

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Order Reserved on: 09.03.2017**

**Date of Decision : 05.04.2017**

**Misc. Application No.147 of 2016  
And  
Misc. Application No.178 of 2016  
And  
Appeal No.123 of 2016**

Arbutus Consultancy LLP  
60, 2<sup>nd</sup> Floor, Vasant Marg, Vasant Vihar,  
New Delhi, South Delhi, India -110057. .... Appellant

Versus

The Securities and Exchange Board of India,  
SEBI Bhavan, Plot No. C-4A, G-Block,  
Bandra-Kurla Complex, Bandra (East),  
Mumbai – 400 051. .... Respondent

Mr. J.J. Bhat, Senior Advocate with Mr. Animesh Bisht and Ms. Sahana Ramesh, Advocates i/b. Cyril Amarchand Mangaldas for the Appellant.

Mr. Fredun DeVitre, Senior Advocate with Mr. Mihir Mody, Mr. Saurabh Bachhawat and Mr. Nishant Upadhyay, Advocates i/b. K. Ashar & Co. for the Respondent.

Mr. P.N. Modi, Senior Advocate with Mr. Ankit Lohia and Mr. Deepak Dhane, Advocates i/b. Joby Mathew and Associates for Interveners in Misc. Application No. 147 of 2016.

Mr. Unnat Agrawal, Applicant/Intervener in person in Misc. Application No. 178 of 2016.

**With  
Misc. Application No.148 of 2016  
And  
Appeal No.124 of 2016**

Laurel Energetics Private Limited  
60, 2<sup>nd</sup> Floor, Vasant Marg, Vasant Vihar,  
New Delhi, South Delhi, India -110057. .... Appellant

Versus

The Securities and Exchange Board of India,  
SEBI Bhavan, Plot No. C-4A, G-Block,  
Bandra-Kurla Complex, Bandra (East),  
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Mr. J.J. Bhat, Senior Advocate with Mr. Animesh Bisht and Ms. Sahana Ramesh, Advocates i/b. Cyril Amarchand Mangaldas for the Appellant.

Mr. Fredun DeVitre, Senior Advocate with Mr. Mihir Mody, Mr. Saurabh Bachhawat and Mr. Nishant Upadhyay, Advocates i/b. K. Ashar & Co. for the Respondent.

Mr. Ankit Lohia, Advocate with Mr. Deepak Dhane, Advocate i/b. Joby Mathew and Associates for Interveners in Misc. Application No. 148 of 2016.

CORAM : Justice J.P. Devadhar, Presiding Officer  
Jog Singh, Member  
Dr. C.K.G. Nair, Member

Per : Dr. C.K.G. Nair

1. These appeals are preferred against the communication of SEBI dated May 5, 2016 (impugned order) whereby the Manager to the open offer announced by the Appellants herein was directed to revise the open offer price since the inter-se promoter transfer of shares of the target company made during the year 2014 were not exempted from the open offer obligation under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ('SAST/Takeover Regulations, 2011' for short). The question of law being raised in these appeals, therefore, is whether the inter-se promoter transfers made prior to completion of 3 years of listing the target company are eligible for general exemption from open offer under Regulation 10(1)(a)(ii) of SAST Regulations. These appeals also raise the question of the legal status of informal guidance given by a department of SEBI, under the SEBI (Informal Guidance) Scheme, 2003.

2. Laurel Energetics Private Limited, Appellant in Appeal no.124 of 2016, an original co-promoter of India Bulls Real Estate Ltd. and the target company, M/s. RattanIndia Infrastructure Ltd. alongwith Arbututs Corporation LLP (Appellant in Appeal no.123 of 2016), Yantra Energetics

Pvt. Ltd., Spire Constructions Pvt. Ltd., Nettle Constructions Pvt. Ltd. and Mr. Rajiv Rattan made a public announcement under Regulation 15 of the SAST/Takeover Regulations, 2011 for the acquisition of 35.94 crore equity shares from the public shareholders of the target company on October 28, 2015. This was pursuant to voluntary acquisition of more than 5% of the voting share capital of the target company in one financial year by the promoters and persons acting in concert together triggering an open offer obligation and hence this announcement. The draft letter of offer was filed by the Manager to the offer on November 10, 2015. After various rounds of clarificatory communications between SEBI and the Manager to the issue the impugned order was issued by the SEBI on May 5, 2016. In terms of the impugned order the acquisition has to be made at a price of 6.30 per share instead of Rs.3.20 stated in the public announcement. In addition acquirers have been asked to pay a simple interest of 10% p.a. from the trigger dates to those shareholders who were holding shares in the target company on the date of inter-se promoter transfers and whose shares are accepted in the open offer.

3. The intervening Miscellaneous Applications are filed by some shareholders in the target company who seek to secure their interest in the open offer. Their prayer is that many of the open offers get into long litigations without fructifying to the detriment of the investors' interests. Accordingly, they seek to protect their interest by praying to this Tribunal to direct the Appellants herein to either implement the open offer at Rs.6.30 or at the undisputed price of Rs.3.20 per share keeping the disputed part of Rs.3.10 per share in an escrow account or in any other manner this Tribunal would deem fit.

4. Facts in these appeals are not disputed. However, in order to provide the full background of the matter the relevant facts are given as follows:

- India Bulls Real Estate Limited ('IBREL' for short) was incorporated on April 4, 2006 and listed on the Bombay Stock Exchange Limited ('BSE' for short) and National Stock Exchange of India Limited ('NSE' for short) on March 23, 2007.
- The target company, India Bulls Infrastructure and Power Limited (renamed as RattanIndia Infrastructure Limited with effect from November 3, 2014) was incorporated on November 9, 2010 as a wholly owned subsidiary of IBREL.
- A scheme of arrangement and demerger was filed on January 17, 2011 with the Delhi High Court, inter alia, by the IBREL (the parent company) and the target company for consolidating the power business of IBREL and thereafter to demerge into the target company as a separate undertaking. This scheme was approved/sanctioned by the Delhi High Court on October 17, 2011.
- The target company was listed on the BSE and NSE on July 30, 2012. Documents relating to the shareholding pattern of promoters etc were filed with the stock exchanges on July 20, 2012.
- Laurel Energetics Pvt. Ltd., one of the co-promoter of IBREL and the target company acquired various quantities of equity

shares from 3 other co-promoters of IBREL and the target company on July 9-10, 2014.

- Laurel acquired various quantities of the equity shares of the target company from 4 other co-promoters of IBREL and the target company on September 5, 2014.
- Laurel further acquired various quantities of equity shares of the target company from two co-promoters of IBREL and the target company on October 20, 2014.
- All these acquisitions made in July, September and October, 2014 were duly disclosed to the stock exchanges as per SAST/ Takeover Regulations, 2011.
- On October 28, 2015 the Appellants alongwith persons acting in concert made a public announcement for acquisition of 35.95 crore equity shares of the target company. On November 10, 2015 the draft letter of offer was filed with SEBI by the Manager to the issue.
- On May 5, 2016 the impugned order was issued by SEBI asking the Manager to the issue to revise the price of the open offer as the inter-se promoter transfers of July, September and October, 2014 were not exempt from open offer obligations under SAST/Takeover Regulations, 2011.

5. Before we proceed further the relevant regulations are reproduced for ease of reference:

**“Regulation 3 of SAST/Takeover Regulations, 1997**

Applicability of the regulation.

**3. (1) Nothing contained in regulations 10, 11 and 12 of these regulations shall apply to:**

(a) .....

**(e) inter se transfer of shares amongst—**

(i) to (iii) .....

(a) .....

**(b) qualifying promoters**

**Provided that the transferor(s) as well as the transferee(s) have been holding shares in the target company for a period of at least three years prior to the proposed acquisition.**

(i) & (ii) .....

### **Regulation 10 of the SAST/Takeover Regulations, 2011**

**“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) .....

**(ii) persons named as promoters in the shareholding pattern filed by the target company in terms of the listing agreement or these regulations for not less than three years prior to the proposed acquisition;**

(iii) .....

(2) to (4) .....

(5) In respect of acquisitions under clause (a) of sub-regulation (1), and clauses (e) and (f) of sub-regulation (4), the acquirer shall intimate the stock exchanges where the shares of the target company are listed, the details of the proposed acquisition in such form as may be specified, at least four working days prior to the proposed acquisition, and the stock exchange shall forthwith disseminate such information to the public.

(6) In respect of any acquisition made pursuant to exemption provided for in this regulation, the acquirer shall file a report with the stock exchanges where the shares of the target company are listed, in such form as may be specified not later than four working days from the acquisition, and the stock exchange shall forthwith disseminate such information to the public.

(7) In respect of any acquisition of or increase in voting rights pursuant to exemption provided for in clause (a) of sub-regulation (1), sub-clause (iii) of clause (d) of subregulation (1), clause (h) of

sub-regulation (1), sub-regulation (2), sub-regulation (3) and clause (c) of sub-regulation (4), clauses (a), (b) and (f) of sub-regulation (4), the acquirer shall, within twenty-one working days of the date of acquisition, submit a report in such form as may be specified along with supporting documents to the Board giving all details in respect of acquisitions, along with a non-refundable fee of rupees twenty five thousand by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board.

Explanation.— For the purposes of sub-regulation (5), sub-regulation (6) and sub-regulation (7) in the case of convertible securities, the date of the acquisition shall be the date of conversion of such securities”

6. We have heard the extensive contentions made by the learned counsel for both the sides as well as the submissions made by the intervening applicants.

7. Shri J.J. Bhatt, learned senior counsel for the Appellants reiterated the facts in the matter and submitted as follows:

- (a) The promoters of IBREL and the promoters of the target company have been the same. There has been no change in the composition of the promoter group of the Target Company.
- (b) IBREL disclosed to the stock exchanges details of its promoters and the promoter group entities in 2009-2010.
- (c) In 2010-11 in the annual report of IBREL the details of the promoter group after the incorporation of the target company were disclosed to the stock exchanges.
- (d) The target company itself disclosed the shareholding pattern and details of its promoters on July 30, 2012 in its listing agreement to the stock exchanges.

- (e) Similar details were filed by the target company on June 30, 2014 also with the stock exchanges.
- (f) All these filings, both by the parent company and the Target Company, show that the promoters of the parent company IBREL and the target company were the same. As such there has been no change in the promoter group since 2009-10 and this information was in public domain even though the target company was listed only in 2012 and as per the listing agreement filing of shareholding pattern is available for less than 3 years in 2014. Since there was no change in the promoter group and the information was available to the public for more than 3 years there is no violation of SAST/Takeover Regulations, 2011. Since the target company was incorporated on November 9, 2010 the target company itself was in existence for more than 3 years as on 9<sup>th</sup> July, 2014, the first date of inter-se promoter transfer, though the target company was listed on 30<sup>th</sup> July, 2012. Accordingly, based on an interpretation of both Regulation 3(1)(e)(iii) and proviso there under of SAST/Takeover Regulations, 1997 and under Regulation 10(1)(a)(ii) of SAST/Takeover Regulations, 2011 the exemption from open offer was available for the impugned inter-se promoter transfers. The changes brought in the Takeover Regulations, 1997 through the 2011 Regulations was basically to keep 'alien entities' from becoming promoters. In the instant case it is an undisputed fact that all the promoters of the target company remain the same for more than 3 years and it was publicly announced and as such the

benefit of exemption from open offer is available to the Appellants. Regulation 10 of SAST/Takeover Regulation, 2011 does not say that 3 years promoter holding has to be submitted subsequent to listing.

(g) Going further, the learned senior counsel relied on the report of the Takeover Regulations Advisory Committee dated July 19, 2010 to emphasize the intention behind the amendments made in SAST in the year 2011. The intention of this Committee was also to continue to provide exemption for inter-se transfer of shares among qualifying parties and the purpose of amendment in terms of new Regulations is to curb the abuse of introduction of new entities as qualifying parties. It was further emphasized in this Report that in respect of a scheme of arrangement sanctioned by a court or other competent authority it would be desirable to continue with the exemption from making the open offer. In terms of the Respondent's own interpretation submitted at page 7 of their reply this benefit should be available to the Appellants.

(h) It was further argued that the Appellants have squarely used a guidance given by SEBI to another entity. Citing the informal guidance issued by SEBI on October 25, 2012 to Weizmann Forex Ltd. it was argued that the situation of the Appellant is exactly similar to that in the Weizmann Guidance. The Appellants would not have gone for any inter-se promoter transfers but for this Guidance. The Appellants only followed the Takeover Regulations and the Weizmann Guidance given by SEBI in the matter. Other guidance available on date were

distinguishable and as such was not relevant to the Appellants and the argument of the Respondent that informal guidance have no statutory value cannot be accepted as these are clarifications on Regulations issued by the same Regulator.

