

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BM/AO- 85/2010]

**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 BY ADJUDICATING OFFICER) RULES, 1995**

In respect of

Mr. Nirav Mehta

PAN No. not available.

In the matter of

**Maloo Polymers Ltd.
(Now known as Maloo Gems and Jewellery Ltd.)**

FACTS OF THE CASE IN BRIEF

1. M/s. Corporate Strategic Allianz Private Limited (hereinafter referred to as 'CSAPL/Merchant Banker'), on behalf of Mr. Dipan Patwa and Mr. Manish Janani (hereinafter referred to as Acquirers') filed a Letter of Offer (hereinafter referred to as 'LOO') dated January 27, 2009 before the Securities and Exchange Board of India (hereinafter referred to as "SEBI") for acquiring 10,04,000 fully paid up equity shares of Rs. 10/- each of **Maloo Polymers Ltd** at the offer price of Rs.12/-, representing 20% of the total paid up capital and voting equity share capital of the company.
2. **Maloo Polymers Ltd.** (hereinafter referred to as "**MPL/Target Company**") is a company incorporated and registered under the Companies Act, 1956 having its registered office at B-1, Harikrupa Apartment, Near Naranpura Railway Crossing, Naranpura, Ahmedabad - 380013. The authorized share capital of MPL as on the date of Public announcement was Rs 5,50,00,000 comprising of 55,00,000 shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company was Rs.5,02,00,000/- comprising of 50,20,000

equity shares of Rs.10/- each fully paid-up. The company was listed on Ahmedabad Stock Exchange (hereinafter referred to as ASE), Jaipur Stock Exchange (hereinafter referred to as JSE) Saurashtra and Kutch Stock Exchange (hereinafter referred to as SKSE) and Pune Stock Exchange (hereinafter referred to as PSE) at the relevant time.

3. As per the aforesaid draft offer document the acquirer entered into Share Purchase Agreement (hereinafter referred to as SPA) dated December 18, 2008 with the promoters of Maloo Polymers Ltd. for purchase of 15,20,000 fully paid up equity shares for cash at a price of Rs.1/- per fully paid up equity share. The sellers were the part of the promoter group of the Target Company. The aforesaid agreement to acquire shares and consequential change in control and management of the target company triggered the open offer for which the aforesaid offer document was filed.
4. While examining the aforesaid offer document of the Acquirer to acquire the shares of the Target Company it was observed that in Para 6.11 of the offer document that the promoters of the Target Company did not comply with the provisions of Regulation 6(1) and 6(3) and 8(1) and 8(2), for the years 1998 to 2002 and 2008, of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (**hereinafter referred to as 'Takeover Regulations'**) within stipulated time. As per the LOO the promoters of the target company were Mr. Nirav Metha (**hereinafter referred to as the Noticee**), Mr. Anant Maloo, Mr. Sanjay Maloo, Mr. Ajay Maloo, Ms. Shalini Maloo, Ms. Nina Maloo, Ms. Nilima Maloo, Mr. J.P. Maheshwari, Ms. Darashna Bavisi, Mr. Manoj Sharda, Ms. Rajni Sharda, Mr. Hemant Sharda and M/s Maloo Building Materials P Ltd. (**hereinafter collectively referred to as 'the promoters'**) Based on the aforesaid information with respect to the non-compliance of Takeover Regulations, Adjudication proceedings under Chapter VI A of SEBI Act, 1992 (hereinafter referred to as "Act") were initiated against the Noticee and other promoters under Sec15A (b) of SEBI Act, 1992 to inquire into and adjudicate the alleged violations of the provisions of 6(1), 6(3), 8(1) and 8(2) of the Takeover Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

5. I was appointed as the Adjudicating Officer, vide order dated January 13, 2010, under Section 15I of the SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and

Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Rules') to inquire into and adjudge under Section 15A (b) of the SEBI Act for the alleged violation of Regulations 6(1), 6(3), 8(1) and 8(2), of Takeover Regulations committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A common Show Cause Notice (hereinafter referred to as "SCN") dated February 16, 2010 was issued to the Noticee and the promoters under rule 4(1) of SEBI Rules communicating the alleged violation of Takeover Regulations as detailed below. A copy of the offer document was also sent alongwith the SCN.

