WTM/MPB/EFD-1-DRA-III/74-75/2019

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

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

In Re: Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997

In the matter of M/s Marg Ltd.

In re Show Cause Notice dated May 11, 2018

In respect of:

G R K Reddy (AEHPR7240G) Old no. 24, New No. 17, South Mada Street, Srinagar Colony, Saidapet, Chennai - 600015	**G Raghava Reddy** (AFHPG6683H) 31-23-6, Andhra Bank Building, Upstairs, Maruthi Nagar, Machavaram, Vijayawada - 520004
GRK Reddy Sons HUF (AAEHG3164P) Old no. 24, New No. 17, South Mada Street, Srinagar Colony, Saidapet, Chennai - 600015	**Global Infoserv Ltd.** (AABCG3022A) Sri Sai Subhodaya Apartments, 1st Floor, No. 57/2B, East Coast Road, Thiruvanmiyur, Chennai - 600041
Marg Capital Markets Ltd. (AACCM9282F) Sri Sai Subhodaya Apartments, 1st Floor, No. 57/2B, East Coast Road, Thiruvanmiyur, Chennai - 600041	**Marg Holdings & Financial Services Ltd.** (AACCM9037G) (Currently known as Marg Projects and Infrastructure Ltd.) Sri Sai Subhodaya Apartments, 1st Floor, No. 57/2B, East Coast Road, Thiruvanmiyur, Chennai - 600041
Raghunatha Reddy S V C/o. MARG Ltd. 4/318, Marg Axis, Rajiv Gandhi Salai, Kottivakkam ,Chennai ,Tamil Nadu ,600041	**Nagaraja Reddy S V** C/o. MARG Ltd. 4/318, Marg Axis, Rajiv Gandhi Salai, Kottivakkam ,Chennai ,Tamil Nadu ,600041
Chandra Reddy E C/o. MARG Ltd. 4/318, Marg Axis, Rajiv Gandhi Salai, Kottivakkam ,Chennai ,Tamil Nadu ,600041	**Subhash Reddy Y** C/o. MARG Ltd. 4/318, Marg Axis, Rajiv Gandhi Salai, Kottivakkam ,Chennai ,Tamil Nadu ,600041
Revanth S C/o. MARG Ltd.	**Hymavathi S** C/o. MARG Ltd.

4/318, Marg Axis, Rajiv Gandhi Salai, Kottivakkam ,Chennai ,Tamil Nadu ,600041	4/318, Marg Axis, Rajiv Gandhi Salai, Kottivakkam ,Chennai ,Tamil Nadu ,600041
Laxmi E C/o. MARG Ltd. 4/318, Marg Axis, Rajiv Gandhi Salai, Kottivakkam ,Chennai ,Tamil Nadu ,600041	**Manjula Y** C/o. MARG Ltd. 4/318, Marg Axis, Rajiv Gandhi Salai, Kottivakkam ,Chennai ,Tamil Nadu ,600041
Mallikarjuna Rao G C/o. MARG Ltd. 4/318, Marg Axis, Rajiv Gandhi Salai, Kottivakkam ,Chennai ,Tamil Nadu ,600041	**Parvathi Devi G** C/o. MARG Ltd. 4/318, Marg Axis, Rajiv Gandhi Salai, Kottivakkam ,Chennai ,Tamil Nadu ,600041
Surendranathan Reddy N C/o. MARG Ltd. 4/318, Marg Axis, Rajiv Gandhi Salai, Kottivakkam ,Chennai ,Tamil Nadu ,600041	**Madhavi N** C/o. MARG Ltd. 4/318, Marg Axis, Rajiv Gandhi Salai, Kottivakkam ,Chennai ,Tamil Nadu ,600041
Srinivajulu G C/o. MARG Ltd. 4/318, Marg Axis, Rajiv Gandhi Salai, Kottivakkam ,Chennai ,Tamil Nadu ,600041	**V P Rajini Reddy** (AELPR1820A) Old no. 24, New No. 17, South Mada Street, Srinagar Colony, Saidapet, Chennai - 600015
Madhusudan Reddy Gorepatti (ARIPG4093L) Old no. 24, New No. 17, South Mada Street, Srinagar Colony, Saidapet, Chennai - 600015	**Exemplarr Worldwide Ltd.** (AACCR5263P) Basement, Sai Subhodaya Apartments, No. 57/2B, ECR Road, Thiruvanmiyur, Chennai - 600041
Akshya Infrastructure Pvt. Ltd. (AAHCA6944K) 414, Bharathi Street, Puducherry - 605001	

In the matter of M/s Marg Ltd.

In re Show Cause Notice dated February 25, 2016

In respect of:

Akshya Infrastructure Pvt. Ltd. (AAHCA6944K) 414, Bharathi Street, Puducherry - 605001

BACKGROUND

1. Marg Limited (hereinafter referred to as "**Marg / Target Company**") is an infrastructure and real estate development and services company. The Target

Company was incorporated on December 16, 1994 as Marg Constructions Limited under the Companies Act, 1956. Subsequently, the name of the Target Company was changed to Marg Limited pursuant to a special resolution of the shareholders of the Target Company at an annual general meeting held on September 25, 2007. The Target Company's equity shares are listed on BSE Limited and were also listed on Madras Stock Exchange Ltd. Further, its equity shares are also traded on National Stock Exchange of India Limited under permitted securities category with effect from November 5, 2009.

2. A voluntary offer was made by Akshya Infrastructure Pvt. Ltd. (hereinafter referred to as "**Acquirer / AIPL**") (as part of the Promoter Group), vide public announcement dated October 20, 2011, to acquire 20% of the equity shares of Target Company. An examination of the same was carried out by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") *inter alia* to ascertain whether there were any possible violations of provisions of Securities and Exchange Board of India, Act 1992 (hereinafter referred to as the "**SEBI Act**") and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "**Takeover Regulation**") at the time of making the voluntary offer by the Acquirer.

SHOW CAUSE NOTICES

3. The facts observed by SEBI upon the examination of the voluntary offer made by AIPL, are as follows:

   3.1. The Promoter Group during the financial years 2006-07, 2007-08 and 2010-2011 had made certain acquisitions which had resulted in a breach of 5% creeping acquisition limit in a financial year. In view of the same, AIPL along with the Promoter Group were required to make a public announcement on the respective dates as per regulation 11(1) read with regulation 14(2) of Takeover Regulations, which AIPL failed to make.

   3.2. In view of the above, SEBI issued the observation letter dated November 30, 2012 advising AIPL to revise the offer price of the Voluntary Open Offer Price as a result of trigger of open offers on the aforementioned dates.

   3.3. In response, AIPL had filed an appeal (Appeal No. 3 of 2013) before Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") against the

aforesaid letter of SEBI. Hon'ble SAT, vide its order dated June 19, 2013 decided the following:-

3.3.1. Set aside SEBI's directions;

3.3.2. Allowed withdrawal of offer and escrow amount;

3.3.3. No observations made on the merit of the issue regarding the three alleged triggers and the contentions of parties in this regard are kept open.

3.4. In response, SEBI filed an appeal (Civil Appeal No. 6041 of 2013) in Hon'ble Supreme Court of India (hereinafter referred to as "**SC**") against the aforesaid SAT Order. Hon'ble SC vide order dated April 25, 2014 set aside the SAT order and restored directions issued by SEBI in its letter dated November 30, 2012. The review petition filed by AIPL was also dismissed by Hon'ble SC on October 30, 2014.

3.5. Subsequently, SEBI, vide its letter dated March 05, 2015 advised the Acquirer to comply with the observations issued by SEBI in its letter dated November 30, 2012. Further, vide letter dated April 10, 2015, AIPL had requested SEBI to grant a month's time for its reply. In response SEBI vide its letter dated April 21, 2015 informed AIPL that SEBI has taken a note of its request and advised it to comply with the directions of Hon'ble SC. However, it is noted that AIPL did not comply with the directions.

3.6. In this context, AIPL's attention was drawn to provisions of the regulations 11(1) read with 14(2) of Takeover Regulations.

3.7. It is noted that the aforesaid acquisitions of shares by AIPL and Promoter Group during the financial years 2006-07, 2007-08 and 2010-2011 resulted in a breach of 5% creeping acquisition limit in a financial year. In view of the same, AIPL along with the Promoters Group were required to make public announcement on the respective dates as per regulations 11(1) read with regulation 14(2) of Takeover Regulations which AIPL failed to comply.

4. In light of the above, a Show Cause Notice (hereinafter referred to as "**First SCN**") dated February 25, 2016 was served on AIPL in the extant matter and AIPL was called upon to show cause as to why suitable directions under Sections 11 (1), 11(4) and 11B of SEBI Act and regulations 44 and 45 of Takeover Regulations read with

corresponding provisions of regulations 32 and 35 of Takeover Regulations, 2011 should not be issued against AIPL for the alleged violations referred to hereinabove.

5. Later a corrigendum dated May 11, 2018 was issued to the aforesaid SCN wherein the following was stated:

   5.1. In the aforesaid SCN, the paragraph no. 9, 10 and 11 shall be replaced with the following:

   "*It is therefore alleged that Akshya Infrastructure Pvt. Ltd. ("**AIPL**") did not carry out the changes in the letter of offer as specified by SEBI vide letter dated November 30, 2012 (annexure 1) thereby violating the provisions of regulation 18(2) read with regulation 26 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("Takeover Regulations, 1997").*

   In light of the above, AIPL is called upon to show cause as to why suitable directions under Sections 11 (1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 and Regulations 44 and 45 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 read with corresponding provisions of Regulations 32 and 35 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 should not be issued against you for failure to send letter of offer to the shareholders and to make public announcement for revision of the offer price in compliance with SEBI observation letter dated November 30, 2012."

6. Subsequently, a common SCN dated May 11, 2018 (hereinafter referred to as "**Second SCN**") was sent to the Promoter group of the Target Company namely Mr. GRK Reddy, Mr. G Raghava Reddy, GRK Reddy Sons HUF, Global Infoserv Ltd., Marg Capital Markets Ltd., Marg Holdings & Financial Services Ltd., Mr. Raghunatha Reddy S V, Mr. Nagaraja Reddy S V, Mr. Chandra Reddy E, Mr. Subhash Reddy Y, Mr. Revanth S, Ms. Hymavathi S, Ms. Laxmi E, Ms. Manjula Y, Ms. Mallikarjuna Rao G, Ms. Parvathi Devi G, Mr. Surendranathan Reddy N, Ms. Madhavi N, Ms. V P Rajini Reddy, Mr. Madhusudan Reddy Gorepatti, Exemplarr Worldwide Ltd., AIPL and Mr. Srinivajulu G (hereinafter collectively referred to as "**Noticees**") in the extant matter.

