WTM/SM/IVD/ ID2/ 13172 /2021-22

BEFORE THE SECURITIES ANDEXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

Under Sections 11, 11(4) and 11B (1) of the Securities and Exchange Board of India Act, 1992

In respect of:

Sr. No.	Names of the Entities	PAN
1.	Shyam Alcohol and Chemicals Limited	AAGCS6595M

In the matter of Sampada Chemicals Limited

Background:

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation in the scrip of Sampada Chemicals Limited (for convenience "**Sampada / *Target Company***"), for the period of October 01, 2010 to March 21, 2011 (hereinafter referred to as "***Investigation Period***") for possible violation, if any, of the provisions of the Securities and Exchange Board of India Act, 1992 (for short "**the *SEBI Act, 1992***") and rules and regulations made thereunder.

2. During the course of investigation conducted by SEBI in the scrip of the *Target Company*, following findings, *inter alia*, were made:

a) Shyam Alcohol and Chemicals Limtied ((hereinafter referred to as the "***Acquirer / Noticee***") was the promoter of the *Target Company* during the *Investigation Period*.

b) In the quarter ending March 2011, the *Noticee* was holding 501,000 number of equity shares equivalent to 10.06% to total share capital in the *Target Company*. On April 05, 2011, *Noticee* acquired 6,32,000 shares of the *Target Company* through off-market transfer which resulted in increasing its total shareholding in the *Target Company* to 11,33,000 shares amounting to 22.75% of the total share capital of the *Target Company*.

c) As the *Noticee* was holding more than 10% of the shares of the *Target Company* as on March 31, 2011 and during the Financial year 2011-12, it had acquired 6,32,000 additional shares through off market mechanism, consequently, its shareholdings in the *Target Company* had become 22.75%. On account of the above acquisition, the *Noticee* became entitled to exercise fifteen percent or more of the voting rights in the *Target Company* and was required to make public announcement to acquire shares of the *Target Company* as stipulated under regulation 10 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as "'***Takeover Regulations, 1997***'"). However, it was revealed that pursuant to the acquisition of shares that it acquired through off- market as mentioned above, the *Noticee* failed to to make public announcement required to be made in compliance with the regulation 10 of SEBI *Takeover Regulations, 1997*.

3. Keeping in view the aforesaid findings of facts as unearthed during the investigation, it has been alleged that the *Noticee* has violated the provisions of regulation 10 read with regulation 14 (1) of *Takeover Regulations, 1997*.

Show Cause Notice and Reply

4. Pursuant to the aforesaid findings during the investigation, a Show Cause Notice dated March 15, 2017 (hereinafter referred to as **"SCN"**) was issued to the *Noticee*, asking it to show cause as to why suitable direction under Section 11 & 11 (B) the *SEBI Act, 1992* read with regulation 44 read with regulation 45 (6) of the *Takeover Regulations, 1997* read with regulation 35 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011(hereinafter referred to as **"*Takeover Regulations, 2011*"**) should not be issued against it for the alleged acts of violations of provisions of the *Takeover Regulations, 1997*.

5. I note from the available records that the afore-said SCN was duly served on the *Noticee* through Speed Post. Further, it was noticed that inadvertently, instead of

alleging violation of regulation 10 of *Takeover Regulations, 1997,* violation of regulation 11 (1) of *Takeover Regulations, 1997* was alleged while issuing the SCN. Accordingly, a supplementary Show Cause Notice (hereinafter referred to as **"Supplementary SCN"**) was issued on January 20, 2021 to *Noticee*, in furtherance of the SCN dated March 15, 2017 modifying the alleged provisions in the SCN from regulation 11 (1) of the *Takeover Regulations, 1997* to regulation 10 of the *Takeover Regulations, 1997*. For the purpose of convenience, SCN and Supplementary SCN are hereinafter collectively referred to as SCNs in this Order. I note from the records available before me that the Supplementary SCN was also duly served upon the *Noticee* through Speed Post, however, the *Noticee* for the reason best known to it has chosen to not file reply to the SCNs. Subsequently, in compliance with the principle of natural justice, an opportunity of personal hearing was accorded to the *Noticee* for which the date of hearing was fixed on August 12, 2021. I further note from the records available before me that the hearing notice dated June 29, 2021 for the aforesaid hearing date was served upon the *Noticee* through Speed Post, however, neither *Noticee* nor any Authorized representative appeared on behalf of the *Noticee* to dispel the allegation levelled in the SCNs and to present its side of story. I find that sufficient opportunities for personal hearing have been provided to the *Noticee* and considering the fact that no request of adjournment has been received from it so far, no useful purpose would be achieved by granting any more opportunity. Therefore, I deem it appropriate to proceed in the matter on the basis of materials available on record.

Consideration of Issues and Findings

6. Considering the findings of the Investigation, the allegations leveled against the *Noticee* in the SCN based on such findings, I find that in this case, the only issue that require consideration is as follows:

- *Whether the Noticee failed to make public announcement to acquire further shares of the Target Company as stipulated under regulation 10 read with regulation 14 of the Takeover Regulations, 1997 and such acts / omissions on part of the Noticee have resulted in violations of the said regulations?*

7. I note that in the SCN, the acts of the *Noticee* in the scrip of the *Target Company*, have been alleged to be in violations of provisions of *Takeover Regulations, 1997*. Therefore, before moving forward on this issue, it would be proper to visit the afore-stated regulatory provisions alleged as to have been violated in the SCN. The said provisions are produced hereunder for ready reference:

Takeover Regulations, 1997

Acquisition of fifteen per cent or more of the shares or voting rights of any company.

10.No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen percent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the Regulations.

Timing of the public announcement of offer

14. The public announcement referred to in Regulation 10 or Regulation 11 shall be made by the merchant banker not later than four working days of entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein."

8. It is worth mentioning here that the *Takeover Regulations, 1997* has been repealed by the *Takeover Regulations, 2011*. Further, regulation 35 of the *Takeover Regulations, 2011* provides for both savings and repeal of erstwhile *Takeover Regulations, 1997,* thereby saving and enabling the continuation of proceedings initiated for the alleged violations of provisions of the *Takeover Regulations, 1997*. The regulation 35 of the *Takeover Regulations, 2011*, provides as under:

Takeover Regulations, 2011

"Repeal and Savings.

35. (1) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, 85[stands] repealed from the date on which these regulations come into force.

(2) Notwithstanding such repeal, –

(a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations has never been repealed;

(c) any open offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations.

(3) After the repeal of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations."

9. Thus, any proceedings initiated or proposed for initiation for the alleged contraventions of the provisions under the *Takeover Regulations, 1997* are saved and hence can be validly commenced and continued. Considering the foregoing, I am proceeding with the matter.

10. From the perusal of the facts and charges made in the SCNs, it is noted that the investigation has revealed that the *Noticee* was the promoter of the *Target Company* during the *Investigation Period* and was holding 501,000 number of equity shares equivalent to 10.06% to total share capital in the *Target Company*. The category wise shareholding pattern of the *Target Company* during the *Investigation Period* was as follows:

Table no. 1: Shareholding pattern of the *Target Company*

Particular	Quarter ending September 2010			Quarter ending December 2010			Quarter ending March 2011		
	Number of Shareholders	Number of shares	%	Number of Shareholders	Number of shares	%	Number of Shareholders	Number of shares	%
Promoter Holding	1	12,51,000	25.12	1	12,51,000	25.12	1	5,01,000	10.06
Non Promoter Holding	835	37,29,000	74.88	750	37,29,000	74.88	633	44,79,000	89.94
Total Share Capital	836	49,80,000	100	751	49,80,000	100	634	49,80,000	100

11. It is alleged that on April 05, 2011, *Noticee* acquired 6,32,000 shares of the *Target Company* through off-market transfer which resulted in increasing its total shareholding in the *Target Company* to 11,33,000 shares (22.75% of the total share capital). The aforesaid acquisition of shares entitled the *Noticee* to exercise more than 15% of the voting rights in the *Target Company* and it was required to make public announcement to acquire further shares of *Target Company* in accordance with the provisions of the *Takeover Regulations 1997.* However, no public announcements as stipulated under the aforesaid regulation were made by the *Noticee*. Accordingly, it is alleged that *Noticee* has violated regulation 10 of the *Takeover Regulation, 1997*.

12. From the material on record, it is noted that there is nothing to contradict the position that the *Noticee*, had acquired 6,32,000 shares of the *Target Company* and resultantly, causing its total shareholding in the *Target Company* to increase from 10.06 % to 22.75% of the total share capital of the *Target Company* and by such acquisition, it was under obligation to make a public announcement to acquire further shares of *Target Company*. Further, regulation 14 of the *Takeover Regulation, 1997* stipulates that such public announcement shall be made not later than four working days of entering into an agreement of acquisition of shares or voting rights or deciding to acquire shares or voting rights, but as per the records available before me, the *Noticee* has failed to do so.

13. As already noted above, *Noticee* has not filed any reply to the charges levelled against it in the SCN. The *Noticee* has even preferred to remain absent from attending personal hearing, for the reasons best known to it. At this juncture, I find it apt to refer and rely on the observation of the Hon'ble Securitties Appellate Tribunal (for convenience "SAT") in the case of *Sanjay Kumar Tayal & Others v SEBI (Appeal No. 68 of 2013- DoD- 11.02.2014),* wherein the Hon'ble SAT have held that–"*……As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor have availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices……."*

14. In view of the afore-said judicial observation, facts and circumstances and in the absence of any material contrary to the allegations, I find that materials on record are sufficient enough to establish the charge in the SCN against the *Noticee.* Since the acquisition was clearly in breach of regulation 10 of the *Takeover Regulations,* 1997, the consequences of this breach must follow. Thus, as per the provisions of the *Takeover Regulations, 1997*, the obligation of the acquirer is to make the open offer, once there is breach of regulation 10 no matter whatsoever circumstances or the manner in which the shares were acquired. I further note from the records available before me that the *Target Company* has been compulsorily delisted from BSE with effect from May 11, 2018 under SEBI (Delisting of Equity Shares) Regulations, 2009 (hereinafter referred to as "***Delisting Regulations 2009***"). Now the question before me is whether directions for providing open offer to the shareholders of the *Target Company* should be issued against the *Noticee* or not.

15. In this regard, I note the Hon'ble SAT vide order dated September 08, 2011 in the matter of *Nirvana Holdings Private Limited vs. SEBI (Appeal no. 31/2011)* have, *inter alia*, given the following findings:

> "*It must be remembered that whenever an acquirer violates Regulation 10, 11 or 12 of the takeover code by not making a public announcement, he should be directed to comply with the provision by making a public offer. The words "unless such acquirer*

makes a public announcement" appearing in Regulations 10 and 11(1) make these provisions mandatory and a public announcement has to be made. Similar words appear in Regulation 12 as well. These provisions make the acquisition conditional upon a public announcement being made. The primary object of the takeover code is to provide an exit route to the public shareholders when there is substantial acquisition of shares or a takeover. This right to exit is an invaluable right and the shareholders cannot be deprived of this right lightly. It is only when larger interest of investor protection or that of the securities market demands that this right could be taken away. Therefore, as a normal rule, a direction to make a public announcement to acquire shares of the target company should issue to an acquirer who fails to do that. The Board need not give reasons as to why such a direction is being issued because that is the mandate of Regulations 10, 11 and 12. However, if the issuance of such a direction is not in the interest of the securities market or for the protection of interest of investors, the Board may deviate from the normal rule and issue any other direction as envisaged in Regulation 44 of the takeover code. In that event, the Board should record reasons for deviation." (emphasis supplied)

16. I would further refer to the judgement of the Hon'ble SAT dated June 28, 2018 in the matter of *Rudra Securities Ltd. & Ors. Vs. SEBI*. While dealing with the contention raised by the acquirers/appellants *inter alia* on non-feasibility of directions given by SEBI to make open offer where the target company was delisted, the Hon'ble Tribunal has held as under:

"33. We do not agree with the arguments of the appellants that a public announcement for open offer is now impossible in view of the fact that PCL has been compulsorily delisted by the BSE on November 29, 2017. We note that while issuing the order on compulsory delisting by BSE on November 29, 2017, inter-alia, the following directions were given: "Promoters of these delisted companies will be required to purchase the shares from the public shareholders as per the fair value determined by the independent valuer appointed by the Exchange, as mentioned in the Public Notice to be issued shortly….. Accordingly, there is no difficulty in buying back the shares by the promoters and PACs, including the appellants in three appeals here who have been

directed to do so under SAST Regulations, 1997".

17. In the present matter, subsequent to the issuance of SCN dated March 15, 2017, the *Target Company* i.e. *Sampada* has been compulsorily delisted from BSE with effect from May 11, 2018 with directions issued to the promoters of *Sampada* which are same as those directions issued in the matter of *Rudra Securities* (*Supra*). It has already been established that *Noticee,* by acquisition of acquired shares of *Sampada* had breached the threshold of 15% as stipulated under regulation 10 of the *Takeover regulations, 1997*, which is neither disputed by the *Noticee* nor anything contrary to the same is established from the consideration of material made available before me. Therefore, I find that the compulsory delisting of *Sampada* herein cannot be an impediment in the way of carrying out of an open offer obligation on the part of the *Noticee*.

18. It emerges from the aforesaid discussions that even though directions for open offer has to be normally issued in case of acquisitions beyond the threshold limits provided under regulations 10 of the *Takeover Regulations, 1997*, however, the same can be deviated depending on the specific facts and circumstances of a particular case. In this case, even though *Sampada* has been compulsorily delisted, I am of the view that given the specific facts and circumstances of the case, since the open offer under the *Takeover Regulations, 1997*was triggered, an open offer deserves to be made.

19. The Hon'ble SAT also in its order passed in the matter of *Rudra Securities* (*Supra*) had held that there is no bar in directing open offer even in case a target company is compulsorily delisted. It is observed that the *Noticee* is the promoter of the *Target Company*, who has acquired shares in breach of the regulation 10 of the *Takeover Regulations, 1997.* The records before me further suggest that the scrip of the *Target Company* has been compulsorily delisted in terms of regulation 22 of the *Delisting Regulations, 2009*. Under the circumstances, more particularly, considering the kind of conduct of the *Noticee,* who is the promoter of the *Target Company* also, it becomes imperative that the consequences of the breach of regulation 10 of the *Takeover Regulations 1997* need to he complied with.

20. A basic premise that underlies the integrity of securities market is that all the participants have to conform to the standards of transparency, good governance and ethical behavior prescribed in securities laws and have to ensure that they do not resort to fraudulent activities. In this case, the conduct of the *Noticee*, as brought out in the foregoing discussion has been violative of this basic obligation cast by law. In my view, therefore, in the facts and circumstances of this case remedial action needs to be taken by way of present order.

Directions:

21. In view of the above, having found that the charges levelled against the *Noticee* in the SCN stand established, I, in exercise of the powers conferred upon me under section 19 read with sections 11(1), 11(4) and 11B of the *SEBI Act, 1992*, pass the following directions:

a) *Noticee* is directed to make a public offer within 45 days from the date of this Order, through a merchant banker, to acquire the shares of the Company from public shareholders in terms of the provisions of *Takeover Regulations, 1997*;

b) *Noticee* shall pay interest at the rate of 10% per annum along with the offer price, for the period starting from the date when the *Noticee* became liable to make open offer for the first time i.e. from April 05, 2011 till the date of payment of consideration, to the shareholders who were holding shares of *Sampada* on the date of violation and whose shares are accepted in the open offer, after adjustment of dividend paid, if any;

c) The *Noticee* is hereby debarred from accessing the securities market, directly or indirectly and is prohibited from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 03 (three) years from the date of this Order or till completion of directions in sub-paragraphs (a) and (b) above, whichever is later.

22. During the period of restraint, the existing holding of securities including the holding of units of mutual funds of the *Noticee* shall remain frozen.

23. It is clarified that obligation of the *Noticee*, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order, in respect of pending transactions, if any. Further, all open positions, if any, of the aforesaid *Noticee* in the F&O segment of the stock exchange, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

24. The Order shall come into force with the immediate effect.

25. A copy of this Order shall be forwarded to the *Noticee*, all the recognized stock exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

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DATE: AUGUST 27, 2021 **S. K. MOHANTY**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA