

GMM/SEC/2019-20/60

February 10, 2020

To,
BSE Limited
Phiroze Jeejeebhoy Towers,
1st Floor, Dalal Street,
Mumbai – 400 001

NSE Limited
Exchange Plaza, C-1, Block G,
Bandra Kurla Complex, Bandra (E)
Mumbai – 400 051

Scrip Code: 505255

Symbol: GMMPFAUDLR

Dear Sirs,

Sub: Adjudication Order No. Order/GR/AE/2019-20/6753-6765 dated February 7, 2020 from Securities and Exchange Board of India against the Promoters / Promoter Group of the Company.

The Securities and Exchange Board of India ("SEBI") vide its order No. Order/GR/AE/2019-20/6753-6765 dated February 7, 2020 has imposed a penalty of Rs. 13,50,000/- (Rupees Thirteen Lakh Fifty Thousand Only) to be paid jointly and severally by the Promoters / Promoter Group of GMM Pfaudler Limited under Section 15 A(b) of the SEBI Act for 10 instances of non-disclosure and 7 instances of delayed disclosure under Regulation 8(2) of the Takeover Regulations, 1997 from 2003 to 2012.

A copy of the said SEBI order dated February 7, 2020 along with an Explanatory note in the matter is attached for your records.

Kindly acknowledge the same.

Thanking you,

Yours faithfully,

For **GMM Pfaudler Limited**



Mittal Mehta

Company Secretary & Compliance Officer
M. No. F7848

Encl: As above

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/GR/AE/2019-20/6753-6765]**

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

In respect of

Noticee No.	Noticee Name	PAN
1	Shree A J Patel Charitable Trust	AAATA4352P
2	Mr. Ashok J. Patel	AADPP5714D
3	M/s. Millars Machinery Company Pvt. Ltd	AACCM3891Q
4	Ms. Panna S. Patel	AIVPP5474C
5	Ms. Palomita Patel	AAEPP5659E
6	M/s. Skyline Millars Limited	AAACT2755J
7	Mr. Tarak A. Patel	AADPP5712F
8	Ms. Urmi A. Patel	AADPP5711G
9	Ms. Uttara V. Patel	AADPP5713E
10	M/s. Uttarak Enterprises Pvt. Limited	AACA0979R
11	Ms. Pragna S. Patel	ABPPP2262F
12	Patel HUF	AAHHP4235R
13	M/s. Pfaudler Inc	AAACP2126M

In the matter of GMM Pfaudler Limited

FACTS OF THE CASE

1. Shree A J Patel Charitable Trust, Mr Ashok J Patel, M/s Millars Machinery Company Pvt. Limited, Mrs Panna Patel, Ms. Palomita Patel, M/s Skyline Millars Limited, Mr Tarak A. Patel, Ms. Urmi A. Patel, Ms. Uttara V. Patel, M/s Uttarak Enterprises Pvt. Limited, Ms. Pragna Patel, Patel HUF, and M/s Pfaudler Inc (hereinafter referred to

as the “**Noticees/ Promoters**”) are respectively members of promoter/promoter group of M/s. GMM Pfaudler Limited (hereinafter referred to as “**the Company**”) which is a company incorporated under the Companies Act. An offer document (letter of offer) was filed by M/s. National Oilwell Varco, Inc. (**Acquirer**) along with the person acting in concert M/s Pfaudler Inc. (PAC) to acquire upto 38,00,550 shares of face value of Rs. 2/- each representing 26% of the diluted voting equity share capital. The public announcement for the same was made on 22.02.2013 and the shares of the Company were listed on Bombay Stock Exchange Ltd., (hereinafter referred to as “**BSE**”) only.

2. On perusal of the letter of offer (hereinafter referred to as “**LOO**”), SEBI observed that Noticees in the past had not complied / complied with delay Regulation 8(2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as “**Takeover Regulations, 1997**”) and Regulation 30 (2) read with Regulation 30 (3) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as “**Takeover Regulations, 2011**”), as applicable during the years 2003 to 2012. Based on the aforesaid information with respect to the non-compliance of Takeover Regulations, Adjudication proceedings under Chapter VI-A of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) were initiated against the Noticees under Section 15A(b) of SEBI Act to inquire into and adjudicate the alleged violation of the provision of 8(2) of the Takeover Regulations, 1997 and Regulation 30 (2) read with Regulation 30 (3) of Takeover Regulations, 2011.
3. In the said adjudication proceedings, Show Cause Notices(hereinafter referred to as “**SCN**”) dated November 28, 2013 were issued by the erstwhile Adjudicating Officer (**AO**) to the respective Noticees under Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as “**Rules**”) communicating the alleged violation of Takeover Regulations. Subsequently, an adjudication order dated May 30, 2014 was passed in respect of 12 entities which included all the Noticees except M/s Pfaudler Inc. Further, an appeal was filed by the said Noticees in the Hon’ble Securities Appellate Tribunal (hereinafter referred to as

“SAT”) challenging the aforesaid Adjudication Order dated May 30, 2014. In relation to the same, with regards to the issues of i) the responsibility to make disclosures and also ii) on the penalty imposable on failure to make disclosures, Hon’ble SAT in its order dated November 20, 2015 made the following observations –

“23. To sum up, the obligation to make yearly disclosure under regulation 8(2) and regulation 30(2) of the Takeover Regulations framed by SEBI in the year 1997 & 2011 respectively is on the promoter/ promoter group. If the promoters of a listed company are individual promoters then the obligation is on the individual promoters and in case there is a ‘promoter group’ then the promoter group is required to make yearly disclosure. If the promoter group fails to disclose the shares or voting rights held by the promoters in the promoter group as also their PAC’s within the time stipulated under the Takeover Regulations, then, penalty is imposable on the promoter group and the said penalty would be recoverable jointly and severally from the promoters in the promoter group who held shares or voting rights in the Target Company with their PAC’s. In all these appeals the AO’s of SEBI have not considered the question as to whether the appellants are individual promoters or they constitute ‘promoter group’ under the respective Takeover Regulations. Even in Appeal No. 385 of 2014 the AO of SEBI has not verified the correctness of the argument advanced by the appellant to the effect that they form an independent promoter group.”

4. Further, the Hon’ble SAT in its aforesaid order issued the following directions –

“24. In these circumstances, we set aside the orders passed by the AO of SEBI and restore the appeals to the file of SEBI for passing fresh order on merits and in accordance with law.”

APPOINTMENT OF ADJUDICATING OFFICER

5. During the initiation of the adjudication proceedings in the present matter, Ms. Anita Kenkare was appointed as the Adjudicating Officer vide order dated August 16, 2013 under Section 15I of the SEBI Act for the alleged violations committed by the

Noticees. Pursuant to the transfer of erstwhile AO, the undersigned has been appointed as AO in the matter vide communique dated October 23, 2019.

SHOW CAUSE NOTICE, HEARING AND REPLY

6. I note that, as mentioned previously, Show Cause Notices dated November 28, 2013 were issued to the Noticees for the alleged violations and an Adjudication Order dated May 30, 2014 was passed in respect of Noticee Nos. 1 to 12.
7. The replies of Noticee nos. 1 to 12 vide their letters dated December 10, 2013, January 15 and 23, 2014, September 17 and 29, 2016, and December 07, 2017 are summarized below –
 - i. *That the Noticees have complied with Regulation 8(2) and there is no case of violation of Takeover Regulations as alleged in the said Notice;*
 - ii. *That there has been an inadvertent delay ranging between 2-5 days in a few instances in respect of filing of the stipulated disclosure forms. The Promoters have requested to condone these minor delays as there has been a continuous compliance of the Takeover Regulations and that these delays are a fraction of the 43 disclosures made during the notice period i.e. from 31.03.2003 to 31.03.2012;*
 - iii. *That there have been no changes in the shareholding of each promoter during the period 31.03.2003 and 31.03.2012, except sale of 0.14% of the shareholding by the Noticees to comply with Clause 40A of the Listing Agreement entered into with BSE. In view of the fact that no “commercial” trading by the Promoters has taken place over last 10 years, it has been requested to condone the few instances of minor delays;*
 - iv. *That the due diligence exercise was conducted by Citigroup Global Markets India Pvt. Ltd. (hereinafter referred to as ‘Citigroup’) over two days at the company’s Mumbai Corporate & Sales Office and no advance information was provided by Citigroup regarding the nature of due diligence or the records that would be required by them for inspection. All non-current records of the Company, over one year old, are stored at a warehouse in Karamsad, Gujarat where the Company’s registered office is situated. Therefore all the non-current files, including the files*

containing the records of SEBI Takeover Regulations, could not be produced during the due diligence exercise, however, the copies of the disclosure of Promoters under the Takeover Regulations as per the list contained in the SCNs are available and can be provided for inspection, if required.

- v. That no action has been taken against any of the Noticees/Indian Promoters by SEBI;*
- vi. That the company was paying three quarterly dividends and a final dividend every year since 2003, hence there was a requirement of making a total of 5 disclosures per year under Regulation 8(2) of Takeover Regulations, 1997 and for a total of 12 Noticees/ Indian Promoters, it was 540 disclosures over a period of 9 years;*
- vii. That under the Takeover Regulations, 2011, the disclosure of shareholdings by Promoters is required to be made only on an annual basis and not as on record date for dividend. In view of the fact that the new Regulations have also recognized that disclosures by promoters on an annual basis is sufficient, and most of the delays by the Noticee Indian Promoters in the past were related to the various record dates for interim dividends, the company on behalf of the Noticee Indian Promoters has inter alia requested that delays in the past for disclosures as on record date for four interim dividends per year declared since 2003 should be looked at leniently;*
- viii. That further in case of one of the promoters Ms. Panna S. Patel, for the due date of 05.03.2012, the actual date of compliance was 08.03.2012 and not 08.12.2011 as marked by Citigroup during the due diligence examination for the open offer, as such the actual delay is only of 3 days and not 91 days, which can be independently confirmed by Citigroup.*
- ix. That perusal of the Hon'ble SAT's Order dated November 20, 2015, would show that the necessary disclosures under the Takeover Regulations, may be made either by a Promoter or by a Promoter Group.*
- x. That the delays were minor and of venial nature and no prejudice is caused to any investors. The Statutory Register maintained by the Company evince that the Noticees have complied with their obligations under the Takeover Regulations.*
- xi. That the Bombay Stock Exchange always had the necessary material / disclosure on its record.*
- xii. Regarding the documents produced by the Company, there is no such requirement in law of disclosure forms having to be acknowledged.*

- xiii. *That the documentary record produced by the Noticees clearly establish on a preponderance of probabilities that the Noticees has duly complied with the Regulations.*

Noticee nos. 1 to 12 vide their letter dated January 23, 2014 also enclosed the following documents along with their submissions –

1. *Statements reflecting updated Noticee-wise status of compliance of Regulation 8(2) of Takeover Regulations, 1997 by the Noticees as per the Company's records;*
2. *Statements of Noticee-wise changes in shareholding, including inter-se transfer amongst promoters along with the copy of the supporting documents submitted to BSE;*
3. *Statements of quarterly shareholding pattern of the Company from 2003 to 2013 downloaded from BSE website.*

8. As per records, I note that Noticee no. 13 had made submissions vide its letter dated July 11, 2014, and the main contentions made therein are summarized below –
- i. *The Noticee is a company incorporated in United States of America and holds 52.06% of voting share capital of GMM Pfudler Limited.*
 - ii. *The SCN alleges that there is violation of Regulation 8(2) of takeover Regulations by the Noticee. The SCN doesn't contain any material to substantiate the alleged violation apart from an extract of status of compliance filed by the merchant banker acting as a manager to Open Offer made pursuant to public announcement dated February 22, 2013.*
 - iii. *There is publicly available evidence that Noticee has complied with Regulation 8(2) of Takeover Regulations, 1997 and such evidences are available till 2007. The Noticee made all possible endeavors to retrieve the records for the period prior to 2007, but has unfortunately been unable to do so. By no stretch can the inability to prove compliance automatically translate into proof of non-compliance.*
 - iv. *With respect to a particular disclosure dated March 11, 2008, the SCN alleges as "not complied" while the annexure to the Notice states it as "undated compliance". Such An approach is fallacious as it is sought to be allege that the inadvertent absence of a date of compliance would mean that there is proven non-compliance.*