7. The facts and allegations as set out in the Second SCN were as follows:

7.1. It was noted that certain acquisitions were made by the Promoter Groups for the financial years 2006-2007, 2007-2008 and 2010-2011, that resulted in a breach of 5% creeping acquisition limit as given in following table:

Financial Year	**Date of Acquisition**	**No. of shares acquired**	**% of Acquisition**	**Gross Acquisition for the financial year (%)**
2006-07	**30-Mar-07**	3,699,900	14.34	**14.34**
2007-08	7-Apr-07	779,100	0.03	0.03
	1-Aug-07	251,000	0.29	0.32
	11-Oct-07	1,900,000	4.62	4.94
	12-Oct-07	1,220,000	0.54	**5.64**
2010-11	15-Feb-11	2,150,000	3.37	3.37
	19-Feb-11	2,750,000	3.74	**7.11**

7.2. As per the shareholding pattern of the Target Company disclosed to the BSE Ltd., as on quarter ending March 2007, the Promoter Group of the Target Company included Mr. GRK Reddy, Mr. G Raghava Reddy, GRK Reddy Sons HUF, Global Infoserv Ltd., Marg Capital Markets Ltd., Marg Holdings & Financial Services Ltd. (currently known as Marg Projects and Infrastructure Ltd.), Mr. Raghunatha Reddy S V, Mr. Nagaraja Reddy S V, Mr. Chandra Reddy E, Mr. Subhash Reddy Y, Mr. Revanth S, Ms. Hymavathi S, Ms. Laxmi E, Ms. Manjula Y, Ms. Mallikarjuna Rao G, Ms. Parvathi Devi G, Mr. Surendranathan Reddy N, Ms. Madhavi N and Mr. Srinivajulu G.

7.3. As per the shareholding pattern of the Target Company disclosed to the BSE Ltd., as on quarter ending December 2007, the Promoter Group of the Target Company included Mr. GRK Reddy, Mr. G Raghava Reddy, GRK Reddy Sons HUF, Global Infoserv Ltd., Marg Capital Markets Ltd., Marg Holdings & Financial Services Ltd. (currently known as Marg Projects and Infrastructure Ltd.), Mr. Raghunatha Reddy S V, Mr. Nagaraja Reddy S V, Mr. Chandra Reddy E, Mr. Subhash Reddy Y, Mr. Revanth S, Ms. Hymavathi S, Ms. Laxmi E, Ms. Manjula Y, Ms. Mallikarjuna Rao G, Ms. Parvathi Devi G, Mr. Surendranathan Reddy N, Ms. Madhavi N, Ms. V P Rajini Reddy and Mr. Srinivajulu G.

7.4. As per the shareholding pattern of the Target Company disclosed to the BSE Ltd., as on quarter ending March 2011, the Promoter Group of the Target Company included Mr. GRK Reddy, Mr. G Raghava Reddy, Ms. V P Rajini Reddy, Mr. Madhusudan Reddy Gorepatti, GRK Reddy Sons HUF, Global Infoserv Ltd., Marg Capital Markets Ltd., Exemplarr Worldwide Ltd. and AIPL.

7.5. As a result of the acquisitions mentioned in the aforesaid table, it is alleged that the gross acquisitions of the aforesaid Promoter Groups, during the financial years 2006-2007, 2007-2008 and 2010-2011 breached the 5% limit specified under regulation 11(1) of Takeover Regulations. Hence, the Noticees were required to make a public announcement in accordance with the provisions of regulation 14(2) of Takeover Regulations.

7.6. It is observed that despite such acquisition, the Noticees have failed to make the requisite public announcement and thus, have violated the provisions of regulation 11(1) read with regulation 14(2) of the Takeover Regulations.

8. Thus, based on the above, the Noticees were advised to show cause as to why suitable directions in terms of Sections 11 (1), 11(4) and 11B of SEBI Act and regulations 44 and 45 of Takeover Regulations read with regulations 32 and 35 of Takeover Regulations, 2011 should not be initiated against them for the alleged violation of failure to make public announcement.

9. In a nutshell, in the Second SCN, it was alleged that though the constituents of the Promoter Group of the Target Company across the three financial years, 2006-2007, 2007-2008 and 2010-2011 were different, Promoter Group at various points during the aforesaid financial years have acquired more than 5% in gross. Thus, they have allegedly breached 5% limit under regulation 11(1) of the Takeover Regulations.

REPLY & HEARING

10. In response to the First SCN, AIPL *inter alia* submitted as follows:

10.1. The open offer was made with a view to consolidate the holding of Acquirer in Target Company and at the same time give commercially reasonable opportunity to the public shareholders of the Target Company to exit at the offer price of ₹ 91.00 per equity share of the Target Company which represented a premium of 10.30% over the market average closing price for the two weeks

preceding the Public Announcement. In terms of the Open Offer, the tendering period was scheduled to commence on December 1, 2011 and conclude on December 20, 2011 and the consideration for the tendered shares was to have been paid no later than January 4, 2012.

10.2. AIPL had made voluntary open offer based on the available resources, including the facility extended to it for the purpose of acquisition of shares and had ability to implement the offer to the extent of resources available. The acquirer had specified the same in the column of Financial Arrangement in Para 7.2 of the Letter of Offer about the total consideration and its arrangement to meet and ways to arrange the same. It had ability to acquire the shares only at the particular price.

10.3. With respect to the allegation of acquisitions beyond creeping acquisition limit, the particulars of the the promoters and promoters group at the end of various financial years is as under:

Year ended	**Total Equity Shares Nos.**	**Promoter Group Holding**		
		Nos.	**%**	**% of change**
31.03.2006	1,00,00,000	46,00,000	46	
31.03.2007	1,65,92,900	82,99,900	50.021	+4.021
31.03.2008	2,56,08,381	1,23,00,000	48.031	-1.990
31.03.2009	2,56,08,381	1,26,50,000	49.398	+1.088
31.03.2010	2,72,08,381	1,41,00,000	51.822	+2.424
31.03.2011	3,81,18,926	1,90,00,000	49.844	-1.978

10.4. It is clarified that the percentages of acquisition in any financial year by the Promoter and Promoter Group for the purposes of regulation 11(1) of the Takeover Regulations is to be reckoned as at the end of each financial year ending on 31st March in comparison to the holding of the Promoters and Promoters Group as at the end of immediate previous financial year on 31st March or 1st April and not on the basis of intervening changes during the financial year. In other words, if the percentage of shares held or acquired by the Acquirer during the

financial year does not exceed 5% of the paid capital of the Target Company, the regulations do not get triggered.

10.5. It is also submitted that the provision of regulation 11(1) of Takeover Regulations were specifically amended on September 9, 2002 to specify that the 5% (creeping acquisition limit) is applicable "*in any financial year ending on 31st March*" as opposed to "*in any period of 12 months*." Therefore any changes in shareholding from the beginning of April of any financial year until the end of March of the same financial year is to be considered for this purpose.

10.6. Assuming without admitting that above interpretation is incorrect, in view of the lack of clarity with regard to acquisitions made during the financial year with reference to the total paid up share capital of the Target Company, any stray or isolated exceeding of acquisition of 5% shares or voting rights occasioned during the course of a financial year ought not to lead to any open offer obligation.

10.7. It is further submitted that SEBI in many of the instances has granted the exemption from making public announcement even when the limit as specified under regulation has allegedly been breached. One of the example is Order in matter of Trent Limited vide W7M/PS/14/CFD-DCR/OCT/2012 dated October 25, 2012 by SEBI.

10.8. It is submitted that Hon'ble SC has in the case of *Clairant International Ltd & Anr*. vs. *Securities and Exchange Board of India* (2004) 8 SCC 524 clarified that the direction to make an open offer ought not to be resorted to where the public shareholding of the Target Company has altered since the time of requirement of making of open offer. The provision of the Takeover Regulation therefore clearly contemplates the, making of the open offer within four days. Assuming whilst denying that there was any requirement to make any open offers in relation to the alleged triggers, the same cannot be directed to be made to the shareholders of the target company in November 2012.

10.9. It is further submitted that reason for making of open offer in case of any acquisition attracting open offer is to give in exit opportunity to the public shareholders. Assuming whilst denying that there was any requirement to make any open offers in relation to the alleged triggers, it is to be noted that most of shareholders of the target company are not continuing after the alleged trigger

date as they got an exit opportunity at the higher share price as compared to price based on alleged trigger date.

10.10. It is requested to allow AIPL to complete the open offer as requested vide its letter dated June 1, 2015, July 11, 2015 and petition dated August 14, 2015 considering the material change of circumstance including its financial position at a price calculated to reflect the current market price along with interest of delayed period in changed circumstances due to lapse of time.

11. In response to the Second SCN, Mr. GRK Reddy vide his letter dated June 8, 2018 requested for extension of time by 60 days to submit a reply as he is unable to retrieve the old data. Moreover, the persons dealing with it were not associated with them now and records were also lost during transit and floods.

12. Noticees failed to submit any reply to the SCN. The Noticees were granted an opportunity of hearing on January 15, 2019 at SEBI Bhavan, Mumbai vide common hearing notice dated September 24, 2018. The hearing notices were served on all the Noticees except Mr. G Raghava Reddy (he passed away) and Exemplarr Worldwide Ltd.

13. During the pendency of the extant proceedings, following Noticees, Mr. GRK Reddy, GRK Reddy Sons HUF, Global Infoserv Ltd., Marg Capital Markets Ltd., Marg Holdings & Financial Services Ltd. (currently known as Marg Projects and Infrastructure Ltd.), Ms. V P Rajini Reddy, Mr. Madhusudan Reddy Gorepatti, Exemplarr Worldwide Ltd. and AIPL filed an application dated September 28, 2018 for settlement of the proceedings initiated vide the aforesaid SCN. In light of the same, the authorized representative of the aforesaid Noticees, namely Visesha Law Services (hereinafter referred to as the "**AR**"), vide its letter dated October 1, 2018 requested to keep the proceedings against its clients in abeyance till the disposal of the settlement application.

14. On the day of scheduled hearing on January 15, 2019, Noticees on whom the hearing notice was served, namely, Mr. G R K Reddy, GRK Reddy Sons HUF, Global Infoserv Ltd.,Marg Capital Markets Ltd., Marg Holdings & Financial Services Ltd., Mr. Raghunatha Reddy S V, Mr. Nagaraja Reddy S V, Mr. Chandra Reddy E, Mr. Subhash

Reddy Y, Ms. Revanth S, Ms. Hymavathi S, Ms. Laxmi E, Manjula Y, Mr. Mallikarjuna Rao G, Ms. Parvathi Devi G, Mr. Surendranathan Reddy N, Ms. Madhavi N, Mr. Srinivajulu G, Ms. V P Rajini Reddy, Mr. Madhusudan Reddy Gorepatti, and AIPL failed to attend the hearing without providing any reason. In view of the same, the hearing with respect to them was concluded. Since the hearing notice could not be served on Exemplarr Worldwide Ltd., another hearing notice dated February 13, 2019 was sent to the Noticee granting it an opportunity of hearing on March 7, 2019 at SEBI Bhavan, Mumbai. The same was also send to the AR of the Noticee through an email dated February 13, 2019.

