BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/AA/MG/2020-21/8570-8576]

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 ADJUDICATION OFFICER) RULES, 1995 AND UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATION OFFICER) RULES, 2005

In respect of

1. **Dr. V. K. Sukumaran (AJAPS8288D)**
2. **Ms. Saritha Sukumaran (AYFPS1523F)**
3. **Mr. R. Sahadevan (ACJPR4835P)**
4. **Mr. Piyush Kothari (AEOPK1882L)**
5. **Mr. Mohammed Azhar Khan (ARIPK1912C)**
6. **Mr. Mehul Modi (AAMPM7310B)**
7. **Mr. Nelesh Devendra Vora (ABOPV0353L)**

In the matter of VKS Project Limited

FACTS OF THE CASE IN BRIEF:

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation in the scrip of VKS Project Limited (hereinafter referred to as '**VPL/**

Target Company/ Company'), which is listed on the Bombay Stock Exchange (herein after referred to as '**BSE**') and the National Stock Exchange (herein after referred to as '**NSE**') with respect to certain irregularities in the scrip of VPL during the period from July 18, 2012 to 31st December 2014 (herein after referred to as '**Investigation Period**'). SEBI observed that Dr. V. K. Sukumaran (hereinafter referred to as '**Noticee 1/ by name**'), Ms. Saritha Sukumaran (hereinafter referred to as '**Noticee 2/ by name**') and Mr. R. Sahadevan (hereinafter referred to as '**Noticee 3/ by name**') who are the promoters of the Target Company and thus are Persons Acting in Concert (hereinafter referred to as '**PAC**') in terms of regulation 2(1)(q)(2)(iv) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as the '**SAST Regulations'**) have together acquired more than 5% paid up share capital of the Target Company in the financial Year 2013-14. Thus, the Noticees 1 to 3 were required to make an announcement of open offer in accordance with the Regulation 3(2) of SAST Regulations. However, it was observed that the Noticees 1 to 3 have failed to do so.

2. SEBI also observed that the Noticee 1 had received and transferred shares through off market transactions from/to Mr. Piyush Kothari (hereinafter referred to as '**Noticee 4/ by name**'), Mr. Mohammed Azhar Khan (hereinafter referred to as '**Noticee 5/ by name**') and Mr. Mehul Modi (hereinafter referred to as '**Noticee 6/ by name**') during the investigation Period. Further, the Noticee 2 has received shares through off market transactions from Mr. Nelesh Devendra Vora (hereinafter referred to as '**Noticee 7/ by name**'). The Noticees 1, 2, 4, 5, 6 and 7 were required to pay consideration against the off market transactions in terms of Section 2(i) of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as '**SCRA**'). However, it was observed that the Noticees 1, 2, 4, 5, 6 and 7 have failed to pay consideration.

3. SEBI further observed that in respect of share transactions carried out by the Noticee 1, he was required to make disclosures in terms of SAST Regulations and SEBI (Prohibition of Insider Trading) Regulations, 1992, (herein after referred to as '**PIT Regulations, 1992**') read with SEBI (Prohibition of Insider Trading) Regulations, 2015, (herein after referred to as '**PIT Regulations, 2015**') on multiple occasions. However, it was observed that the Noticee 1 had failed to make disclosures in terms of SAST and PIT Regulations. Therefore, SEBI initiated adjudication proceedings against-

   i. the Noticees 1 to 3 under the provisions of Section 15H of SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**')
   ii. the Noticees 1, 2, 4, 5, 6 and 7 under the provisions of Section 23H of SCRA
   iii. the Noticee 1 under the provisions of Section 15A(b) of SEBI Act

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI, vide Communiqué dated April 10, 2019, appointed the undersigned as Adjudicating Officer under Section 19 read with Section 15I of the **SEBI Act**, and 23I of SCRA read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**SEBI AO Rules**') and Rule 3 of the SCRA (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**SCRA AO Rules**') to inquire into and adjudge the violations alleged to have been committed by:

   I. the Noticees 1 to 3 under the provisions of Section 15H of SEBI Act
   II. the Noticees 1, 2, 4, 5, 6 and 7 under the provisions of Section 23H of SCRA
   III. the Noticee 1 under the provisions of Section 15A(b) of SEBI Act.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A show-cause notice (hereinafter referred to as '**SCN**') dated April 23, 2019, was issued to the Noticees 1 to 7 under rule 4 of the SEBI AO Rules and SCRA AO Rules to show-cause as to why an inquiry should not be initiated against Noticees 1 to 7 and penalty not be imposed upon the Noticees under relevant provisions of SEBI Act and SCRA for the violations alleged to have been committed by them. The Noticees were given 15 days' time to make their submissions in respect of the allegations made in the SCN.

6. The following violations were alleged in the SCN, to have been committed by the Noticees:

Violation of Regulation 3(2) of SAST Regulations, by the Noticee 1 to 3, by failing to make announcement of open offer

a. *It was observed that the Noticee 1, 2 & 3, who are promoters of the Target Company and thus are part of Persons Acting in Concert (herein after referred to as "PAC") were together holding 21,39,97,725 shares, amounting to 33.97% of the paid up share capital of the Target Company on October 17, 2013. Subsequently, on October 18, 2013, the Noticee 1 acquired 3,00,00,000 shares, as a result of which the share capital of the promoters increased to 38.73% (i.e. by 4.76%). Further, on November 22, 2013, the Noticee 2 acquired 25,00,000 shares, amounting to 0.40% of the paid up share capital of the Target Company. Subsequent to the said acquisition on November 22, 2013 by the Noticee 2, total shareholding of the Noticee 1 to 3 taken together, in the Company increased by 5.16% of paid up share capital of the Target Company in the financial year 2013-14. The details of the acquisition as mentioned above and the resultant change in share capital held by the promoters are given in the Table – 1.*

Table – 1

Names of the promoters	Acquirer/ PAC	Pre acquisition holding (As on 17/10/2013)		Acquired on 18/10/2013*		Acquired on 22/11/2013*		Post acquisition holding (As on 22/11/2013)	
		No. of shares	% of TNS	No. of shares	% of TNS	No. of shares	% of TNS	No. of shares	% of TNS
Mr. V K Sukumaran	PAC	122338800	19.42	30000000	4.76	0	0	152338800	24.18
Ms. Saritha Sukumaran	Acquirer	91650000	14.55	0	0	2500000	0.40	94150000	14.95

Mr. R Sahdevan	PAC	8925	0.00	0	0	0	0	8925	00
Grand Total		**213997725**	**33.97**	**30000000**	**4.76**	**2500000**	**0.40**	**246497725**	**39.13**
Total no. of shares (TNS)		**630000000**	**100**	**630000000**	**100**	**630000000**	**100**	**630000000**	**100**

*shares were acquired in off-market.

b. *As brought out in the Table - 1 above, the promoters of the Target Company, have acquired total 5.16% of paid up share capital of the Target Company during the financial year 2013-14 (i.e. 4.76 % on 18/10/2013 + 0.40% on 22/11/2013). The aforesaid total acquisition, by the Noticees 1 to 3, is more than threshold of 5% as prescribed in Regulation 3(2) of SAST Regulations. Thus, post-acquisition the Noticees were required to make an announcement of open offer in accordance with Regulation 3(2) of SAST Regulations. However, it is alleged that the Noticee 1 to 3 have failed to do so.*

c. *In view of the above, it is alleged that the Noticee 1 to 3 have violated Regulation 3(2) of SAST Regulations.*

Violation of SCRA by the Noticee 1, 2, 4, 5, 6 and 7

Noticee 1

d. *It was observed from the demat statements of the Noticee 1 that he had received and transferred shares through off-market transactions to Noticees 4 ,5 and 6, during the Investigation Period. Details of shares acquired/ transferred is given in the Table - 2:*

Table – 2

Sr. No.	*Date*	*No of shares held - pre Acquisition/ disposal*	*% of shareholding held - pre Acquisition/ disposal*	*No of shares Acquired*	*No of shares disposed off*	*shares Acquired/ (disposed off) as a % of paid up capital*	*No of shares held - post Acquisition/ disposal*	*% of shareholding held - post Acquisition / disposal*	*Mode*	*Noticee from whom the shares acquired/ transferred*
1	*08/10/2013*	*188338800*	*29.90*		*15000000*	*2.38*	*173338800*	*27.51*	*OFF MRKT*	*Noticee 5*
2	*08/10/2013*	*173338800*	*27.51*		*15000000*	*2.38*	*158338800*	*25.13*	*OFF MRKT*	*Noticee 6*
3	*08/10/2013*	*158338800*	*25.13*		*30000000*	*4.76*	*128338800*	*20.37*	*OFF MRKT*	*Noticee 4*
4	*15/10/2013*	*128338800*	*20.37*	*15000000*		*2.38*	*143338800*	*22.75*	*OFF MRKT*	*Noticee 4*
5	*18/10/2013*	*122338800*	*19.42*	*15000000*		*2.38*	*137338800*	*21.80*	*OFF MRKT*	*Noticee 5*
6	*18/10/2013*	*137338800*	*21.80*	*15000000*		*2.38*	*152338800*	*24.18*	*OFF MRKT*	*Noticee 4*
7	*26/11/2013*	*152338800*	*24.18*	*5294005*		*0.84*	*157632805*	*25.02*	*OFF MRKT*	*Noticee 6*

Total No. of Shares of the Company (63,00,00,000)

e. *Vide email dated September 5, 2018 and September 24, 2018, the Noticee 1 was advised to provide the following information with regard to off-market transfers entered into with the Noticee 4 to 6:*

- *Reason for transfer of shares in off market to the Noticees 4 to 6 in off-market along with supporting documents*
- *Details of consideration received/paid from/to the above mentioned entities for the above transactions along with a copy of bank statement in support of the same*

f. *The Noticee 1, vide email dated 03/10/2018, inter-alia submitted that:*

> *"…these team approached him directly with an assurance of arranging 6 cr fund against the fv 1 of 6 cr Vks Projects Ltd for their business need and after few interactions I have developed a trust and transferred the shares in off market. But they couldn't get fund to support me and transferred back the same to my dp account. There was no financial fund transfer to my account, so no banking transaction happened too."*

g. *In view of the above, it is alleged that in the above transactions between the Noticee 1 and the Noticee 4 to 6, there was no consideration paid against the off-market transfer of shares and the said transactions are not in conformity with the provisions of section 2(i) of SCRA. Therefore, it is alleged that the Noticees 1, 4, 5 and 6 have violated Section 16 read with Sections 2(i), 13 and 18 of SCRA and SEBI Notification G.S.R 219(E) dated March 2, 2000.*

Noticee 2

h. *It is observed that the Noticee 2 has received shares through off-market transaction from following entities, during the IP. Details of shares acquired/ transferred is given in the Table – 3 :*

Table - 3:

Sr. No.	*Date*	*No of shares held - pre Acquisition/ disposal*	*% of shareholding held - pre Acquisition/ disposal*	*No of shares Acquired*	*No of shares disposed off*	*shares Acquired/ (disposed off) as a % of paid up capital*	*No of shares held - post Acquisition/ disposal*	*% of shareholding held - post Acquisition/ disposal*	*Mode*	*Noticee from whom the shares acquired/ transferred*
1	*22/11/2013*	*91650000*	*14.55*	*2500000*	*--*	*0.40*	*94150000*	*14.94*	*off market*	*Noticee 7*

i. *Vide email dated November 28, 2018, the Noticee 2 was advised to provide the following information with regard to off-market transfers entered into with the Noticee 7:*

- *Reasons for the same, along with supporting documents.*

- *Details of consideration received/paid from/to the Noticee 2 for the above transactions. A copy of bank statement in support of the same.*

j. *The Noticee 1 on behalf of the Noticee 2, vide email dated December 2, 2018 submitted its reply, wherein he inter-alia submitted that:*

> *She had purchased 25 lacs shares from Nelesh Devendra Vora on 22/11/2013 in off market…. She had not paid any amount against this transaction, the financial transaction connected with this is yet to be settled.*

k. *Replies were also sought from Noticee 7 vide e-mails and letters dated November 28, 2018. However, no replies were received from them.*

l. *In view of the above, it is alleged that in the above transactions between the Noticees 2 and 7, there was no consideration paid against the off-market transfer of shares and the said transactions are not in conformity with the provisions of section 2(i) of SCRA. Therefore, it is alleged that the Noticees 2 and 7 have violated Section 16 read with Sections 2(i), 13 and 18 of SCRA and SEBI Notification G.S.R 219(E) dated March 2, 2000.*

Disclosure Violations of the Noticee 1

Disclosures violations in terms of SAST Regulations

Pledge of Shares

m. *It was observed from the demat statements of the Noticee 1, provided by NSDL, that during the investigation period, the Noticee 1 had pledged its shares with Religare Securities Ltd., IIFL Securities Limited, SBICAP Securities Limited and Indusind Bank Ltd. on various occasions. Details of the shares of VPL pledged/released/invoked by the Noticee 1 during the IP, are given in the Table – 4*

Table – 4

Sr. No.	Date	No of shares pledged / encumbered	No of shares revoked/ closed	No. of shares invoked	Disclosure provided under SAST (Y/N)	Date of disclosure made to exchanges
1	21-Nov-12	600,000	0		Y	26/11/2012
2	21-Mar-13	3,500,000	0		Y	19/03/2013
3	12-Apr-13	11,500,000	0		Y	10/04/2013
4	18-Apr-13	1,000,000	0		Y	10/04/2013
5	17-May-13	2,500,000	0		Y	21/05/2013
6	28-May-13	7,500,000	0		Y	21/05/2013
7	28-May-13	2,500,000	0		Y	22/05/2013
8	7-Jun-13	16,250,000	0		Y	07/06/2013
9	13-Aug-13	800,000	-		Y	20/08/2013
10	28-Sep-13	21,000,000			Y	26/09/2013
11	15-Oct-13	-		21,000,000	N	-

12	*6-Dec-13*	*-*	*15,000,000*		*N*	*-*
13	***6-Dec-13***	***-***	***6,000,000***		***N***	***-***
14	*26-Dec-14*	*21,000,000*	*-*	*-*	*Y*	*23/12/2014*

n. In this regard, BSE vide e-mails dated July 23, 2018 and NSE vide emails dated November 22 & 29, 2018 respectively submitted copies of all the disclosures filed by the promoters the Noticee 1 in terms of PIT Regulations, 1992 and SAST Regulations, during the IP. Further, the Noticee 1 vide e-mails dated August 3, 2018, provided copies of disclosures made by him in terms of PIT Regulations and SAST Regulations, during the IP. It is observed from abovementioned emails of NSE, BSE and Noticee 1, that the Noticee 1 has not filed the disclosures in respect of invocation of pledge on October 15, 2013 and closure of pledge on December 6, 2013 for 1,50,00,000 shares and 60,00,000 shares respectively, in terms of Regulation 31(2) read with 31(3) of SAST Regulations. Therefore, it is alleged that the Noticee 1 has violated Regulation 31(2) read with 31(3) of SAST Regulations on three occasions.

Continual disclosures violations in terms of Regulations 30(2) and 30(3) of SAST Regulations

o. In terms of Regulation 30(2) of SAST Regulations, the Noticee 1 was required to submit the disclosure for the Year ending 31/03/2014 within seven working days from the March 31, 2014. In this regard, details of disclosures provided by the promoters are as follows:

Table – 5

Sr.	*FY ending*	*Date of receipt of disclosure by NSE*	*Within Seven working days (Y/N)*	*Holding of Noticee 1 (% of share capital)*
1.	*Mar 2014*	*25/04/2014*	*No*	*19.75*

p. However, as per the reply received from the Noticee 1 as mentioned in the Table -5, for year ending March, 2014, he has submitted his disclosure in terms of Regulations 30(2) and 30(3) of SAST Regulations on 21/04/2014 (received by NSE on 25/04/2014) which is not as per time limit of seven working days from the end of financial year 31/03/2014, provided for the submission of continual disclosure in terms of Regulation 30(2) of SAST Regulation. In view of the above, it is alleged that the Noticee 1 has filed delayed disclosure in terms of Regulation 30(2) of SAST Regulation.

q. Therefore, it is alleged that by not submitting disclosure within Seven working days, the Noticee 1, has violated Regulation 30(2) read with 30(3) of SAST Regulations.

Disclosure violations in terms of Regulations 29(2) and 29(3) of SAST Regulations

r. It is observed that on October 18, 2013 the Noticee 1 acquired 1.5 crore shares each from Noticee 4 and 5 in off-market. These transactions resulted in an increase in shareholding of the Noticee 1 by 3 crore shares (i.e. 4.76% of the paid up share capital of the Company) on October 18, 2013. Details of these transactions are provided in Table – 6:

Table – 6

Sr. No.	Date	No of shares held - pre Acquisition/ disposal	% of shareholding held - pre Acquisition/ disposal	No of shares Acquired	No of shares disposed off	No of shares Acquired/ disposed off	No of shares Acquired/ (disposed off) as a % of paid up capital	No of shares held - post Acquisition/ disposal	% of shareholding held - post Acquisition/ disposal	Mode
1	18/10 /2013	12,23,38,800	19.42	15000000	--	30000000	4.76	152338800	24.18	OFF MRKT
2				15000000	--					

Total No. of Shares of the Company 630000000

s. The Noticee 1 was already holding more than 5% (19.42%) paid up share capital of the Company. Further, due to the aforesaid transaction on October 18, 2013 there was change in his shareholding of more than 2% of the share capital of the Company. Thus, in terms of Regulation 29(2) read with 29(3) of SAST Regulations, the Noticee 1 was required to disclose abovementioned acquisition to the Company, BSE & NSE within two working days of the acquisition. However, it is alleged that the Noticee 1 has failed to make disclosures to the Company and Exchanges as required in terms of Regulation 29(2) read with 29(3) of SAST Regulations and has thus violated Regulation 29(2) read with 29(3) of SAST Regulations.

Disclosure Violation of the Noticee 1 in terms of PIT Regulations, 1992

Change in shareholding pursuant to issue of Bonus Shares

t. On May 7, 2013 VPL approved issuance of 45,00,00,000 Equity shares by way of Bonus issue to its shareholders as on May 06, 2013 (Record date) in the ratio of 5:2 (i.e. 5 new Equity Shares will be issued for every 2 Equity Share held.). The resultant change in the number of shares held by the Noticee 1 is given in Table 7:

Table – 7

Date	No of shares before issue of bonus shares		No of shares After issue of bonus shares		Increase in no. of shares	Change exceed more than 25000 shares
	No of shares	% to total shareholding	No. of Shares	% to total shareholding		
7/5/ 2013	48096800	26.72	168338800	26.72	120242000	yes

It is observed from the Table - 7 that the number of shares held by the Noticee 1 has increased by more than 25000 shares. Hence, being a promoter of the Company, he was required to make disclosures in terms of Regulation 13(4A) of PIT Regulations, 1992 to the Company. However, it is alleged that the Noticee 1 has failed to do so. Therefore, it is alleged that the Noticee 1 has violated Regulation 13(4A) read with 13(5) of PIT Regulations, 1992.