Sl. No.	Regulation/ Sub-regulation	Due date of compliance	Actual date of compliance
1.	6(1)	20.04.1997	08.12.2008
2.	6(3)	20.04.1997	08.12.2008
3.	8(1)	21.04.1998	21.03.2003
4.	8(2)	21.04.1998	21.03.2003
5.	8(1)	21.04.1999	21.03.2003
6.	8(2)	21.04.1999	21.03.2003
7.	8(1)	21.04.2000	21.03.2003
8.	8(2)	21.04.2000	21.03.2003
9.	8(1)	21.04.2001	21.03.2003
10.	8(2)	21.04.2001	21.03.2003
11.	8(1)	21.04.2002	21.03.2003
12.	8(2)	21.04.2002	21.03.2003
13.	8(1)	21.04.2008	13.08.2008
14.	8(2)	21.04.2008	13.08.2008

7. The Noticee was also called upon to show cause as to why an inquiry should not be initiated against him and penalty be not imposed under Section 15A (b) of the SEBI Act for the alleged violations.
8. A common reply was submitted to the SCN vide letter dated March 23, 2010. The submissions made by Mr. Anant Maloo for himself and on behalf of the other promoters, *inter alia*, are as under:

We refer to your notice issued to me and 12 other persons –viz. namely Mr. Ajay Maloo, Mr. Sanjay Maloo, Ms. Shalini Maloo, Ms. Nina Maloo, Ms. Nilima Maloo, Mr. Nirav Mehta, Mr. J.P. Maheswari, Ms. Darashna Bavisi, Mr Manoj Sharda, Ms. Rajni Sharda, Mr. Hemant Sharda and M/s Maloo Building Materials P Ltd. We wish to inform that some of the Noticees were the erstwhile promoters of Maloo Polymers Ltd. before it was taken over during March 2009.

The Offer Document referred to in para 2 of your Notice was filed by the Merchant Banker on behalf of the Acquirers. We have gone through para 6.11 on page 15 of the said document forwarded to us by you alongwith Annexure 1 attached to the same. We have found that there is an error in the information furnished in the same and the actual date of compliance by the promoters etc. is inadvertently shown as the same date of actual compliance made by the Company. We give below the exact status of compliance in the following table:

Sr.	Regulation/ Sub-regulation	Due date of compliance	Actual Date of compliance	Date of compliance by the company	Date of compliance shown in the offer document	Evidence /Annexure
	6(1)	N.A	N.A	N.A	08.12.2008	N.A
	6(3)	N.A	N.A	N.A	08.12.2008	N.A
	8(1)	N.A	N.A	21.03.2003	21.03.2003	N.A
	8(2)	21.04.1998	13.04.1998	21.03.2003	21.03.2003	A
	8(1)	N.A	N.A	21.03.2003	21.03.2003	N.A
	8(2)	21.04.1999	16.04.1999	21.03.2003	21.03.2003	B
	8(1)	N.A	N.A	21.03.2003	21.03.2003	N.A
	8(2)	21.04.2000	17.04.2000	21.03.2003	21.03.2003	C
	8(1)	N.A	N.A	21.03.2003	21.03.2003	N.A
	8(2)	21.04.2001	14.04.2001	21.03.2003	21.03.2003	D
	8(1)	N.A	N.A	21.03.2003	21.03.2003	N.A
	8(2)	21.04.2002	16.04.2002	21.03.2003	21.03.2003	E
	8(1)	N.A	N.A	13.08.2008	13.08.2008	N.A
	8(2)	21.04.2008	05.04.2008	13.08.2008	13.08.2008	F

With regard to the compliance of Regulations 6(1) and 6(3) are concerned, we request you to note that that the same were transitional provisions applicable to those companies which were listed on or before the pronouncement of the SEBI Takeover Regulations ie. on or before 20.02.1997. we wish to inform you that Maloo Polymers Ltd. became a listed company during July, 1997 and therefore the provisions of the Regulations 6(1) and 6(3) were not applicable. Accordingly, no disclosures under these regulations were made.

As far as compliance of Regulation 8(1) was concerned please note that none of the persons was holding more than ten/fifteen percent of shares or voting rights in the company at the relevant point of time and hence Regulations 8(1) is not applicable and no disclosures were required to be made.