15. In the meantime, the following Noticees namely, Mr. G R K Reddy, GRK Reddy Sons HUF, Global Infoserv Ltd., Marg Capital Markets Ltd., Marg Holdings & Financial Services Ltd. (currently known as Marg Projects and Infrastructure Ltd.), Ms. V P Rajini Reddy, Mr. Madhusudan Reddy Gorepatti, Exemplarr Worldwide Ltd. and AIPL, submitted a reply to the SCN wherein *inter alia* they submitted as follows:

15.1. APIL, one of the Promoter group Company, made a public announcement of an open offer Voluntarily through M/s. Motilal Oswal Investment Advisors Pvt. Ltd. (hereinafter referred to as "**Merchant Banker**") on October 20, 2011, to acquire 76,51,572 (20%) of equity shares of Marg for consolidation of shareholdings of the Promoter Group in the Target Company. There was no trigger for the Open Offer either factual or legal as the same was voluntary exercise. The offer price of ₹ 91 per equity share which represented a premium of 10.09% over the market average for the two weeks preceding public announcement, which was ₹ 83.66 per share.

15.2. Prior to public announcement an Escrow Account was opened and ₹ 17.45 crore was deposited with the Axis Bank, Virugambakkam, Chennai Branch in relation to the Open Offer. The same amount is still lying in Escrow Account since the year 2011.

15.3. APIL considering the delay in giving approval by SEBI and change in circumstances submitted a letter dated March 29, 2012 with SEBI for withdrawal of Voluntary Open Offer.

15.4. SEBI communicated to the Merchant Banker vide letter dated November 30, 2012 the acquisition of shares by the Promoter Group on March 30, 2007, October 12, 2007 and February 19, 2011, was in violation of Regulation 11 (1) of the Takeover Regulation. The Merchant Banker was advised to make appropriate disclosures in the offer document regarding the violation of Regulation 11(1) of the Takeover Regulations and revise the offer price. However, the offer price was not mentioned in the said communication.

15.5. APIL filed an Appeal before Hon'ble SAT. Hon'ble SAT vide its Order dated June19, 2013 allowed the appeal and made it clear that it does not intended to make any observation on the merit of the issue regarding the three alleged triggers dated March 30 2007, October 12, 2007 and February 19, 2011.

15.6. SEBI filed an appeal before the Hon'ble SC and the Hon'ble SC vide its Order dated February 25, 2014 allowed the SEBI appeal.

15.7. With regard to the allegation of acquisition of shares by the Promoters on March 30, 2007, it is submitted that the Promoters/ Promoter Group as on March 31, 2006 were holding 46% of the total equity capital of the Target Company.

15.7.1. On May 28, 2006, 190,000 shares were issued on preferential basis to public and hence the shareholding of Promoter/Promoter Group got reduced.

15.7.2. In order to have a buffer, on February 22, 2006 the Promoters were allotted 81,00,000 (nos.) warrants and on March 8, 2008, 97,00,000 (nos.) warrants to be converted into shares to offset the dilution of shareholding.

15.7.3. On February 28, 2007, the GDR holders exercised their options to convert GDRs into 2,703,000 equity shares which diluted the Promoters shareholding.

15.7.4. On March 30, 2007, Promoters converted 3,699,900 warrants into equity shares so that their holding got consolidated at 50.021 %.

15.7.5. The closing balance as on March 31, 2006 of the Promoters/ Promoter Group shareholding was 46% and the closing balance as of March 30, 2007 was 50.021% which constitutes an increase of 4.021%.

15.8. With reference to the alleged acquisitions during the year 2007- 2008 it is submitted as follows:-

15.8.1. The Promoters converted warrants on April 7, 2007 into 7,79,100 shares thus increasing the shareholding from 50.021% to 50.05%, at the same time FCCB issued earlier were also converted into 7,68,276 shares.

15.8.2. The shareholding of the promoters increased from 50.05% to 50.34% on August 1, 2007 as the Promoters converted warrants into allotment of 251,000 shares, at the same time FCCB were also converted into 141,292 shares.

15.8.3. On October 11, 2007, the Promoters group converted warrants issued earlier into 190,000 shares thus increasing the shareholding to 54.96%.

15.8.4. On October 12, 2007, the shareholding of the Promoters group increased from 54.96% to 54.99% on account of preferential allotment to Non - Promoter entities of 200,000 shares, conversion of FCCB issued by the company into 261,390 shares, conversion of warrants leading to allotment of shares to Promoters to the tune of 12,20,000 shares and Non-Promoters to the tune of 250,000 shares and the sale of 150,000 shares by one of the Promoter entities in the open market.

15.8.5. On December 1, 2007 and January 5, 2008, FCCB issued by the company earlier were converted into 21,19,384 shares and 11,25,039 shares respectively, thus reducing the Promoters stake in the company from 54.99% to 48.03% and the same continued till March 31, 2008.

15.8.6. Thus, compared to the total holding of 50.02% as on March 31, 2007 all the transactions during the year 2007-08 has resulted in a decrease in Promoters holding to 48.03% as at March 31, 2008.

15.9. With regard to acquisition on March 31, 2010, the Promoters and Promoters Group were holding 1,41,00,000 equity shares out of the total 2,72,08,369 equity shares representing 51.822% of the total paid up equity share capital of the Target Company.

15.9.1. The Promoters and Promoters Group were also holding 49,00,000 warrants to be converted into equity shares.

15.9.2. In the meanwhile there was a Qualified Institutional Placement on May 3, 2010. There was conversion of employees Stock Options on October 12, 2010 and November 13, 2010.

15.9.3. Promoters and Promoters Group converted warrants into equity shares on February 15, 2011 and February 19, 2011.

15.9.4. Thereafter, the consolidated equity shareholding of Promoters and Promoters Group stood at 1,90,00,000 equity shares out of the total 3,81,18,926 equity shares of the Target Company representing 49.844% of total equity share capital of the Target Company.

15.9.5. As such, there was no increase in the percentage of equity shareholding of Promoters and Promoters Group as on March 31, 2011 as compared to the 51.822% holding as on March 31, 2010.

15.10. In the light of the above, it is submitted that there was no market purchase by the Promoters. All the acquisition of shares by the PAC was on account of corporate action and conversion of pre-allotted options. The consideration paid by the Acquirers was in fact paid to the company and the company was benefited out of it.

15.11. The act to convert the warrant was only to protect the interest of Promoters in the company and more fully to protect the shareholders from third party acquisitions. No fresh allotment was done to Promoters rather it was entirely conversion of warrants which was predetermined.

15.12. In the light of the above, it is submitted that the breaching of limits, if any, is only technical and there was no net effect on the holding annually.

15.13. The Noticees have negative net worth as on date. None of the Noticees had any substantial income in the span of last 5 years. Hence the financial viability of making Open Offer is practically not possible. All the assets of the Promoters stood mortgaged to the lenders of Marg as collaterals. The financial condition of the Noticees is not good and the same can be seen from the enclosed net-worth /IT Returns.

15.14. The numbers of public shareholders have increased from 15,800 in the year 2007 to 19,783 by the year 2011. Any open offer will include the new shareholders who were allotted shares post the acquisition.

15.15. The Noticees are facing number of cases before NCLT Chennai, Hon'ble High Court of Madras, Consumer Court, RERA and Arbitration Tribunals at various places.

15.16. It is also submitted that Axis Bank had transferred the escrow account as margin account and hence the amount of ₹ 17.45 crore is not earning any interest as of now. The Noticees have filed Civil Suit against the Axis Bank for recovery of interest amount upon the said amount of ₹ 17.45 crore. Therefore, it is submitted that the Noticees are ready to give an Open Offer for acquisition for an amount of ₹ 17.45 crore subject to the attachment and proceedings thereon.

16. Mr. KRCV Seshachalam along with Mr. G R K Reddy (representing himself) and Mr. Nawal Kishore appeared for the hearing on behalf of GRK Reddy Sons HUF, Global Infoserv Ltd., Marg Capital Markets Ltd., Marg Holdings & Financial Services Ltd. (currently known as Marg Projects and Infrastructure Ltd.), Ms. V P Rajini Reddy, Mr. Madhusudan Reddy Gorepatti, Exemplarr Worldwide Ltd. and AIPL. They submitted that the aforesaid Noticees failed to attend the first scheduled hearing in the matter on January 15, 2019 as they were under the bona fide impression that the hearing in the matter would be kept in abeyance as the said Noticees have filed settlement application. The ARs at the time of hearing reiterated the submissions made in the reply dated February 26, 2019 and *inter alia* submitted as follows:

16.1. There were no market purchase by the Promoters. All the acquisitions were on account of conversion of warrants. The same was done to protect the interest of the Promoters in the company as being an infrastructure company, Promoters are the face of the company.

16.2. The current shareholding of the Promoter in the Target Company is 12.5%.

16.3. The financial condition of the entities is not good.

16.4. The properties of the entities are under attachment of various lenders.

16.5. The entities are ready to give an open offer for acquisition for an amount of ₹ 17.45 crore subject to the outcome of Income Tax department's attachment proceedings.

16.6. The AR stated that the directions envisaged under the show cause notices would be impossible for the entities to implement and are not in the interest of either the Target Company or its shareholders.

17. The aforesaid Noticees were given time till March 31, 2019 to make additional

submissions including a detailed proposal to implement the Hon'ble SC's order and a copy of the death certificate of Mr. G Raghav Reddy.

18. Post hearing, the AR vide its letter dated April 23, 2019 reiterated the submissions made in its reply dated February 26, 2019 and *inter alia* made the following submissions:

18.1. The PACs including AIPL will give an Open Offer to all the shareholders who were on records as on date of decision of the Hon'ble SC i.e. October 30, 2014 using the amount available. Since one Open Offer is being given, it is submitted that all the other triggers mentioned in the SCN could be subsumed into the said Open Offer in the peculiar facts and circumstances of the case.

18.2. It is the case of the Noticees that direction as foreseen in the SCN under Sections 11 (4), 11B of SEBI Act read with Regulations 44 and 45 of Takeover Regulations [or corresponding provisions of the 2011 Regulations] is incapable being complied with, the performance of obligations contained therein, would stand excused in the eyes of law. The law excuses the performance of obligations that are incapable of being performed. Reference may be made to the matter of *Gyani Chand* vs *State of AP i*n CA No. 5728/ 2005.

18.3. The directions as foreseen in the SCN are not in the interests of the Target Company or its shareholders.

19. It is noted from the records that the settlement application dated September 28, 2018 was rejected by the panel of Whole Time Members on June 18, 2019 and the same was communicated to the applicants on June 20, 2019.

FINDINGS & CONSIDERATIONS

20. Before delving into the merits of the case, I note that except Mr. G R K Reddy, GRK Reddy Sons HUF, Global Infoserv Ltd., Marg Capital Markets Ltd., Marg Holdings & Financial Services Ltd. (currently known as Marg Projects and Infrastructure Ltd.), Ms. V P Rajini Reddy, Mr. Madhusudan Reddy Gorepatti, Exemplarr Worldwide Ltd. and AIPL, none of the other Noticees (with the exception of Mr. G R Reddy who has passed away) have replied to the SCN or have availed the opportunity of hearing granted to them. Service of SCN and hearing notices have been done on the Noticees. In this regard, the observations of Hon'ble SAT in the matter of *Sanjay Kumar Tayal &*

Others vs. *SEBI* decided on February 11, 2014 is pertinent here. The Hon'ble SAT observed as follows:

"…As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices…"

21. I, note from the records that Mr. G Raghava Reddy has passed away on June 29, 2015. Noticees have submitted his death certificate to that effect. Considering the Second SCN was issued on May 11, 2018, the service of the said SCN is not effective on Mr. G Raghava Reddy. In view of the same, the extant proceedings cannot be proceeded further with respect to him. However, SEBI may initiate any other action, if any, against Legal Representatives as per applicable provisions of law.

22. Without prejudice to the above observation, I proceed to examine the matter on merits. To that effect, I have perused the Hon'ble SC Order dated April 25, 2014, SCNs, oral submissions, written submissions and other materials available on record. On perusal of the same, the following issues arise for consideration:

    i. *Who are the Acquirers / Persons Acting in Concert for the voluntary open offer and for the alleged triggers referred to in the Second SCN?*
    ii. *Whether the Noticees have triggered the provisions of regulation 11 (1) read with regulation 14(2) of Takeover Regulations during the financial years 2006-2007, 2007-2008 and 2010-2011?*
    iii. *If answer to the aforesaid question is in affirmative, what directions, if any have to be issued against the Noticees?*

Issue No. 1 *- Who are the Acquirers / Persons Acting in Concert for the voluntary open offer and for the alleged triggers referred to in the Second SCN?*

23. I note from the public announcement dated October 20, 2011 for the voluntary open offer to acquire 20% of the fully diluted share capital of the Target Company that the said offer was made by the Merchant Banker for and on behalf of AIPL. Thus, making AIPL the Acquirer for the voluntary open offer.

24. With respect to the alleged trigger during the financial year 2006-2007, I note from the Noticees submission that Promoters have converted 36,99,900 warrants into equity shares on March 30, 2007. In this regard, Hon'ble SAT in the matter of *Rajesh Toshniwal* vs. *SEBI & ORS.* dated June 1, 2012 while dealing with the provisions of Takeover Regulations *inter alia* has observed as follows:

"The next issue to be considered is whether the entire promoter group has to be considered as a homogenous unit and, therefore, acting in concert in the acquisition of shares. It is the basic principle of corporate law that promoter group is a homogenous class. It is the normal practice to club the entire promoter group into one class unless otherwise proved by the acquirer. The acquirers have always filed their shareholding as belonging to the promoter group. In the disclosures made to the stock exchanges and the Board, the promoters' shareholding consisted of the group as a whole. Even though there is a mention in the offer document that the acquirers by themselves are responsible to the offer to the exclusion of other promoter group the conduct of the promoters as a whole suggests that their behaviour was always united…

…The promoters, as a rule, belong to a homogenous group unless otherwise proved by attendant circumstances to be otherwise. In the present case, except the statement contained in the public announcement no circumstance is pointed out which would prove that a set of promoters are a class apart. It is a matter of record that the shareholding of the entire promoter group was always disclosed as a group holding to the regulators. In the public announcement document also the shareholding of the entire promoters group is specifically grouped together. The objective of the open offer was consolidation of shareholding and this could be achieved only by grouping the acquirers and other promoters together.

…The decision of the Supreme Court in Daiichi case relied on by the appellant may not be of any assistance to him since it deals with a different set of facts relating to common object underlying the acquisition of shares. In the case of K.K. Modi, again relied upon by the appellant, the shareholders were admittedly a divided house. In the present case the various statements furnished by the promoter group and the conduct of the parties show that they acted together. Perhaps the appellant has introduced the above argument with a view to diluting the percentage of shareholding which is reckoned in the acquisition of shares and consideration for public announcement. We cannot appreciate the stand

taken by the appellant in this regard…"

25. The aforesaid order of SAT was challenged before Hon'ble SC and the Hon'ble SC vide its order dated November 7, 2017 in the matter of *Rajesh Toshniwal* vs. *SEBI & ORS.* held that there is no ground for interference with the Order of SAT.

26. In light of the aforesaid observation of Hon'ble SAT, I note from the submission of the Noticees that the Promoter Group had always acted as one unit towards a common objective of consolidation of their shareholding as and when the Promoter's Group voting capital reduced / diluted in the Target Company. Further, neither there is any evidence brought on record to establish the contrary that the Promoter Group was not acting in concert nor the Promoter Group has claimed otherwise. Therefore, in the extant matter, the Promoter Group is a homogenous class and is acting as one unit.

27. In view of the above, the following are Acquirer / Persons Acting in Concert (herein after referred to as "**PACs**") for the alleged trigger during the financial year 2006-2007, namely, Mr. GRK Reddy, Global Infoserv Ltd., Marg Capital Markets Ltd., GRK Reddy Sons HUF, Marg Holdings & Financial Services Ltd. (currently known as Marg Projects and Infrastructure Ltd.), Mr. Raghunatha Reddy S V, Mr. Nagaraja Reddy S V, Mr. Chandra Reddy E, Mr. Subhash Reddy Y, Mr. Revanth S, Ms. Hymavathi S, Ms. Laxmi E, Ms. Manjula Y, Ms. Mallikarjuna Rao G, Ms. Parvathi Devi G, Mr. Surendranathan Reddy N, Ms. Madhavi N and Mr. Srinivajulu G.

28. It is noted from Noticees submission that during the financial year 2007-2008, the Promoters had converted warrants on 4 instances (April 7, 2007, August 1, 2007, October 11, 2007 and October 12, 2007), to the tune of 24,40,100 shares. From the shareholding pattern of Promoter and Promoter Group as disclosed on BSE Ltd. for the quarter ending, June, 2007, September, 2007 and December, 2007 that the constituents / members of Promoter and Promoter Group did not undergo any change. Thus, the following Promoter and Promoter Group members are Acquirer / PACs for the alleged trigger during the financial year 2007-2008, namely, Mr. GRK Reddy, GRK Reddy Sons HUF, Global Infoserv Ltd., Marg Capital Markets Ltd., Marg Holdings & Financial Services Ltd. (currently known as Marg Projects and Infrastructure Ltd.), Mr. Raghunatha Reddy S V, Mr. Nagaraja Reddy S V, Mr. Chandra Reddy E, Mr. Subhash Reddy Y, Mr. Revanth S, Ms. Hymavathi S, Ms. Laxmi E, Ms. Manjula Y, Ms. Mallikarjuna Rao G, Ms. Parvathi Devi G, Mr. Surendranathan Reddy N,

Ms. Madhavi N, Ms. V P Rajini Reddy and Mr. Srinivajulu G.

29. It is noted from Noticees submission that during the financial year 2010-2011, the Promoters had converted warrants on 2 instances (February 15, 2011 and February 19, 2011), to the tune of 49,00,000 shares. From the shareholding pattern of Promoter and Promoter Group as disclosed on BSE Ltd. for the quarter ending, December, 2010 and March, 2011 that the constituents / members of Promoter and Promoter Group did not undergo any change. Thus, the following Promoter and Promoter Group members are Acquirer / PACs for the alleged trigger during the financial year 2010-2011, namely, Mr. GRK Reddy, Ms. V P Rajini Reddy, Mr. Madhusudan Reddy Gorepatti, GRK Reddy Sons HUF, Global Infoserv Ltd., Marg Capital Markets Ltd., Exemplarr Worldwide Ltd. and AIPL.

Issue No. 2 *- Whether the Noticees have triggered the provisions of regulation 11 (1) read with regulation 14(2) of Takeover Regulations during the financial years 2006-2007, 2007-2008 and 2010-2011?*

30. In order to proceed further, it will be relevant to reproduce the relevant provision of Takeover Regulations as applicable for the financial years 2006-2007 and 2007-2008, as under:

Consolidation of holdings.

11. *(1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, in any financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.*

31. On examination of provisions of regulation 11(1) of Takeover Regulations, I note that for triggering the obligation to make public announcement under this regulation, following essential ingredients should be satisfied –

31.1. The Acquirer together with persons acting in concert holds 15% or more shares but less than 55% shares in the Target Company,

31.2. The Acquirer acquires additional shares or voting rights by himself or through or

with persons acting in concert,

31.3. The additional acquisition entitles the Acquirer to exercise more than 5% of the voting rights in any financial year ending on 31st March.

Financial Year 2006-2007

32. It has been alleged in the SCN that Promoters and the Promoter Group had acquired 36,99,900 shares on March 30, 2007, which represents 14.34% gross acquisition for the financial year in the Target Company.

33. It is observed that the reference date for determining pre acquisition shareholding of the Promoters and Promoter Group for its acquisition on March 30, 2007, will be March 29, 2007. However, the details of Promoters and Promoter Group as on March 29, 2007 is not available on record. In this regard, it is observed that as on February 28, 2007, Promoters and Promoter Group were holding 46,00,000 shares in the Target Company. In the absence of any corporate announcements, during the period March 1, 2007 to March 29, 2007, related to equity share capital of the Target Company viz., preferential allotment, conversion of warrants, conversion of FCCBs etc., the shareholding of the Promoters and Promoter Group for the purpose of computation of pre-acquisition shareholding, will be determined based on disclosure made on February 28, 2007. It is noted that Promoter and Promoter Group were holding 45.14% shares in the Target Company representing 46,00,000 equity share capital as on February 28, 2007 and they continued to hold the same as on March 29, 2007. The said fact has not been disputed by the Noticees. Thus, the first ingredient of regulation 11(1) of Takeover Regulations of Acquirer holding 15% or more shares but less than 55% shares in the Target Company is satisfied.

34. With respect to the second ingredient, it is observed from the Noticees submission that the Promoters have converted 36,99,900 warrants into equity shares on March 30, 2007. Here, it will be appropriate to refer to the provisions of regulation 14(2) of Takeover Regulations, which reads as follows:

14(2) *In the case of an acquirer acquiring securities, including Global Depository Receipts or American Depository Receipts which, when taken together with the voting rights, if any already held by him or persons acting in concert with him, would entitle him to voting rights, exceeding the percentage specified in regulation 10 or regulation*

11, the public announcement referred to in sub-regulation (1) shall be made not later than four working days before he acquires voting rights on such securities upon conversion, or exercise of option, as the case may be.