- v. *It is a settled law that no one should be put to proceedings after a delay so inordinate that it is impossible for him to disprove the charge.*
 - vi. *In the Notice, SEBI is equating “No evidence” to “not complied”- this is an approach alien to law. Out of 40 instances of compliance requirements, the merchant bankers have shown compliance to 27 instances. Also for seven instances, SEBI too acknowledges compliance with a delay of few days. In no instance there has been alleged delay of even one week and thus none of these delays are of any materiality in character and therefore don’t deserve regulatory penal intervention.*
 - vii. *It is noteworthy that there has been complete compliance under Clause 35 of the Listing agreement and therefore there could not have any harm for non-compliance with Regulation 8(2) of Takeover Regulations.*
 - viii. *With respect to Section 15J of SEBI Act, 1992, it is submitted that there is no question of gain or advantage accrued to them, no loss has been caused to any investor as a result of delayed disclosures of the acquisition and there have been no instances in past before receipt of the SCN where any regulatory action has been initiated against them.*
9. Pursuant to Hon’ble SAT’s order dated November 20, 2015, an opportunity of personal hearing was granted to the Noticees before the erstwhile AO on September 19, 2016, wherein the Authorized Representatives (ARs) *inter alia* filed an affidavit of Ms. Mittal Mehta, the Company Secretary of GMM Pfaudler Ltd., regarding the disclosures made by the Noticees to the Company under the Takeover Regulations. It was *inter alia* stated that the records of the company including the (i) Statutory Register to be maintained under the Takeover Regulations, (ii) the disclosure forms submitted by the promoters of the company to the company and (iii) the disclosure forms filed by the company with BSE are in her custody and are kept in the Registered Office of the company in Karamsad, Gujarat for safekeeping. On perusal of the Statutory Register (2 registers) it was noted that the register included a column showing ‘date of intimation to the company’, however the Company Secretary stated that the said Statutory Register was not audited by the auditors. Also the entries were neither initialed by any company official nor stamped by the company.
10. Subsequent to the aforesaid personal hearing the Noticee nos. 1 to 12 *inter alia* submitted that they have at all times acted with each other as a group and hence by

conduct deemed to be a promoter group. It was further submitted that in fact in the past on several occasions Noticee no.2 Mr. Ashok J Patel had made a common filing for all twelve noticees of the said promoter group. Further, the copy of the Register maintained by the Company under the Takeover Regulations were submitted.

11. From the material on record, I note that the Noticees were granted additional opportunity of personal hearing before the erstwhile AO on June 19, 2017. In the said hearing, the ARs of the Noticees reiterated the submissions made in their earlier replies and the submissions made at the earlier hearings.
12. Pursuant to the appointment of the undersigned as the AO, an opportunity of personal hearing was granted to the Noticees on January 13, 2020. In the said hearing, the ARs of the Noticees appeared for the said hearing and reiterated the submissions made by the Noticees's replies dated July 11, 2014, January 15 and 23, 2014, September 17 and 29, 2016, and December 07, 2017. Subsequently, the Noticees made additional submissions in the matter vide their letter dated January 20, 2020, and the main contentions made therein are summarized as under –
 - i. *Noticee Nos. 1 to 13 are part of promoter/promoter group and have been shown as such in all the filing with the stock exchange under clause 35 of the Listing Agreement.*
 - ii. *With regards to the Table of alleged violation (mentioned under paragraph 4 of the erstwhile AO Order dated May 30, 2014), it is submitted that :*
 - a. *In 24 out of 41 instances (erroneously numbered as 42 instances); at-least one of the promoter/promoter group have made the requisite disclosures (indicated as "NA" in the Table). Thus, in terms of the SAT Remand Order – it ought to be considered as an effective compliance of the takeover Regulations;*
 - b. *In the remaining 17 instances, they tried their best to extract the acknowledgement/seal/stamp to prove that the Company indeed received the requisite disclosures. However, due to lapse of considerable time, the same could not be located.*
 - iii. *It has been noted by the Merchant Banker and the earlier Adjudication Order, that there are instances where compliances are taken to be made. Even the Merchant*

Banker has stated that there are delay in the disclosure compliances and not “non-compliance”.

- iv. The details of the shareholding of the promoter/promoter group was always in public domain for the entire period as uploaded by the Company in terms of Clause 35 of the Listing Agreement.*
- v. No prejudice was caused to investors due to minor instances of delayed disclosures (that too for a period of 2 to 5 days) since the investors were always aware of the shareholding of promoter/promoter group from the public domain.*
- vi. The delay of more than 5 years, if counted from 2013 (last alleged violation) and 17 years, if counted from the year 2003 (first alleged violation) in conducting the captioned proceedings has caused prejudice to Noticees in extracting and producing all the relevant data pertaining to the matter.*
- vii. There has been no change in shareholding of the promoter/promoter group during the entire period except for the sale of meagre 0.14% of shareholding by one of the promoters in order to comply with Clause 40 A of the Listing Agreement entered with the BSE Ltd. Though there have been corporate actions, there has been no ‘commercial’ sale undertaken by the promoter/promoter group in entire period and consequently the percentage of promoter/promoter group shareholding has remained same.*
- viii. As per the SAT Remand Order the disclosure requirement is a unitary obligation by the promoter group and accordingly levying separate penalties on individual Noticee is unsustainable. In the case of Gopalkrishnan Raman (passed in accordance with Remand Order), single penalty was levied on entire promoter group.*
- ix. The learned erstwhile Adjudicating Officer in her Order had taken a lenient view and imposed the penalty of 50,000 per violation. So instead of continuing with the controversy, we request you to take the no proof as non-compliance and dispose of the matter with a token penalty. As a submission. the highest penalty on the Noticee from the earlier order be considered as a penalty which can be paid jointly and severally in the light of the decision of the Hon'ble Tribunal (supra);*
- x. No harm loss or prejudice has been caused to the investors due to the impugned delayed disclosures.*

- xi. *In their humble submission, in the past as well, other Adjudicating Officer of SEBI have taken a pragmatic view when there is a technical violation and disposed-off the proceedings qua the Noticee without resorting to heavy penalty.*

CONSIDERATION OF ISSUES AND FINDINGS

13. I have carefully perused the written submissions of the Noticees and the documents available on record. It is observed that the allegation against the Noticees is that they have failed to make the relevant disclosure under the provisions of Regulation 8(2) of the Takeover Regulations for the financial year 2004 to 2012 within the stipulated time. In respect of Shree A J Patel Charitable Trust the violation of Regulation 8(2) of the Takeover Regulation is for financial year 2003 to 2012.
14. The issues that, therefore, arises for consideration in the present case are:
- a. Whether the Noticees had violated the provisions of Regulation 8(2) of the Takeover Regulations, 1997 and Regulation 30(2) read with Regulation 30(3) of Takeover Regulations, 2011 during the years 2003 to 2012, as applicable?
 - b. Does the violation, if any, attract monetary penalty under Section 15 A(b) of SEBI Act?
 - c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?
15. Before moving forward, it is pertinent to refer to the provisions of Regulation 8(2) of Takeover Regulations, which reads as under:

Regulation 8 (2) of Takeover Regulation, 1997:

Continual disclosures.

8. (2) A promoter or every person having control over a company shall, within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, disclose the number and percentage of shares or voting

rights held by him and by persons acting in concert with him, in that company to the company.

Regulation 30 (2) read with 30 (3) of Takeover Regulation 2011:

Continual disclosures.

30(1).....

(2) The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the end of each financial year to,—

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

16. The first issue for consideration is whether the Noticees were required to make the relevant disclosure under the provisions of Regulations 8(2) of the Takeover Regulations. I find from the LOO filed by the Acquirer before SEBI that the Noticees were the promoter of the company at the relevant point of time. Hence, the Noticees were required to make the relevant disclosure under the provisions of Regulation 8(2) of the Takeover Regulations, 1997 and under Regulation 30(2) read with 30(3) of Takeover Regulations, 2011, as applicable.

17. I note that the Hon'ble SAT in its order dated November 20, 2015 in respect of the appeals nos. 212 to 223 of 2014 preferred by Noticee nos. 1 to 12 in the matter has inter alia held that

“22. It is true that the language used in that regulation 8(2) of the Takeover Regulations, 1997 differs from the language used in regulation 30(2) of the Takeover Regulations, 2011. However, under both the regulations the basic object is to ensure that at the end of every financial year, the investors in the Target Company are informed about the number and percentage of shares or voting rights held by the promoter/promoter group and the object is not to make it mandatory for every

promoter in the promoter group to make individual yearly disclosure even if that promoter neither held nor holds any shares of the Target Company.”

The Hon'ble SAT has further held that in case the members of the promoter/promoter group constitute a group and are PACs under the Takeover Regulations, then the promoters as a group are required to make the relevant disclosures under Regulation 8(2) of the Takeover Regulations. It has further held that if the promoter group fails to disclose the shares or voting rights held by the promoters in the promoter group as also their PAC's within the time stipulated under the Takeover Regulations, then, penalty is imposable on the promoter group and the said penalty would be recoverable jointly and severally from the promoters in the promoter group who held shares or voting rights in the Target Company with their PAC's.

18. In light of the aforesaid observations and from the material available on record, I note that the Noticees vide their replies dated September 29, 2016 and January 20, 2020 have submitted that the Noticees are part of the promoter/promoter group and have been shown as such in all the filings with the stock exchanges under clause 35 of the Listing Agreement. The Noticees have further submitted that the disclosure requirement under Regulation 8(2) of the Takeover Regulations is a unitary obligation by the promoter group. Accordingly, I find that the Noticees are to be considered as a group for the purposes of filing disclosures under Regulation 8(2) of the Takeover Regulations, 1997 / Regulation 30(2) read with 30(3) of Takeover Regulations, 2011, and compliance of the said regulations. As per the material available on record, the details of instances of non-compliances in respect of the Noticees as provided by the merchant banker in the status of compliance report document submitted to SEBI at the time of open offer are stated in the tabular form below:

TABLE - A

Sr. No.	Due date of compliance	Compliance status of by the Promoters, including delay in days
Regulation 8(2) of Takeover Regulations, 1997		
1	21.04.2003	NA

2	23.06.2003	NA
3	23.09.2003	NA
4	08.03.2003	NA
5	21.04.2004	NC
6	12.07.2004	NC
7	07.12.2004	NC
8	21.04.2005	NC
9	10.06.2005	NC
10	26.08.2005	NC
11	01.12.2005	NC
12	01.03.2006	NC
13	21.04.2006	NA
14	21.04.2007	3
15	01.06.2007	NA
16	07.09.2007	NA
17	07.12.2007	4
18	10.03.2008	NA
19	11.03.2008	NA
20	21.04.2008	NC
21	23.05.2008	NA
22	29.08.2008	4
23	28.11.2008	NA
24	06.03.2009	NA
25	21.04.2009	3
26	03.06.2009	NA
27	03.09.2009	NA
28	21.11.2009	NA
29	03.03.2010	NA
30	21.04.2010	3
31	02.06.2010	NA
32	03.09.2010	NA
33	03.12.2010	NA
34	04.03.2011	NA
35	21.04.2011	NC
36	03.06.2011	NA
37	07.09.2011	NA
38	23.09.2011	NA
39	08.12.2011	2
40	05.03.2012	2
Regulation 30(1) r.w. 30(2) of Takeover Regulations, 2011		
41	21.04.2012	NA

Note –

NA – Not Applicable / Complied.

NC – Not Complied

19. I note from the reply submitted by the company on behalf of the Noticees that the company was paying three quarterly dividends and a final dividend every year since 2003. Hence, under Regulation 8(2) of the Takeover Regulations, 1997, the Noticees, I find, were required to file disclosures for each of the four record dates every year for the dividends declared, in addition to the disclosure for year ending March 31 every year. Hence, I note that there was a requirement for making in all five disclosures per year under Regulation 8(2) of Takeover Regulations, 1997.
20. The details of number of instance where there is delay in making compliance and where there is no compliance at all, is given in table above. There are instances in the said table where the Noticees had not provided the disclosure copies to the merchant banker and in those cases it is mentioned in the Remarks column "No Evidence -Not Complied". Based on the available material, it is noted that out of total 41 instances requiring disclosures, the promoters as a group have complied in 24 instances. However, in the rest 17 instances where the Noticees were required to file requisite disclosures to the company under Regulation 8(2) of Takeover Regulations, 1997, the Noticees have not complied in 10 instances and there is a delayed compliance in 7 instances.
21. I note that the Noticees have submitted that all non-current records of the company over one year old are stored at a warehouse in Karamsad, Gujarat where the company's registered office is situated. Therefore all the non-current files, including those containing the records of SEBI Takeover Regulations, could not be produced during the due diligence exercise conducted by the Manager to the Offer. However, I find that the same could have been called for and produced subsequently. Further, I also note that during the course of adjudication proceedings, the Noticees have produced the Statutory Registers, wherein all the requisite disclosures submitted by the promoters under the Takeover Regulations were recorded and maintained.

However, it is also noted that the Company has stated that the same were not audited. I also note that the said records produced during the adjudication proceedings were neither stamped by the company nor were initialed by any employee.

22. In respect of the non-compliances and delayed compliances, the Noticees have *inter alia* submitted that in order to support their case, they tried to extract the acknowledgement/seal/stamp to prove that the Company has indeed received the requisite disclosures, however due to lapse of considerable time, the same could not be located. From the aforesaid submissions of the Noticees, I find that the Noticees have admittedly not been able to prove with supporting evidence that they had filed disclosures in 10 instances shown in Table A above for the following due dates of compliance - 21.04.2004, 12.07.2004, 07.12.2004, 21.04.2005, 10.06.2005, 26.08.2005, 01.12.2005, 01.03.2006, 21.04.2008, and 21.04.2011. Further, in respect of 7 instances (*viz.* following due dates - 21.04.2007, 07.12.2007, 29.08.2008, 21.04.2009, 21.04.2010, 08.12.2011, and 05.03.2012) of delayed compliance, the Noticees have not been able to prove that their disclosures were indeed made in timely manner. However, I also note that the delays in these instances range from 2 to 4 days. I note that the Noticees in their submissions dated January 20, 2020 have *inter alia* stated that “..... we request you to take the no proof as non-compliance and dispose of the matter with a token penalty”. From the above submissions, while I note that the Noticees have not disputed that allegations of non-compliance of the provisions of Regulation 8(2) of Takeover Regulations, 1997, I also find from the aforesaid specific submission of the Noticees, that admission of the defaults is forthcoming. In view of the above, I conclude that the Noticees by not making the requisite disclosures in 10 instances and making delayed disclosures in 7 instances, have violated the provisions of Regulation 8(2) of Takeover Regulations, 1997.
23. The H`on`ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)** held that “*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by*

the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...". Further in the matter of Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed "Once it is established that the mandatory provisions of Takeover Code was violated, the penalty must follow."

24. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section 15A(b) of the SEBI Act on the Noticees for the violation of Regulation 8(2) of Takeover Regulations, 1997. The provisions of the said section reads as under:

SEBI Act

Penalty for failure to furnish information, return, etc.

15A.*If any person, who is required under this Act or any rules or regulations made thereunder,—*

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

25. While determining the quantum of monetary penalty under Section 15 A(b) of the SEBI Act, I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:-

(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."

26. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. It is

noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticees. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticees. However, the main objective of the Takeover Regulations is to afford fair treatment for shareholders who are affected by the change in control. The Regulation seeks to achieve fair treatment by inter alia mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decision. Thus, the cornerstone of the Takeover regulations is investor protection. In the present matter I note that the Noticees have on several occasions not complied with Regulation 8(2) of Takeover Regulations, 1997.

ORDER

27. After taking into consideration all the facts and circumstances of the case, observations and in exercise of power conferred upon me under section 15 I of the SEBI Act read with rule 5 of the Rules, I hereby impose a penalty of Rs. 13,50,000/- (Rupees Thirteen Lakh Fifty Thousand Only) to be paid jointly and severally on the Noticees, under Section 15 A(b) of the SEBI Act for the violation of Regulation 8(2) of the Takeover Regulations, 1997.
28. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in 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:

ENFORCEMENT ☐ **Orders** ☐ **Orders of AO** ☐ **PAY NOW.**

29. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to “The Division Chief (Enforcement Department - DRA-3), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051”. The Noticee shall also provide the following details while forwarding DD / payment information.
- i. Name and PAN of the Noticee
 - ii. Name of the case / matter
 - iii. Purpose of Payment – Payment of penalty under AO proceedings
 - iv. Bank Name and Account Number
 - v. Transaction Number
30. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.
31. In terms of rule 6 of the Rules, copy of this order is sent to the Noticees and also to Securities and Exchange Board of India.

Date: **February 07, 2020**
Place: **Mumbai**

G Ramar
Adjudicating Officer

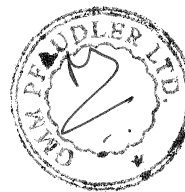
Explanatory note:

The Promoters / Promoter Group of GMM Pfaudler Limited (as listed in Annexure 1 and hereinafter referred to as the "Noticees") received Notices from SEBI dated September 16, 2013 under Rule 4 of SEBI (Procedure for Holding Inquiry and imposing Penalties by Adjudicating officer) Rule 1995 read with Section 15-I of the Securities and Exchange Board of India Act, 1992 for alleged violation of Regulation 8(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 based on the Letter of Offer filed in February 2013 by M/s. National Oilwell Varco, Inc. (Acquirer) along with the person acting in concert M/s Pfaudler Inc. (PAC) to acquire upto 38,00,550 shares of face value of Rs. 2/- each representing 26% of the diluted voting equity share capital.

Subsequently, an adjudication order dated May 30, 2014 was passed by the Adjudication Officer of SEBI in respect of all the Noticees except M/s Pfaudler Inc. Further, an appeal was filed by the said Noticees in the Hon'ble Securities Appellate Tribunal (SAT) Challenging the order of SEBI. SAT by its Order dated November 20, 2015 set aside the order of the Adjudicating Officer of SEBI and remanded the matter back to SEBI to decide the same afresh based on merits and in accordance with the law.

Thereafter, SEBI issued letter no. EAD-6/AK/RSL/19299/2016 dated July 8, 2016 for fresh hearing in the case. The hearing was held on September 19, 2016 and further documents were submitted on September 29, 2016. Further, a personal hearing in the matter was held on June 19, 2017. Pursuant to the change in the Adjudication Officer, an opportunity of personal hearing was granted to the Noticees on January 13, 2020 and further documents were submitted on January 20, 2020.

Based on various documents and submissions, the Adjudication Officer of SEBI has noted that there were 10 instances of non-disclosure and 7 instances of delayed disclosure of Regulation 8(2) of the Takeover Regulations, 1997 for the notice period. Accordingly, SEBI vide its order dated February 7, 2020 has imposed a penalty of Rs. 13,50,000/- (Rupees Thirteen Lakh Fifty Thousand Only) to be paid jointly and severally on the Noticees, under Section 15 A(b) of the SEBI Act for the violation of Regulation 8(2) of the Takeover Regulations, 1997. The said penalty shall be paid within the stipulated time limit of 45 days as given in the said order.



“Annexure 1 of the Explanatory Note”

The Promoters of GMM Pfaudler Limited (referred to as the “Noticees”)

1.	Shri A J Patel Charitable Trust
2.	Mr. Ashok J Patel
3.	Millars Machinery Company Pvt. Limited
4.	Mrs. Panna Patel
5.	Ms. Palomita Patel
6.	Skyline Millars Limited
7.	Mr. Tarak A. Patel
8.	Ms. Urmi A. Patel
9.	Ms. Uttara V. Patel
10.	Uttarak Enterprises Pvt. Limited
11.	Ms. Pragna Patel
12.	M/s. A J Patel HUF
13.	Pfudler Inc.