We therefore deny the allegations and humbly submit that we have not violated the provisions of Regulations 6(1), 6(3), 8(1) and 8(2) of SEBI Takeover Regulations. Since we have submitted the reply in time we have not violated the provisions of Section 15 A of the SEBI Act, 1992 as well.

9. In the interest of natural justice and in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of hearing on June 08, 2010 vide notice dated may 18, 2010. Accordingly, Mr. Keyoor Bakshi, Authorized Representative, appeared on behalf of the Noticee and made the following submissions.

The submissions made vide letter dated March 23, 2010 may be taken as the final reply. We will submit the confirmation from the company, that Regulation 8(2) was complied within due time.

10. Vide Notice dated May 13, 2010 the target Company was also asked to confirm whether the promoters had made the disclosures under Regulation 8(2) of the Takeover Regulations, to the company, for the years 1998 to 2002 and 2008, within the stipulated time.

The company vide its reply dated July 12, 2010 confirmed that the promoters made the disclosures under Regulation 8(2) within the stipulated time.

CONSIDERATION OF ISSUES

11. I have carefully perused the written submissions of the Noticee and the documents available on record. It is observed that the allegation, against the Noticee, is that he along with the other promoters have failed to make the relevant disclosure under the provisions of Regulation 6(1), 6(3) and Regulations 8(1) and 8(2), for the years 1998 to 2002 and 2008, of the Takeover Regulations.
12. The issues that arise for consideration in the present case are :
- a. Whether the Noticee has violated the provisions of Regulation 6(1) and 6(3) of the Takeover Regulations?
 - b. Whether the Noticee has violated the provisions of Regulations 8(1) and 8(2), for the years 1998 to 2002 and 2008, of the Takeover Regulations?
 - c. Does the violation, if any, attract monetary penalty under Section 15 A (b) of SEBI Act?
 - d. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

FINDINGS

13. Before moving forward, it is pertinent to refer to the provisions of Regulation 6(1), 6(3), 8(1) and 8(2) of Takeover Regulations, which reads as under:

6. Transitional provision.

(1) Any person, who holds more than five per cent shares or voting rights in any company, shall within two months of notification of these regulations disclose his aggregate shareholding in that company, to the company.

(2)...

(3) A promoter or any person having control over a company shall within two months of notification of these regulations disclose the number and percentage of shares or voting rights held by him and by person(s) acting in concert with him in that company, to the company.

(4) ...

8. Continual disclosures.

(1) Every person, including a person mentioned in regulation 6 who holds more than ¹[fifteen] per cent shares or voting rights in any company, shall, within 21 days from the

¹ Substituted for "ten" by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 1998, w.e.f. 28-10-1998.

financial year ending March 31, make yearly disclosures to the company, in respect of his holdings as on 31st March.

(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.

(3)...

14. The first issue for consideration is whether the Noticee failed to make required disclosures under regulation 6(1) and 6(3) within the stipulated time. It was submitted on behalf of the Noticee, vide letter dated March 23, 2010, that the provisions of Regulations 6(1) and 6(3) of the Takeover Regulations are not applicable to the Noticee as the same were transitional provisions which were applicable only to shareholders and promoters of companies that were listed when the Takeover Regulations came into effect. ie. on or before February 20, 1997. It was further submitted that Maloo Polymers Ltd. became a listed company during July, 1997 and in support of this, copy of the offer document dated March 15, 2007 for the initial public issue of shares was submitted by the Noticee.

15. As per Regulation 6(1) any person, who holds more than five per cent shares or voting rights in any company, shall within two months of notification of these regulations disclose his aggregate shareholding in that company, to the company and under 6(3) of the Takeover Regulations a promoter or any person having control over a company shall within two months of notification of these regulations disclose the number and percentage of shares or voting rights held by him and by person(s) acting in concert with him in that company, to the company. It is observed that the above regulations were notified on February 20, 1997. As observed from the copy of the offer document submitted before me the public issue was made by the company on June 2, 1997. Further, it is observed from the copy of the letter of Ahmedabad Stock Exchange, granting permission to the company to list on the exchange that the company got listed w.e.f. July 14, 1997. Thus when the transitional provisions of 6(1) and 6(3) were notified i.e. on February 20, 1997, the company was not listed and accordingly the provisions of the aforesaid regulations does not apply in case of the promoters of the company. The submission thus made on behalf of the Noticee is acceptable.

16. The second issue for consideration is whether the Noticee failed to make the relevant disclosures under Regulations 8(1) and 8(2), for the years 1998 to 2002 and 2008, of the

Takeover Regulations within the stipulated time. It was submitted on behalf of the Noticee that ‘As far as compliance of Regulation 8(1) was concerned please note that none of the persons was holding more than ten/fifteen percent of shares or voting rights in the company at the relevant point of time and hence Regulations 8(1) is not applicable and no disclosures were required to be made.’

17. As per Regulation 8(1) of the Takeover Regulations every person, including a person mentioned in regulation 6 who holds more than fifteen per cent (substituted for ten percent w.e.f 28-10-1998) shares or voting rights in any company, shall, within 21 days from the financial year ending March 31, make yearly disclosures to the company, in respect of his holdings as on 31st March. From the documents submitted on behalf of the Noticee along with the common reply it is observed that the holding of the Noticee and the other promoters/PACs from 1998 to 2001 and as on 31.2. 2008 were as follows:

Sl.no.	Names of promoters	No of shares held as on 31.3.1998 to 31.3.2001 and as on 31.3.2008	% of shares to total paid up capital
1	Maloo S Anant	257600	5.13
2	Maloo S Ajay	454400	9.05
3	Maloo S Sanjay	417600	8.32
4	Maloo S Shalini	2600	0.05
5	Maloo A Nina	7100	0.14
6	Maloo A Nilima	100	0.00
7	Mehta A Nirav	100	0.00
8	Maheshwari J P	500	0.01
9	Bavisi Darshana	2500	0.05
10	Sharda Manoj	2500	0.05
11	Sharda Rajni	2500	0.05
12	Sharda Hemant	2500	0.05
13	Maloo Building Materials P Ltd. (Formerly, Maloo Investments P Ltd.)	370000	7.37

It is observed from above that the Noticee was holding only 100 shares of the company and the Noticee's shareholding never touched 10%/15% of the paid up capital of the company over the years. In view of the above, the provisions of Regulations 8(1) of SAST do not become applicable to the Noticee and hence the submission made on behalf of the Noticee is acceptable.

18. With respect to the disclosure under regulation 8(2) of the Takeover Regulations it was submitted on behalf of the Noticee that there *'is an error in the information furnished in the same and the actual date of compliance by the promoters etc. is inadvertently shown as the same date of actual compliance by the company'*. In support of this a copy of the disclosures made to the company, under Regulation 8(2) of the Takeover Regulations, for the years 1998-2002 and 2008 was submitted, which was also acknowledged by the company. From the details/documents submitted on behalf of the Noticee the compliance status is as summarized below.

Sr.	Regulation/ Sub-regulation	Due date of compliance	Actual Date of compliance	Complied stipulated YES/NO	within time
1.	8(2)	21.04.1998	13.04.1998	YES	
2.	8(2)	21.04.1999	16.04.1999	YES	
3.	8(2)	21.04.2000	17.04.2000	YES	
4.	8(2)	21.04.2001	14.04.2001	YES	
5.	8(2)	21.04.2002	16.04.2002	YES	
6.	8(2)	21.04.2008	05.04.2008	YES	

19. Further the company has also in its reply dated July 11, 2010 confirmed that the promoters had made the required disclosures under regulation 8(2) to the company, for the years 1998-2002 and 2008, within the stipulated time. In view of the above allegation of violation of Regulation 8(2) does not stand established.

20. On the basis of the materials/documents produced before me and the explanations given above I am of the opinion that the alleged violations of Regulations 6(1), 6(3), 8(1) and 8(2), for the years 1998 to 2002 and 2008 does not stand established.

ORDER

21. Considering the facts and circumstances of the case, I do not find the instant matter fit for imposition of penalty in terms of section 15A (b) of SEBI Act and dispose of the proceedings accordingly.

22. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the SEBI.

Date: August 02, 2010	BARNALI MUKHERJEE
Place: Mumbai	ADJUDICATING OFFICER