- (i) The impugned order does not specify the grounds, reasons and the exact provisions that has been violated by the Appellants.
- (j) The 3 year post listing condition is not there in the 2011 (SAST Regulations, 2010) nor in the informal guidance of Weizmann, Commercial Engineers and Future Capital, nor in the Takeover Regulation Advisory Committee Report nor even in the impugned order. Changes made in the SAST/Takeover Regulations, 1997 through the 2011 Regulations is only to the extent that a declaration under the listing agreement has been mandated in the 2011 Regulations but there is nothing to suggest that it has to be for 3 years post listing.
- (k) In conclusion it was submitted that the inter-se promoter transfers during 2014 were eligible for exemption from open offer obligations on correct interpretation of the SAST/Takeover Regulations of 1997 and 2011; on a correct reading of the intention behind the amendment to the Takeover Regulations in terms of the report of the Takeover Regulations Advisory Committee 2010 and in terms of the applicability of the informal guidance issued by SEBI to Weizmann Forex Ltd. on October 25, 2012. As such SEBI

cannot ask the Appellants to go for a public offer from the date of those inter-se transfers made in 2014.

- (1) Learned senior counsel for the Appellants also relied upon the judgments of the Apex Court on the legal validity of the circulars issued by the Central Board of Excise and Customs, to emphasize the point that informal guidance issued by a regulator is legally binding; (a) Collector of Central Excise, Vadodra vs. Dhiren Chemical Industries reported in (2002) 2 Supreme Court Cases 127; (b) Commissioner of Central Excise, Bolpur vs. Ratan Melting & Wire Industries, Calcutta reported in (2005) 3 Supreme Court Cases 57; (c) Kalyani Packaging Industry vs. Union of India and Another reported in (2004) 6 Supreme Court Cases 719 and (d) Commissioner of Central Excise, Bolpur vs. Ratan Melting & Wire Industries (Civil Appeal No. 4022 of 1999 dated October 14, 2008).

Emphasizing the Constitution Bench Judgment at (d) above, it was argued that the circulars and instructions issued by the Board are binding in law on the authorities under the respective statutes.

8. With regard to the Miscellaneous Applications, on instruction, learned senior counsel for the Appellants stated that a total amount of Rs. 115 crore has already been secured to enable the open offer @ Rs. 3.20 per share. On direction, the Appellants filed an affidavit dated March 10, 2017 before this Tribunal, inter alia, stating therein that:-

- (a) The acquirers have created an escrow account with HDFC Bank in favour of the Manager to the Open Offer for a sum of Rs. 30 crore;

- (b) An amount of Rs. 20 crore has been provided in a fixed deposit with lien in favour of the Manager to the Open Offer that can be used to meet the obligations of the acquirers under the open offer;
- (c) Mr. Rajiv Rattan, one of the PACs, has certified and provided an undertaking of financial support to Arbutus Consultancy LLP (one of the Appellants herein) upto an aggregate amount of Rs. 65 crore. In addition, a certificate relating to the networth of the acquirers issued by chartered accountant has also been submitted, which clearly shows that the acquirers are financially fully sound.

9. Shri Fredun DeVitre, learned senior counsel for the Respondent SEBI argued that the Regulations have to be interpreted correctly. A simple reading of Regulation 10(1)(a)(ii) of the SAST/Takeover Regulations, 2011 is that “persons named as promoters in the shareholding patterns filed by target company in terms of the listing agreement for not less than 3 years prior to the proposed acquisition” means that the shareholding pattern filed by the target company in terms of its listing agreement has to be available for a minimum of 3 years post listing. In the instant case, the target company filed its shareholding pattern in terms of its listing agreement on July 30, 2012. The inter-se transfers were made during July to October, 2014 and as such the company had filed the relevant details only for 2 years post listing whereas the requirement is not less than 3 years post listing. A straight forward reading of Regulation 10 of Takeover Regulations 2011 unambiguously shows that the Appellants were not eligible for exemption. When a straight forward reading of the Regulation/law is available that is the only way it should be read. In the instant matter no other interpretation is actually possible.

10. When the statute is clear, informal guidance should not be relied on. Informal guidance scheme cannot be used to reduce the importance of the statute itself. Under the SEBI Informal Guidance Scheme, 2003, the guidance is the view of the concerned department of SEBI and will not be binding on the Board. The letter issued by a department under this scheme should not be construed as a conclusive decision or determination of any question of law or fact by SEBI. Such a letter cannot be construed as an order of the Board under Section 15T of the Securities and Exchange Board of India Act, 1992 ('SEBI Act' for short) and shall not be appealable. Further citing the position of law in the USA where no-action letters as not legally binding opinion it was argued that guidance cannot become the determining factor on matters of interpretation of law. An informal guidance cannot be used as an estoppel against law.

11. Official of SEBI erred in the Weizmann Guidance by inadvertently providing an interpretation in the spirit of the Takeover Regulations, 1997 oblivious of the changes happened in terms of the SAST/Takeover Regulations, 2011. Such a mistake made by an officer of the respondent cannot be used to furtherance of the mistake. SEBI in all its subsequent informal guidances insisted that the target company has to complete a minimum period of 3 years as a listed entity and filing to that effect about promoter holdings for availing the exemption of inter-se promoter transfers from public offer obligation. In fact while the Weizmann Guidance was dated October 25, 2012 the correct guidance insisting on 3 years post-listing requirement was available as early as December 5, 2012, just 40 days later, in the matter of Commercial Engineers and Body Builders Company Ltd. Since the inter-se promoter transfers in the impugned order relates to 2014 the latter informal guidance also should have been relied on by the

Appellants and a fresh guidance should have been sought from SEBI in case of any doubt.

12. 2011 amendments to SAST Regulations was specifically brought in to prevent the potential abuse of new promoters getting in soon after a company is listed. That is why for inter-se promoter transfers to be eligible for exemption from open offer a minimum 3 years condition after listing and as given in the listing agreement by the Target Company itself was mandated. A declaration relating to the promoters prior to listing or whether the same promoters continued after listing etc. has no relevance for getting this exemption.

13. The Learned senior counsel for the Respondent further argued that the judgments of the Apex Court relied upon by the Appellants relate to circulars approved by the board of the Central Board of Excise and Customs. The informal guidances issued by SEBI officials in the present matter are not approved by the board of SEBI and as such the cited judgments have no relevance here. Rather the learned senior counsel for the respondent relied on the judgment of this Tribunal in the case of Deepak Mehra vs. Securities and Exchange Board of India (Appeal No. 140 of 2009 dated 28<sup>th</sup> August, 2009) wherein the legal validity of the informal guidances was examined by this Tribunal. It was held that informal guidances were views of a department of SEBI and cannot be construed as law and as such not amenable for appeal before this Tribunal.

14. We do not find any merit in the arguments put forth by the learned senior counsel for the Appellants. SAST/Takeover Regulations, 2011 is the law during the relevant time. It states as follows:-

*“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) .....*

*(ii) persons named as promoters in the shareholding pattern filed by the target company in terms of the listing agreement or these regulations for not less than three years prior to the proposed acquisition;”*

Regulation 10(1)(a)(ii) clearly states that in order to be eligible for exemption from making an open offer inter-se transfers of shares amongst persons named as promoters in the shareholding pattern by the target company in terms of its listing agreement has to be for not less than 3 years prior to the proposed acquisition. The argument that the promoters have to be named in the listing agreement for minimum period of 3 years overall, not necessarily 3 years subsequent to the signing of the listing agreement, cannot be accepted by a plain reading of Regulation 10(1)(a)(ii). If such an interpretation is accepted a company listed today with an unchanged promoter holding for more than 3 years prior to listing becomes eligible for exemption from making an open offer for inter-se promoter transfers even tomorrow. This is not the intention behind the amended law (SAST/ Takeover Regulations, 2011). If that be the case SAST, 1997 would suffice. If such an interpretation is agreed to the very purpose of providing stability for promoter holding for a reasonable period of 3 years post listing will be defeated.

15. The impugned order clearly states that the inter-se transfers amongst promoters on July 9-10, 2014, September 5, 2014 and October 20, 2014 were not exempted from the open offer obligations. Further, vide e-mail dated December 4, 2015 addressed to the Manager to the Open Offer it was

stated that Regulation 10(1)(a)(ii) of SAST/Takeover Regulations, 2011 was triggered. As such, there is no ambiguity in the order as the provision relating to exemption of inter-se promoter transfers from the open offer obligations is available only under Regulation 10(1)(a)(ii) of SAST/Takeover Regulations, 2011.

16. Fact that all relevant filings to SEBI / Stock Exchanges under relevant provisions of SAST/Takeover Regulations, 2011 were made regarding inter-se promoter transfers is not a ground for seeking that these transfers should become eligible for exemption from making an open offer. Argument of the Appellants that no 'alien entity' has come in as promoter / promoters in the Target Company ever is also not a reason for claiming exemption for the inter-se promoter transfers from making an open offer. The law is not interpreted such that because nothing untoward has happened the benefit of law should be available to an entity. Compliance of law has to be the starting point, not the end result.

17. This Tribunal also sought to know as to whether it is essential to declare the history of promoter holding in the listing agreement as part of the format of the relevant filing. It was clarified by learned senior counsel for the respondent that such declarations are not part of the format. This fact also underscores that the promoter holding pattern prior to listing is not a relevant factor to be reckoned with for this purpose. Hence, it is irrelevant whether the same promoters were holding the same shares for over a long period either in the target company or in the parent company or both, prior to listing the target company. The only relevant factor is date of listing the target company and the promoter holding filed by the target company as part of the listing agreement. In the present appeal, it is an undisputed fact that

the target company was listed only on July 30, 2012 and the inter-se promoter transfers were made first on July 9-10, 2014 and subsequently on September 5 and October 20, 2014. Therefore, as on the first date of inter-se promoter transfer the Target Company was listed for 23 months and 10 days and on the date of the last inter-se transfers the Target Company was listed for 26 months and 20 days. As such, the promoter holding as per the listing agreement was filed by the target company only for 23 months and 10 days as on the first date of inter-se promoter transfers. Since, the stated eligibility condition as per Regulation 10(1)(a)(ii) is “for not less than 3 years” the inter-se promoter transfers made on July 9-10, 2014 and also subsequently on September 5 and on October 20, 2014, all were ineligible for exemption from making an open offer.

18. It is fairly admitted by the Respondent that Weizmann Guidance dated October 25, 2012 was not a correct interpretation of law applicable as on that date. SEBI official should have been more careful and diligent in issuing interpretations of Regulations; however, a wrong interpretation given by an official cannot be used as a shelter in interpreting provisions of law. It is on record that on December 5, 2012 informal guidance on Commercial Engineers and Body Builders Company Ltd. was also available in public domain. The argument of the Appellants that this was not a relevant example as no details relating to this company was available in public domain prior to its listing in 2010 has no merit since this guidance as well as Regulation 10(1)(a)(ii) very clearly state that 3 years subsequent to listing of the Target Company is invariably needed for inter-se promoter transfers to become eligible for exemption from an open offer obligation.

19. We have also perused the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003. Clauses 12 and 13 of the scheme state as follows:-

*“12. A no-action letter or an interpretive letter issued by a Department constitutes the view of the Department but will not be binding on the Board, though the Board may generally act in accordance with such a letter.*

*13. The letter issued by a Department under this scheme should not be construed as a conclusive decision or determination of any question of law or fact by SEBI. Such a letter cannot be construed as an order of the Board under section 15T of the Act and shall not be appealable.”*

Accordingly, an interpretation provided under the Scheme by an official of department of SEBI cannot be used against the correct interpretation of law (in the instant matter SAST/Takeover Regulations, 2011). This Tribunal's order in the matter of Deepak Mehra vs. SEBI (supra) also had held this view.

20. For the reasons stated above, we do not find any reason to interfere with the impugned direction of SEBI dated May 5, 2016. As a result, the appeals fail. Appellants are directed to proceed with implementing the open offer immediately. Miscellaneous Applications, therefore, become infructuous and are disposed of accordingly. No order as to costs.

21. After the judgment was pronounced, counsel for the Appellants sought stay for a period of four weeks on implementation of the public offer so as to enable the Appellants to move the Apex Court. The Appellants in their open offer had agreed to purchase shares from the public at Rs. 3.20 per share, whereas, SEBI has directed the Appellants to make the open offer at Rs. 6.30 per share. Since the appeal is dismissed, the Appellants must at least make good the amount payable as per their own open offer. It is not in

dispute that the amount payable as per the open offer made by the Appellants comes to Rs. 115 crore. As ordered the Appellants are liable to pay interest @ 10% p.a. from July 09-10, 2014 till payment.

22. Accordingly, we direct the Appellants to deposit with SEBI the amount of Rs. 115 crore with interest @ 10% p.a. from July, 2014 till March 31, 2017 within four weeks from today. Subject to the payment of the aforesaid amount within the time stated above, we direct SEBI not to enforce the impugned order dated May 5, 2016 for a period of four weeks from today.

Sd/-  
Justice J.P. Devadhar  
Presiding Officer

Sd/-  
Jog Singh  
Member

Sd/-  
Dr. C.K.G. Nair  
Member

05.04.2017  
Prepared and compared by:  
rhn/msb