BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-2/50-55/2013-14]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of

1. **Valecha Engineering Ltd. [PAN: AAACV2288G]**
2. **Jagadish K. Valecha[PAN:AAAPV6661L]**
3. **Kavita Valecha [PAN:AABPV4823H]**
4. **Karan Valecha [PAN: ADMPV1447K]**
5. **Kapil Valecha [PAN: AEEPV8425N] &**
6. **Valecha Investment Pvt. Ltd. [PAN: AAACV2759G]**

In the matter of

Valecha Engineering Ltd.

Background

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') has conducted investigation into the alleged irregularity in the scrip of M/s. Valecha Engineering Ltd. (hereinafter referred to as 'VEL/Noticee No.1') and into the possible violations of the provisions of the SEBI Act, 1992 (hereinafter referred to as the 'Act') and various Rules and Regulations made there under for the period from January 01, 2009 to December 31, 2009 (hereinafter referred to as 'investigation period').

2. The investigations inter alia revealed that VEL delayed in disseminating price sensitive information to the Stock Exchanges and therefore Noticee No.1 and Shri Jagadish K. Valecha, Managing Director of VEL (hereinafter referred to as Noticee No.2) are alleged to have violated Clause 2.1 of Schedule II (Code of Corporate

Disclosure Practices for Prevention of Insider Trading) under Regulation 12 (2) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations'). VEL also failed to close the trading window at the time of the Board Meeting for the purpose of issuing of convertible warrants /ADR/GDR, and therefore Noticee Nos. 1 and 2 are alleged to have violated Clause 3.2.3 Part A of Schedule I under Regulations 12(1) of the PIT Regulations. Further, it has been alleged that Kavita Valecha (hereinafter referred to as Notice No. 3), the Company Secretary and Compliance officer, failed to ensure compliance of the continual disclosure requirements, thereby violating Clause 3.2 of Schedule II as specified under Regulations 12(2) of the PIT Regulations.

3. Noticee No. 2 communicated to his two sons, namely Karan Valecha and Kapil Valecha (hereinafter referred to as Noticee Nos. 4 & 5, respectively), Unpublished Price Sensitive Information (UPSI) with respect to bagging of new projects/ contracts before corporate announcements made by VEL and they in turn, traded in the scrip of VEL on the basis of and while in possession of the UPSI. Therefore Noticee No. 2 is alleged to have violated Regulation 3 (ii) of PIT Regulations and Noticee Nos. 4 & 5 violated Regulation 3 (i) of PIT Regulations.

4. Further, Valecha Investments Pvt. Ltd. (hereinafter referred to as Noticee No.6), a promoter entity has traded in the scrip of VEL while in possession of UPSI with respect to the Board meeting convened for consideration of proposed issuance of convertible warrants to identifiable investors and promoters. Therefore, Noticee No. 6 has allegedly violated Regulation 3 (i) of PIT Regulations. The Noticee Nos. 1 to 6, hereinafter are collectively referred to as the Noticees.

Appointment of Adjudicating Officer

5. In view of the above, SEBI initiated adjudication proceedings against the Noticees and appointed Shri S. R. Prasad as Adjudicating Officer (AO) under Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') to inquire into and adjudge under sections 15 G and/ 15 HB of the SEBI Act, for the alleged violation of the abovementioned provision

of PIT Regulations by the Noticees. SEBI vide Order dated May 22, 2012 appointed the undersigned as the AO.

Show Cause Notice, Reply and Personal Hearing

6. The AO issued separate Show Cause Notices in the month of May 2011 ('SCNs') to the Noticees under Rule 4 of the Adjudication Rules, to show cause as to why an inquiry should not be held and penalty be not imposed under Section 15 G/15 HB of the SEBI Act for the alleged violation/s of PIT Regulations. The Noticees had made various submissions in reply to the SCNs. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the AO granted several opportunities of personal hearing to the Noticees. The undersigned granted a final opportunity of personal hearing to the Noticees on May 29, 2013. The authorised representative of the Noticees attended the hearing on the scheduled date and reiterated the submissions made in the written replies.

7. In view of the above, I am proceeding with the inquiry taking into account the submissions made by the Noticees, documents and material as available on record.

Issues, Evidence and Findings

8. I have carefully perused the charges leveled against the Noticees mentioned in the SCNs, oral and written submissions and the materials and documents as available on record. The issues that arise for consideration in the present case are:

a) **Whether Noticee Nos. 1 and 2 have failed to comply with Clause 2.1 of Schedule II (Code of Corporate Disclosure Practices for Prevention of Insider Trading) as specified under Regulation 12 (2) of the PIT Regulations?**
b) **Whether Noticee Nos. 1 and 2 have failed to comply with Clause 3.2.3 (c) of Part A of Schedule I as specified under Regulation 12 (1) of the PIT Regulations?,**
c) **Whether Noticee No. 3 has failed to comply with Clause 3.2 of Schedule II as specified under Regulations 12(2) of the PIT Regulations?**

d) **Whether Noticee No.2 has violated Regulation 3 (ii) and Noticee Nos. 4 & 5 violated Regulation 3 (i) of PIT Regulations pursuant to the trading before corporate announcements made by VEL with respect to the bagging of new projects/ contracts?**
e) **Whether Noticee No. 6 has violated Regulation 3 (i) of PIT Regulations, pursuant to the trading while in possession of UPSI with respect to issuance of share warrants ?**
f) **Do the violations, if any, on the part of Noticees attract any penalty under Sections 15 G/ 15 HB of the SEBI Act?**
g) **If yes, what should be the quantum of monetary penalty?**

Now I am proceeding to analyze each of the allegations in the above order.

a) Whether Noticee Nos. 1 and 2 have failed to comply with Clause 2.1 of Schedule II (Code of Corporate Disclosure Practices for Prevention of Insider Trading) as specified under Regulation 12 (2)?

9. I would like to refer to the relevant provisions of the PIT Regulations which read as under:

POLICY ON DISCLOSURES AND INTERNAL PROCEDURE FOR PREVENTION OF INSIDER TRADING
Code of internal procedures and conduct for listed companies and other entities.

12. *(1) All listed companies and organisations associated with securities markets including:*
(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;
(b) the self-regulatory organisations recognised or authorised by the Board;
(c) the recognised stock exchanges and clearing house or corporations;
(d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and
(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies, shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same.

(2) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.

Clause 2. Prompt disclosure of price sensitive information-

***2.1 Price** sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.*

10. It was alleged in the SCN that there has been a delay in submitting to the Stock Exchanges, the price sensitive information with respect to projects received by VEL as detailed below:

Information disseminated on April 6, 2009:

Authority giving contract/ project	*Date of letter of Authority*	*Amount (₹ Cr.)*
Delhi Development Authority (DDA)	*March 24, 2009*	*65.00*
Indian Air Force, Jammu	*March 30, 2009*	*71.00*
	Total	***136.00***

Information disseminated on August 28, 2009:

Authority giving contract/ project	*Date of letter of Authority*	*Amount (₹ Cr.)*
Govt. of Arunachal Pradesh	*July 31, 2009*	*79.00*
BARC (Trombey, Mumbai)	*March 24, 2009*	*15.00*
MSRDC	*July 29, 2009*	*46.00*
Western Railway (Ratlam)	*June 19, 2009*	*32.00*
	Total	***172.00***

11. The Noticee Nos. 1 & 2 submitted that as disclosures of bagging of projects/contracts which are done in the ordinary course of business typically executed over a period spanning from 12 months to 36 months or more. VEL makes the disclosures when the size of the orders received becomes substantial i.e. around 100 crore or more and this is an admitted fact. As regards the process of applying for tenders and awarding of contracts, it can be observed that after complying with the tender of application and the bidding process, the letter of acceptance is issued to the lowest bidder with conditions thereto and only after the same has been complied with the said prerequisite/conditions of letter of acceptance that the contract is awarded. If the awardee fails to comply with the same no work order is issued and the award is cancelled, while the client is free to negotiate with other bidders.

12. As regards the disclosures made on April 06, 2009 in the matter of contracts/projects received from DDA and IAF, Jammu. The Noticee submitted that the letter of authority dated March 24, 2009 from DDA was dispatched via speed post only on March 25, 2009 at 19.09 p.m. and the same was received by the Noticee only on March 27, 2009. This can be understood from the inward register maintained by the Noticee and other acknowledgement as submitted by the Noticee. Thus, the Noticee was aware of the same only on March 27, 2009 but however did not make the disclosure as the award amount only consisted on ₹ 65 crore. The DDA letter was followed by a letter dated April 01, 2009 from IAF, Jammu informing the Noticee of it having bagged work order for ₹ 70.85 crore. As on April 01, 2009 the Noticee had received orders worth ₹ 135 crore and therefore it immediately made a disclosure to BSE vide its letter dated April 01, 2009. However due to technical difficulties the same could only be faxed on April 06, 2009.

13. Similarly, as regards the disclosures made on August 27, 2009, the first point to be noted is the fact that, the disclosures were made on August 27, 2009 and not on August 28, 2009. Next, the projects/ contracts concerned with this date are from BARC (Trombey, Mumbai), Western Railway (Ratlam), MSRDC and Govt. of Arunachal Pradesh. The Noticee bid for the BARCC contract was worth ₹ 15 crore and the acceptance of the same was communicated vide letter dated March 24, 2009 along with a condition to make payment of requisite security deposit and compliance with other conditions. Since the work order was only worth ₹ 15 crore, VEL did not make any disclosures. VEL bid for the Ratlam contract worth ₹ 32 crore and the acceptance of the same was communicated to VEL vide letter dated June 19, 2009 along with a condition to make payment of the requisite security deposit and compliance with other conditions. Since the work order was only worth ₹ 32 crore, VEL did not make any disclosures. VEL later bid for the MSRDC contract worth ₹ 46 crore and the acceptance of the same was communicated to the Noticee vide letter dated July 07, 2009 along with a condition to make payment of the requisite security deposit and compliance with

other conditions. However the work order was awarded to VEL only vide letter dated July 29, 2009. Since the work order was only worth ₹ 46 crore, the Noticee did not make any disclosures. Similarly VEL bid for the government of Arunachal Pradesh Contract worth ₹ 79 crore (36.13 crore + 42.17 crore) for two projects and the acceptance of the same was communicated vide two letters dated July 31, 2009 along with a condition to make payment of the requisite security deposit and compliance with other conditions. However the work order was awarded to VEL only vide letters dated August 22, 2009. Since as on August 24, 2009 VEL had received orders worth ₹172 Crore, it immediately disclosed the same to BSE vide its letter dated August 25, 2009.

14. I find from the submissions of Noticee Nos. 1 and 2, that VEL is in the business of undertaking infrastructure projects and it is a well accepted market practice of making combined disclosures regarding the bagging of projects by such companies. VEL had a laid down corporate disclosure policy where they make disclosures to the exchanges as and when the combined orders reach around ₹ 100 crore and they have been following the said practice. I would like to analyze whether the information regarding bagging of contracts is price sensitive information. I understand from the very nature of the business of VEL, that it may receive several contracts worth thousands of crores every year and the market price of the scrip usually discounts such expectations. The announcement of any major contracts however, may impact the price temporarily; say for a couple of hours or for a day or even a few days. Our markets are not wholly competitively perfect in dissemination of and discounting of information and therefore such aberrations. In the medium/ long run, the price will stabilize. In my view, therefore, insisting the company to disclose to the Stock Exchanges every time they receive a project/ order is neither practical nor advisable.

15. In this context it is pertinent to note the observations of the Hon'ble Securities Appellate Tribunal (SAT) in *SAT Appeal Nos. 217 & 218 of 2011 of Shri Anil Harish & Smt. Ratna Harish dated June 22,* 2012 particularly since the parties to the appeal are another set of entities alleged to have violated PIT Regulations under

similar facts and circumstances pursuant to the investigation carried out by SEBI in the scrip of VEL as mentioned in para 1 above. I reproduce below the relevant extracts of the said order in verbatim:

"Whether information is price sensitive and on what date it became price sensitive will depend on the facts and circumstances of each case. In case of Gujarat NRE Mineral Resources ltd. vs. SEBI (Appeal no. 207 of 2010 decided on 18.11.2011) where this Tribunal was dealing with the case of an investment company whose business was only to make investments in the securities of other companies, it was held that earning income by buying and selling securities held in investment is the normal activity of the investment company and every decision to buy it or to sell its investments would have no effect on the price of the securities of the company. By the way of an illustration the Tribunal has also observed that if a manufacturing company were to sell its product or buy raw material, it would be a part of its normal business activity and would not be price sensitive. On the same analogy, when a company which is in the business of infrastructure projects, bags an order in the normal course of its business, although it may be required to give intimation to the stock exchanges under Regulation 36(7) of the Listing agreement, the information need not necessarily be price sensitive. It will depend on the facts and circumstances of each case. In the case in hand, by its letter dated 25th August 2009, the company has given intimation to the stock exchange regarding bagging of new project worth Rs. 172 crores. It needs to be noted that this intimation is not in respect of one project but in respect of five different projects out of which two road projects are form Arunachal Pradesh worth Rs. 79 crores only.

We find that the intimation given to the stock exchange on August 25, 2010 was not in respect of one project but was in respect of five different projects out of which two road projects are from Arunachal Pradesh worth Rs. 79 crores only. The other contracts were relating to construction of waste tank farm for Bhabha Atomic Research Centre, Trombay worth Rs. 15 crores, bridge work at Thane worth Rs. 46 crores and bridge work at Indore worth Rs. 32 crores. When a company having contracts worth Rs. 1000 crores pending with it for execution bags a few new projects through the tendering process such information need not necessarily be price sensitive. It needs to be appreciated that the projects relating to Arunachal Pradesh were awarded after a long drawn up tendering process keeping in view the transparency norms to be followed by the government departments/public sector undertakings and the persons participating in the tendering process

knew about the developments which took place at each and every stage of the tendering process. Opening of tenders is done in the presence of bidders where the bidders came to know the lowest bidder who is likely to get the award. Usually, there is a long time gap between the date when the lowest bidder is declared and the contract is actually awarded to the lowest bidder. During all this period, the information with regard to the lowest bidder and processing the award of contract in his favour is known to all the participants. Under such circumstances award of the contract to an infrastructure company cannot be said to be a price sensitive information. The adjudicating officer has not dealt at all with the issue whether award of the contract was a price sensitive information. In fact, he has proceeded on the assumption that the announcement made by the company on August 25, 2009 is a price sensitive information. In para 21 of the impugned order he has recorded that "there is no dispute over the issue that the aforesaid announcement of the company was indeed a price sensitive information". This is incorrect in view of the fact that the appellant has throughout taken a stand that information with regard to award of contract by Arunachal Pradesh Government was not price sensitive information.

In view of our finding above, the order passed by the adjudicating officer cannot be sustained. We may point out some other discrepancies in the order for which the order seems to be vitiated. In para 17 of the impugned order in the case of Mr. Anil Harish, it has been observed by the adjudicating officer that major chunk of purchases were made by the appellant just prior to corporate announcement made by the company regarding "its bagging of the said project worth Rs. 172 crores from the Government of Arunachal Pradesh on August 28, 2009". Again in para 21 of the order, it is recorded by him that "the price movement in the shares of the company as has been detailed in the table at paragraph 20 above, do indicate that during the last week of August 2009, its price had moved almost in tandem with the BSE sensex and the corporate disclosure made by the company on August 28, 2009 regarding its getting orders worth Rs. 172 crores from the Government of Arunachal Pradesh , had no significant impact on the price of the scrip". We are constrained to observe that the adjudicating officer has not properly examined the information given by the appellant to the stock exchange which clearly shows that the orders from the Arunachal Pradesh Government were in respect of two road projects worth only Rs.79 crore and not worth Rs. 172 crores. The impugned order proceeds on the assumption that the company had bagged orders worth Rs. 172 crores from the Government of Arunachal Pradesh whereas it had received orders only the extent of Rs. 79 crores from the Government of

Arunachal Pradesh. We also noticed that the adjudicating officer has traversed beyond the charge in the show cause notice. In para 4 of the show cause notice dated May 18, 2011, reference is made only to the transaction entered into by the appellant on August 21, 2009 and August 25, 2009. However, in the impugned order the appellant has been held guilty even in respect of the transactions made by him on August 28, 2009. The transactions of August 28, 2009 were not the subject matter of the show cause notice. In any case, since the disclosures were made to the stock exchanges on August 25, 2009 which were disseminated tot the public by NSE on August 25, 2009 itself and by BSE on August 27, 2009, the adjudicating officer has erred in taking note of the transaction of August 28, 2009 also. In short, the order cannot be sustained for the reason that there is no finding recorded by the adjudicating officer that the information with regard to bagging of award from the Government of Arunachal Pradesh was a price sensitive information; the contracts relating to Arunachal Pradesh government were only to the tune of Rs. 79 crores and not Rs. 172 crores and the trading of the appellants on August 28, 2009 have also been taken into account which were after the date of publication of the information and were also not a subject matter of the show cause notice. Since we are holding that in the facts and circumstances of the case, the bagging of contracts by the company from the Arunachal Pradesh Government was not price sensitive information, the charge against appellant in Appeal no. 218 of 2011 also fails."

16. In view of the above, I conclude that the information of receiving of projects / orders cannot necessarily be considered as price sensitive and therefore, the Noticee Nos. 1 and 2 cannot be said to have violated Clause 2.1 of Schedule II (Code of Corporate Disclosure Practices for Prevention of Insider Trading) as specified under Regulation 12 (2) of PIT Regulations.

b) Whether Noticee Nos. 1 and 2 have failed to comply with Clause 3.2.3 (c) of Part A of Schedule I as specified under Regulation 12 (1) of the PIT Regulations?

17. The Clause 3.2.3 Part A of Schedule I under Regulations 12(1) of the PIT Regulations reads as under–

3.0 Prevention of misuse of "Price Sensitive Information"
Clause 3.2.3 *The trading window shall be, inter alia, closed at the time:—*

……..

(c) Issue of securities by way of public/rights/bonus etc.

18. The SCN alleged that a Board meeting was held on April 30, 2009 for the purpose of considering issue of share warrants on preferential basis to the identified investors and promoters and another Board meeting was held on November 27, 2009 for the purpose of considering of issue of ADR/GDR/FCCBs. However, the trading window was not closed with respect to these meetings.

19. Regarding the failure to close the trading window, the Noticee Nos. 1 and 2 submitted that the relevant clause is applicable only for securities issue to all investors/ all shareholders and not to section of investors such as preferential issue of ADR/GDR. Further, the trading window cannot be closed on T 4 basis when the meeting is decided with short notice say one day. Admittedly, the corporate announcement for holding of board meeting for consideration of ADR/GDR was made on November 25, 2009 and the Board Meeting was held on November 27, 2009 i.e within a day's gap.

20. I find that VEL convened Board Meetings on April 30, 2009 and November 27, 2009 for consideration/approval of issuance of share warrants/ADR/GDR/FCCBs to identified investors and the promoters. VEL's own code of conduct for prevention of insider trading stated that the trading window shall be closed 4 days prior to the Board meeting for the following events:

i. Declaration of financial results (quarterly, half-yearly and annually)
ii. Declaration of dividends (interim and final)
iii. Issue of securities by way of public/rights/bonus etc.
iv. Any major expansion plans or execution of new projects.
v. Amalgamation, mergers, takeovers and buy-back.
vi. Disposal of whole or substantially whole of undertaking.
vii. Any significant changes in policies, plans or operations.

Therefore, the contention of the Noticee that window closure is not required in such cases is not acceptable for the simple reason that the said clause is inclusive in nature and the list cited is not exhaustive. Therefore, the issuance of shares in

whatever nature, mode to the existing or new share holders, to a section of public or at large all covered under the provisions of the said clause. Further, there was no bar VEL to close trading window for one day ie the between deciding and holding the Board meeting on November 27, 2009.

21. In view of the above it is established beyond doubt the Noticee No. 1 has failed to comply with the provisions of Clause 3.2.3 (c) of Part A of Schedule I as specified under Regulation 12 (1) of the PIT Regulations warranting imposition of monetary penalty under Section 15HB of the SEBI Act.

22. Now let me examine the role of Noticee No.2. As per Clause 1.2 of Schedule I Part A of the PIT Regulations, '*The compliance officer shall be responsible for setting forth the policies, procedures, monitoring adherence to the rules for the preservation of 'Price Sensitive Information", pre-clearing; of designated employees' and their dependent trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct*' and this should be done '*under the overall supervision of the board of the listed company'.*

23. As per Regulation 12 (1) of the PIT Regulations all companies shall frame a code of internal procedures and conduct as near there to the Model Code specified in Schedule I of the said Regulations without diluting it in any manner and ensure compliance of the same. The company being an artificial person acts through its board of directors and officers.

24. I find that VEL has framed and adopted a code of conduct for prevention of Insider Trading as per Regulation 12 (1) of the PIT Regulations. The company/board of directors has also appointed a compliance officer responsible for the implementation of the same. It is therefore the duty of the compliance officer to implement the code of conduct and in case of any difficulty in implementation he/she should bring it to the attention of the board of directors and the board of director in turn shall remedy / remove the difficulties. In my view, the above provision of law does not envisage the Managing Director to

monitor and supervise the day to day functioning of the compliance department of the company. The substantive corroborative evidences as available on record are insufficient to establish beyond doubt that Noticee No. 2 has done or not done anything which is in contravention of any provisions of the law with regard to the alleged non - closure of trading window prior to the Board meeting held on April 30, 2009 for the purpose of considering issue of share warrants on preferential basis to the identified investors and promoters and another Board meeting held on November 27, 2009 for the purpose of considering of issue of ADR/GDR/FCCBs.

25. From the foregoing findings and observations, I conclude that the alleged violation against the Noticee No. 2 does not stand established and is not a fit case to impose any monetary penalty.

c. Whether Noticee No. 3 has failed to comply with Clause 3.2 of Schedule II as specified under Regulations 12(2) of the PIT Regulations?

3.0 Overseeing and co-ordinating disclosure

…….

"3.2 This official shall be responsible for ensuring that the company complies with continuous disclosure requirements. Overseeing and co-ordinating disclosure of price sensitive information to stock exchanges, analysts, shareholders and media and educating staff on disclosure policies and procedure." (*Compliance Officer).*

26. It was alleged in the SCN that Noticee No. 3 being the Company Secretary and the Compliance officer failed in her responsibility in submitting price sensitive information with respect to projects received by VEL to the Stock Exchanges as detailed in para 10 above.

27. The Noticee No.3 vide her replies to the SCN inter alia stated that she has been working as a Company Secretary / Compliance officer of VEL for more than 15 years and she has at all point of time complied with her duties/

responsibilities as a compliance officer. She has always acted in a bonafide manner while performing her duties and has never dealt in the shares of VEL during the investigation period. She denies that there was any delay in the submission of price sensitive information to the stock exchange and in the process having violated any PIT Regulations as she had overseen and coordinated the disclosure of price sensitive information to both the stock exchanges and the public. She has a clean track record in terms of compliance and never in the past has any action been taken against her by any regulating authority including SEBI. VEL deals in infrastructure business wherein it mainly executes projects and bags orders from various clients including Government agencies in its ordinary course of business which is long drawn process. Till the time the order is actually awarded and formally communicated the bagging/acquiring of the order is uncertain. VEL has taken a policy decision to make consolidated disclosures of all the pending orders as and when the size reached 100 Crore owing to its nature of work, which is a common and widely followed practice across such industries.

28. VEL follows corporate practices such as keeping its shareholders informed of all the developments in the company from time to time. This is also followed in the case of the corporate announcements made by VEL from time to time. SEBI itself has stated that VEL has made disclosures for all the transactions even more than required, and thereby VEL has gone that extra mile to ensure transparency as well as keeping the shareholders informed. All the corporate announcements made by VEL are genuine, bonafide and were followed up with implementation. The allegations have been leveled based on the disclosures made by VEL on April 06, 2009 and August 28, 2009 regarding the bagging of the orders, in this context it has been completely overlooked that VEL has made consolidated disclosures regarding bagging of orders, once the pending order exceeds 100 crore and in this circumstances there was no delay in making the disclosures. It was held by SAT in its order dated June 22, 2012 that bagging of orders by VEL whose order book size itself runs into ₹ 1000 crore bagging of new projects through the tendering process need not be price sensitive qua announcement made by VEL on August 28, 2009 pertaining to bagging of orders

₹ 172 crore. Therefore, the information pertaining to bagging of orders of ₹ 65 crore by VEL from DDA on March 24, 2009 is not price sensitive. Therefore, the Noticee has not violated any of the provisions of law.

29. In view of the above submissions, findings and observations as mentioned in para 14 and 15, I conclude that the alleged violation against Noticee No. 3 does not stand established.

d. Whether Noticee No.2 has violated Regulation 3 (ii) and Noticee Nos. 4 & 5 violated Regulation 3 (i) of PIT Regulations in connection with the trading before corporate announcements made by VEL with respect to the bagging of new projects/ contracts.

30. The relevant provisions of Regulations 3(i) and (ii) of PIT Regulations are reproduced below:

Insider Trading Regulations

Prohibition on dealing, communicating or counseling on matters relating to insider trading.

3. *No insider shall—*

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information

(ii) communicate or counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities

31. It was alleged in the SCN that the Noticee No. 2 communicated to his two sons, Noticee Nos. 4 and 5, UPSI with respect to bagging of new projects/ contracts before corporate announcements made by VEL and they in turn traded in the scrip of VEL on the basis of and while in possession of the UPSI. Noticee Nos. 4 and 5 are sons of Noticee No. 2, who is the Managing Director of VEL, and therefore all of them fall under the category of 'insider' as defined under Regulation 2 (e) read with Regulation 2 (h) of PIT Regulations. Noticee Nos. 4 and 5 traded during March 24 to April 06, 2009 (prior to the announcement of getting project worth ₹ 65 crore from Delhi Development Authority [DDA] and ₹ 71 crore from Indian Air Force).

32. The Noticee Nos. 4 and 5 inter alia submitted that they traded in the scrip of VEL, however they neither benefitted by purchasing the shares, nor traded in the scrip while being in possession of any UPSI. They also denied having made any unlawful gains. They submitted that Shri Amit Aggarwal was present on the date of the opening of the bid, as opposed to their father, i.e. Noticee No.2. Noticee No.2 had no role to play in their purchase or sale of shares in VEL and that it was their individual decision. It is the result of their long term investment in stock market and they have complied with all the necessary procedures and regulations. Therefore, they submitted that just because Noticee No.2 is alleged to be privy to the information, it cannot be automatically concluded that they are also privy to the price sensitive information. Same is merely an assumption devoid of any basis. As regards DDA's letter dated January 28, 2009, the Noticee Nos. 4 and 5, submitted that DDA has informed VEL about its successful bid vide its letter dated March 24, 2009. Further, even though the letter was dated March 24, 2009, it was dispatched only on March 25, 2009, due to which, VEL received the same only on March 27, 2009, which is evident from the enclosures to DDA's letter dated January 28, 2011. If VEL itself was aware of the receipt of the work only March 27, 2009, the question of they being aware of the same prior to that date, does not arise. Therefore, there is no co-relation between the opening of the bid on January 28, 2009 and the trades executed by the Noticee on March 24, 2009 to April 06, 2009. There is a gap of two months between the same, denoting that they could not have been privy to such information while dealing in the scrip from anyone including Noticee No.2.

33. As per my observations made in paragraphs Nos. 14 and 15, I conclude that as the information with respect to receiving of new projects/orders by VEL, cannot be considered as Price Sensitive Information. Further, after considering the submissions made by the Noticees and taking into account the facts and circumstances of the case including that in a similar case being the outcome of the same set of investigations, the Hon'ble Securities Appellate tribunal held that "award of the contract to an infrastructure company cannot be said to be a price sensitive information", I am of the view that this is not a fit case

for the imposition of monetary penalty on Noticee Nos. 2, 4 and 5 for their above mentioned violations.

e. Whether Noticee No. 6 has violated Regulation 3 (i) of PIT Regulations in connection with the trading while in possession of UPSI with respect to issuance of share warrants ?

34. It was alleged in the SCN that the Noticee No. 6, bought 1, 17,128 shares of VEL during April 20-22, 2009. VEL made corporate announcement on April 22, 2009 to the effect that a Board Meeting of its Directors will be held on April 30, 2009 to consider the issue of Share Warrants on preferential basis to the identified investors and promoters. Further, the Board Meeting took place on April 30, 2009 where the issue on preferential basis to the promoters/promoters group and other entities up to 16,00,000 warrants was approved and disseminated to public on the same day at 6:58:01 p.m. The said meeting was attended by Shri Dinesh Valecha and Shri Umesh Valecha who are the Directors of both Noticee No.6 and VEL during the period of investigation. Therefore, The Noticee was privy to the said price sensitive information and it falls under the category of "insider" in terms being a promoter entity has traded in the scrip of VEL while in possession of UPSI with respect to Board meeting convened for consideration of proposed issuance of convertible warrants to identifiable investors and promoters.

35. The Noticee No. 6 inter alia submitted that two completely independent unconnected acts viz. (a) making of corporate announcement by VEL on April 22, 2009 in the ordinary course of business and (b) trading made by the Noticee in the scrip of VEL during April 20, 2009 and April 22, 2009 have been connected in order to draw adverse inferences against the Noticee. The Noticee became aware of the Board Meeting only through the corporate announcement and the directors received the agenda for the same only on April 27, 2009. It did not posses prior knowledge of the same. Just because Shri Umesh Valecha and Shri Dinesh Valecha, Directors of the Noticee Company are also the directors of VEL, it cannot be concluded that they were privy to price sensitive information and

through them the Noticee. Consequently the Noticee could not have been privy to the price sensitive information while dealing in the scrip. They were made as a part of a normal long term investment through stock market on the then prevailing market price with due disclosures and following the applicable procedure which inter alia included :

i. Obtaining pre clearance before acquiring the shares ;
ii. Acquiring the shares only after receiving the pre clearance from the company ;
iii. Post acquisition making the requisite disclosures under PIT Regulations for the information of the investors at large.

Serious allegations of insider trading cannot be alleged on the basis of mere surmises and conjectures as has been done in the instant case. In normal case of insider trading, the shares purchased while in the possession of UPSI would be sold immediately after the UPSI becomes public. The Noticee as a promoter of VEL would not indulge in insider trading at the cost of his reputation and track record. The Noticee denies having benefitted by purchasing the shares of VEL prior to disclosure of the price sensitive information, or having traded in the scrip while being in possession of unpublished price sensitive information or having made any unlawful gains. It is also pertinent to point out that even the promoters of VEL have also not sold any shares held by them during the relevant period. The only intention behind the purchases made by the Noticee was to acquire the shares from the sellers and to increase the shareholding and to not gain any unfair advantage. Any person who indulges in insider trading does so in a surreptitious manner without any disclosure and with a motive of making profit by taking contra position immediately when the information comes within the public domain. Further no sale has taken place post the alleged unpublished price sensitive information becoming public. The Noticee still holds the shares increase in the price of the shares when compared to the initial purchase price. There is no evidence at all to establish that we were in possession of any unpublished price sensitive information as alleged and that we have violated Regulation 3 (i) of Insider Trading Regulation.

36. I find that the Noticee No. 6 being a promoter entity falls under the category of 'Insider' under Regulation 2 (e) read with Regulation 2 (h) of PIT Regulations. It is an admitted fact that the Noticee had purchased 1, 17,128 shares during April 20 – 22, 2009. I also find that announcement of the meeting of the Board of Directors for consideration of issuance of convertible warrants is price sensitive information as defined under Regulation 2 (ha) of the PIT Regulations. The next question that arises is when did the price sensitive information come into existence? As per records and documents available with me, VEL made a corporate announcement at 6:17:40 p.m. on April 22, 2009 that a meeting of the Board of Directors will be held on April 30, 2009, to consider the issuance of share warrants on preferential basis to identified investors and promoters. The substantive corroborative evidences available on record are insufficient to indicate that the UPSI came into existence prior to the said announcement (i.e. 06:17:40 p.m. on April 22, 2009) and the said information was available to Noticee No. 6 or its directors, prior to the corporate announcement. The Noticee no. 6 had traded during April 20 – 22, 2009 i.e. prior to the existence of the UPSI.

37. In view of the above findings and observations, I am inclined to give benefit of doubt to the Noticee No.6 and conclude that this is not a fit case for the imposition of monetary penalty for the violations as mentioned above.

38. From the foregoing findings, observations and conclusions, I am of the view that Noticee No. 1 has failed to comply with the provisions of Clause 3.2.3 (c) of Part A of Schedule I as specified under Regulation 12 (1) of the PIT Regulations warranting imposition of monetary penalty under Section 15HB of the SEBI Act. The remaining charges leveled against the Noticees in the SCNs do not stand established.

39. The Hon'ble Supreme Court of India in the matter of ***SEBI v. Shri Ram Mutual Fund*** **[2006] 68 SCL 216(SC)** *inter alia* held: ***"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes***

totally irrelevant. Once the contravention is established then the penalty is to follow."

40. Thus, the aforesaid violation by the Noticee No.1 makes it liable for penalty under Section15 HB of SEBI Act, 1992 which read as follows:

15HB.*Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

41. While imposing monetary penalty it is obligatory to consider the factors stipulated in Section 15J of the SEBI Act which reads as under:

15J - ***Factors to be taken into account by the adjudicating officer***

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

42. I observe that from the material available on record it is difficult to quantify any gain or unfair advantage accrued to the Noticee No.1 or the extent of loss suffered by the investors as a result of the default. I note that Noticee No.1 failed in closing the trading window on two occasions and therefore repetitive in nature. However, I take note of the finding of the investigating authority that 'no company related entity was observed to have traded during this period'.

Order

43. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I

hereby impose a penalty of ` 2,00,000/- (Rupees Two Lakh Only) on Valecha Engineering Limited, under Section 15 HB of the SEBI Act. In my view, the penalty is commensurate with the default committed by the Noticee. The remaining charges as leveled against the Noticees in the SCNs do not stand established and accordingly the matter is disposed of.

44. The penalty amount as mentioned above shall be paid by Noticee No.1 through a duly crossed demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to the Division Chief, Investigation Department (IVD-4), Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

45. In terms of the provisions of Rule 6 of the Adjudicating Rules the copies of this order are sent to the Noticees and also to Securities and Exchange Board of India.

Date: July 26, 2013 **P. K. KURIACHEN**

Place: Mumbai **ADJUDICATING OFFICER**