

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI  
CORAM: S. RAMAN, WHOLE TIME MEMBER

ORDER

UNDER REGULATION 11(5) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.

IN THE MATTER OF PROPOSED ACQUISITION OF SHARES AND VOTING RIGHTS IN BATLIBOI LIMITED.

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**Background –**

- 1.1 Batliboi Limited (“**Target Company**”) was incorporated in 1941 at Mumbai as a private limited company under the name of *Bhogilal Menghraj & Company*. In 1982, *Bhogilal Menghraj & Company* was converted into a public limited company. In 1984, *Bhogilal Menghraj & Company* was changed to its current name. The Registered Office of the Target Company is at Bharat House, 5<sup>th</sup> Floor, 104, Bombay Samachar Marg–400001. The shares of the Target Company are listed on BSE Limited (“**BSE**”).
- 1.2 SEBI received an application dated January 28, 2016 (received at SEBI on February 2, 2016) (“**Application**”) from Bhogilal Family Trust (represented by its Trustee – Shri Nirmal Bhogilal) (“**Proposed Acquirer**”) seeking exemption from the applicability of Regulation 3(1) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“**Takeover Regulations**”) in respect of the proposed acquisition and control of the shareholding and voting rights in the Target Company.
- 1.3 Regulation 3 of the Takeover Regulations states –

***“Substantial acquisition of shares or voting rights. –***

*3. (1) No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty-five per cent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.*

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

rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations:

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

1.4 In the aforementioned Application, the following was stated –

- i. “The details of the current shareholding pattern of the Target Company as at 31<sup>st</sup> December, 2015, is as under:

<b>Table A</b>			
<b>Sr. No.</b>	<b>Name</b>	<b>No. of shares</b>	<b>% Shareholding</b>
<b>A.</b>	<b>Promoter Group</b>		
1.	<b>Nirmal Bhogilal</b>	<b>1,87,29,713</b>	<b>65.2241</b>
2.	<b>Bhogilal Family Trust</b>	<b>0</b>	<b>0.0000</b>
3.	Sheela Nirmal Bhogilal	8,41,022	2.9288
4.	Kabir Nirmal Bhogilal	4,54,176	1.5816
5.	Maya Goyel	18,296	0.0637
6.	Nirbhag Investment Private Limited	6,18,200	2.1528
7.	Pramaya Shares & Securities Private Limited	6,00,000	2.0894
8.	Bhagmal Investment Private Limited	2,40,800	0.8386
9.	Dharini B Anand	2,680	0.0093
10.	Chitra Ashok Kumar	2,680	0.0093
11.	Farah Bhogilal	2,000	0.0070
12.	Darshana Bhogilal	1,000	0.0035
		<b>2,15,10,567</b>	<b>74.9081</b>
<b>B.</b>	<b>Public Shareholding</b>	<b>22,05,316</b>	<b>25.0919</b>
<b>C.</b>	<b>Total (A + B)</b>	<b>2,87,15,883</b>	<b>100.0000</b>

- ii. Shri Nirmal Bhogilal, Chairman and Managing Director and also the Promoter of the Target Company, currently holds (1,87,29,713) equity shares [equivalent to (65.2241%) of the total shareholding] of the Target Company in his individual capacity. Shri Nirmal Bhogilal is named as Promoter in the shareholding pattern filed by the Target Company in terms of the listing agreement for more than 3 years.
- iii. The following family members, being immediate relatives of Shri Nirmal Bhogilal, are also named as part of the Promoter Group in the shareholding pattern filed by the Target Company in terms of the Listing Agreement for more than 3 years:
- Smt. Sheela Nirmal Bhogilal (wife of Shri Nirmal Bhogilal)
  - Shri Kabir Nirmal Bhogilal (son of Shri Nirmal Bhogilal)
  - Mrs. Maya Goyel (daughter of Shri Nirmal Bhogilal).

### Proposed Transaction

- iv. Pursuant to a private family arrangement to provide for family succession and welfare of Shri Nirmal Bhogilal's family, it is proposed that Bhogilal Family Trust/Acquirer, which is a Promoter – managed Private Family Trust, would acquire 15,00,000 equity shares (equivalent to 5.2236% of total shareholding) of the Target Company held by Shri Nirmal Bhogilal ("**Transferor**") by way of gift through an off–market transaction.

### Details of Acquirer

- v. The Acquirer is a private irrevocable trust formed under the Indian Trusts Act, 1882, set–up for the welfare of Shri Nirmal Bhogilal's family and provide for family succession. The Trust Constituents are stated as under:

<b>Trust Constituents</b>	<b>Name</b>	<b>Particulars</b>
<b>Settlor</b>	Mrs. Chitra Ashok Kumar	Part of Promoter Group of Target Company
<b>Trustees</b>	Shri Nirmal Bhogilal (Transferor)	Promoter of Target Company
	Smt. Sheela Nirmal Bhogilal	Part of Promoter Group of Target Company
	Bhogilal Trusteeship Private Limited	100% owned by Promoter and Promoter Group i.e. Shri Nirmal Bhogilal and Smt. Sheela Nirmal Bhogilal of Target Company.
<b>Beneficiaries</b>	There are Corpus Beneficiaries and Income Beneficiaries. Details are as under:	
<b>(A) Corpus Beneficiaries</b>	(1) Kabir Family Trust  Beneficiaries of Kabir Family Trust –  i. Shri Kabir Nirmal Bhogilal ii. Ms. Kiara Kabir Bhogilal iii. Master Aaran Kabir Bhogilal	i. Son of Shri Nirmal Bhogilal (part of Promoter Group) ii. Granddaughter of Shri Nirmal Bhogilal iii. Grandson of Shri Nirmal Bhogilal
	(2) Maya Family Trust  Beneficiaries of Maya Family Trust –  i. Mrs. Maya Goyel ii. Smt. Sheela Nirmal Bhogilal	i. Daughter of Shri Nirmal Bhogilal (part of Promoter Group) ii. Wife of Shri Nirmal Bhogilal (part of Promoter Group)
<b>(B) Income Beneficiaries</b>	i. Smt. Sheela Nirmal Bhogilal ii. Shri Kabir Nirmal Bhogilal iii. Mrs. Maya Goyel	i. Wife of Shri Nirmal Bhogilal (part of Promoter Group) ii. Son of Shri Nirmal Bhogilal (part of Promoter Group) iii. Daughter of Shri Nirmal Bhogilal (part of Promoter Group)

- vi. As can be observed from above, all the Trustees of the Acquirer i.e. Shri Nirmal Bhogilal, Smt. Sheela Nirmal Bhogilal and Bhogilal Trusteeship Private Limited, are part of the Promoters and/or Promoter Group of the Target Company.

Also, all the Beneficiaries are the immediate relatives and family members of Shri Nirmal Bhogilal. Kindly note that the Trust Deeds provide that the Beneficiaries shall always be immediate relatives and family members of Shri Nirmal Bhogilal and no third party would become a beneficiary of the said Family Trusts at any point of time during the Trust Period.

- vii. Considering that the Acquirer, presently, does not hold any shares in the Target Company, the proposed acquisition would exceed the stipulated threshold of 5%. However, there would be no change in the aggregate shareholding of the Promoter Group alongwith persons acting in concert, which would continue to remain at 2,15,10,567 (74.9081%) shares.
- viii. The pre-transfer and post-transfer shareholding of the Acquirer and Transferor and the shareholding pattern of the Promoter Group before and after the proposed acquisition by the Acquirer is summarized below:

<b>Table B</b>					
	Name	Pre – Acquisition (as on 31.12.2015)		Post – Acquisition	
		Shares	%	Shares	%
	<b>Promoter Group</b>				
1.	<b>Nirmal Bhogilal*</b>	<b>1,87,29,713</b>	<b>65.2241</b>	<b>1,72,29,713</b>	<b>60.0005</b>
2.	<b>Bhogilal Family Trust*</b>	<b>0</b>	<b>0.0000</b>	<b>15,00,000</b>	<b>5.2236</b>
3.	Sheela Nirmal Bhogilal	8,41,022	2.9288	8,41,022	2.9288
4.	Kabir Nirmal Bhogilal	4,54,176	1.5816	4,54,176	1.5816
5.	Maya Goyel	18,296	0.0637	18,296	0.0637
6.	Nirbhag Investment Private Limited	6,18,200	2.1528	6,18,200	2.1528
7.	Pramaya Shares & Securities Private Limited	6,00,000	2.0894	6,00,000	2.0894
8.	Bhagmal Investment Private Limited	2,40,800	0.8386	2,40,800	0.8386
9.	Dharini B Anand	2,680	0.0093	2,680	0.0093
10.	Chitra Ashok Kumar	2,680	0.0093	2,680	0.0093
11.	Farah Bhogilal	2,000	0.0070	2,000	0.0070
12.	Darshana Bhogilal	1,000	0.0035	1,000	0.0035
<b>A.</b>	<b>Total Promoter Group</b>	<b>2,15,10,567</b>	<b>74.9081</b>	<b>2,15,10,567</b>	<b>74.9081</b>
<b>B.</b>	<b>Public</b>	<b>22,05,316</b>	<b>25.0919</b>	<b>22,05,316</b>	<b>25.0919</b>
<b>C.</b>	<b>Total (A + B)</b>	<b>2,87,15,883</b>	<b>100.0000</b>	<b>2,87,15,883</b>	<b>100.0000</b>
*Of the 1,87,29,713 shares of the Target Company held by Shri Nirmal Bhogilal, Bhogilal Family Trust/Acquirer would acquirer 15,00,000 equity shares. The remaining 1,72,29,713 shares will be retained by Shri Nirmal Bhogilal.					

#### **Rationale for seeking exemption under Takeover Regulations**

- ix. The acquisition would take place pursuant to a private family arrangement intended for family succession and welfare of Shri Nirmal Bhogilal's family and would be a non-commercial transaction, which would not affect or prejudice the interests of the public shareholders of the Target Company in any manner.
- x. The proposed gift of 15,00,000 equity shares (5.2236%) of the Target Company held by Shri Nirmal Bhogilal to the Bhogilal Family Trust is only an internal reorganization within the Bhogilal Family, pursuant to a private family arrangement, for the family succession and benefit of family members of Shri Nirmal Bhogilal.
- xi. The proposed gift of shares of the Target Company would not result in any change in the shareholding of Promoter Group nor would it result in any change in the control or management of

*the Target Company. The total Promoter Group shareholding pre-acquisition and post- acquisition shall continue to remain the same at 2,15,10,567 equity shares (74.9081%). There would not be any additional acquisition by the Promoter Group as a whole.*

- xii. The Trustees, namely, Shri Nirmal Bhogilal, Smt. Sheela Nirmal Bhogilal and Bhogilal Trusteeship Private Limited, through whom the control is exercised over the assets of the Bhogilal Family Trust, are part of the Promoter Group of the Target Company. Consequently, there would be no effective change in the exercise of voting rights or change in control or management of the Target Company pursuant to the proposed acquisition of shares by the Acquirer.*
- xiii. The ultimate beneficiaries of the Acquirer are and shall always remain the immediate relatives of Shri Nirmal Bhogilal and persons forming part of the Promoter Group of the Target Company.”*

1.5 Vide letter dated February 17, 2016, the Acquirer submitted the following clarifications in relation to the Application dated January 28, 2016, –

**1. Clarification regarding the Application filed for seeking exemption under Regulation 3(1) and/or Regulation 3(2) of the Takeover Regulations.**

*“It is hereby requested (for) grant (of) an exemption from the applicability of Regulation 3(1) and/or Regulation 3(2) of the Takeover Regulations (as applicable) in relation to the proposed acquisition of 15,00,000 equity shares by Bhogilal Family Trust from Shri Nirmal Bhogilal for the reasons stated in the Application.”*

**2. Clarification regarding one of the Trustees of Bhogilal Family Trust, viz. Bhogilal Trusteeship Private Limited.**

*“Clause 3.1 of the Trust Deed of Bhogilal Family Trust (Acquirer) provides that it shall have minimum two Trustees and maximum five Trustees at all time. At the time of its formation, it is provided that there shall be three Trustees – Shri Nirmal Bhogilal as Main Trustee for his life whereas Smt. Sheela Nirmal Bhogilal and Bhogilal Trusteeship Private Limited as other Trustees. Bhogilal Trusteeship Private Limited is a private company which is 100% owned by Promoter and Promoter Group i.e. Shri Nirmal Bhogilal and Smt. Sheela Nirmal Bhogilal.*

*Clause 3.5 of the Trust Deed of Bhogilal Family Trust provides that in the case of death, permanent incapacity or resignation of Shri Nirmal Bhogilal, Smt. Sheela Nirmal Bhogilal shall become the Main Trustee of the Acquirer whereas Bhogilal Trusteeship Private Limited will continue to be the other Trustee. Further, it is also mentioned that upon such even, Shri Kabir Nirmal Bhogilal (son of Shri Nirmal Bhogilal) and Mrs. Maya Goyel (daughter of Shri Nirmal Bhogilal) shall become Trustees of the Acquirer without any further act (if not appointed as Trustees before such event).*

*Thus, in case of death of Shri Nirmal Bhogilal, Smt. Sheela Nirmal Bhogilal (wife of Shri Nirmal Bhogilal) will have control over 2 Trusteeship seats of the Acquirer – one, in the capacity of Main Trustee of the Acquirer and other, by being the shareholder of other Trustees of the Acquirer i.e. Bhogilal Trusteeship Private Limited. In other words, in case of death of Shri Nirmal Bhogilal, the majority decision of the Acquirer will continue to vest with Smt. Sheela Nirmal Bhogilal – the family matriarch. This would enable an orderly and smooth transition of control of the Target Company from the current Promoters to their legal heirs in future in accordance with the family’s desired succession plan.”*

**Revised Application dated July 22, 2016 –**

1.6 Vide a Revised Application dated July 22, 2016 (received at SEBI on July 25, 2016) (“**Revised Application**”), the Acquirer *inter alia* submitted as under:

- i. “We hereby wish to inform your goodself that there is a change in the contemplated number of acquisition of equity shares of the Target Company by Bhogilal Family Trust from the existing Promoter i.e. Shri Nirmal Bhogilal.*
- ii. Bhogilal Family Trust is now contemplating to acquire 45,00,000 equity shares (15.6708%) of the Target Company from Shri Nirmal Bhogilal instead of 15,00,000 equity shares, as contemplated earlier.*
- iii. The proposed transfer would increase the individual shareholding and voting rights of the Acquirer in the Target Company from 0% to 15.6708%. The shareholding of the Acquirer together with persons acting in concert (persons in the Promoter Group other than the Transferor) shall increase from 9.6840% to 25.3548%, which exceed the stipulated threshold of 25% mentioned under Regulation 3(1) of the Takeover Regulations. Also the proposed acquisition is in excess of the creeping limit of 5% stipulated under Regulation 3(2) of the Takeover Regulations.*

iv. The pre-transfer and post-transfer shareholding of the Acquirer and Transferor and the shareholding pattern of the Promoter Group before and after the proposed acquisition by the Acquirer is summarized below:

<b>Table C</b>					
	<b>Name</b>	<b>Pre – Acquisition (as on June 30, 2015)</b>		<b>Post – Acquisition</b>	
		<b>Shares</b>	<b>%</b>	<b>Shares</b>	<b>%</b>
	<b>Promoter Group</b>				
1.	<b>Nirmal Bhogilal*</b>	<b>1,87,29,713</b>	<b>65.2241</b>	<b>1,42,29,713</b>	<b>49.5533</b>
2.	<b>Bhogilal Family Trust*</b>	<b>0.0000</b>	<b>0.0000</b>	<b>45,00,000</b>	<b>15.6708</b>
3.	Sheela Nirmal Bhogilal	8,41,022	2.9288	8,41,022	2.9288
4.	Kabir Nirmal Bhogilal	4,54,176	1.5816	4,54,176	1.5816
5.	Maya Goyel	18,296	0.0637	18,296	0.0637
6.	Nirbhag Investment Private Limited	6,18,200	2.1528	6,18,200	2.1528
7.	Pramaya Shares & Securities Private Limited	6,00,000	2.0894	6,00,000	2.0894
8.	Bhagmal Investment Private Limited	2,40,800	0.8386	2,40,800	0.8386
9.	Dharini B Anand	2,680	0.0093	2,680	0.0093
10.	Chitra Ashok Kumar	2,680	0.0093	2,680	0.0093
11.	Farah Bhogilal	2,000	0.0070	2,000	0.0070
12.	Darshana Bhogilal	1,000	0.0035	1,000	0.0035
<b>A.</b>	<b>Total Promoter Group</b>	<b>2,15,10,567</b>	<b>74.9081</b>	<b>2,15,10,567</b>	<b>74.9081</b>
<b>B.</b>	<b>Public</b>	22,05,316	25.0919	22,05,316	25.0919
<b>C.</b>	<b>Total (A + B)</b>	<b>2,87,15,883</b>	<b>100.0000</b>	<b>2,87,15,883</b>	<b>100.0000</b>
*Of the 1,87,29,713 shares of the Target Company held by Shri Nirmal Bhogilal, Bhogilal Family Trust/Acquirer would acquirer 45,00,000 equity shares. The remaining 1,42,29,713 shares will be retained by Shri Nirmal Bhogilal.					

v. The acquisition would take place pursuant to a private family arrangement intended for family succession and welfare of Shri Nirmal Bhogilal's family and would be a non – commercial transaction, which would not affect or prejudice the interests of the public shareholders of the Target Company in any manner.

vi. The proposed gift of 45,00,000 equity shares (15.6708%) of the Target Company held by Shri Nirmal Bhogilal to the Bhogilal Family Trust is only an internal reorganization within the Bhogilal Family, pursuant to a private family arrangement, for the family succession and benefit of family members of Shri Nirmal Bhogilal.

vii. The proposed gift of shares of the Target Company would not result in any change in the shareholding of Promoter Group nor would it result in any change in the control or management of the Target Company. The total Promoter Group shareholding pre-acquisition and post- acquisition shall continue to remain the same at 2,15,10,567 equity shares (74.9081%). There would not be any additional acquisition by the Promoter Group as a whole.”

1.7 Thereafter, SEBI sought the following clarifications from the Acquirer –

- i. *Reasons for including Trusts as beneficiaries.*
- ii. *It has been mentioned that the beneficiaries would always remain immediate relatives of Shri Nirmal Bhogilal. In this regard, please clarify whether these immediate relatives would be limited to his spouse, children and their lineal descendants or would extend to other relatives as well.*

1.8 Vide letter dated August 2, 2016, the Acquirer submitted the following clarification in relation to the Revised Application dated July 22, 2016, –

**1. Clarification regarding 'Immediate Relatives'.**

*"In relation to the above, it is hereby clarified that the ultimate beneficiaries of the Bhogilal Family Trust are and will be within the following categories of persons within the family:*

- *Smt. Sheela Nirmal Bhogilal (wife of Shri Nirmal Bhogilal)*
- *Lineal ascendants and descendants of Shri Nirmal Bhogilal*
- *Spouses of the said Lineal ascendants and descendants."*

1.9 Thereafter, vide letter dated August 8, 2016, the Acquirer further submitted the following clarification in relation to the Revised Application dated July 22, 2016, –

1. *"The beneficiaries of Bhogilal Family Trust are Kabir Family Trust and Maya Family Trust, formed for the benefit of the respective families of son and daughter of Shri Nirmal Bhogilal (namely, Shri Kabir Nirmal Bhogilal and Mrs. Maya Goyel). The respective trusts of son and daughter's families are nominated as beneficiaries of Bhogilal Family Trust in order to facilitate smooth succession within the families of son and daughter of the transferor and safeguarding the interests of the family members. This can be demonstrated with the help of an example below:*

*This can be demonstrated with the help of an example below:*

*For instance, Kabir Family Trust is entitled to 80% share in the corpus of Bhogilal Family Trust and hence, Shri Kabir Nirmal Bhogilal would have the flexibility to nominate and distribute the said corpus within his family members (namely, his wife and children) in the manner desired by him. This would provide flexibility for smooth succession of the corpus amongst the lineal descendants of Shri Nirmal Bhogilal and their respective spouses.*

*Thus, as can be observed from above, Bhogilal Family Trust has 2 beneficiaries viz. the Kabir Family Trust and the Maya Family Trust, which are formed to bifurcate and clearly define the interests of the son (Shri Kabir Nirmal Bhogilal) and daughter (Mrs. Maya Goyel) of Shri Nirmal Bhogilal and also to provide them flexibility to nominate the beneficiaries for their respective share from within their respective families (spouse and lineal descendants).*



2. We also enclose herewith the requisite undertakings as requested, from the transferor (Shri Nirmal Bhogilal) and all the Trusts (namely, Bhogilal Family Trust, Kabir Family Trust and Maya Family Trust).

*'... we hereby provide the following Undertakings to SEBI:*

*(i) The Trust Deed shall contain the following covenants and Bhogilal Family Trust/Kabir Family Trust/Maya Family Trust hereby provides the following undertakings:*

- a. Any change in the trustees/beneficiaries and any change in ownership or control of share or voting rights held by the Trust shall be disclosed to the concerned stock exchanges.*
- b. The provision of the SEBI Act and the regulations framed thereunder will apply on the basis that the ownership or control of shares or voting rights vests not only directly with the trustees but also indirectly with the beneficiaries.*

*(ii) The Trust Deed shall be amended to ensure that it does not contain any limitation of liability of the trustees/ beneficiaries in relation to the provision of the SEBI Act and all regulations framed thereunder.*

*(iii) The liabilities and obligations of the Transferor under the SEBI Act and the regulations framed thereunder will not change or get diluted due to the above transfers to the Trust. (Undertaking applicable only for Transferor)."*

- 1.10 Vide letter dated September 6, 2016, the Acquirer informed SEBI as under (in relation to the Revised Application dated July 22, 2016) –

*"As provided in the above application, Bhogilal Trusteeship Private Limited is one of the Trustees of the proposed Acquirer i.e. Bhogilal Family Trust. The shareholders and Directors of Bhogilal Trusteeship Private Limited as on date are as under –*

*It is the intention of the Promoter Group that the shareholding and/or management control over Bhogilal Trusteeship Private Limited shall remain with the Promoters and/or within the family members of the Promoter Group.*

*In this regards, Bhogilal Trusteeship Private Limited hereby provides the following Undertaking as stipulated by SEBI (in the meeting held on September 1, 2016):*

*'Bhogilal Trusteeship Private Limited provides the following undertakings:*

- a. Any change in the shareholding and/or management control of Bhogilal Trusteeship Private Limited, resulting in any change in ownership or control of share or voting rights held in the Target Company shall be disclosed to the concerned stock exchanges.*

- b. *The provision of the SEBI Act and the regulations framed thereunder will apply in case of any change in the shareholding and/or management control of Bhogilal Trusteeship Private Limited, resulting in any change in ownership or control of share or voting rights held in the Target Company.*
- c. *Bhogilal Trusteeship Private Limited acknowledges that its liability as a Trustee of the Acquirer is not limited in relation to provisions of SEBI Act and all the regulations framed thereunder."*

#### Observations of the Takeover Panel on the Application made by the Proposed Acquirer –

##### A. Takeover Panel's Recommendations –

- 2.1 The Revised Application dated July 22, 2016, was forwarded to the Takeover Panel in terms of the proviso to Regulation 11(5) of the Takeover Regulations. The matter was deliberated by the Takeover Panel in its meeting held on October 20, 2016 (minutes of the said meeting were approved on November 28, 2016). The Takeover Panel made the following observations –

*"In the case of **Batliboi Limited** ... the Panel was of the view that in case a private limited company is appointed as a Trustee, there may be issues of transparency in determination of control/change in control. Further, it may be difficult to track the changes in the ultimate control of a private limited company. Therefore, the panel recommended the rejection of the application."*

- 2.2 Vide an e-mail dated December 14, 2016, SEBI sought clarification from the Acquirer in respect of certain issues concerning trustees to the Acquirer.

- 2.3 Vide letter dated December 20, 2016, the Acquirer replied to the SEBI e-mail dated December 14, 2016, as under –

*"... We confirm that Bhogilal Trusteeship Private Limited shall not be appointed as the Trustee of Bhogilal Family Trust and the Trustees would be restricted only to individual Promoters i.e. Shri Nirmal Bhogilal or Smt. Sheela Nirmal Bhogilal or the family members in their absence (upon death or incapacitation). We shall undertake suitable amendments to this effect in the Trust Deed of Bhogilal Family Trust."*

**B. Takeover Panel’s Recommendations –**

2.4 The Revised Application dated July 22, 2016, was again deliberated by the Takeover Panel in its meeting held on January 7, 2017 (minutes of the said meeting were approved on February 17, 2017) in light of the Acquirer’s letter dated December 20, 2016. The Takeover Panel made the following observations –

*“In the case of **Batliboi Limited** ... the Panel was informed that the applicant has agreed to remove private limited company as the Trustee and the trustees will be limited to individual Promoters. In view of the same, the Panel recommended grant of exemption subject to the undertakings taken by SEBI in the past.”*

**Consideration of the Application and Findings –**

3.1 I have considered the **Revised Application** alongwith further correspondences/submissions/clarifications submitted by the Proposed Acquirer; the recommendations of the Takeover Panel and other material available on record.

3.2.1 From the preceding paragraphs, it is noted that –

A. The Revised Application submitted is in respect of the proposed acquisition and control of the shareholding and voting rights in the Target Company i.e. **Batliboi Limited**.

B. The aforesaid acquisition is proposed to be made by **Bhogilal Family Trust** i.e. the **Proposed Acquirer**, in the following manner –

	Name	Pre – Acquisition (as on June 30, 2015)		Post – Acquisition	
		Shares	%	Shares	%
<b>A.</b>	<b>Promoter Group</b>				
1.	<b>Nirmal Bhogilal*</b>	1,87,29,713	65.2241	1,42,29,713	49.5533
2.	<b>Bhogilal Family Trust*</b>	0.0000	0.0000	45,00,000	15.6708
<b>B.</b>	<b>Total</b>	<b>1,87,29,713</b>	<b>65.2241</b>	<b>1,87,29,713</b>	<b>65.2241</b>

*\* Of the 1,87,29,713 shares of the Target Company held by Shri Nirmal Bhogilal, Bhogilal Family Trust/Acquirer would acquirer 45,00,000 equity shares. The remaining 1,42,29,713 shares will be retained by Shri Nirmal Bhogilal.*

i. The proposed acquisition in the Target Company would entitle the proposed Acquirer to exercise 15.6708% of the voting rights in the Target Company. Accordingly, the proposed Acquirer would trigger Regulation 3 of the Takeover Regulations.

- C. The proposed acquisition transaction is pursuant to a private family arrangement intended for family succession and welfare of Shri Nirmal Bhogilal's family and would be a non-commercial transaction. The proposed acquisition will not affect the interest of the public shareholders.
- D. There will be no change in control of the Target Company pursuant to the proposed acquisition.
- E. There is no new acquisition of shares by the Promoters Group and the pre-acquisition and post-acquisition shareholding of the Promoter Group in the Target Company will remain the same at 74.9081%.
- F. There will also be no change in the public shareholding of the Target Company.
- G. The Target Company shall continue to be in compliance with the minimum public shareholding requirements under the Securities Contracts Regulation Rules, 1957 ("SCRR") and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
- H. Vide letter dated August 8, 2016, the Proposed Acquirer forwarded copies of the Undertakings from the transferor (Shri Nirmal Bhogilal) and all the Trusts (Bhogilal Family Trust, Kabir Family Trust and Maya Family Trust), *inter alia* as under:
- (i) *"The Trust Deed shall contain the following covenants and Bhogilal Family Trust/Kabir Family Trust/Maya Family Trust hereby provides the following undertakings:*
- a. *Any change in the trustees/beneficiaries and any change in ownership or control of share or voting rights held by the Trust shall be disclosed to the concerned stock exchanges.*
- b. *The provision of the SEBI Act and the regulations framed thereunder will apply on the basis that the ownership or control of shares or voting rights vests not only directly with the trustees but also indirectly with the beneficiaries.*
- (ii) *The Trust Deed shall be amended to ensure that it does not contain any limitation of liability of the trustees/ beneficiaries in relation to the provision of the SEBI Act and all regulations framed thereunder.*
- (iii) *The liabilities and obligations of the Transferor under the SEBI Act and the regulations framed thereunder will not change or get diluted due to the above transfers to the Trust. (Undertaking applicable only for Transferor)."*
- I. Further, vide letter dated December 20, 2016, the proposed Acquirer also confirmed that *"Bhogilal Trusteeship Private Limited shall not be appointed as the Trustee of Bhogilal Family Trust and the Trustees would be restricted only to individual Promoters."*

J. From the Takeover Panel's Recommendations, the following is reiterated –

*“In the case of **Batliboi Limited** ... the Panel was informed that the applicant has agreed to remove private limited company as the Trustee and the trustees will be limited to individual Promoters. In view of the same, the Panel recommended grant of exemption subject to the undertakings taken by SEBI in the past.”*

3.2.2 Considering the aforementioned, I am of the view that exemption as sought for in the Application (read with further correspondences/submissions/clarifications) be granted to the Proposed Acquirer, subject to certain conditions as ordered herein below.

**Order –**

4.1 I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 (“**SEBI Act**”) read with Regulation 11(5) of the Takeover Regulations, hereby grant exemption to the Proposed Acquirer, viz. **Bhogilal Family Trust (represented by its Trustee – Shri Nirmal Bhogilal)**, from complying with the requirements of Regulations 3 of the Takeover Regulations with respect to its proposed acquisition/exercise of voting rights in respect of the Target Company, viz. **Batliboi Limited**, by way of proposed transactions as mentioned in the Revised Application.

4.2 The exemption so granted is subject to the following conditions:

- i. The proposed acquisition shall be in accordance with the relevant provisions of the Companies Act, 2013 and other applicable laws.
- ii. The Undertaking given by the transferor (Shri Nirmal Bhogilal) and all the Trusts (Bhogilal Family Trust, Kabir Family Trust and Maya Family Trust), vide letter dated August 8, 2016, shall be incorporated in the Deed of Trust(s) within a period of 30 days from the date of this Order and the Proposed Acquirer shall furnish authenticated copies of the same to SEBI.
- iii. The proposed acquisition shall be completed within a period of 30 days after revision of the Trust Deed(s). On completion of the proposed acquisition, the Acquirer shall file a report with SEBI in the manner provided in the Takeovers Regulations, within a period of 21 days from the date of such acquisition.
- iv. The statements/ averments made or facts and figures mentioned in the Application and in the subsequent correspondences/submissions/clarifications by the Proposed Acquirer are true and correct.

- v. The provisions of the SEBI Act and the Regulations framed thereunder will apply on the basis that the ownership or control of shares or voting rights vests not only directly with the Trustees but also indirectly with the beneficiaries of the Proposed Acquirer.
- vi. There shall be no limitation of liability of the Trustees/beneficiaries in relation to the provisions of the SEBI Act and all Regulations framed thereunder.
- vii. The Proposed Acquirer shall honour their undertakings and shall also ensure compliance with the statements, disclosures and undertakings made in the Application and in their subsequent correspondences.
- viii. The Proposed Acquirer shall confirm, on an annual basis, that it is in compliance with the exemption order passed by SEBI. The said confirmation shall be furnished to the Target Company, which it shall disclose prominently as a note to the shareholding pattern filed for the quarter ending March 31 each year, under Regulation 31 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
- ix. The Proposed Acquirer shall get the compliance status certified from an Independent Auditor annually and furnish the same to the stock exchanges with a copy endorsed to SEBI for its records.
- x. The Proposed Acquirer shall also ensure that the covenants in the Trust Deed(s) are not contrary to the above conditions and undertakings provided by itself, Kabir Family Trust and Maya Family Trust, etc. In such case, the Trust Deed(s) shall be suitably modified and expeditiously reported to SEBI.

4.3 The exemption granted above is limited to the requirements of making open offer under the Takeover Regulations and shall not be construed as exemption from the disclosure requirements under Chapter V of the Takeover Regulations; compliance with the SEBI (Prohibition of Insider Trading) Regulations, 2015; Listing Agreement/SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 or any other applicable Acts, Rules and Regulations.

4.4 The Revised Application dated July 22, 2016 (read with further correspondences/submissions/clarifications) filed by Bhogilal Family Trust (represented by its Trustee–Shri Nirmal Bhogilal), is accordingly disposed of.

Place: Mumbai  
Date: March 24, 2017

S. RAMAN  
WHOLE TIME MEMBER  
SECURITIES AND EXCHANGE BOARD OF INDIA