appropriate enforcement action. However, it is noted that in spite of the aforesaid instructions and several requests by the MB, the Acquirers failed to provide the requisite information to the Independent Valuer. As a result, valuation exercise could not be completed causing prolonged delay on account of failure of extension of co-operation by the Acquirers.

16. In the meantime, the aforesaid Appeal No. 293 of 2019 filed by the Acquirers against communication of SEBI dated April 12, 2019 was disposed of by the Hon’ble SAT vide its Order dated January 28, 2020 (hereinafter referred to as “**Third SAT Order**”), as rendered infructuous, since SEBI had issued another communication dated July 12, 2019 advising the MB to ensure the availability of the necessary information/documents to the Independent Valuer for carrying out the valuation assignment. The Hon’ble SAT has further left it open to question the veracity of the said communication dated July 12, 2019 before an appropriate forum.

17. It is noted that pursuant to dismissal of the appeal by the Hon’ble SAT vide its above mentioned order the Acquirers were asked through several emails to provide the necessary information/documents to the Independent Valuer, however, the Acquirers have continuously without any justifiable reasons, failed to provide the same. In this regard, SEBI vide email dated January 30, 2020, advised the Independent Valuer to provide the current status of the valuation and in response, the Independent Valuer vide email dated January 30, 2020 submitted that “*In spite of our repeated follow up, we have not been furnished with the full and complete details required for the purpose of valuation as intimated vide our mail dated 26th July, 2019. In the absence of details/particulars called for, we have not been able to proceed with the valuation*”.

Considering the fervent non-cooperation on the part of the Acquirers, vide letter dated July 13, 2020 (hereinafter referred to as “**Second Advisory**”), SEBI sent

another advisory to the Acquirers and to the Compliance Officer of the *Target Company* with a copy to the MB, advising them to extend full co-operation to the Independent Valuer to comply with the directions of SEBI Order and to provide desired information within 15(fifteen) days. The said letter specifically stated that failure to provide the information required by the Independent Valuer would compel for initiation of appropriate proceedings including issuance of suitable directions.

18. Upon receipt of the Second Advisory, the Acquirers vide letter dated July 15, 2020, *inter-alia* submitted that upon disposal of their Appeal No. 293 of 2019 by the Hon'ble SAT vide order dated January 28, 2020, they have filed another appeal on March 18, 2020, which is pending for hearing. They also requested to allow AFSL to continue with the valuation, as the same was suggested by the Exchange.
19. From the above noted factual background and perusal of the materials before me, it is observed that the whole controversy has arisen out of an investigation which was conducted in the year 2010, wherein the Acquirers were found to be engaged in committing fraud of very serious and demeaning nature on the shareholders of the *Target Company*. They were found *inter alia* engaged in issuance of fake share certificates, forging signatures of genuine investors on the transfer documents, verifying those fake share certificates and forged signatures and approving transfer of those false and fabricated share certificates by ignoring deficiencies in the transfer documents. It was also found in the SEBI's Order that the Acquirers deprived shareholders of their shares by effecting transfer of their shares fraudulently in their own demat accounts on the basis of forged signatures and forged/duplicate share certificates. In this backdrop, vide its order dated July 27, 2010, the Acquirers were *inter alia* directed to make a public offer through a merchant banker to acquire shares from public shareholders by paying them the value determined by the valuer in the manner as prescribed in regulation 23 of the Delisting Regulations, and further to complete acquisition of the shares so offered in response to the public offer, within three months from the date of the SEBI Order. It has also been noted that Acquirers have filed appeals before the Hon'ble

SAT and thereafter have filed appeals before the Hon'ble Supreme Court of India assailing the findings recorded in the SEBI Order. The appeals so filed have not only been disposed of affirming the findings recorded by SEBI but the appellate authorities have gone to the extent of recording that the misconduct perpetrated by the Acquirers are so grave that direction of open offer is found to be justified. The Hon'ble Tribunal further, while upholding the direction of open offer as preventive and remedial in nature, recorded that the acts of the Acquirers in defrauding their own innocent shareholders were so sinful that there could hardly be a more serious fraud similar to the acts committed by the Acquirers and considering the fact that the possibility of happening of such fraud cannot be ruled out in future, it becomes imperative that the persons like Acquirers should be essentially directed to make an open offer to acquire shares from the shareholders and consequently to get the securities of the *Target Company* delisted in the event, the shareholding falls below the threshold level of required mandatory holdings.

20. As noted above, the Hon'ble Tribunal has held that fraud of the worst kind was perpetrated by the *Target Company* and its directors/promoters (Acquirers) on its own shareholders and there could not be a more serious fraud relating to the securities market than the present one committed by the *Target Company* and the Acquirers on their shareholders, who posed faith in them by subscribing the shares and becoming shareholders of the *Target Company*. Further, the Hon'ble Tribunal has strongly observed that the direction of making public offer by the Acquirers as recorded in the SEBI Order cannot be said to be perverse or arbitrary and the same is a reasonable direction to protect the interest of the shareholders of the *Target Company* by giving them an exit opportunity at a fair price. While rejecting the contention of the financial burden likely to be caused on the Acquirers on account of making public offer in terms of the direction issued in the SEBI Order, the Hon'ble SAT has further held that having cheated and defrauded own shareholders, one cannot claim to have defence of being burdened with a financial liability. If such direction causes a financial liability, so be it as it is only incidental as the main object is to protect the interest of shareholders and

therefore, the direction to make a public offer through a merchant banker to acquire shares from the public shareholders by paying them the price determined in terms of the regulation 23 of the Delisting Regulations has been upheld as reasonable in the facts and circumstances of the case.

21. Keeping the aforesaid factual matrix and the strong observations made by the Hon'ble Tribunal on the conduct of the Acquirers and the *Target Company* recorded above, I find that despite having exercised all legal remedies available to the Acquirers and even after the final disposal/dismissal of all Court proceedings with respect to the issues arising out of a direction to make open offer issued as early as on July 27, 2010, the Acquirers have yet to comply with the SEBI Order. The Acquirers have been avoiding, delaying and protracting the obligation to make an open offer in compliance with the SEBI Order for a prolonged period of more than 10 years thereby adversely affecting the interests of small shareholders of the *Target Company* and depriving them of an exit opportunity at a fair price. It is unfortunate that despite having received the aforesaid orders of the Hon'ble SAT and the Hon'ble Supreme Court of India confirming and upholding the direction of SEBI to make an open offer, the Acquirers have been acting in complete defiance and disregard of the aforesaid orders and authorities. In this regard, it is noted that as per the SEBI Order, the Acquirers were required to make a public offer within 90 days from the date of the SEBI Order i.e., July 27, 2010, however, the Acquirers took a considerably long time and made the public offer/announcement almost after 8 years on July 12, 2018, that too, by adopting improper valuation of the fair price of the shares of the *Target Company*.
22. As noted above, in spite of elapse of a period of more than 10 years, the Acquirers are yet to comply with SEBI's direction to make offer to the shareholders in total disregard to the directions issued by SEBI, and the subsequent two Advisories issued to them and have been wilfully protracting such compliance despite such directions having been confirmed and upheld by the Hon'ble SAT and thereafter by the Hon'ble Supreme Court of India.

23. Having regard to the aforementioned facts, any further delay by the Acquirers at this stage would prejudice the interests of the shareholders especially the minority shareholders of the *Target Company*. Under the above compelling circumstances, it would be appropriate for SEBI to step in and protect the interest of such shareholders by adopting effective measures so as to ensure fair exit opportunity to the shareholders by directing the Acquirers i.e. Mr. Zafar Yunus Sareshwala and Mr. Uves Yunus Sareshwala to comply with the legal mandate of making an public offer in compliance with the SEBI Order read with the First Advisory dated October 09, 2019 and the Second Advisory dated July 12, 2020, without any further delay. In my considered view, considering the fact that the SEBI Order has attained finality, it is obligatory upon the Acquirers to make the public offer in terms of the regulation 23 of the Delisting Regulations read with the observation of SEBI, if any, by taking July 27, 2010 as the relevant date to compute and calculate the fair price at which the shares of the shareholder will be acquired.
24. In this regard, as recorded in paragraph 8 above, I observe that the Acquirers, by relying upon the financials and share price as prevailing in the year 2017 and 2018 have made the public offer at just INR 0.25 /- per share. SEBI vide letter dated September 26, 2018, *inter alia* advised the MB that offer price should be arrived at in the manner prescribed in regulation 23 of the Delisting Regulations by adopting valuations based on the share prices, financials, etc. of the financial year 2009-10, along with the interest payable for the period, the public offer has been delayed. I note that order directing the public offer to be made by the Acquirers was issued in July 2010 and the Acquirers have on their own volition not taken sufficient steps to complete the process of public offer in compliance with SEBI Order. I further note that there is no material on record which shows that the Acquirers, at any point of time, have been constrained in complying with the above direction for reasons beyond their control. On the contrary, I note that the issue of financial burden arising out of the direction of public offer was vehemently contented before the Hon'ble Tribunal and same was rejected as not justifiable in the facts of the matter. Under the circumstances, it is not legally justifiable to accede to the price of

INR 0.25 offered by the Acquirers in the public offer and the offer price must be arrived at by adopting calculations based on the share prices, financials, etc. of the year 2009 and 2010.

25. Further, as recorded in detail above, that in spite of appointing an Independent Valuer (after AFSL vide letter dated May 02, 2019 informed that it had not signed any mandate to act as the valuer in the said public offer) and sending the aforesaid two Advisories asking the Acquirers and the *Target Company* to cooperate with the Independent Valuer, the Acquirers have been defying the Advisories issued by SEBI and have miserably failed in providing requisite information & documents to the Independent Valuer and in the process have deliberately failed in taking effective and sufficient steps to complete the process of public offer in a time bound manner. Despite numerous reminders, the Independent Valuer has not been provided with necessary information either by the Acquirers and/or the *Target Company*. I also see that sufficient opportunities have already been given to the Acquirers through SEBI Advisories dated October 09, 2019 and July 12, 2020 to comply with the SEBI order and to provide full co-operation to the SEBI appointed Independent Valuer to carry out the valuations of shares as per regulation 23 of the Delisting Regulations which is a pre-requisite to make the public offer. However, I can very well notice that the Acquirers have adopted all kinds of dilatory tactics to subvert the process of law and have been protracting the public offer process. As a result, the public shareholders have been deprived from the exit opportunity at an appropriate fair price. Further, I have also seen that vide Second Advisory dated July 12, 2020, the *Target Company* through its Compliance Officer was advised to provide full co-operation to the SEBI appointed Independent Valuer. However, no positive action was seen on the part of the *Target Company* as well. Thus, I am convinced that based on the materials available on record, there is an urgent need to crystalize the liability of the Acquirers by calculating the offer price in terms of regulation 23 of the Delisting Regulations.

26. In this regard, for the purpose of calculating the offer price, the relevant provisions are extracted hereunder:

The Delisting regulations, 2009

23. Rights of public shareholders in case of a compulsory delisting

(1).....

(2).....

(3).....

Explanation: for the purpose of sub-regulation (1),-

(a)

(b) *value of the delisted equity shares shall be determined by the valuer having regard to the factors mentioned in regulation 15.*

Offer Price

15. (1)

15.(2) *The floor price shall not be less than-*

(a) where the equity shares are frequently traded in all the recognised stock exchanges where they are listed, the average of the weekly high and low of the closing prices of the equity shares of the company during the twenty six weeks or two weeks preceding the date on which the recognised stock exchanges were notified of the board meeting in which the delisting proposal was considered, whichever is higher, as quoted on the recognised stock exchange where the equity shares of the company are most frequently traded;”

27. It is noted that in the instant matter, it was directed to give exit offer within 90 days from the date of SEBI Order i.e., July 27, 2010. Thus, for the purpose of aforesaid calculation, July 27, 2010 is to be taken as a reference date and considering July 27, 2010 (date of SEBI Order) as a reference date, the shares of the *Target Company* has been found to be frequently traded. Accordingly, the offer price is calculated in terms of regulation 15(2) of the Delisting Regulations and the same is as under:

If shares are frequently traded, the floor price shall be higher of the following:	
Average of weekly high and low of the closing prices of the equity shares during the twenty-six weeks (Jan 11 - July 23, 2010)	INR 22.82

Average of weekly high and low of the closing prices of the equity shares during the two weeks (July 05 - July 23, 2010)	INR 17.46
Accordingly, the floor price is INR 22.82/-	
Total Liability > ¹1,69,37,847 equity shares (60.43%) * INR 22.82 = INR 38,65,21,669 (INR 38.65 Crore)	

28. It is noted that the Acquirers by not making public offer has not only deprived the shareholders from exiting their shareholding at a fair price thereby acting in gross defiance of the directions issued under SEBI Order (which finally merged with order passed by the Hon'ble Tribunal and the Hon'ble Supreme Court of India) but at the same time, the non-compliance on the part of the Acquirers caused a financial gain of INR 38.65 Crore along with interest amount for the undue prolonged delay in making the offer to the shareholders, since the non-compliance to make the public offer has resulted in saving of the above stated amount as calculated towards public offer consideration to the Acquirers. It can be stated that the Acquirers have notionally gained to such extent in this regard.

29. It is reiterated that the Acquirers have failed to make the public offer despite SEBI's directions to them to do so and despite the SEBI directions having been upheld by the Hon'ble SAT and the Hon'ble Supreme Court of India. Further, the Acquirers have failed to cooperate with the Independent Valuer despite issuance of First and Second Advisories. I note that adequate opportunities and time have already been provided to the Acquirers to comply with the requirements of law regarding the public offer and the aforestated SEBI's directions issued in this regard. By failing to comply with the directions issued vide SEBI's order dated July 27, 2010, the Acquirers have acted adverse to the interest of the shareholders of the *Target*

¹ As per draft letter of offer filed by the Acquirer through the MB.

Company, by denying them the right to exit at a fair price as per SEBI's directions including the aforesaid two advisories.

30. In the aforesaid facts and these circumstances, in order to protect the interest of shareholders and to avoid any further delay in the matter and to implement/execute the directions contained in the SEBI Order dated July 27, 2010 which has long back become final and binding on the Acquirers in light of the First and Second SAT Orders and Second Supreme Court Order, it is imperative to issue further appropriate directions against the Acquirers, which would require the Acquirers to do the needful immediately.

ORDER

31. In view of the foregoing and in the interest of investors and for protection of their rights, I in exercise of the powers conferred upon me by virtue of Section 19 read with Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 hereby direct as under:

- a. Mr. Zafar Yunus Sareshwala and Mr. Uves Yunus Sareshwala shall take steps and complete the process of public offer in terms of SEBI Order dated July 27, 2010 within 60 days of receipt of this Order.
- b. Pending completion of the public offer, Mr. Zafar Yunus Sareshwala and Mr. Uves Yunus Sareshwala shall within 7 working days deposit the amount of INR 38,65,21,669/- (Rupees Thirty Eight Crore Sixty Five Lakh Twenty One Thousand Six Hundred Sixty Nine) along with simple interest @ 15% from July 27, 2010 till date of actual payment.
- c. The Acquirers are directed that above mentioned amount shall be credited to an interest bearing Escrow Account ["Escrow Account in Compliance with SEBI Order dated December 13, 2021– A/c (in the name of the respective persons/entities)"] created specifically in a Nationalized Bank to complete the public offer directed in the SEBI Order dated July 27, 2010. The Escrow Account(s) shall create a lien in favour of SEBI and the amount kept therein shall not be released without prior written permission from SEBI.

- d. Banks are directed that no debit from the bank account(s) of Mr. Zafar Yunus Sareshwala and Mr. Uves Yunus Sareshwala at least to the extent of the above mentioned amount shall be made without the written permission of SEBI. Credits, if any, into the accounts may be allowed. The Banks may allow debit in the accounts only for the limited purpose of completing the public offer and compliance with the order. The Banks are directed to ensure that all the aforementioned directions are strictly enforced.
 - e. Mr. Zafar Yunus Sareshwala and Mr. Uves Yunus Sareshwala are restrained from disposing of or alienating any of his assets/ properties/securities except for the purpose of completing the public offer and are further directed to provide, within 30 days from the date of this Order, a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/securities, if held in physical form and details of companies in which they hold substantial or controlling interest.
32. Pending completion of the public offer, Mr. Zafar Yunus Sareshwala and Mr. Uves Yunus Sareshwala are restrained from buying, selling or dealing in securities market in any manner whatsoever or accessing the securities market directly or indirectly and/or remaining associated with the securities market in any manner whatsoever, except for the purpose of complying with directions of making public offer.
33. Further, keeping in view the misconduct and non-compliances by the aforesaid Acquirers/entities as discussed in the foregoing paragraphs, Mr. Zafar Yunus Sareshwala and Mr. Uves Yunus Sareshwala are called upon to show cause as to why the suitable directions, including the following, should not be issued/imposed against them under Sections 11(1), 11(4)(d) and 11B(1) of the SEBI Act:
- i. direction to disgorge an amount equivalent to the gain made by them by not complying with direction of public offer along with interest;
 - ii. direction to restrain them from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.

34. This Order is without prejudice to any other action that SEBI may initiate under the securities laws, as deemed appropriate, against the above mentioned persons/entities.

35. This Order shall come into force with immediate effect.

36. A copy of this Order shall be forwarded to the Stock Exchanges, Depositories and Registrar and Share Transfer Agents of all Mutual Funds and Banks to ensure necessary compliance.

Sd/-

Place: Mumbai

Date: December 13, 2021

**S.K. MOHANTY
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**