Disclosure violation w.r.t. the acquisition / disposal of shares by the promoters

u. *The acquisition / disposal of shares by the Noticee 1 during the IP, and the resultant disclosure requirements under PIT Regulations are given below in Table - 8:*

Details of transactions of the Noticee 1 triggering Violation in terms of PIT Regulations

Table – 8

Sr. No.	Date	No of shares held - pre Acquisition/ disposal		% of shareholding held - pre Acquisition/ disposal	No of shares Acquired	No of shares disposed off	No of shares Acquired/ disposed off	No of shares Acquired/ (disposed off) as a % of paid up capital	Value of transaction (Rs.)	No of shares held - post - Acquisition / disposal	% of share holding held - post - Acquisition/ disposal	Mode	Disclosure requirement with respect to Reg 13(4A) of PIT Regulations when change exceeds more than (*) which ever is lower			Disclosure provided under PIT (Y/N)
													* 25000 shares	*5 lacs value of the shares	* 1% of holding of total share holding	
1	08/10/2013	168338800	20000000	26.72	--	--	(40000000)	6.34	N.A.	128338800	20.37	OFF MRKT	Yes	NA	yes	NO
2			--		--	15000000						OFF MRKT				
3			--		--	15000000						OFF MRKT				
4			--		--	30000000						OFF MRKT				
5	15/10/2013	128338800	15000000	20.37	--	--	(6000000)	0.95	--	122338800	19.42	OFF MRKT	Yes	NA	NO	NO
6			--		--	21000000						Pledge invoked				
7	18/10/2013	122338800	15000000	19.42	--	--	30000000	4.76	--	152338800	24.18	OFF MRKT	Yes	NA	yes	NO
8			15000000		--	--						OFF MRKT				
9	26/11/2013	152338800	5294005	24.18	--	500000	4794005	0.76	550000	157132805	24.94	OFF MRKT	Yes	NA	NO	NO
10			--		500000							On Market				
11	**29/11/2013**	157132805	--	24.94	500000		500000	0.08	501007.52	156632805	24.86	On Market	Yes	Yes	NO	NO
12	**02/12/2013**	156632805	--	24.86	500000		500000	0.08	503673.69	156132805	24.78	On Market	Yes	Yes	NO	NO
13	**16/12/2013**	156132805	--	24.78	1500000		1500000	0.24	1110000.00	154632805	24.54	On Market	Yes	Yes	NO	NO
14	**26/12/2013**	154632805	--	24.54	1150000		1150000	0.18	1035000.00	153482805	24.36	On Market	Yes	Yes	NO	NO
15	**06/01/2014**	153482805	--	24.36	1425000		1425000	0.23	1068750.00	152057805	24.14	On Market	Yes	Yes	NO	NO
16	**13/05/2014**	152057805	--	24.14	1000000		1000000	0.16	520000.00	151057805	23.98	On Market	Yes	Yes	NO	NO
17	**24/06/2014**	151057805	--	23.98	2738379		2738379	0.43	1663934.05	148319426	23.54	On Market	Yes	Yes	NO	NO
18	**25/06/2014**	148319426	--	23.54	1805647		1805647	0.29	1006515.61	146513779	23.26	On Market	Yes	Yes	NO	NO
19	**26/06/2014**	146513779	--	23.26	8205657		8205657	1.30	4191251.97	138308122	21.95	On Market	Yes	Yes	Yes	NO
20	**27/06/2014**	138308122	--	21.95	7389532		7389532	1.17	3411084.58	130918590	20.78	On Market	Yes	Yes	Yes	NO
21	**30/06/2014**	151057805	--	23.98	1549134		1549134	0.25	697110.30	149508671	23.73	On Market	Yes	Yes	NO	NO
22	**08/07/2014**	149508671	--	23.73	3100000		3100000	0.49	1085000.00	146408671	23.24	On Market	Yes	Yes	NO	NO
23	**09/07/2014**	146408671	--	23.24	10000000		10000000	1.59	3000000.00	136408671	21.65	On Market	Yes	Yes	Yes	NO
24	**10/07/2014**	136408671	--	21.65	5000000		5000000	0.79	1500000.00	131408671	20.86	On Market	Yes	Yes	NO	NO
25	**15/07/2014**	137894456	--	21.89	670902		670902	0.11	201270.60	137223554	21.78	On Market	Yes	Yes	NO	NO
26	**16/07/2014**	137223554	--	21.78	1540000		1540000	0.24	462000.00	135683554	21.54	On Market	Yes	NO	NO	NO
27	**17/07/2014**	135683554	--	21.54	805000		805000	0.13	241500.00	134878554	21.41	On Market	Yes	NO	NO	NO
28	**18/07/2014**	134878554	--	21.41	4291696		4291696	0.68	1288942.72	130586858	20.73	On Market	Yes	Yes	NO	NO
29	**23/07/2014**	130586858	--	20.73	1600000		1600000	0.25	559999.67	128986858	20.47	On Market	Yes	Yes	NO	NO
30	**23/10/2014**	128986858	1	20.47		--	1	0.00	0.33	128986859	20.47	On Market	NO	NO	NO	NA

v. From the above Table following is observed-

a) On October 08, 2013, the Noticee 1 acquired two crore shares from the Noticee 2 through Off Market transaction and transferred 1.5 crore shares each to Mohd Azhar Khan and Mr. Mehul Modi and 3 crore shares to Mr Piyush Kothari through off-market transactions. As a result of these transactions, his net shareholding decreased by 4 crore shares, i.e. by 6.34% of the share capital of the Company.

b) On October 15, 2013, the Noticee 1 acquired 1.5 crore shares from Piyush Kothari through off-market and the pledge for 2.10 crore shares with Religare Securities Ltd. was invoked. In view of the same, there was a net decrease in the shareholding of VKS on October 15, 2013, by 60,00,000 shares (i.e. 0.95%).

c) On October 18, 2013, the Noticee 1 acquired 1.5 crore shares each from Mohd Azhar and Piyush Kothari in off-market. These transactions resulted in an increase in shareholding of the Noticee by 3 crore shares (i.e. 4.76% of the share capital of the Company) on October 18, 2013.

d) On November 26, 2013, the Noticee 1acquired 52,94,005 shares in off market and sold 5,00,000 shares in market. Hence, the net change in shareholding of the Noticee 1 was 47,94,005 shares (0.76% of the share capital).

e) The Noticee had sold shares of the Company, held by him on multiple days during the period November 26, 2013 to October 23, 2014, and on 22 occasions/days as shown in the Table above, the quantity traded was more than 25000 shares.

As brought out in the points (a) to (e) of para 6.9 above, pursuant to transactions of the Noticee 1, the change in his shareholding exceeded 25000 Shares or 1% of total shareholding on multiple occasions. Thus, same was required to disclose in terms of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations to the Company.

w. It is observed from e-mails of BSE dated July 23, 2018 and emails of NSE dated November 22 & 29, 2018 and email of the Noticee 1 dated October 03, 2018 that the Noticee 1 has not made required disclosures in this regard. Therefore, it is alleged that the Noticee 1 has failed to comply with the Regulation 13(4A) of PIT Regulations, 1992 in respect of the above transactions and has violated Regulation 13(4A) read with Regulation 13(5) of PIT Regulations on multiple occasions as brought out in Para t to v above.

7. The SCNs were sent to the Noticees 1 to 7 through Speed Post Acknowledgement due (herein after referred to as '**SPAD**'). The SCNs sent to the Noticees 1, 3, 5 & 6

were delivered; however, the SCNs sent to the Noticees 2, 4 & 7 returned undelivered. However, the Noticees to whom SCNs were delivered did not file any reply to the SCN. The Authorized representative (herein after referred to as '**AR**') of the Noticees 1 to 3 vide letter dated May 08, 2019, requested for inspection of documents. The request was acceded to and vide letter dated June 10, 2019, the Noticees 1 to 3 were granted an opportunity of inspection of documents which was completed on June 19, 2019. Vide letter dated July 04, 2019, a reminder was sent to the AR to file reply to the SCN latest by July 22, 2019. In addition to that, vide aforesaid letter, the undelivered SCN of the Noticee 2 was also sent to the AR. Vide letter dated July 22, 2019, the AR submitted reply to the SCN, on behalf of the Noticees 1 to 3 and *inter-alia* made the following submissions:

a. *The Noticee submitted that the copies of all the requested documents were not provided during the inspection of documents.*
b. *That the present proceedings are vitiated by delay as allegations pertains to the year 2013.*
c. *That the Company suffered severe losses, its net worth completely eroded, scrip was suspended for trading by NSE with effect from October 18,2017 and the company is delisted from the NSE with effect from September 11, 2018.*
d. *Vide order dated May 03, 2018, the Hon'ble Bombay High Court ordered winding up of the Company.*
e. *Mr. R. Sahadevan is only a shareholder, not a promoter of the Company and he was never in control over the affairs of the company and admittedly, he did not acquire any shares of the Company during the investigation period.*
f. *Dr. V.K. Sukumaran has not acquired 3,00,00,000 shares of the target company on October 18, 2013 as erroneously alleged. As set out in his email dated September 5, 2018, Dr. V.K. Sukumaran had clarified that on and around October 5, 2013, he had approached one Mr. Piyush Naresh Kothari for financial assistance and entered into an agreement whereby the said Mr. Kothari agreed to provide financial assistance of ₹3 crore against 3 crore shares of the target company. Accordingly, on October 8, 2013, the Noticee 1 had transferred a total of 3 crore shares of the target company to the 2*

beneficiary accounts of Mr. Kothari in off market transaction (1.50 Crore shares to each beneficiary account). However, since the said Mr. Kothari was unable to provide the ***financial assistance*** *as agreed upon, he returned the said 3 crore shares to the beneficiary account of Dr. V.K. Sukumaran from his 2 beneficiary accounts (1.50 crore shares each). Thus, it is evident that there was no acquisition of shares by Dr. V.K. Sukumaran in October 18, 2013 as erroneously alleged or otherwise.*

g. *Similarly, 1.50 crore shares of the target company were transferred by Dr. V.K. Sukumaran to one Mr. Mehul Jagdishbhai Mody on October 8, 2013 as a security for proposed financial assistance to be offered by Mr. Mody. However, since the said Mr. Mody could not provide the agreed/promised* ***financial assistance****, after a great deal of persuasion and perseverance, 52,94,005 shares were got back from him. He transferred the said 52,94,005 shares to Dr. V.K. Sukumaran's account during the period November 23 to 29, 2013. The said Mr. Mody also informed that he had sold some of the shares in off-market to several persons, one of whom was one Mr. Nelesh Devendra Vora (he received 25 Lakh shares). The Noticees were able to obtain 25 Lakh shares from Mr. Nelesh Devendra Vora, which he transferred to Ms. Saritha Sukumaran's beneficiary account on November 22, 2013. The balance 72,05,995 shares could not be recovered and in this regard, the Noticees filed a complaint with the Economic Offences Wing of the Mumbai Police (hereinafter referred to as "****EOW****"). Thus, Ms. Saritha Sukumaran did not per se acquire any shares of the target company on November 22, 2013.*

h. *It is pertinent to note that the baseline shareholding for determining as to whether there was actually an increase in the shareholding of the Noticees would be as of September 30, 2013, i.e., when the target company made quarterly disclosures of the shareholding of its promoters/promoter group. A comparison of the shareholding of the Noticees as on September 30, 2013 and as on November 22, 2013 will show that there was no increase in the total shareholding of the Noticees. In fact, there will be a decrease in the shareholding of the said Noticees.*

i. *Therefore, the charge in the said notice that there was an acquisition of shares by the promoters during the relevant period and that such acquisition exceeded the annual creeping limit of 5% is erroneous, false and unsustainable. Therefore, the allegation that*

the Noticees were required to make a public announcement and an open offer under regulation 3(2) of the Takeover Regulations, 2011 is erroneous, false and unsustainable.

j. *With respect to non-payment of consideration, the Noticee 1 submitted that the Company required Financial Assistance to meet its working capital requirements and approached the Noticees 4, 5 & 6, who promised to provide financial assistance of Rs. 6 Crore provided that 6 crore shares of the Company were transferred to their beneficiary accounts i.e. 3 crore shares to the Noticee 4 and 1.5 Crore shares to the Noticee 5 & 6 each.*

k. *However, the Cheques provided by the said Noticees were returned unpaid for the reason for the reason insufficient funds and therefore the Noticee 1 pursued the matter with them for return of shares. The Noticee 4 & 5 returned 3 & 1.5 crore shares, respectively, on October 18, 2013. The Noticee 6 failed to return 1.5 crore shares.*

l. *The Noticee 1 approached EOW of Mumbai Police regarding fraudulent action of the Noticee 6. The Noticee 1 came to understand that the Noticee 6 had transferred aforesaid shares in off market to several persons including the Noticee 7. The Noticee 6 transferred 52,94,005 shares to the Beneficiary account of the Noticee 1 on November 26, 2013. Further, the Noticee 7, transferred 25 lakh shares to the beneficiary account of the Noticee 2 on November 22, 2013. The balance 72,05,995 shares*

m. *The AR further submitted that the cheques for a total sum of Rs. 6 Crore were received by the Noticee 1 from the Noticees 4 to 6 on same day i.e. October 08, 2013 when shares were transferred. Therefore, the said transfers were well within the definition of spot contracts. Transfer of shares from the Noticees 4, 5 & 6 to the Noticee 1 and from the Noticee 7 to the Noticee 2, was return of the shares by the said Noticees because of cheques were returned unpaid. Same cannot be in the violation of the prohibition under S.13 of the SCRA. Thus, we deny that they have acted in violation of SCRA.*

n. *With respect to non-disclosure in terms of SAST and PIT Regulations for the transactions mentioned in the Paragraph 6 of the SCN, the Noticee 1 submitted that he had informed the Company regarding the aforesaid transactions and it was usual practice of the Company to then inform the Stock exchanges.*

o. *That his shareholding in the company did not changed from last disclosed shareholding from the quarter ending September 30, 2013, therefore he was not required to make disclosure in terms of Regulation 29(3) of SAST Regulations.*

p. *That he had informed the Company about Bonus Shares, immediately. However, since the offices of the Company are sealed and in custody of SBI officials, thus the Noticee 1 is unable to obtain any documents in respect of his disclosures.*

q. *That the Noticee may be discharged from the said notice. The Noticee also requested for hearing opportunity.*

8. The Noticees 1 to 3 were granted opportunities of personal hearing on February 11, 2020, in the interest of principles of the natural justice, vide email dated hearing notice dated February 03, 2020. The AR and the Noticee 1 attended the hearing on the scheduled date & time and reiterated the contents of his reply dated July 22, 2019. The Noticees 1 to 3 was granted time till February 21, 2020 to file additional submissions in the matter. The Noticees 1 to 3, vide letter dated February 21, 2020, filed common additional written submissions through their authorized representative reiterating their earlier submissions and additionally submitting, *inter alia*, as under:

a. *It is pertinent to note that the baseline shareholding for determining as to whether there was an increase in the shareholding of the Noticees should be taken as of September 30, 2013, i.e., when the target company made quarterly disclosures of the shareholding of its promoters/promoter group. A comparison of the shareholding of the Noticees as on September 30, 2013 and as on November 22, 2013 will show that there was no increase in the total shareholding of the Noticees; in fact, there will be a decrease in the shareholding of the said Noticees.*

b. *That the transfer of shares into beneficiary accounts of the Noticee 1 & 2 on October 18, 2013 and November 22, 2013, respectively were not instances of acquisition of shares by them, Mr. R. Sahadevan submits that no shares were transferred to his beneficiary account during the relevant period and therefore, he may not be considered to be a person acting in concert with Dr. V.K. Sukumaran and Ms. Saritha Sukumaran, in respect of the said failed transactions and/or return of shares.*

c. *The target company is presently under liquidation and the Bombay High Court, vide order dated May 3, 2018 have appointed the Official Liquidator as Liquidator to wind up the Company. The present status of the winding up petition filed against the Company is that the Official Liquidator of the Bombay High Court has taken possession of all assets of the Company.*

d. *The shares of the target company have been delisted from BSE since September 28, 2018 and from NSE since September 11, 2018 as per correspondence between SEBI and the aforesaid stock exchanges. As mentioned above, a Liquidator has been appointed by the Bombay High Court and he has taken possession of all assets, offices and records of the Company. Correspondence between the stock exchanges*

9. As noted at para 7 above, the delivery by SPAD failed. Therefore, delivery of the SCN was attempted to the Noticees 4 and 7 through the affixture at the premise of last known addresses of the aforesaid Noticees, however, affixture failed for the reason that 'consignee shifted'. Thereafter, scanned copies of SCN were sent to the Noticees 4 and 7 at their email addresses bigbulls.pk@gmail.com and nvora6876@yahoo.com through digitally signed emails dated October 01, 2019 and they were duly delivered. The Noticee 7 did not file any reply to the SCN, therefore, vide email dated January 20, 2020, was again advised to file reply to the SCN. Thereafter, the Noticee 7 was granted an opportunity of personal hearing on February 11, 2020, vide digitally signed email dated January 29, 2020. The Noticees 5 & 6, were also granted opportunities of personal hearings on February 11, 2020, vide hearing notices dated February 03, 2020, which were duly delivered to them through SPAD. The Noticees 5, 6 & 7, vide aforesaid hearing notices were also advised to file replies to the SCN before the date of hearing. However, the Noticees 5, 6 & 7 neither filed their reply to the SCN nor did they avail the opportunity of personal hearing granted to them.

10. The Noticee 4 vide email dated October 03, 2019, requested to provide annexure to the SCN. The Noticee was advised to furnish his current address vide email dated

October 09 2019, which he provided vide email dated November 10, 2019. The Noticee 4 was provided with a copy of SCN along with annexures, vide letter dated November 11, 2019, which were duly served upon the Noticee 4. The Noticee 4, vide email dated January 10, 2020, informed that he has met with a car accident and had been advised a complete bed rest for 3 months. The Noticee 4, vide hearing notice dated February 03, 2020, was granted an opportunity of hearing. Hearing notice was sent vide email dated February 03, 2020, wherein the Noticee 4 was also advised to represent his case by authorized representative or file written submissions, in view of his health condition. It was also advised in the aforesaid hearing notice to file replies to the SCN, if any, before date of hearing. Vide email dated February 04, 2020, the Noticee 4 requested for 1 months' time, in view of his ill health. Vide email dated June 17, 2020, the Noticee 4 was granted final opportunity of hearing on June 29, 2020.

11. In view of the difficulties posed due to Covid -19 Epidemic and subsequent lockdown, hearing proceedings were conducted online through videoconferencing. The AR of the Noticee 4 attended the online hearing on the scheduled date & time and made submissions. The Noticee 4, vide letter dated July 01, 2020, submitted reply to the SCN and *inter-alia* made the following submissions:

a. *The Noticee 4 denied all allegations made against it in the SCN.*
b. *The Noticee 4 submitted that the violations alleged by the SEBI deal with the requirement of sale and purchase of shares to be done through a spot delivery contract only. The underlying requirement therefore, to be satisfied is that there must be a contract for sale between the parties and such contract may provide for delivery of securities and the payment of a price.*
c. *In the present case, the transaction between the parties is not a sale and purchase transaction and therefore is not covered in the ambit of SCRA. The transaction is evidently transaction for providing security over the shares of Mr. V. K. Sukumaran for a loan to be provided by the Noticee 4 to the promoter of the Company. The Noticee 4 and*

the Noticee 1 executed a share transfer agreement dated October 05, 2013. The agreement provided for transfer of 3 crore shares of the company by the Noticee 1 to the Noticee 4 as security for the loan to be provided by the Noticee 4 to the Noticee 1.

d. *That the agreement also specified an interest rate on the loan and and the terms of prepayment. The agreement also provides that the shares will be transferred back to the Noticee 1 upon repayment of loan at the end of the repayment period.*
e. *That these terms and conditions are reflective of a loan transaction and not a sale transaction. As the Noticee 4 could not arrange the loan for the Noticee 1, the shares were transferred back to the Noticee 1.*
f. *That the transaction was not a sale and purchase transaction but a loan transaction, the same is not covered in the SCRA.*
g. *That the SCN be discharged as against the Noticee 4 and charges against him be dropped.*
h. *That the Noticee 4 has not made any gains or no loss caused to the investors. There was no repetitive nature of default.*

12. I also note that the Noticee in its reply has relied , *inter alia,* on the following Orders:-

a) Hon'ble Supreme Court of India in the matter of Adjudicating Officer vs. Bhavesh Pabari (dated 28th February, 2019),
b) Hon'ble High Court of Bombay in the matter of SEBI vs. Cabot International Capital Corporation Limited
c) Hon'ble Supreme Court of India in the matter of Hindustan Steel vs. State of Orissa
d) Hon'ble Supreme Court of India in the matter of Ex-Naik Sardar Singh vs. Union of India (1991) (3 sec 212)
e) Hon'ble Supreme Court of India in the matter of Ranjit Thakur vs. Union of India (AIR 1987 SC 2386)
f) Ho'nble Supreme Court of India in the matter of Superintendent and Remembrancer Legal Affairs to Government of West Bengal vs. Abani Maity.

Consideration of Issues, Evidence And Findings

13. I have carefully perused the oral and written submissions of the Noticees 1, 2, 3 & 4 and the documents available on record. The issues that arise for consideration in the present case are:

(a) Whether the Noticees 1 to 3 have violated Regulation 3(2) of SAST Regulations?
(b) Whether the Noticees 1, 2, 4, 5, 6 & 7 have violated Section 16 of SCRA read with Sections 2(i), 13 and 18 of SCRA and SEBI Notification G.S.R. 219 (E) dated March 2, 2000?
(c) Whether the Noticee 1 has violated Regulation 13(4A) read with Regulation 13(5) of PIT Regulations on multiple occasions, Regulations 29(2) read with Regulation 29(3) of SAST Regulations on one occasion, Regulation 31(2) read with Regulation 31(3) of SAST Regulations on three occasions & Regulation 30(2) read with Regulation 30(3) of SAST Regulations on one occasion?
(d) Does the violation, if any, attract monetary penalty under Section 23H of SCRA, Section 15H and Sections 15A(b) of SEBI Act.
(e) If so, what should be the quantum of monetary penalty?

14. Before moving forward, it is pertinent to refer to the relevant provisions of the PIT Regulations which read as under:

Relevant provisions of SAST Regulations, 2011:

Definitions-

2.(1).(q).(2). Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established,—
….

(iv) promoters and members of the promoter group;

Substantial acquisition of shares or voting rights.

….

3.(2) No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations:
Provided *that such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding.*

Explanation. — For purposes of determining the quantum of acquisition of additional voting rights under this sub-regulation,—

(i) gross acquisitions alone shall be taken into account regardless of any intermittent fall in shareholding or voting rights whether owing to disposal of shares held or dilution of voting rights owing to fresh issue of shares by the target company.
(ii) in the case of acquisition of shares by way of issue of new shares by the target company or where the target company has made an issue of new shares in any given financial year, the difference between the pre-allotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition.

Section 2 (i) of SCRA
In this Act, unless the context otherwise requires,—

spot delivery contract" means a contract which provides for,-

(a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository

Section 13 of SCRA
If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or States or area that it is necessary so to do, it may, by notification in the Official Gazette, declared this section to apply to such State or States

or area and thereupon every contract in such State or States or area which is entered into after the date of the notification otherwise than between members of a recognised stock exchange or recognised stock exchanges in such State or States or area or through or with such member shall be illegal.

Section 16 of SCRA

If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.

Section 18 of SCRA

Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.

SEBI Notification G.S.R 219(E) dated March 2, 2000

"In exercise of the powers conferred by sub-section (1) of section 16 of the Securities Contracts (Regulation) Act,1956 (42 of 1956), read with Government of India Notification No. S.O. 573(E), dated 30th July, 1992, (See [1992] 75 Comp Cas (St.) 216.) and Notification No. 183(E), dated 1st March, 2000, (See page 53 supra.) issued under section 29A of the said Act, the Securities and Exchange Board of India (hereinafter referred to as "the Board") being of the opinion that it is necessary to prevent undesirable speculation in securities in the whole of India, hereby declare that no person in the territory to which the said Act extends, shall, save with the permission of the Board, enter into any contract for sale or purchase of securities other than such spot delivery contract or contract for cash or hand delivery or special delivery or contract in derivatives as is permissible under the said Act.

Relevant provisions of SAST Regulations, 2011:

Disclosure of acquisition and disposal

29.(1) ……

(2) Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

(4) For the purposes of this regulation, shares taken by way of encumbrance shall be treated as an acquisition, shares given upon release of encumbrance shall be treated as a disposal, and disclosures shall be made by such person accordingly in such form as may be specified:

***Provided** that such requirement shall not apply to a scheduled commercial bank or public financial institution as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business.*

Continual disclosures.

30(1) ……..

(2) The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the end of each financial year to,—
(a) every stock exchange where the shares of the target company are listed; and
(b) the target company at its registered office.

Disclosure of encumbered shares.

31(1) ……...

(2) The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance, as the case may be to,—
(a) every stock exchange where the shares of the target company are listed; and
(b) the target company at its registered office.

Relevant provisions of PIT Regulations, 1992:

Continual disclosure.

13.(4A) Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change

exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(5) The disclosure mentioned in sub-regulations [(3), (4) and (4A)] shall be made within two working days of :

(a) the receipts of intimation of allotment of shares, or
(b) the acquisition or sale of shares or voting rights, as the case may be.

Repeal and Savings.

12. (1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.
(2) Notwithstanding such repeal,—

(a) 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 had never been repealed; and

(b) anything done or any action taken or purported to have been done or taken including 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;

(3) After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

15. Before going into the submissions of the Noticees on merit, let me deal with the preliminary objections of the Noticees 1, 2 & 3. I note that the Noticees 1, 2 & 3 have inter alia stated that copies of certain documents including the Investigation Report, requested by them were not provided. It is a matter of record that the Noticees were granted inspection of the documents relied upon by SEBI with respect to instant proceedings. It is not in dispute that the SCN has been issued on the basis of the findings in the Investigation Report. Further, a typical investigation report may also contain certain information about other entities which may not be relevant for the

entities on whom the SCN has been served. In this regard, I also note that the findings of the Investigation Report have been narrated in detail in the SCN. Thus, the SCN itself is a self-contained document containing all the allegations and charges against the Noticees 1, 2 & 3. Further, it is also seen that the documents relied upon in the instant proceedings with respect to the Noticees 1, 2 & 3, have already been provided to them. Therefore, the submission made by the Noticees that they have not been provided with all the documents cannot be accepted.

16. I observe that the Noticees 1, 2 & 3, have in their submission relied upon the findings of the Hon'ble Supreme Court in the matter of *Gorkha Security Services vs Government (NCT of Delhi) and others* (herein after referred to as '**case of Gorkha Security**') to support their claim that the SCN in the instant case fails to set out the particular penalty sought to be imposed and hence the same is not compliant with the principles of natural justice. In this regard, I find that the judgment of the Hon'ble Supreme Court in the case of Gorkha Security being distinguishable on several counts is not applicable to the present case. The decision in Gorkha Security pertained to blacklisting of a contractor by a government agency, which results into depriving the contractor from entering into any public contracts, thus violating the fundamental rights of such person. Further, in Gorkha Security case, the contractor was blacklisted for breaching the terms of the contract, whereas the present SCN has been issued for breach of statutory provisions. Also, the SCN has already stated the provisions of law under which the penalty shall be imposed. In my view, the judgment of the Hon'ble Supreme Court, in the case of Gorkha Security, cited by the Noticees 1, 2 & 3, and the law laid down therein does not absolve the Noticees 1, 2 & 3 from the alleged violations. The principles of natural justice including notice regarding the penalty has also been followed in the instant case.

17. The Noticees 1, 2 & 3, have also raised objection stating that there has been inordinate delay and laches in initiating proceedings against them which has

rendered the proceedings incapable of being defended. At the outset, I note that there is no provision in the SEBI Act which lays down any limitation period for initiating actions under the Act. For ascertaining whether there is any delay in the matter, the date when the violation came to the notice of the SEBI would be the relevant point and not the date of violation. In the instant case, I have seen that the investigation begin in the year 2015 and the current adjudication proceedings were initiated soon after completion of investigation in January, 2019. Further, a show cause notice was issued to the Noticees 1, 2 & 3, on April, 2019. The schedule of adjudication proceedings are dealt with at length in Paragraph 7 to 10, above. Further, the Noticee 4, who sought postponement of hearing in view of his health condition also added to delay in the proceedings. Therefore, there is no delay in completing the case, as instant proceedings has been initiated as soon as the investigation was completed in the matter. Hence, the contention raised by the Noticees 1, 2 & 3, regarding delay, is not tenable.

Violation of Open Offer Requirement:

18. Now I proceed to deal with the issues of the case. The first issue for consideration is whether the Noticees 1 to 3 have violated Regulation 3(2) of SAST Regulations. I note that as per regulation 2(1)(a) of SAST Regulations, *Acquirer - means any person who, directly or indirectly, acquires or agrees to acquire whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over a target company.*

19. The definition of “Promoter Group” in the ICDR Regulations, 2009 has been adopted in the context of defining “persons acting in concert” (PAC) along with the “acquirer” in the SAST Regulations. The question therefore is whether a person falling within the definition of “promoter group” can qualify to be a “deemed PAC” for the purpose of ‘acquisition’ automatically, without there being any proof of his having acted in concert or without any disclosure to that effect having been made to the public /

investors at large through the stock exchange mechanism. I am of the opinion that the “deemed PAC” is a category that can be used either to assert that they have acted along with the acquirer or to deny that they have so acted in a particular acquisition. For instance, the question of whether the Noticee 3 can be treated as a PAC for the acquisition of shares by the Noticees 1 & 2 will necessarily depend on the proof of conduct of all the Noticees 1 to 3. The Noticees 1 to 3 have contended that the Noticee 3 was only a shareholder in the target company during the relevant period and has been erroneously categorized as promoter in the SCN and that no shares were transferred to his beneficiary account during the relevant period and therefore, he may not be considered to be a person acting in concert, with the Noticee 1 & 2, in respect of the aforesaid transactions entered into by the Noticee 1 and/or return of those shares to the demat accounts of Noticees 1 & 2. It is admitted position that V.K. Sukumaran and Saritha Sukumaran (i.e. the Noticees 1 and 2), constituted the promoter group of the target company, at the relevant time. As regards the Noticee 3, I note that against him, there is only one allegation, which is the violation of Regulation 3(2) of SAST Regulations as a part of the promoter group of VPL. I also find from the records that he is primarily an academician and there is no evidence to suggest that he was associated with other promoters in promoting the target company. Moreover, his shareholding in the target company remains unchanged and the Noticee 3, has not acquired any further shares in the target company. Keeping this in view and the very fact that the Noticees 1 and 2, have themselves explicitly asserted that the Noticee 3, was not a promoter of the target company while not disputing their role as promoters of the Company, I do not see any reason to include the Noticee 3 as a part of the promoter group in terms of the ICDR Regulations, and thus part of the deemed PAC in terms of Regulation 2(1)(q)(2)(iv) of SAST Regulations. In view of the above, Prof. R. Sahadevan (Noticee 3) is exonerated from the allegations made in the SCN dated April 23, 2019.

20. The next part of the first issue for consideration, is the violation of Regulation 3(2) of the SAST Regulations by the Noticees 1 & 2. Regulation 3(2) of the SAST Regulations states that any acquirer, who along with PAC holds more than 25% shares in the target company, shall not acquire more than 5% shares in the target company in a financial year, unless the acquirer makes a public announcement of an open offer for acquiring shares.

21. It is observed that the shareholding of the promoter group in the target company as on October 17, 2013 was 21,39,97,725 which constituted to 33.97% of the total paid up capital of the target company. Further, on October 18, 2013, one of the promoters, namely Dr. V K Sukumaran, acquired 3,00,00,000 shares whereby the shareholding of the promoter group had increased by 4.76%. Similarly, on November 22, 2013, the other promoter Ms. Saritha Sukumaran, had acquired 25,00,000 shares resulting in an increase of 0.40% of the total shareholding by the promoter group. Thus, during the relevant period, the total shareholding of the promoter group had increased by 5.16%, as seen from the Table -1 above. The Noticees 1 & 2 have primarily contended that it would be erroneous to call the above noted increase in the shareholding as 'acquisition' under the SAST Regulations as the aforesaid increase in the shareholding of the promoter group during the relevant time was on account of return of shares as a result of failed transactions for obtaining financial assistance from certain persons/entities.

22. I have perused the contentions of the Noticees 1 & 2 with regard to increase in shareholding of the promoter group in the target company. I note that the Noticees 1 & 2 have stated that these shares were transferred to certain entities through off-market dealings and were received back in their accounts from certain entities as well in off-market transactions. The Noticees 1 & 2 have attached a copy of the Share Transfer Agreement (dated October 05, 2013) purportedly signed by one Mr. Piyush Kothari (the Noticee 4) on one side and by the Noticee 1 on the other side whereby, the lender therein (Mr. Piyush Kothari) had agreed to extend financial

assistance of ₹3 crore against the 3 crore equity shares of the Company on a buyback system. It is noted from the terms of the said Agreement that the shares were required to be transferred to the lenders and after the repayment of the loan amount, the said shares were required to be bought back to the account of the Noticee 1. Thus, change of beneficial ownership of the impugned shares was inherent in the said Share Transfer Agreement both at the time of transferring out and at the time of buying back as per the terms of the Agreement. It is also relevant to mention here that it is not a case where the Noticees have contended that the impugned shares were pledged by them to the lenders. The Noticees 1 & 2 have also submitted a copy of the letter dated October 24, 2013 purportedly written by the Noticee 1 to the "Assistant Commissioner of Police, Economic Offences Wing, Crime Branch, Mumbai" (herein after referred to as '**EOW**') with regard to failure of one Mehul Modi and other associates to return 1.5 crore shares to the depository account of the said Noticee. As regards the complaint to EOW, I find it necessary to state that from the copy of the complaint it is not clear if any case has been registered by the EOW pursuant to the complaint by the Noticees. Further, there is nothing on record to indicate if the Noticees have already filed any criminal or civil case against the said lender in respect of the alleged fraud, breach of trust, or misrepresentation. I further, note that complaint filed before EOW, is only an information regarding alleged offence and it cannot be construed as an order from the competent authority. The copy of complaint to EOW, submitted by the Noticee 1 & 2, does not prove or substantiate the claim of the Noticee that shares of the Noticee 1 & 2 were fraudulently acquired by Mr. Mehul Modi and other associates. I note that the share transfer between the Noticee 1 and Mr. Mehul Modi has taken place in October, 2013 and more than six years has passed since then. However, the Noticees 1 & 2, have also not furnished any updated status on the complaint filed before the EOW. Therefore, the aforesaid two documents, viz. the Share Transfer Agreement and the complaint to EOW submitted by the Noticees to prove their *bona fide* will not come to their rescue. Moreover, if credence is to be given to the said Share Transfer

Agreement, one finds that the Noticees have agreed to transfer their shares to the lender on a buyback basis which means that the ownership of the shares was intended to be transferred to the lender and again to be re-acquired after the repayment of the loan. It is also observed that subsequent to the transfer of the shares by the Noticee 1 to Mr. Mehul Modi (the Noticee 6), shares changed hands further. Therefore, the so called return of the shares to their accounts by the lender was nothing but acquisition of shares.

23. Further, the lender, as per the terms of the said Agreement, is an individual lender. In this regard I find it necessary to discuss the findings of the Hon'ble Tribunal in the matter of Liquid Holdings Private Limited vs. SEBI (Appeal No. 83 of 2010 – date of decision March 11, 2011) which is reproduced herein below:

"5. The argument of the learned senior counsel that the letters dated December 13, 2004 and December 19, 2007 and the tripartite agreement executed on August 9, 2006 clearly indicate the intention of the parties that the shares were throughout held by the banks as collateral security notwithstanding the fact that they stood transferred in their names is not acceptable. Such an argument would mean circumventing the statutory provisions of the takeover code and Regulation 58 of the Regulations which cannot be permitted. The way we read these documents is that after the shares were transferred in the names of the banks on the invocation of the pledge, the parties agreed that the banks will transfer the shares back to the pledgors (appellants) upon the loan being repaid. It was open to the banks to transfer the shares to other parties and instead of doing that, they agreed to transfer the shares back to the appellants. This agreement will not override or circumvent the statutory provisions already referred to above and would only result in transfer of shares from the banks to the appellants. This transfer is altogether different from the transfer by which the shares came to the banks upon invocation of pledge and by no process of reasoning can it be said that the banks continued to hold the shares as collateral security which was returned to the appellants on the repayment of the loan.

6. We may now take note of another submission made by the learned senior counsel for the appellants. He contends that the banks may have become beneficial owners of the shares when

they were transferred in their demat account but they had not become the real owners of the shares and they could not have gained title to the said shares in the absence of any consideration. There is no merit in this contention at all. The Depositories Act, 1996 provides for only two category of owners viz. 'registered owner' who has necessarily to be a depository and a 'beneficial owner' in whom all the rights vest. Once the beneficial ownership stands transferred to the banks the parties cannot circumvent the legal provisions by entering into an agreement to make a declaration otherwise. The law also prescribes a mode for the creation and revocation of a pledge. The parties cannot agree to create a pledge contrary to the provisions of Regulation 58. The present is, indeed, a case where the shares had been pledged to secure the loan and on default being made in its repayment, the pledge was invoked. Even the Contract Act entitles the pledgee to invoke the pledge when a default occurs. In the case of shares held in demat form, the Depositories Act and the Regulations framed thereunder provide the manner in which the pledge is to be created and invoked and that procedure was duly followed in the present case. As already noticed, when the pledge was invoked, the banks became the beneficial owners of the shares and thereafter on repayment of the loan the shares were transferred back to the appellants on the basis of an agreement between the parties. The appellants did not get back the shares.

24. The above findings of the Hon'ble Tribunal squarely apply to the facts of instant case. As seen from the facts, there is an instant change in the beneficial ownership of shares pursuant to the transfer of shares to the accounts of the purported lenders by the Noticees 1 & 2 and again change in the beneficial ownership occurred when some of the impugned shares were transferred back to the demat accounts of the Noticees 1 & 2 after the so called financial deal with the lenders failed. It is also worth mentioning that the first leg of transaction is between Noticee 1 and Mr. Piyush Kothari (the Noticee 4) whereas in the second leg of transaction, 3 crore shares were returned to the demat accounts of Dr. V.K. Sukumaran (Noticee 1) and 25 lac shares were transferred to the demat account of Ms. Saritha Sukumaran (Noticee 2). There is no dispute over the fact that the pre-acquisition shareholding by the promoters (Noticees 1 & 2) together was 33.97% as on October 17, 2013 which means this was the shareholding position of the said two promoters after transferring their

shares to Mr. Piyush N. Kothari (the Noticee 4) and Mr. Mehul J. Mody (the Noticee 6) as per their off-market deals. However, it is admitted that the two promoters have received shares of the Company constituting more than 5% of the total paid up share capital thereby increasing their shareholding to 39.13% of the total share capital of the Company. There is no dispute to the aforesaid incremental acquisition by the said two promoters. Considering the above, I do not find the contention of the Noticees 1 & 2 acceptable and find that the increase in the shareholding of the promoter group by acquisition of shares by the Noticees 1 & 2, on October 18, 2013 and November 22, 2013, respectively, had together breached the 5% benchmark prescribed in terms of Regulation 3(2) of the SAST Regulations. However, these two promoters have failed to make the mandatory public announcement of open offer, in terms of regulation 3(2) of the SAST Regulations.

Violation of SCRA by the Noticee 1, 2, 4, 5, 6 and 7-

25. The second issue for consideration is whether the Noticees 1, 2, 4, 5, 6 & 7 have violated Section 16 of SCRA read with Sections 2(i), 13 and 18 of SCRA and SEBI Notification G.S.R. 219 (E) dated March 2, 2000. In the present case, Noticees 5, 6 & 7 have neither replied to the SCN nor availed the opportunity for hearing. Further, it appears that they have not responded to the e-mails/queries of SEBI's investigation team. In this context, the silence on the part of the Noticees 5, 6 & 7, in this inquiry clearly indicates that Noticees 5, 6 & 7 do not want to participate in any inquiry in respect of the alleged violation stated in the SCN.

26. Further, reliance can be placed upon the judgment of the Hon'ble Securities Appellate Tribunal in the matter of *Classic Credit Limited Vs. SEBI (Appeal No. 68 Of 2003, Date of Decision December 8, 2006)* regarding the significance of the filing of the reply to the show cause notice, which stated as follows "*the appellant did not file any reply to the second show cause Notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them*." I also

observe that the Hon'ble Securities Appellate Tribunal in the matter of Sanjay Kumar Tayal & Ors. v SEBI (Appeal 68 of 2013 dated February 11, 2014) had inter alia observed that:

"…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..."

27. Further, it may be noted that the "Spot Delivery Contract" is defined under section 2(i)(a) of SCRA as "a contract which provides for, actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefore, through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality." Thus, in terms of the aforesaid Section 2(i)(a) of the SCRA, a contract in securities market will be completed on actual delivery of shares and payment of consideration either on the same day or the next day of the contract. In other words, a spot contract in securities market is said to be completed only if delivery/transfer of securities and payment therefore has been made within the time limit prescribed under Section 2(i)(a) of SCRA.

28. SEBI Notification G.S.R. 219(E) dated March 2, 2000 issued by SEBI under section 16(1) of SCRA provides that it is necessary to prevent undesirable speculation in securities in the whole of India, hereby declare that no person in the territory to which the said Act extends, shall, save with the permission of the Board, enter into any contract for sale or purchase of securities other than such spot delivery contract or contract for cash or hand delivery or special delivery or contract in derivatives as is permissible under the said Act.

29. Therefore, in a 'spot delivery contract' the payment of consideration amount must be done either on the same day or the next day of the transaction as stipulated under section 2(i)(a) of SCRA. However, in the instant case, the Noticee 1 had received and transferred shares through off-market transactions from/to Noticees 4, 5 and 6, during the Investigation Period. Details of shares acquired/ transferred are discussed in the Table – 2 above of this order. It is observed from the Table -2, that the Noticee 4 has received 3,00,00,000 shares and the Noticees 5 & 6 have received 1,50,00,000 shares each from the Noticee 1, on October 08, 2013. Further, the Noticee 1 has received 1,50,00,000 shares twice from the Noticee 4, once on October 15, 2013 and another on October 18, 2013. In addition to that the Noticee 1 has received 1,50,00,000 shares from the Noticee 5, on October 18, 2013 and 52,94,005 shares from the Noticee 6, on November 26, 2013. Similarly, It is observed from the Table – 3 of this order that the Noticee 2 has received 25,00,000 shares from the Noticee 7, on November 26, 2013.

30. Every contract in securities must be executed through the stock exchange mechanism unless it is a spot delivery contract. Since, the transaction entered into by the Noticees is an off-market transaction, it is not in conformity with section 13 of SCRA. In order to be a legal transaction, it would have to qualify as a spot delivery contract as defined under section 2(i) of SCRA i.e. actual delivery/ transfer of shares and the payment should be on the same day as date of contract or the next day.

31. However, it was observed from the material available on record that the Noticees 1, 2, 4, 5, 6 & 7 neither received any money for the shares they transferred in off market nor did they pay any money for the shares they received in off market. In this regard, the Noticees 1 and 2 submitted that the Noticee 1 approached the Noticees 4, 5 & 6, who promised to provide financial assistance of Rs. 6 Crores provided that 6 crore shares of the Company were transferred to their beneficiary accounts i.e. 3 crore shares to the Noticee 4 and 1.5 Crore shares to the Noticee 5 & 6 each. However, the cheques provided by the said Noticees 4, 5 & 6, were returned unpaid for the

reason of insufficient funds and therefore the Noticee 1 pursued the matter with them for return of shares. The Noticees 4 & 5 returned 3 & 1.5 crore shares, respectively, on October 18, 2013. The Noticee 6 failed to return 1.5 crore shares. The Noticee 1 has stated that he has approached EOW of Mumbai Police regarding fraudulent action of the Noticee 6. The Noticee 1 came to understand that the Noticee 6 had transferred aforesaid shares in off market to several persons including the Noticee 7. The Noticee 6 transferred 52,94,005 shares to the Beneficiary account of the Noticee 1 on November 26, 2013. Further, the Noticee 7 transferred 25 lakh shares to the beneficiary account of the Noticee 2 on November 22, 2013. The balance 72,05,995 shares remain untraced. The submissions made by the Noticee 4, in this regard, are also in line with the submissions made by the Noticee 1 & 2.

32. The Noticee 4 submitted, in this regard, that the transaction between the parties is not a sale and purchase transaction and therefore is not covered within the ambit of SCRA. He has also submitted that the transaction is evidently one for providing security over the shares of Mr. V. K. Sukumaran for a loan to be provided by the Noticee 4 to the promoter of the Company. The Noticee 4 and the Noticee 1 executed a share transfer agreement dated October 05, 2013. The agreement provided for transfer of 3 crore shares of the company by the Noticee 1 to the Noticee 4 as a security for the loan to be provided by the Noticee 4 to the Noticee 1. The Noticee 4 further submitted that the agreement also specified an interest rate on the loan and the terms of prepayment. The agreement also provides that the shares will be transferred back to the Noticee 1 upon repayment of loan at the end of the repayment period. The Noticee 4 added that as he could not arrange the loan for the Noticee 1, he transferred shares back to the Noticee 1.

33. In support of their claim, the Noticees 1, 2 & 4 have also submitted a copy of the Share Transfer Agreement dated October 05, 2013, executed between the Noticees 1 and 4. However, as already discussed in this order, it is observed from the aforesaid Share Transfer Agreement that, the shares were required to be

transferred to the lenders and after the repayment of the loan amount, the said shares were required to be bought back to the account of the Noticee 1. Thus, change of beneficial ownership of the impugned shares was inherent in the said Share Transfer Agreement both at the time of transferring out and at the time of buying back as per the terms of the Agreement. It is also noteworthy that, the Noticees 1 & 2 do not have share transfer agreement vis-a-vis the Noticees 5 & 6 for 1.5 crore shares each. The Noticees 1 and 2 further submitted that the cheques for a total sum of Rs. 6 Crore were received by the Noticee 1 from the Noticees 4 to 6 on the same day i.e. October 08, 2013 when shares were transferred. However, the Noticees 1 & 2 has failed to submit any proof in this regard. In view of the same, I find contentions of the Noticees 1, 2 & 4, are devoid of merit.

34. In view of the above, I find that the off market transactions executed by the Noticees 1, 2, 4, 5, 6 & 7 as brought out in the Tables 2 & 3 of this order are in violation of the provisions of section 2(i) of the SCRA. Therefore, the Noticees 1, 2, 4, 5, 6 & 7 have violated Section 16 of SCRA read with Sections 2(i), 13 and 18 of SCRA and SEBI Notification G.S.R. 219 (E) dated March 2, 2000.

35. It is to prevent undesirable transactions in securities that such provisions were inserted in the Act and subsequent notification was issued to prevent dealings outside the stock exchange mechanism. In order to be a legal transaction, it would have to qualify as a spot delivery contract as defined under section 2(i) of SCRA i.e. actual delivery/ transfer of shares and the payment should be on the same day as date of contract or the next day. As evident from the discussion above, in this case, the payment has not taken place as per spot delivery contract as defined in SCRA.

Disclosure Violations by the Noticee 1

36. The final issue for consideration is whether the Noticee 1 has violated Regulation 13(4A) read with Regulation 13(5) of PIT Regulations on multiple occasions, Regulations 29(2) read with Regulation 29(3) of SAST Regulations on one occasion,

Regulation 31(2) read with Regulation 31(3) of SAST Regulations on three occasions & Regulation 30(2) read with Regulation 30(3) of SAST Regulations on one occasion. In terms of the regulation 31(2) read with Regulation 31(3) of SAST Regulations, the promoters of every listed company are required to disclose details of invocation or release of encumbrance of shares within seven days to stock exchanges and the target Company. However, in the instant case, it is observed that the Noticee 1 has not filed the disclosures in respect of invocation of pledge of 2,10,00,000 shares on October 15, 2013 and closure of pledge on December 6, 2013, for 1,50,00,000 shares and 60,00,000 shares, respectively, in terms of Regulation 31(2) read with 31(3) of SAST Regulations. Details of aforesaid transactions are mentioned at Table -4 above of this order.

37. In terms of the Regulation 30(2) read with Regulation 30(3) of SAST Regulations, the promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified., within seven working days from the end of each financial year to the stock exchanges and the target Company. However, in the instant case, it is observed that the Noticee 1 has not filed the disclosures for the financial year ending on March 31, 2014, in terms of Regulation 30(2) read with Regulation 31(3) of SAST Regulations.

38. In terms of the Regulation 29(2) read with Regulation 29(3) of SAST Regulations, any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified, within two working days from the acquisition to stock exchanges and the target Company. However, in the instant case, it is observed that the Noticee 1 was already holding more than 5% (19.42%) paid up share capital of the Company. Further, on October 18, 2013, the Noticee 1

acquired 1.5 crore shares each from Noticees 4 and 5 in off-market. These transactions resulted in an increase in the shareholding of the Noticee 1 by 3 crore shares (i.e. 4.76% of the paid up share capital of the Company) on October 18, 2013. Details of aforesaid transactions are mentioned at Table -6 above of this order. Thus, on October 18, 2013 there was change in his shareholding of more than 2% of the share capital of the Company. Therefore, in terms of Regulation 29(2) read with 29(3) of SAST Regulations, the Noticee 1 was required to disclose abovementioned acquisition to the Company, BSE & NSE within two working days of the acquisition. Therefore, I find that the Noticee 1 has failed to make disclosures to the Company and Exchanges as required in terms of Regulation 29(2) read with 29(3) of SAST Regulations and has thus violated Regulation 29(2) read with 29(3) of SAST Regulations.

39. In terms of the Regulation 13(4A) of PIT Regulations, 1992, any person who is a promoter or part of the promoter group of a listed company, shall disclose to the company and the stock exchanges where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower. However, it is observed that on May 07, 2013, the Company approved issuance of 45,00,00,000 Equity shares by way of Bonus issue to its shareholders as on May 06, 2013 (Record date) in the ratio of 5:2 (i.e. 5 new Equity Shares will be issued for every 2 Equity Share held). The details of resultant change, in the number of shares held by the Noticee 1, are mentioned at Table -7 above of this order. It is observed from the Table - 7 that the number of shares held by the Noticee 1 has increased by more than 25000 shares. Hence, being a promoter of the Company, the Noticee 1 was required to make disclosures in terms of Regulation 13(4A) read with 13(5) of PIT Regulations,

1992 to the Company and the stock exchanges. However, it is seen that the Noticee 1 has failed to do so. In view of the above, I find that the Noticee 1 has violated Regulation 13(4A) read with 13(5) of PIT Regulations, 1992 on one occasion on account of issuance of bonus shares on May 07, 2013.

40. Further, it is observed that the Noticee 1 has acquired and disposed of shares of the Company, on multiple occasions during the IP and the details of resultant change, in the number of shares held by the Noticee 1, are mentioned at Table - 8 above of this order. I note from the Table - 8 that the Noticee 1 has executed transactions of more than 25,000 shares on 23 days and therefore, he was required to make disclosures in terms of Regulation 13(4A) read with 13(5) of PIT Regulations, 1992, to the Company and the stock exchanges on 23 occasions for aforesaid transactions. However, it is seen that the Noticee 1 has failed make above disclosures and has thus violated Regulation 13(4A) read with 13(5) of PIT Regulations, 1992 on 23 occasions for the transactions mentioned in Table – 8.

41. With respect to the disclosure violations in terms of Regulation 29(2) read with 29(3) of SAST Regulations, the Noticee 1 submitted that 1.5 Crore shares acquired by him from the Noticees 4 & 5, each, on October 18, 2013 was not an acquisition but return of shares transferred by him to the Noticees 4 & 5 on October 08, 2013. The Noticee 1 further submitted that there was no change in his shareholding from the last disclosed shareholding i.e. for quarter ended September 30, 2013. For the reasons discussed in the paragraphs 21 to 23 of this order, these submissions of the Noticee 1, are not acceptable. In this regard, I note from the Table – 6, which is based on demat statements of the Noticee 1, that the Noticee 1 was already holding 12,23,38,800 shares (19.42% of total paid up share capital of the Company) of the Company which is more than 5% shares of the Company. Further, on October 18, 2013, the Noticee 1 acquired 4.76% of total paid up share capital of the Company (3,00,00,000 shares) in two transactions of 1,50,00,000 shares each. Therefore, I

find that the Noticee 1 has violated Regulation 29(2) read with 29(3) of SAST Regulations on one occasion.

42. Further, with respect to allegations of violations of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations on 24 occasions in all, Regulation 31(2) read with Regulation 31(3) of SAST Regulations on three occasions & Regulation 30(2) read with Regulation 30(3) of SAST Regulations on one occasion the Noticee 1 has submitted that he had informed the Company regarding the aforesaid transactions and it was usual practice of the Company to then inform the Stock exchanges. The Noticee 1 has submitted that as the offices of the Company are sealed and in the custody of SBI officials, the Noticee 1 is unable to obtain any documents in respect of his disclosures. The investigation has given a clear finding that necessary disclosures are not made by the Noticee 1. In the absence of any evidence to the contrary, I am inclined to find that the Noticee 1 has failed to make necessary disclosures to the stock exchanges, in terms of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations on 24 occasions, Regulation 31(2) read with Regulation 31(3) of SAST Regulations on three occasions & Regulation 30(2) read with Regulation 30(3) of SAST Regulations on one occasion.

43. In view of the above, I find that the allegation of violation of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations on 24 occasions, Regulation 31(2) read with Regulation 31(3) of SAST Regulations on three occasions & Regulation 30(2) read with Regulation 30(3) of SAST Regulations on one occasion stands established.

44. The above violations, as brought out in the foregoing paragraphs, make the noticee liable for monetary penalty under Section 15H of the SEBI Act, Section 23H of SCRA, and Section 15A(b) of the SEBI Act. In this context, I refer to the ruling of the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as*

soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established..…". The text of Section 15H of the SEBI Act, Section 23H of SCRA, and Section 15A(b) of the SEBI Act is as below:

SCRA

Penalty for contravention where no separate penalty has been provided.

23H. *Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

SEBI Act

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made there under,—*

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

Penalty for non-disclosure of acquisition of shares and take-overs.-

15H. *If any person, who is required under this Act or any rules or regulations made there under, fails to,-*

(i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or

(ii) make a public announcement to acquire shares at a minimum price;

(iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or

(iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer.

he shall be liable to a penalty twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

45. While determining the quantum of penalty under Section 15H of the SEBI Act, Section 23H of SCRA, and Section 15A(b) of the SEBI Act, it is important to consider the relevant factors as stipulated in Section 23J of the SCRA and Section 15J of the SEBI Act, which reads as under:-

SCRA

Factors to be taken into account while adjudging quantum of penalty

Section 23J *- While adjudging the quantum of penalty under section 12A or section 23-I, the Securities and Exchange Board of India or 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."

SEBI Act

Factors to be taken into account by the adjudicating officer.

Section 15J *- 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.

Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

46. In view of the charges as established, the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15-J of the SEBI Act and Section 23J of SCRA, stated as above. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the default of the Noticees 1 to 7 in making disclosures or the consequent loss caused to investors as a result of the default.

47. With respect to violation of Regulation 3(2) of SAST Regulations by the Noticee 1 & 2, it would be also appropriate to rely upon the observations of Hon'ble SAT, in its order dated September 14, 2010, in the matter of Ushdev Trade Limited v. SEBI, Appeal no. 106 of 2010, wherein it observed that *"……we are satisfied that even though the appellant violated the provisions of Regulation 10 of the takeover code, this violation, in the circumstances of the case, has not prejudiced or jeopardized the interest of the shareholders of the target company and cannot be said to be serious enough calling for an exorbitant penalty as imposed by the adjudicating officer. This is not a case where a non-promoter has acquired a substantial chunk of shares in the target company changing its shareholding pattern and has gone away without making a public announcement. The acquisition by the appellant is within the promoter group which has not led to any change in the control of the target*

company nor has its management changed. However Regulation 10 having been violated, penalty must follow as observed by the Supreme Court in Chairman, SEBI vs. Shriram Mutual fund AIR 2006 SC 2287……..".

48. I note that there is no material on record to indicate that such default was repetitive. It is, however, a matter of record that in the instant matter, the limit of 5% has been exceeded by a mere 0.16%. It is also observed from the MCA Website that the Company is under liquidation. The very fact that the Noticees 1 & 2 have failed to make open offer when they were required to do so in terms of provisions of SAST Regulations, warrants that penalty shall be imposed for such violation. I also note that with respect to the same set of facts & allegations, the Noticee 1 & 2 have been debarred from accessing the capital market or dealing in securities for a period of 2 years by SEBI vide order dated November 28, 2019. Further, the Noticee 1 has also submitted that the Company is under liquidation and has also been delisted now. Taking into consideration, the facts and circumstance of the case and mitigating factors as mentioned above, an appropriate penalty needs to be imposed upon the Noticees 1 & 2 to meet the ends of justice.

49. With respect to the violation of Section 16 of SCRA read with Sections 2(i), 13 and 18 of SCRA and SEBI Notification G.S.R. 219 (E) dated March 2, 2000, by the Noticees 1, 2, & 4 to 7, I note that the Section 13 of SCRA makes a transaction in securities, in an area, illegal which is other than between the members of recognized stock exchange or through or with such member(s). The effect of this provision is that if a transaction in securities has to be validly entered into, such a transaction has to be either between the members of a recognized stock exchange or through a member of a stock exchange or with a member of a recognized stock exchange. Section 18 excludes spot delivery contracts from the applicability of Section 13 of SCRA. Hence, it can be said every contract in securities must be executed through the stock exchange mechanism unless it is a spot delivery contract. The transactions entered by the Noticees 1, 2, & 4 to 7, were neither executed on the stock exchange

nor do they qualify to be the spot delivery contract, therefore, need to be penalized accordingly. I note that w.r.t the prohibited transactions, the Noticee 1 dealt in a total of 11,02,94,005 shares, the Noticees 2 & 7 had dealt in a total of 25,00,000 shares each, the Noticee 4 dealt in a total of 6,00,00,000 shares, the Noticee 5 dealt in a total of 3,00,00,000 shares and the Noticee 6 has dealt in a total of 2,02,94,005 shares through off market in the scrip during the investigation period which is in violation of provisions of SCRA. I note that, the Noticee 1 entered into prohibited transactions on seven (7) occasions, the Noticee 4 entered into prohibited transactions on three (3) occasions and the Noticee 2 entered on one (1) occasion. Therefore, I find that the defaults by the Noticees 1 & 4 are repetitive in nature. I also note that the Noticees 5, 6 and 7 have neither responded to the SCN nor have they participated in the instant proceedings.

50. With respect to the disclosure violations by the Noticee 1, I note that the purpose of these disclosures is to bring about transparency in the transactions of Directors/ Promoters/Acquirers/ employees and assist the Regulator to effectively monitor the transactions in the market. Hon'ble SAT in the case of **M/s. Coimbatore Flavors & Fragrances Ltd. & Ors vs SEBI (Appeal No. 209 of 2014 order dated August 11, 2014)**, observed *"Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."* Further, the Noticee 1 has violated Regulation 13(4A) read with Regulation 13(5) of PIT Regulations on 24 occasions, Regulation 29(2) read with Regulation 29(3) of SAST Regulations on one occasion, Regulation 31(2) read with Regulation 31(3) of SAST Regulations on three occasions and Regulation 30(2) read with Regulation 30(3) of SAST Regulations on one occasion. Therefore, I find that the default by the Noticee

1 is repetitive in nature. However, it is noted that the violations pertains to the years 2013 and 2014.

ORDER

51. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticees and also the factors mentioned in Section 23J of the SCRA and Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 23-I of the SCRA and Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose the following penalties on the Noticees under the provisions of –

Penalty under Section 15H of the SEBI Act:

Noticee No.	Name of the Noticee	Penalty (payable Jointly and severally)
1	Dr. V. K. Sukumaran	Rs. 10,00,000/- (Rupees Ten Lakh only)
2	Ms. Saritha Sukumaran	

Penalty under Section 23H of SCRA

Noticee No.	Name of the Noticee	Penalty
1	Dr. V. K. Sukumaran	Rs. 10,00,000/- (Rupees Ten Lakh only)
2	Ms. Saritha Sukumaran	Rs. 10,00,000/- (Rupees Ten Lakh only)
4	Mr. Piyush Kothari	Rs. 10,00,000/- (Rupees Ten Lakh only)
5	Mr. Mohammed Azhar Khan	Rs. 10,00,000/- (Rupees Ten Lakh only)
6	Mr. Mehul Modi	Rs. 10,00,000/- (Rupees Ten Lakh only)
7	Mr. Nelesh Devendra Vora	Rs. 10,00,000/- (Rupees Ten Lakh only)

Penalty under Section 15A(b) of the SEBI Act

Noticee No.	Name of the Noticee	Penalty
1	Dr. V. K. Sukumaran	Rs. 10,00,000/- (Rupees Ten Lakh only)

I am of the view that the said penalties are commensurate with the lapse/omission on the part of the Noticees.

52. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

53. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - II, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

54. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act and section 23JB of the SCRA for realization of the said amount of penalty along

with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

55. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees viz. Dr. V. K. Sukumaran, Ms. Saritha Sukumaran, Mr. R Sahadevan, Mr. Piyush Kothari, Mr. Mohammed Azhar Khan, Mr. Mehul Modi and Mr. Nelesh Devendra Vora and also to the Securities and Exchange Board of India.

Place: Mumbai **Dr. ANITHA ANOOP**

Date: August 05, 2020 **ADJUDICATING OFFICER**