35. On a harmonious reading of regulation 11(1) of Takeover Regulations with regulation 14(2) of Takeover Regulations leads to the outcome that for the purpose of crossing the threshold limits prescribed under regulation 11(1) of Takeover Regulations should be the Acquirer's decision to convert the warrants. This is so because the Acquirer in fact acquires the voting rights on the date of conversion and not on mere allotment of warrants. This interpretation of the concerned provisions is reinforced by the observations of Hon'ble SAT in the matter of *Mr. Sohel Malik* vs. *SEBI & Anr.* decided on October 15, 2008, wherein the Hon'ble SAT had observed as follows: "*…the requirement of public announcement arises only with the allotment of shares and not with the allotment of warrants*."

36. In light of the aforesaid, it is held that Promoters and Promoter Group by converting their warrants into equity shares have acquired additional shares and voting rights in the Target Company. Thus, the second ingredient of regulation 11(1) of Takeover Regulations is also satisfied.

37. With respect to the third ingredient of regulation 11(1) of Takeover Regulations, the Noticees have submitted that as on March 31, 2006 of the Promoters/ Promoter Group shareholding was 46% and the closing balance as of March 30, 2007 was 50.021% which constitutes an increase of only 4.021%. Hence, there is no trigger. Noticees have also submitted that if the percentage of shares held or acquired by the Acquirer during the financial year does not exceed 5% of the paid capital of the Target Company, the regulations do not get triggered. Moreover, the provision of regulation 11(1) of Takeover Regulations were specifically amended on September 9, 2002 to specify that the 5% (creeping acquisition limit) is applicable "*in any financial year ending on 31st March*" as opposed to "*in any period of 12 months*." Therefore any changes in shareholding from the beginning of April of any financial year until the end of March of the same financial year is to be considered for this purpose.

38. In this regard, I observe from a plain reading of the provision of regulation 11(1) of Takeover Regulations that to avail the benefit of creeping acquisition the additional acquisition should not entitle the Acquirer to exercise more than 5% of the voting

rights in the Target Company in any financial year that starts on April 1st and ends on March 31st. Thus, the creeping acquisition limit has to be reckoned in a financial year ending March 31st and not as of the end of the financial year ending on March 31st. In this regard, I would like to refer to the order of Hon'ble SC in the matter of *Kosha Investments Ltd.* vs. *Securities and Exchange Board of India* (Civil Appeal No. 3219 of 2006 decided on September 18, 2015) wherein the Hon'ble Court observed as follows;

"…Let us conceptualize the case of an entity holding 20 per cent of shareholding in a target company on 1st April of a given year. If it were to increase its holding by say 3 per cent and subsequently reduce it to 2 per cent. It at that point it intended to purchase 4 per cent shares again, whether by way of fractions or otherwise, it would cross the threshold of 5 per cent. It would then have to make compliance with Regulation 11. We hasten to clarify that if the aggregate percentage of acquisitions at any point of time during the financial year exceeds 5 per cent, the provision would get triggered. In other words, the provision of Regulation 11 mandating a public announcement will kick in at any stage whence the shareholding of the said entity in the target company would exceed 25 per cent.

… If the plea of appellant will be accepted then an acquirer can keep on violating Regulation 11(1) with impunity on as many occasions as he/it wants and avoid letting the public have the required knowledge through public announcements by simply making subsequent sale or transfer to another entity so as to reduce the so-called net acquisition in a financial year to within 5%. This interpretation will defeat the purpose of Regulation 11(1) and shall also render Regulation 14(1) otiose. The concept of permitting creeping acquisitions by permitting not more than 5% of the shares or voting rights in a company limits the period for such acquisition to a financial year ending by 31st March. But such concept does not dilute the requirement of making a public announcement within the time mentioned in Regulation 14(1) if the acquisition even if only once made and divested, is of more than 5% of shares or voting rights in the target company. In other words, even if such acquisition is followed by sale in the same financial year, the liability of making the public announcement would remain unaffected and shall attract action, as in this case…"

39. Thus, drawing strength from the aforesaid observation of Hon'ble SC, I note that for the purpose of computing 5% creeping acquisition limit under regulation 11(1) of

Takeover Regulations, gross / aggregate of acquisitions made by the Acquirer in the given financial year have to be taken into consideration. Therefore, the computation of creeping acquisition limit cannot be determined based on the difference in shareholding of Promoter Group at the beginning and at the end of the financial year as it may lead to a situation where intervening acquisitions will be disregarded. The same as observed by the Apex Court will defeat the purpose of regulation 11(1) of Takeover Regulations.

40. The submission of the Noticees, if accepted, will lead to a situation where an Acquirer may acquire any percentage of shares on the 1st of April of a financial year and on 31st March of that financial year, he may reduce it to 5% by sale of holding or otherwise and claim that there is no trigger. This is not the intention of the regulation which, since inception, had put a limit on percentage of creeping acquisition and did not allow netting of acquisition and disinvestment for determining the percentage of increase. Such intention is noted from *Justice P.N. Bhagwati Committee Report of 1997* (prior to its amendment on September 09, 2002, the regulation 11(1) of Takeover Regulations provided for permissible creeping acquisition in any period of twelve months, without attracting the mandatory public offer requirement) wherein the Committee had recommended that- *"The percentage of acquisition referred to above is on absolute basis i.e. there should be no netting of acquisition and disinvestment during the said period. In other words, if a person acquired x% during a period of 12 months, sold y% and acquired z% his aggregate acquisitions of (x% + z%) would be reckoned for the purpose of the Regulation and not (x% - y% + z%)."* The same is also true for acquisition of shares, post dilution of the shareholding of the Acquirer.

41. The amendment dated September 9, 2002 referred to by the Noticees which inserted the phrase "*in any financial year ending on 31st March*" in place of "*in any period of 12 months*" was to bring clarity in the manner of computing "*any period of 12 months*".

42. Moreover, for the purpose of calculation of change in voting rights, the voting rights held by the entity vis-à-vis total equity capital immediately before the acquisition has to be taken into account and not the voting rights held by the entity in the beginning of the financial year as the voting rights held by the entity immediately before the acquisition, will reflect the precise change in the voting rights, post-acquisition, though in certain situations both can be same. In other words, dilution of shareholding

of the entity resulting in reduction of voting rights has no effect on the computation of creeping limit, as the emphasis is on the acquisition of additional voting rights vis-à-vis entity's pre acquisition voting rights which entitles the entity to exercise more than 5% of voting rights.

43. Further, in the context of the trigger of creeping acquisition what is also important is that pre-acquisition shareholding of the Acquirer / PACs has to be between 15% and less than 55% during the period of subject financial year when the creeping acquisition is made either in one tranche or in several tranches. In a case where the creeping acquisition is made through several tranches, the pre-acquisition holding prior to each tranche during the said financial year has to be between 15% and less than 55%. In this context it is important also to see the dilution effect on the pre-acquisition shareholding of Acquirer/ PACs vis-a-vis the increased paid up capital of the company.

44. It is noted that the shareholding of the Acquirer / PACs gets diluted in percentage terms when new shares are issued including due to reasons of conversion of convertible instruments held by Non-Acquirer / non-PACs. For the purpose of creeping acquisition, therefore, it is important to take into account the effect of dilution on the pre-acquisition shareholding of the Acquirer / PACs. The same should not go below the 15% minimum limit mentioned under regulation 11(1) of Takeover Regulation. In compliance with that, if the acquisition is made in several tranches and the pre-acquisition shareholding prior to any of the latter tranches of acquisition goes down, but not below 15%, due to dilution of the total share capital of the company, immediately from the preceding post acquisition shareholding of the Acquirer / PACs, still the additional acquisition made by Acquirer / PACs post dilution, will be taken into account. If the percentage of the said additional acquisition vis-a-vis the expanded capital of the company when taken together with the percentage of acquisition in prior tranches, breaches the 5% limit prescribed in regulation 11(1) of the Takeover Regulation, than the Acquirer / PACs has to make a public announcement to acquire shares.

45. In the given matter, the percentage of voting capital acquired by the Noticees for their additional gross acquisition have been calculated by taking into account the effect of dilution on the share capital of the Target Company by conversion of warrants /

FCCBs by others including preferential allotment done by the company.

46. I, therefore, am of the view that for the purpose of availing benefit of creeping acquisition under regulation 11(1) of Takeover Regulations, the gross acquisition of the Acquirer should not be more than 5% during any time in a financial year that starts on April 1st and ends on March 31st. Further, during any point of time, in that financial year, the acquisition breaches the threshold of 5% creeping acquisition, the obligation to make public announcement is triggered at that time itself. Regulation 11(1) of Takeover Regulations does not allow an Acquirer to wait till end of the financial year after such breach.

47. In view of the above, the third ingredient of regulation 11(1) of Takeover Regulations is also satisfied as Promoters and Promoter Group had made a gross acquisition of 14.34% (50.02% - 35.68%) in the Target Company, as depicted in the table below:

Date	**Particular**	**Total Equity of the Target Company pre conversion**	**Pre-acquisition Promoter Group shareholding**	**Pre-acquisition Promoter Group shareholding %**	**Total Equity of the Target Company post conversion**	**Post-acquisition Promoter Group shareholding**	**Post-acquisition Promoter Group shareholding %**
30.03.2007	Conversion of Warrants by Promoters into 36,99,900 shares	1,28,93,000	46,00,000	35.68	1,65,92,900	82,99,900	50.02

48. It is an admitted fact that the Noticees namely, Mr. GRK Reddy, GRK Reddy Sons HUF, Global Infoserv Ltd., Marg Capital Markets Ltd., Marg Holdings & Financial Services Ltd. (currently known as Marg Projects and Infrastructure Ltd.), Mr. Raghunatha Reddy S V, Mr. Nagaraja Reddy S V, Mr. Chandra Reddy E, Mr. Subhash Reddy Y, Mr. Revanth S, Ms. Hymavathi S, Ms. Laxmi E, Ms. Manjula Y, Ms. Mallikarjuna Rao G, Ms. Parvathi Devi G, Mr. Surendranathan Reddy N, Ms. Madhavi N and Mr. Srinivajulu G have not made any public announcement before acquiring 14.34% of shares in the Target Company.

49. Based on the above, it is concluded that the Noticees name in the aforesaid paragraph have violated regulation 11(1) read with regulation 14(2) of the Takeover

Regulations for the acquisition of 14.34% of shares in the Target Company during the financial year 2006-2007.

Financial Year 2007-2008

50. It has been alleged in the SCN that Promoters and the Promoter Group had acquired 41,50,100 shares till October 12, 2007 in 4 tranches, which represents 5.64% gross acquisition for the financial year in the Target Company.

51. It is observed that the reference date for determining pre acquisition shareholding of the Promoters and Promoter Group, considering the first of the four acquisitions was done on April 7, 2007 will be April 6, 2007. However, the details of Promoters and Promoter Group as on April 6, 2007 is not available on record. In this regard, it is observed that in the absence of any corporate announcements during the period April 1, 2007 to April 6, 2007, related to equity share capital of the Target Company viz., preferential allotment, conversion of warrants, conversion of FCCBs etc., the shareholding of the Promoters and Promoter Group for the purpose of computation of pre-acquisition shareholding, will be determined based on disclosure made on BSE Ltd. for quarter ending March 2007. From the Promoter and Promoter Group shareholding for the quarter ending March 2007, it is noted that Promoter and Promoter Group were holding 50.02% shares in the Target Company representing 82,99,900 equity share capital and they were holding 50.02% shares as on April 6,2007. The said fact has not been disputed by the Noticees. Thus, the first ingredient of regulation 11(1) of Takeover Regulations of Acquirer holding 15% or more shares but less than 55% shares in the Target Company is satisfied.

52. With respect to the second ingredient, it is observed from Noticees submission that Promoters and Promoter Group had converted warrants allotted to them on four instances during the financial year, on April 7, 2007, August 1, 2007, October 11, 2007 and October 12, 2007 and had acquired 41,50,100 shares in the Target Company. Thus, the second ingredient of regulation 11(1) of Takeover Regulations of acquisition of additional shares in the Target Company is also satisfied.

53. With respect to the third ingredient, Noticees have submitted that compared to the total holding of 50.02% as on March 31, 2007, all the transactions during the year 2007-2008 have resulted in a decrease in Promoters holding to 48.03% as at March

31, 2008. It has already been held in the preceding paragraphs that to determine the threshold limit of 5% under regulation 11(1) of Takeover Regulations, all the aggregate / gross acquisitions of the entity have to be considered and change in voting rights has to be reckoned immediately before the acquisition of additional shares, which in certain situations may or may not be the beginning of financial year. In other words, dilution of the shareholding of the entity has no effect as the emphasis is on the acquisition of voting rights which is more than 5%. Therefore, the submission of the Noticees is devoid of merit.

54. In view of the above, the third ingredient of regulation 11(1) of Takeover Regulations is also satisfied as Promoters and Promoter Group had made a gross acquisition of 5.64% (0.03% + 0.29% + 4.62% + 0.7%) in the Target Company, as depicted in the table below:

Date	**Particular**	**Total Equity of the Target Company pre conversion/ Allotment**	**Pre-acquisition Promoter Group shareholding**	**Pre-acquisition Promoter Group shareholding %**	**Total Equity of the Target Company post conversion/ Allotment**	**Post-acquisition Promoter Group shareholding**	**Post-acquisition Promoter Group shareholding %**
07.04.2007	Conversion of Warrants by Promoters into 7,79,100 shares & Conversion of FCCB by others into 7,68,276 shares	1,65,92,900	82,99,900	50.02	1,81,40,276	90,79,000	50.05
Gross Acquisition by Promoters and Promoter Group on 07.04.2007							0.03
01.08.2007	Conversion of Warrants by Promoters into 2,51,000 shares & Conversion of Warrants by FCCB by others into	1,81,40,276	90,79,000	50.05	1,85,32,568	93,30,000	50.34

Date	Particular	Total Equity of the Target Company pre conversion/ Allotment	Pre-acquisition Promoter Group shareholding	Pre-acquisition Promoter Group shareholding %	Total Equity of the Target Company post conversion/ Allotment	Post-acquisition Promoter Group shareholding	Post-acquisition Promoter Group shareholding %
	1,41,292 shares						
Gross Acquisition by Promoters and Promoter Group on 01.08.2007							0.29
11.10.2007	Conversion of Warrants by Promoters into 1,90,000 shares	1,85,32,568	93,30,000	50.34	2,04,32,568	1,12,30,000	54.96
Gross Acquisition by Promoters and Promoter Group on 11.10.2007							4.62
12.10.2007	Conversion of Warrants by Promoters into 12,20,000 shares , Conversion of Warrants by others into 2,50,000 shares, Preferential allotment to others for 2,00,000 shares & Conversion of FCCB by others into 2,61,390 shares	2,04,32,568	1,12,30,000	54.96	2,23,63,958	1,24,50,000	55.66
Gross Acquisition by Promoters and Promoter Group on 12.10.2007							0.7

55. It is an admitted fact that the Noticees namely Mr. GRK Reddy, GRK Reddy Sons HUF, Global Infoserv Ltd., Marg Capital Markets Ltd., Marg Holdings & Financial Services Ltd. (currently known as Marg Projects and Infrastructure Ltd.), Mr. Raghunatha Reddy S V, Mr. Nagaraja Reddy S V, Mr. Chandra Reddy E, Mr. Subhash Reddy Y, Mr.

Revanth S, Ms. Hymavathi S, Ms. Laxmi E, Ms. Manjula Y, Ms. Mallikarjuna Rao G, Ms. Parvathi Devi G, Mr. Surendranathan Reddy N, Ms. Madhavi N, Ms. V P Rajini Reddy and Mr. Srinivajulu G, have not made any public announcement before acquiring 5.64% of shares in the Target Company. Further, as noted, there were four acquisitions by the Promoters and Promoter Group during the financial year 2007-2008, thus the reference date for the public announcement will be the date when the acquisition in question breaches the benchmark limit either by itself or taking into account the gross purchase of the Acquirer because only when the benchmark limit is breached, the obligation under regulation 11(1) of Takeover Regulations is triggered. In the instant matter that would be October 12, 2007.

56. Based on the above, it is concluded that the Noticees name in the aforesaid paragraph have violated regulation 11(1) read with regulation 14(2) of the Takeover Regulations for the acquisition of 5.64% of shares in the Target Company during the financial year 2007-2008.

Financial Year 2010-2011

57. Regulation 11(1) of Takeover Regulations as it stood during financial year 2010-2011 is reproduced below:

11. (1) *No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, with post acquisition shareholding or voting rights not exceeding fifty five per cent., in any financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.*

58. It has been alleged in the SCN that Promoters and the Promoter Group had acquired 49,00,000 shares till February 19, 2011 in 2 tranches, which represents 7.11% gross acquisition for the financial year in the Target Company.

59. It is observed that the reference date for determining pre acquisition shareholding of the Promoters and Promoter Group, considering the first of the two acquisitions was done on February 15, 2011, will be February 14, 2011. However, the details of

Promoters and Promoter Group as on February 14, 2011 is not available on record. In this regard, it is observed that in the absence of any corporate announcements during the period January 1, 2011 to February 14, 2011, related to equity share capital of the Target Company viz., preferential allotment, conversion of warrants, conversion of FCCBs etc., the shareholding of the Promoters and Promoter Group for the purpose of computation of pre-acquisition shareholding, will be determined based on disclosure made on BSE Ltd. for quarter ending December, 2010. From the Promoter and Promoter Group shareholding for the quarter ending December 2010, it is noted that Promoter and Promoter Group were holding 42.48% shares in the Target Company representing 1,40,16,794 equity share capital and they were holding 42.48% shares as on February 14, 2011. The said fact has not been disputed by the Noticees. Thus, the first ingredient of regulation 11(1) of Takeover Regulations of Acquirer holding 15% or more shares but less than 55% shares in the Target Company is satisfied.

60. With respect to the second ingredient, it is observed from Noticees submission that Promoters and Promoter Group had converted warrants allotted to them on two instances during the financial year, on February 15, 2011 and February 19, 2011 and had acquired 49,00,000 shares in the Target Company. Thus, the second ingredient of regulation 11(1) of Takeover Regulations of acquisition of additional shares in the Target Company is also satisfied.

61. With respect to the third ingredient, Noticees have submitted that compared to the total holding of 51.82% as on March 31, 2010, all the transactions during the year 2010-2000 have resulted in a decrease in Promoters holding to 49.84% as at March 31, 2011. It has already been held in the preceding paragraphs that to determine the threshold limit of 5% under regulation 11(1) of Takeover Regulations, all the aggregate / gross acquisitions of the entity have to be considered and change in voting rights has to be reckoned immediately before the acquisition of additional shares, which in certain situations may or may not be the beginning of financial year. In other words, dilution of the shareholding of the entity has no effect as the emphasis is on the acquisition of voting rights which is more than 5%. Therefore, the submission of the Noticees is devoid of merit.

62. In view of the above, the third ingredient of regulation 11(1) of Takeover Regulations is also satisfied as Promoters and Promoter Group had made a gross acquisition of

7.11% (3.37% + 3.77%) in the Target Company, as depicted in the table below:

Date	Particular	Total Equity of the Target Company pre conversion	Pre-acquisition Promoter Group shareholding	Pre-acquisition Promoter Group shareholding %	Total Equity of the Target Company post conversion	Post-acquisition Promoter Group shareholding	Post-acquisition Promoter Group shareholding %
15.02.2011	Conversion of Warrants by Promoters into 21,50,000 shares & Conversion of Warrants by others into 1,00,000 shares.	3,29,98,807	1,40,16,794	42.48	3,52,48,807	1,61,66,794	45.85
Gross Acquisition by Promoters and Promoter Group on 15.02.2011							3.37
19.02.2011	Conversion of Warrants by Promoters into 27,50,000 shares & Conversion of Warrants by others into 1,20,119 shares.	3,52,48,807	1,61,66,794	45.85	3,81,18,926	1,89,16,794	49.62
Gross Acquisition by Promoters and Promoter Group on 19.02.2011							3.77

63. It is an admitted fact that the Noticees namely Mr. GRK Reddy, Ms. V P Rajini Reddy, Mr. Madhusudan Reddy Gorepatti, GRK Reddy Sons HUF, Global Infoserv Ltd., Marg Capital Markets Ltd., Exemplarr Worldwide Ltd. and AIPL, have not made any public announcement before acquiring 7.1% of shares in the Target Company. Further, as noted, there were two acquisitions by the Promoters and Promoter Group during the financial year 2010-2011, thus the reference date for the public announcement will be the date when the acquisition in question breaches the benchmark limit either by itself or taking into account the gross purchase of the Acquirer because only when the benchmark limit is breached, the obligation under regulation 11(1) of Takeover Regulations is triggered. In the instant matter that would be February 19, 2011.

64. Based on the above, it is concluded that the Noticees named in the aforesaid paragraph have violated regulation 11(1) read with regulation 14(2) of the Takeover

Regulations for the acquisition of 7.1% of shares in the Target Company during the financial year 2010-2011.

65. I note that the observation letter of SEBI dated November 30, 2012 issued with respect to the voluntary public offer by AIPL was challenged by AIPL before Hon'ble SAT. SAT had allowed the appeal filed by AIPL which was subsequently challenged by SEBI before Hon'ble SC which while allowing SEBI's appeal in the matter of *SEBI* vs. *Akshya Infrastructure Pvt. Ltd.* decided on April 25, 2014, observed as follows:

"Factually, it cannot be denied that in the years 2006-07, 2007-08 and 2010-11, the respondent had acquired shares in excess of 5% which breached the 5% creeping acquisition limit. In our opinion, the respondent was required to comply with Regulation 11 and make a Public Announcement to acquire shares in accordance with law. The respondent admittedly not having complied with Regulation 11, in our opinion…"

66. In view of the aforesaid discussions, I concluded that the respective Noticees as mentioned in preceding paragraphs have triggered the provisions of regulation 11 (1) read with regulation 14(2) of Takeover Regulations during the financial years 2006-2007, 2007-2008 and 2010-2011.

Issue No. 3 *- If answer to the aforesaid question is in affirmative, what directions, if any have to be issued against the Noticees?*

67. I note that once the threshold limit prescribed under regulation 11(1) of Takeover Regulations have been breached, the Acquirer has to make a public announcement for acquiring minimum 20% of the voting capital of the Target Company as per regulation 21(1) of Takeover Regulations. In the instant matter, the Noticees have submitted that there was no market purchase by the Promoters. All the acquisition of shares by the PAC was on account of corporate action and conversion of pre-allotted options. In the light of the same, it is submitted that the breaching of limits, if any, is only technical. In this regard, I note that mode of acquisition of shares is not relevant for the purpose of determining the trigger under regulation 11(1) of Takeover Regulations. What is relevant is whether the gross acquisition, by any means / mode, in a financial year ending on 31st March is more than 5% of the voting capital of the Target Company. Further, the objective behind allowing consolidation of holdings, as per *Justice P.N. Bhagwati Committee Report of 1997* was to recognise the need to harmonise

consolidation of holdings by persons already holding substantial shares with the need to protect the interest of shareholders in a competitive, free market environment. Thus, the need to allow for consolidation in a regulated manner without unduly affecting the interest of the shareholders. However, once the limits are breached, then the interests of the shareholders have to be protected which is by way of giving them the option to exit in an Open Offer made by the Acquirers. The same is also in line with the principle of equality of treatment and opportunity to all the shareholders. Thus, it cannot be said that the breaching of limits as prescribed under regulation 11(1) of Takeover Regulations is only technical.

68. The Noticees have contended that they have negative net worth as on date. None of the Noticees had any substantial income in the span of last 5 years. Hence the financial viability of making Open Offer is practically not possible. In this regard, I would like to refer to the observations of Hon'ble SC in the matter of *Nirma Industries Ltd.* vs. *SEBI* decided on May 9, 2013, wherein the Hon'ble Court observed as follows:

"*…we are unable to stretch the meaning of terms such circumstances from the realm of impossibility to the realm of economic undesirability. In essence, the submission made by Mr. Divan is that unless they are allowed to walk away from the public offer they would have to bear losses which would otherwise have been shared by the erstwhile shareholders of the target company. Accepting such a proposition would be contrary to the aims and objectives of the Takeover Code which is to ensure transparency in acquisition of a large percentage of shares in the target company. It would also encourage undesirable and speculative practices in the stock market. Therefore, we are unable to accept the submission of Mr. Shyam Divan. Regulation 27(1) (d) would empower the SEBI to permit withdrawal of an offer merely because it has become uneconomical to perform the public offer*."

69. Further, the Hon'ble Apex Court in the matter of *SEBI* vs. *Akshya Infrastructure Pvt. Ltd.* decided on April 25, 2014, the Hon'ble SC has observed as follows:

"*We are also not impressed by the submission of Mr. Nariman that it has now become economically impossible to give effect to the public offer. This very submission has been rejected in Nirma Industries Ltd. (supra). We reiterate our opinion in Nirma Industries Ltd. (supra) that under Clause 27(1)(b)(c) and (d), a Public Offer, once made, can only be permitted to be withdrawn in circumstances which make it virtually impossible to*

perform the Public Offer. In fact, the very purpose for deleting Regulation 27(1)(a) was to remove any misapprehension that an offer once made can be withdrawn if it becomes economically not viable."

70. I note that though the aforesaid two observations of the Hon'ble SC was in reference to withdrawal of Open Offer, the same principle will also be applicable to situations where Open Offer was due by the Acquirer but the same was not made and later on the Acquirer claims economic hardship to not make an Open Offer. The changed financial condition of the Noticees is not a cogent reason for absolving them from their liability arising out of breaching the provisions of regulation 11(1) of Takeover Regulations. Further the case of *Gyani Chand* vs. *State of AP* referred to by Noticees is distinguishable from the present matter. In the said case, the Apex Court held that the appellant in question had no intention of committing breach of the undertaking given to the Court. It was physically impossible for the appellant to produce the documents as the documents had already been given by him to his mother, on whose behalf he had collected the same from the Court and the said documents had been subsequently destroyed because of a natural calamity. In the present matter, the facts of the case brings out that it is not a case of *force majeure* but rather economic / financial condition of the Acquirer and the Target Company and the same cannot be a valid ground for not complying with the mandatory obligations under Takeover Regulations.

71. The submission of the Noticees that Open Offer is not in the interest of Target Company's shareholders is incorrect. I have perused the data on the movement in price of the scrip of the Target Company. The 52 week high price as on November 8, 2019, is ₹ 22.9 and the 52 week low price is ₹ 7.6. Currently the price of the scrip is within the range of ₹ 8- ₹ 9. Thus, the data on the movement in price of the scrip of the Target Company leaves no room for doubt that even if the offer price is calculated based on the voluntary offer price which was ₹ 91, it is still more than the present quoted price of the scrip at BSE Ltd. Therefore, the shareholders will benefit by the Open Offer, if the Noticees make the same today. Further, it is noted from the material made available on record that the SEBI has received complaints from investors as the Noticees have not made an Open Offer during the relevant period. Thus, it can be seen that the interests of investors have been affected in the absence of Open Offer from

the Noticees.

72. AIPL has submitted that SEBI in many of the instances has granted the exemption from making public announcement even when the limit as specified under regulation has allegedly been breached. In this regard, I note that SEBI has granted exemption from Open Offer obligations provided it falls within exempted category, pursuant to an application made to SEBI and cases which are exempted by SEBI. Moreover, the application has to be made before the acquisition is made by the Acquirer. In the extant matter, neither any application for seeking exemption from Open Offer was received under regulation 4 of Takeover Regulations by SEBI from the Promoter Group before the said acquisitions were made by the Promoter Group nor the acquisitions by the Promoter Group falls within the exempted category as specified under clause (1) of sub-regulation (1) of regulation 3 of Takeover Regulations. Thus, the submission of AIPL is not acceptable.

73. AIPL has relied upon the Order of Hon'ble SC in the case of *Clairant International Ltd & Anr*. vs. *Securities and Exchange Board of India* (2004) 8 SCC 524 and has submitted that the direction to make an Open Offer ought not to be resorted to where the public shareholding of the Target Company has altered since the time of requirement of making of Open Offer. The said submission of the Noticee is incorrect. The questions which were raised before Hon'ble SC in the aforesaid matter were as follows:

    73.1. Rate of interest to be paid.

    73.2. Whether dividends paid should be set off from the amount of payable interest.

    73.3. Which shareholders would be paid the interest?

    The Apex Court in the said matter did not deal with the question of situations in which the direction to make an Open Offer ought not to be given to the Acquirer where the public shareholding of the Target Company has altered.

74. It is noted from records that AIPL's letter dated June 1, 2015 was considered by SEBI wherein AIPL had requested SEBI to allow it to go ahead with the Open Offer with price calculated to reflect the current market prices along with the interest for delayed period and a reasonable premium to the existing public shareholders in view of the changed circumstances and lapse of time. SEBI had examined the said request of AIPL

and had informed AIPL vide its letter dated July 9, 2015 that in the interest of public shareholders of Marg Ltd., the request of AIPL cannot be acceded to by SEBI. AIPL had again reiterated its aforesaid request vide its petition dated August 14, 2015 on the ground of changed financial condition of Marg Ltd. / AIPL. Similar submissions have been made by AIPL in the current proceedings and the same have been dealt in the preceding paragraphs.

75. It has already been concluded in preceding paragraphs that the Noticees have violated the provisions of regulation 11(1) of Takeover Regulations the financial years 2006-2007, 2007-2008 and 2010-2011. Further, I note that as per Hon'ble SC's direction in the matter of *SEBI* vs. *Akshya Infrastructure Pvt. Ltd.* decided on April 25, 2014, AIPL is required to complete its Voluntary Open Offer. However, the point to be analysed is whether or not the Noticees ought to be called upon to make Open Offer for the triggers during the financial years 2006-2007, 2007-2008 and 2010-2011 or whether any other directions can be issued against them.

76. I note that development of the securities market stands on the edifice of effective harmonization of the competing interests of the participants in that market. The Delegated Regulations, effectively harmonises the competing interests of such participants in various fields covered by it. Takeover Regulations itself recognizes that the interests of investors and development of securities market is best served, by expressly making exemptions to make Open Offer, subject to certain conditions. The underlying principle in such exemption is that the interests of the investors are best served by not requiring open offer in the specified exemptions. The Takeover Regulations, further do recognize, the situations in which interests of investor would be better served by not requiring Mandatory Open Offer, cannot be only those which are mentioned in automatic exemptions. It recognizes there could be further situations where the interests of investors and development of securities market is best served by exempting the Open Offer obligations, by vesting discretionary power on the Board under Takeover Regulations. Moreover, Hon'ble SAT in the matter of *Nirvana Holdings Private Limited* vs. *SEBI* (Appeal no. 31/2011) has further recognized even in cases where enforcement proceedings for failure to make open offer has been taken, there exists discretionary power with the quasi-judicial authority and observed that "*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."

77. In the extant matter, I note that SEBI has already taken note of the three triggers for Open Offer during the financial years 2006-2007, 2007-2008 and 2010-2011 and had accordingly asked AIPL vide letter dated November 30, 2012 to revise its Voluntary Open Offer price. The decision of SEBI to revise the Open Offer price after taking into account the three triggers has also been upheld by the Hon'ble SC in *SEBI* vs. *Akshya Infrastructure Pvt. Ltd*. decided on April 25, 2014. It is noted that the said acquisitions have resulted into Mandatory Open Offer liability. It has already been considered that ends of justice would be met if the revised Public Announcement / Open Offer is made as per the observation letter dated November 23, 2012 issued by SEBI. In view of the same, I am of the considered opinion that in the peculiar facts of the case and the judgment of Hon'ble SC in *SEBI* vs. *Akshya Infrastructure Pvt. Ltd.* decided on April 25, 2014, the ends of justice would be met, by giving a direction to complete the Voluntary Open Offer at a revised Open Offer price and other terms as mentioned in SEBI letter dated November 30, 2012. It goes without saying the revised price would be as per the highest open offer price calculated in terms of the Takeover Regulations, for the three triggers covered in SCN dated May 11, 2018 since this would be in the best interest of the investor.

78. The questions that arises next is to determine who all are liable to make the Open Offer. It has already been held that the Noticees are liable to make Mandatory Open Offer and as upheld by the Hon'ble SC, AIPL is liable to make the Voluntary Open Offer. The Mandatory Open Offer obligation is on the Noticees namely Mr. GRK Reddy, GRK Reddy Sons HUF, Global Infoserv Ltd., Marg Capital Markets Ltd., Marg Holdings & Financial Services Ltd. (currently known as Marg Projects and Infrastructure Ltd.), Mr. Raghunatha Reddy S V, Mr. Nagaraja Reddy S V, Mr. Chandra Reddy E, Mr. Subhash Reddy Y, Mr. Revanth S, Ms. Hymavathi S, Ms. Laxmi E, Ms. Manjula Y, Ms. Mallikarjuna Rao G, Ms. Parvathi Devi G, Mr. Surendranathan Reddy N, Ms. Madhavi N, Ms. V P Rajini Reddy, Mr. Srinivajulu G, Mr. Madhusudan Reddy Gorepatti, Exemplarr Worldwide Ltd. and AIPL.

79. AIPL has also submitted that there was no requirement to make any Open Offers in

relation to the alleged triggers, as most of shareholders of the Target Company are not continuing after the alleged trigger date as they got an exit opportunity at the higher share price as compared to price based on alleged trigger date. The said submission of AIPL is unacceptable as the obligation on the Noticee to make an Open Offer is independent of the trading activity of the shareholder in the scrip of the Target Company. The obligation of the Acquirer to make an Open Offer continues till the time he makes it. Further, Hon'ble SC in the case of *Clariant International Limited and another* vs. *SEBI* [Appeal (Civil) No. 3183/2003] while determining the question to whom the interest is payable in case of delayed Open Offer made the following observation:

"…

While compensating a person, the court should see that he is not unjustly enriched. Interest is directed to be paid on the default of the acquirer occasioning loss suffered by an investor of his money. The question of paying interest by way of compensation to persons who had not suffered any loss, thus, would not arise.

Interest was, therefore, payable only to such persons who shareholders were of target company as on the triggering date.

…"

In the aforesaid order, the Hon'ble Court made a distinction between shareholders who were eligible to be paid interest and shareholders who are not eligible for the same. To put it differently, shareholders whose name appear in the register of the company at the time when public announcement of the Open Offer should have been made as per the Takeover Regulations, were eligible to be compensated for the delayed Open Offer while the shareholders whose name did not appear in the register of the company at the time when public announcement of the Open Offer should have been made as per the Takeover Regulations, but will tender their share prior to the closure of Open Offer, were not eligible to be compensated for delayed Open Offer. Corollary to this is that every shareholder of the Target Company is eligible to tender their shares in the Open Offer prior to its closure irrespective of whether their name appears in the register of the company as on the date of public announcement of the Open Offer. In the extant matter, though some of the shareholders of the Target Company would have

reduced their shareholding in the company or would have exited the company and new shareholders would have come in their place, but that does not discharge the Noticee from its Open Offer obligation to make it to all the existing shareholders of the Target Company, as the Open Offer is yet to be completed by the Noticee / Open Offer is yet to be closed. Therefore, the direction to make open offer as stipulated in the present order, should be extended to all shareholders including the new shareholders of the Company who become the shareholders of the company post public announcement of voluntary open offer.

80. So considering the peculiar facts and circumstances of the case, the liability of the Promoter entities involved in the three triggers can be considered as discharged when Noticees along with AIPL, who is the Acquirer for the Voluntary Open Offer, makes a revised public Announcement (including the names of the Noticees as Acquirer / PACs), with suitable terms and as per the observation letter dated November 30, 2012 issued by SEBI.

81. Noticees have submitted that they are facing numerous cases before NCLT Chennai, Hon'ble High Court of Madras, Consumer Court, RERA and Arbitration Tribunals at various places. It is noted that the Noticees have neither submitted any documentary proof substantiating their claim nor have brought to the SEBI's notice that any specific stay has been granted to them by any Court to bar any authority to initiate / continue proceedings or pass appropriate directions against them. Moreover, the Noticee have also not made any submissions with respect to the entity against whom the aforesaid proceedings as stated by them have been initiated. Whether the proceedings have been initiated against the Promoter Group entities in their individual capacity or against the Target Company, cannot be made out from the Noticees submissions.

82. Noticees have also submitted that they are ready to give an Open Offer for acquisition for an amount of ₹ 17.45 crore subject to the outcome of Income Tax Department's attachment proceedings. Noticees have not submitted any documentary proof in support of their submission of attachment. Even if the said attachment proceedings are going on against the Noticees, the same cannot be a ground not to comply with the directions of SEBI as both the proceedings are independent of each other. Mandatory obligations under Takeover Regulations have to be complied with by the Noticees irrespective of their obligations under other laws of the land. Noticees cannot fail to

pay the consideration to the shares offered in the Open Offer on this ground. Further, Noticees and AIPL shall comply with the obligations relating to the escrow account as per Takeover Regulations irrespective of the attachment proceedings, if any, by the Income Tax Department as the same is an independent and a mandatory obligation under Takeover Regulations.

83. In addition to the directions to be issued under the provisions of the Takeover Regulations, the legal sanctity of SEBI's directions of imposing interest on delayed open offer has been affirmed by the Hon'ble SC in the case of *Clariant International Limited and another* vs. *SEBI* [Appeal (Civil) No. 3183/2003]. In the said case, the Hon'ble SC had held *inter alia* as follows:

"..*Interest can be awarded in terms of an agreement or statutory provisions. It can also be awarded by reason of usage or trade having the force of law or on equitable considerations. Interest cannot be awarded by way of damages except in cases where money due is wrongfully withheld and there are equitable grounds therefor, for which a written demand is mandatory.*

....

In Executive Engineer, Dhenkanal, Minor Irrigation Division, Orissa and Others vs. N.C. Budharaj (Deceased) by Lrs. And Others [(2001) 2 SCC 721], Raju, J. speaking for the majority held that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation by whatever name it may be called, namely, interest, compensation or damages.

.....

Directions by the Board are required to be issued for the purpose of protecting the interest of the investors which would imply that such protection be extended to the persons who are entitled thereto and not any other shareholder who would get the same by windfall. The shareholders contemplated under clause (i) of Regulation 44 must be those shareholders whose shares have been accepted upon public announcement of offer and who have suffered loss owing to blockage of amount by not being able to sell the shares held by them. The object of the said provision is to protect the interest of such shareholders who had suffered a loss for delay in making the public announcement and, thus, may have to be compensated. The very fact that the bench-mark as regard the rate

of interest has been fixed is also a pointer to the fact that the interest is to be paid to such investors who had suffered some loss. While compensating a person, the court should see that he is not unjustly enriched. Interest is directed to be paid on the default of the acquirer occasioning loss suffered by an investor of his money. The question of paying interest by way of compensation to persons who had not suffered any loss, thus, would not arise. Interest was, therefore, payable only to such persons who were shareholders of target company as on the triggering date.

....

In view of our findings aforementioned, we are of the opinion that while calculating the amount of interest, the amount of dividend paid to the shareholders should be excluded. The shareholders who by reason of default on the part of acquirer have been deprived of interest payable on the difference of the offer price and market price would be entitled to interest as direction to pay interest being not penal in nature, they cannot make double gains."

84. Since the shareholders who held shares on the date of public announcement of Voluntary Open Offer i.e. on October 20, 2011 and the dates when the Mandatory Open Offers would have been triggered, were denied of their statutory right to exit, in light of the provisions of the Takeover Regulations, I find that those shareholders, as per the Hon'ble SC judgment recorded above, are entitled to receive interest of 10% on the Open Offer price.

85. I note that Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 has been repealed and Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 as notified on September 23, 2011 and has been brought into force from thirtieth day from the date of its publication in the Official Gazette. Regulation 35 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, provides as under:

Repeal and Savings

35 (1) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, 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.

86. Thus, the present proceedings are saved by above mentioned regulation of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

ORDER

87. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11(1) and 11B (1) of the SEBI Act and regulations 44 and 45 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 read with corresponding provisions of regulations 32 and 35 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, hereby issue the following directions:

a) Mr. GRK Reddy, GRK Reddy Sons HUF, Global Infoserv Ltd., Marg Capital Markets Ltd., Marg Holdings & Financial Services Ltd. (currently known as Marg Projects and Infrastructure Ltd.), Mr. Raghunatha Reddy S V, Mr. Nagaraja Reddy S V, Mr. Chandra Reddy E, Mr. Subhash Reddy Y, Mr. Revanth S, Ms. Hymavathi S, Ms. Laxmi E, Ms. Manjula Y, Ms. Mallikarjuna Rao G, Ms. Parvathi Devi G, Mr. Surendranathan

Reddy N, Ms. Madhavi N, Ms. V P Rajini Reddy, Mr. Srinivajulu G, Mr. Madhusudan Reddy Gorepatti, Exemplarr Worldwide Ltd. and Akshya Infrastructure Pvt. Ltd. in discharge of their Mandatory Open Offer liability, along with Akshya Infrastructure Pvt. Ltd. who in discharge of its Voluntary Open Offer liability are directed to make a revised Public Announcement, including the names of the aforesaid Noticees as Acquirer / PACs) and make an Open Offer revising the offer price which shall be the highest offer price calculated in terms of the Takeover Regulations, for the all the subject Mandatory Open Offer and Voluntary Open Offer and in terms of SEBI letter dated November 30, 2012, within a period of 45 days from the date of service of this Order. Further, though the liability of the Noticees as mentioned above are joint and several, their individual liability towards the revised Open Offer price is capped to the extent to which the individual Promoter Group entity would have been liable, if he would have made the Open Offer as and when he had triggered regulation 11(1) of Takeover Regulations, in the given financial year. In case, the Promoter Group entity is present for triggers which happened on multiple occasions, his liability towards the revised Open Offer price will be capped to the highest Open Offer price he would have made as and when he had triggered regulation 11(1) of Takeover Regulations, in the given financial year.

b) The persons mentioned in above sub paragraph (a) shall along with consideration amount, will pay, as per the ratio of, judgment of Hon'ble SC in *Clariant International Limited and another* vs. *SEBI* [Appeal (Civil) No. 3183/2003], interest at the rate of 10% per annum from the respective trigger dates for Mandatory Open Offers and Voluntary Open Offer on the Open Offer price at which they were supposed to make the Open Offer as and when they had triggered regulation 11(1) of Takeover Regulations, in the given financial year, till the date of payment of consideration to the shareholders who were holding shares in the Target Company on the respective dates and whose shares have been accepted in the current Open Offer directed to be made in this Order, after adjustment of dividend, if any, paid.

c) SEBI may initiate action, if any, against Legal representatives of Mr. G Raghava Reddy in terms of applicable law.

88. This order disposes of the show cause notice dated February 25, 2016 read with corrigendum to the said show cause notice dated May 11, 2018 and show cause notice dated May 11, 2018.

89. The order shall come into force with immediate effect.

90. This order is without prejudice to any other actions that SEBI may take in accordance with securities laws.

DATE: November 15, 2019 **MADHABI PURI BUCH**

PLACE: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA