SECURITIES AND EXCHANGE BOARD OF INDIA
BEFORE THE ADJUDICATING OFFICER
[ADJUDICATION ORDER NO. Order/DS/AY/2022-23/19458-19459

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

In respect of

Vitan Agro Industries Ltd.
PAN: AAACC1353K
and
Dinanath Shyamsundar
PAN: BKXPS1638G

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") vide communique dated September 2, 2021 appointed the undersigned as the Adjudicating Officer under Section 19 read with Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") and under section 23I of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SCRA**") read with Rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as "**SCR Adjudication Rules**") to inquire into and adjudge into the alleged violations of provisions of SEBI Act, SCRA, SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**"), erstwhile Listing Agreement [which is now SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "**LODR Regulations**")] by Vitan Agro Industries Limited (hereinafter referred to as 'VITAN AGRO'/'**VAIL'/'noticee company**') and its whole time director Dinanath Shyamsunder during the period January 18, 2014 to May 31, 2014.

2. It is observed that the company passed the resolution in extra ordinary general meeting (EGM) held on January 18, 2014 for issuing 84,60,000 equity shares of Rs

10 each at a premium of Rs 5 on a preferential basis. However, the Board of Directors of the company on February 14, 2014 allotted 40,10,000 equity shares of Rs.10/- each at a premium of Rs.5/- per share aggregating Rs. 6.01 crores.

Details of preferential issue

Sr. No	Date of allotment	No. of allottees*	No of shares	Issue Price (in Rs)	Issue Proceeds (in Rs)
1	February 14, 2014	26	4010000	15	6,01,50,000/-

3. The objects of the preferential issue of shares as presented to the shareholders in the notice dated December 23, 2013 of EGM was as under:

"The purpose of the issue is to achieve long term plans of the company and to meet the funding requirements including ongoing capital expenditure. With this inflow of capital, the Company will augment its financial position"

4. Company has received the payment w.r.t. the preferential allotment in its bank account in Vijaya Bank (A/C No. 300500301000576). The payment details of 26 allottees are placed at **Annexure 5** to the SCN.SEBI vide email dated January 18, 2019 sought details of utilization of preferential issue from the VAIL. The company vide email dated February 01, 2019 submitted the details with respect to fund utilization of the proceeds of preferential issue and the same are as under:

S.No.	Name of Party	Date	Amount	Remark
1	Laurus Textiles Private Limited	14/02/2014	52,00,000	Loan
2	Voilet Infra Trading (P) Ltd	14/02/2014	8,00,000	Loan
3	Haripriya Buildcon Private Limited	15/02/2014	30,00,000	Loan
4	Haripriya Buildcon Private Limited	17/02/2014	26,00,000	Loan

S.No.	Name of Party	Date	Amount	Remark
5	Salsar Multitrade Private Limited	17/02/2014	25,00,000	Loan
6	Carewell industries Limited	14/02/2014	1,00,00,000	Stock Advance
7	Radhasoami Resources Limited	14/02/2014	2,50,00,000	Loan to NBFC on interest
8	Gajanan Enterprises	14/02/2014	85,50,000	Shares Purchased
9	Radhasoami Resources Limited	14/02/2014	25,00,000	Loan to NBFC on interest
	Total		**6,01,50,000**	

5. The company also, inter-alia, submitted to SEBI as under:
“ the company do not wish to get in to NBFC Segment but is utilizing the aforementioned segment for utilizing for gain, the surplus funds available with the company to maintain a reasonable return to the investors. It is the general practice of industry to plan any capital infusion in the company keeping in view both the short - term and long term plans of company. It is a prudent management’s policy to deploy the funds available judiciously and thus earns a reasonable return on investments till the long term objectives of the company do not materialize. From the above clarification it is evident that the company has utilized proceeds from preferential issue in line with on -going business activities of the company in conformity with the objects of issue as stated in the notice of EGM and line with the business object of MOA “.

6. Further, SEBI vide email dated July 31, 2019 sought documentary evidences for the fund utilization as submitted by company. VAIL vide letter dated August 01, 2019 submitted copy of ledger account and copy of Loan agreements entered into with the following parties.

a. Radhasoami Resources Ltd
b. Salasar Multitrade Private Limited
c. Laurus Textiles Private Limited

d. Voilet Infra Trading (P) Ltd
e. Haripriya Buildcon Private Limited

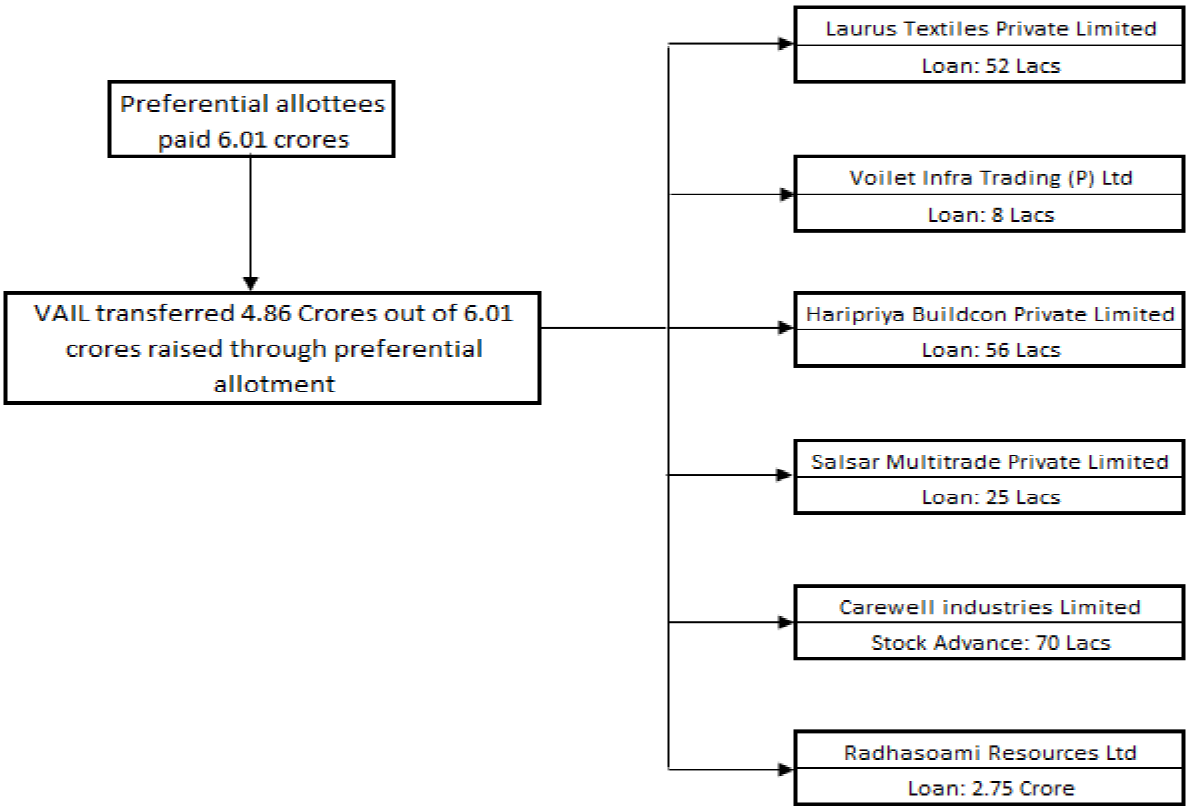
7. Company provided the copy of bank statement highlighting the transfer of Rs. 1 Crore to Carewell Industries Ltd but failed to provide proof for the purpose stated i.e. as advance for purchasing inventory. Moreover, Carewell Industries Ltd cancelled the order on February 22, 2014 and assured the refund of advance by March 31, 2014. The Bank statements of VAIL viz Vijaya Bank (now Bank of Baroda) A/c no 300500301000576 was analysed to check the utilization of preferential allotment proceeds by VAIL. It was observed that the company has transferred the major proceeds of the preferential issue to the 7 entities as given below:Details of funds transferred by VAIL to various entities:

S.No	Name of Entity	Date of Transfer	Amount Transferred (Rs.)
1	Carewell industries Limited	14/02/2014	10000000
2	Radhasoami Resources Ltd	14/02/2014	25000000
3	Radhasoami Resources Ltd	15/02/2014	2500000
4	Laurus Textiles Private Limited	14/02/2014	5200000
5	Gajanan Enterprises	14/02/2014	5500000
6	Gajanan Enterprises	14/02/2014	4500000
7	Voilet Infra Trading (P) Ltd	14/02/2014	800000
8	Haripriya Buildcon Private Limited	15/02/2014	3000000
9	Haripriya Buildcon Private Limited	17/02/2014	2600000
10	Salasar Multitrade Private Limited	17/02/2014	2500000
	Total		**61600000**

8. Upon analysis of the company’s replies and bank statements, it is observed that the preferential issue proceeds were utilized by VAIL in the following manner:

- Issue proceeds of Rs 4.86 crores used for giving Loans & Advances
- Issue proceeds of Rs 1.3 crore used for purchase of shares

9. The detailed analysis and observations on the transfer of issue proceeds by the company and their utilization and return or non-return, as the case may be, by the entities is as under:



10. VAIL has submitted that, out of the preferential issue proceeds of Rs 6.01 crores, 4.16 crores were transferred as loans & advances to 5 entities i.e. Laurus Textiles Private Limited, Voilet Infra Trading (P) Ltd, Haripriya Buildcon Private Limited, Salsar Multitrade Private Limited, Radhasoami Resources Limited. Further, it has transferred Rs 1 crore to Carewell Industries Limited as advance for purchasing the inventory.Based on the available documents such as loan agreements submitted by VAIL and bank statements of VAIL, transactions with aforesaid 5 entities are summarized as under:

Loan Summary

S.No	Name of Borrower	Loan amount as per agreement (Date of loan agreement)	Interest Payable p.a.	Term of Loan
1	Laurus Textiles Private Limited	Rs 52 Lacs (13/02/2014)	12%	3 years
2	Voilet Infra Trading (P) Ltd	Rs 8 Lacs (12/02/2014)	12%	3 years
3	Haripriya Buildcon Private Limited	Rs 56 Lacs (13/02/2014)	12%	3 years
4	Salasar Multitrade Private Limited	Rs 25 Lacs (15/02/2014)	12%	3 years
5	Radhasoami Resources Limited	Rs 2.75 Crore (13/02/2014)	10%	3 years

11. **Detailed analysis of VAIL's transaction with 6 entities is as under:**

i. **Laurus Textiles Private Limited (LTPL):** VAIL vide its email dated February 01, 2019 to SEBI admitted that on receipt of preferential allotment money, VAIL transferred Rs 52 Lacs on February 14, 2014 to LTPL as "Loan". On perusal of the loan agreement executed between VAIL and LTPL, it was observed that LTPL had borrowed Rs 52 Lacs from VAIL towards financing working capital requirements of the Business at interest rate of 12% p.a. for a period of 3 years. The loan agreement was signed by Dinanath Shyamsundar, Director on behalf of VAIL. On further analysis of the bank statements of LTPL, it is observed that LTPL transferred 20 Lacs to Kamtanath Syn and 32 Lacs to Triveni Enterprises Ltd. On analysis of bank statement of VAIL, it is observed that there was no transfer of funds into the VAIL bank account (A/c No. 300500301000576) from the loanee after the end of 3 years till December 31, 2017.

ii. **Voilet Infra Trading (P) Ltd (VITL):** VAIL vide its email dated February 01, 2019 to SEBI accepted that on receipt of preferential allotment money, VAIL transferred Rs 8 Lacs on February 14, 2014 to VITL as "Loan". On perusal of the loan agreement executed between VAIL and VITL, it was observed that VITL had borrowed Rs 8 Lacs from VAIL towards financing working capital requirements at interest rate of 12% p.a. for a period of 3 years. The loan agreement was signed by Dinanath Shyam Sundar, Director on behalf of VAIL. On further analysis of the bank statements of VITL, it is observed that VITL transferred 8 Lacs to Triveni Enterprises Ltd. On analysis of bank statement of VAIL, it is observed that there was no transfer of funds into the VAIL bank account (A/c No. 300500301000576) from the loanee after the end of 3 years till December 31, 2017.

iii. **Haripriya Buildcon Private Limited (HBPL):** VAIL vide its email dated February 01, 2019 to SEBI accepted that on receipt of preferential allotment money, VAIL transferred Rs 56 Lacs in total on February 15 & 17, 2014 to HBPL as "Loan". On perusal of the loan agreement executed between VAIL and HBPL, it was observed that HBPL had borrowed Rs 56 Lacs from VAIL towards financing working capital requirements of the Business at interest rate of 12% p.a. for a period of 3 years. The loan agreements were signed by Dinanath Shyam Sundar, Director on behalf of VAIL. On further analysis of the bank statements of HBPL, it is observed that HBPL transferred 30 Lacs to Mody Enterprises and 26.65 Lacs to Kunti Enterprise. Further, on analysis of bank statement of VAIL, it is observed that there was no transfer of funds into the VAIL bank account (A/c No. 300500301000576) from the loanee after the end of 3 years till December 31, 2017.

iv. **Salasar Multitrade Private Limited (SMPL):** VAIL vide its email dated February 01, 2019 to SEBI accepted that on receipt of preferential allotment money, VAIL transferred Rs 25 Lacs on February 17, 2014 to SMPL as "Loan". On perusal of the loan agreement executed between VAIL and SMPL, it was observed that SMPL had borrowed Rs 25 Lacs from VAIL towards financing working capital requirements of the Business at interest rate of 12% p.a. for a period of 3 years. The loan agreement was signed by Dinanath Shyam Sundar, Director on behalf of VAIL. On analysis of bank statement of VAIL, it is observed that there was no transfer of funds into the VAIL bank account (A/c No. 300500301000576) from the loanee after the end of 3 years till December 31, 2017.

v. **Radhasoami Resources Ltd (RRL):** VAIL vide its email dated February 01, 2019 to SEBI accepted that on receipt of preferential allotment money, it transferred Rs 2.75 Crores in total on February 14 & 15, 2014 to RRL as "Loan". On perusal of the loan agreement executed between VAIL and RRL, it was observed that RRL had borrowed Rs 2.75 Crores from VAIL towards financing working capital requirements of the Business at interest rate of 10% p.a. for a period of 3 years. The loan agreement was signed by Dinanath Shyam Sundar, Director on behalf of VAIL. On further analysis of the bank statements of RRL, it is observed that RRL had transferred funds to several entities. These transfers were made out of the amount received as loan from VAIL. On analysis of bank statement of VAIL, it is observed that loan amount of 2.75 crore was not transferred back to VAIL bank account (A/c No. 300500301000576) from the loanee after the end of 3 years till December 31, 2017.

vi. **Carewell industries Limited:** VAIL vide its email dated February 01, 2019 to SEBI accepted that on receipt of preferential allotment money, it transferred Rs 1 Crore on February 14, 2014 to Carewell industries Limited as advance for purchase of inventory. However, when SEBI vide letter dated August 1, 2019 sought documentary evidence, VAIL failed to provide proof for the stated purpose i.e. order of Rs 1 crore for purchasing inventory. Based on the documents submitted by VAIL, it is observed that Carewell Industries limited had cancelled the order on February 22, 2014 and assured refund of advance by March 31, 2014. It is also observed that VAIL had bought 2 Lac shares (total amount 30 Lacs) of Carewell Industries limited on March 11, 2014

12. As per the copies of loan agreements, as available on record (provided by the company) the following is observed:

- The agreement of loans were executed on letter head of Vitan Agro Industries Ltd. Though signed by both parties, they were not executed on stamp paper, not notarized and not registered, not dated thus raising doubts about the legal validity and enforceability of the said agreements.
- No collateral was secured for the loans provided.

13. As per loan agreements, all loans had the time period of 3 years calculated from the sanction date and interest to be paid together with the capital sum of the loan at the end of the loan period. However, it is observed that there was no transfer of funds into the VAIL bank account (A/c No. 300500301000576) from the loanees after the end of 3 years till December 31, 2017. As observed from the above analysis, out of the preferential issue proceeds of Rs 6.01 crores, total amount of Rs 4.16 Crores (i.e. approx. 69% of total funds) was transferred by VAIL to 5 entities as "loan". It is also observed that VAIL vide its letter dated February 04, 2016 to BSE) inter-alia stated

"*Our prime line of business is agro based products & our growth rate is at a reasonable phase from year to year….*

…We are engaged in to the business of trading of Pulses, Spices, Edible Oil

…We also own chain of Vegetarian Restaurants under our Subsidiary Amirdam Food Pvt Ltd.

…Our Future Business Modules as under: We wish to enlarge our Restaurant base thought India and be a leading chain of Restaurants.

...Further, we are also devising strategies to start Quick Service Restaurants or Food on Wheels where by entering the segment of packed Foods/meals to tap the potential of the busy working class population…"

14. Further, VAIL in the Information Memorandum submitted to BSE for direct listing on Exchange Platform inter-alia stated "*Our prime matter of business is agro based products. Our vision is to be a global player in Agro and Food industry by running successful Speciality Stores strategic business with forward and backward integration plans. We are engaged in to the business of trading of Pulses, Grains, Spices, Edible Oil, Agarbattis and Agro based fast moving consumer goods and have plans to open/launch Speciality Stores pan India. Company also has plans to venture in to the industry of delivering packed Tiffin's/Lunches to MNC's Educational Institutions, IT Hubs etc. on contract basis.*"

15. The objects of the preferential issue of shares as presented to the shareholders in the notice to the EGM held on January 18, 2014 were:
"to achieve long term plans of the company and to meet the funding requirements including ongoing capital expenditure. With this inflow of the capital the company will augments its financial positions."

16. Thus, in view of the above and documents available, it was alleged that lending money and purchasing of Shares of private limited companies is neither the core activity of the company nor the object or purpose of the preferential issue made by the company.The company had transferred a sum of Rs 1 Crore to Gajanan Enterprises (out of the preferential issue proceeds of Rs 6.01 crores) to purchase shares of RKKR Holding Private Limited, Siddarth Mercantile Private Limited, Ultra Veneers & Boards Private Limited and Sheet N Blank Private Limited. SEBI vide summons dated June 30, 2021 sought details and copy of share certificates from VAIL w.r.t. shares purchased through Gajanan Enterprises. However, VAIL has not submitted the required information.

17. Further, it is observed that after cancellation of order for purchase of inventory by Carewell Industries Ltd, VAIL had purchased shares of Carewell for Rs 30 Lacs on February 14, 2014.

Summary of shares purchased from proceeds of preferential allotment is as under:

S.No	**Name of Company of which Shares purchased**	**Number of shares**	**Rate**	**Total Amount(in Rs)**
1	RKKR Holding Private Limited	30000	100	3000000
2	Siddarth Mercantile Private Limited	62500	40	2500000
3	Ultra Veneers & Boards Private Limited	50000	30	1500000
4	Sheet N Blank Private Limited	30000	100	3000000
5	Carewell industries Limited	200000	15	3000000
	Total			13000000

18. As can be observed from the above analysis, out of the preferential issue proceeds of Rs 6.01 crores, total amount of Rs 1.30 Crores (i.e. approx. 22% of total funds) was transferred by VAIL to 2 entities viz Gajanan Enterprises, Carewell Industries Limited for purchasing shares of private limited companies which was neither the core activity of the company nor the object or purpose of the preferential issue made by the company.As per the Notice dated December 23, 2013 EGM held on January 18, 2014 and the resolution passed, the funds raised by preferential allotment of shares shall be utilized to achieve long term plans of the company and to meet the funding requirements including ongoing capital expenditure.

19. Based on replies received from company, it was observed that 69% of the proceeds of preferential allotment were utilized for disbursal of loans (3 years) without any legally binding agreement, without any collateral which a listed company is reasonably expected to secure in the interest of the company. It has also utilized 22% of the proceeds for purchasing shares of private limited companies which was not the object of the preferential allotment. Thus, it was alleged that the object of the issue as presented to shareholders were not true and the company misled the shareholders. In view of the above, it was alleged that VAIL has violated regulation 3(a)(b)(c)(d), 4(1), 4(2)(f), 4(2)(k) & 4(2)(r) of PFUTP Regulations r/w Section 12A (a)(b)(c) of SEBI Act.

20. A company is a legal entity and as such, it cannot act by itself, but acts only through its directors who are expected to exercise their power on behalf of the company with due diligence and within the framework of law. It was observed that Dinanath Shyamsundar was in the board of the company from the date of passing of board

resolution for issue of preferential shares i.e. January 18, 2014 to the date when the preferential allotment money of Rs 6.01 crores was fully utilized i.e. February 17, 2014.As per the Notice dated December 23, 2013 given to shareholders for EGM and the resolution passed by VAIL, the funds raised by preferential allotment of shares shall be utilized to achieve long term plans of the company and to meet the funding requirements including ongoing capital expenditure.

21. The Notice to EGM had the signature of Dinanath Shyamsundar, Director of VAIL. Company vide email dated July 23, 2021 was asked to share the Minutes of Board Meeting held on January 18, 2014 but it didn't provide the same. Minutes of Board meeting held on January 18, 2014 are not available on MCA website. As per Annual report 2014 available on bseindia.com, Dinanath Shyamsundar is Whole Time Director and member of the Audit Committee. Moreover, Dinanath Shyamsundar has executed all the loan agreements on behalf of VAIL for disbursing loans to 5 entities i.e. Laurus Textiles Private Limited, Voilet Infra Trading (P) Ltd, Haripriya Buildcon Private Limited, Salsar Multitrade Private Limited, Radhasoami Resources Limited.KYC for Bank account 300500301000576 was sought from bank and it was found that Dinanath Shyamsundar and Kokila Gangan were the authorized signatories of the Bank account through which loan amount was disbursed and money was transferred to purchase shares.In view of the above, it is alleged that the fraudulent act of diverting and mis utilising the preferential issue proceeds was done by VAIL with the knowledge of its director Mr. Dinanath Syamsundar and he violated the provisions of Regulation 3 (a), (b), (c), (d), 4 (1), 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations r/w Section 12A (a),(b),(c) of the SEBI Act.

22. VAIL was listed on the Madras Stock Exchange (hereinafter referred to as "**MSE**") and Delhi Stock Exchange (hereinafter referred to as "**DSE**") at the time of preferential allotment dated February 14, 2014. Thereafter, VAIL was listed on BSE w.e.f. July 16, 2014. The company has ratified the resolution for utilization of funds raised through preferential issue dated February 14, 2014 by way of passing resolution in EGM held on January 18, 2014. The extent to which the deviation had been made such as giving loans and purchase of shares of private limited companies should have been disclosed to MSE and DSE, on a quarterly basis, as per Clause 43 of the listing agreement. Although MSE and DSE have exited the stock exchange business, efforts were made to gather information from them in respect of compliance by VAIL to Clause 43 of the erstwhile Listing Agreement. However, they failed to provide the required information. As regards the disclosure under Clause 43 of the listing agreement, BSE vide SCN dated August 16, 2016 asked the VAIL regarding the disclosure under Clause 43 of listing agreement requirement. In response to the same, VAIL vide its reply letter dated August 23,

2016 inter-alia replied “the company has utilized proceeds from preferential issue in line with on-going business activities of the company, in conformity with the objects of the issue as stated in the Notice convening EGM and line with the business Objects of Memorandum of Association and your allegation for not following Clause 43 of erstwhile listing agreement is wrong.”

23. BSE vide email dated July 26, 2021 also confirmed to SEBI that exchange is not in receipt of any disclosure/announcement indicating the variation between projected utilization and actual utilization of funds raised through preferential allotment issue. In view of the above, it was alleged that the company did not utilize the funds raised from preferential allotment of shares for the approved purposes and it has not furnished the statement to the exchange indicating the variations between projected and actual utilization of funds. In view of the above, it is alleged that VAIL violated Clause 43 of the Listing Agreement (which is now regulation 32 of LODR Regulations) r/w Section 21 of SCRA.

24. The relevant provisions of law allegedly violated by the company and Dinanath Shyamsunder are reproduced as under:

<u>Relevant provisions of PFUTP Regulation:</u>

3. Prohibition of certain dealings in securities No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;
(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;
(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(1) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(f)Publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities.

(k) An advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors.

(r) Planting false or misleading news which may induce sale or purchase of securities.

Relevant provisions of SEBI Act:

Prohibition of manipulative and deceptive devices

12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

Relevant provisions of LODR

32. Statement of deviation(s) or variation(s).

(1) The listed entity shall submit to the stock exchange the following statement(s) on a quarterly basis for public issue, rights issue, preferential issue etc. ,-

(a) indicating deviations, if any, in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting, as applicable; (b)indicating category wise variation (capital expenditure, sales and

marketing, working capital etc.) between projected utilisation of funds made by it in its offer document or explanatory statement to the notice for the general meeting, as applicable and the actual utilisation of funds.

(2) The statement(s) specified in sub-regulation (1), shall be continued to be given till such time the issue proceeds have been fully utilised or the purpose for which these proceeds were raised has been achieved.

(3) The statement(s) specified in sub-regulation (1), shall be placed before the audit committee for review and after such review, shall be submitted to the stock exchange(s).

(4) The listed entity shall furnish an explanation for the variation specified in sub-regulation (1), in the directors' report in the annual report.

(5) The listed entity shall prepare an annual statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice, certified by the statutory auditors of the listed entity, and place it before the audit committee till such time the full money raised through the issue has been fully utilized.

(6) Where the listed entity has appointed a monitoring agency to monitor utilisation of proceeds of a public or rights issue, the listed entity shall submit to the stock exchange(s) any comments or report received from the monitoring agency 158[within forty-five days from the end of each quarter].

(7) Where the listed entity has appointed a monitoring agency to monitor the utilisation of proceeds of a public or rights issue, the monitoring report of such agency shall be placed before the audit committee on an annual basis, promptly upon its receipt. Explanation,—159[For the purpose of sub-regulations (6) and (7), "monitoring agency" shall mean the monitoring agency as specified in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.]

(8) For the purpose of this regulation, any reference to "quarterly/quarter" in case of listed entity which have listed their specified securities on SME Exchange shall respectively be read as "half yearly/half year".

SHOW CAUSE NOTICE, REPLY AND HEARING

25. A Show Cause Notice No. SEBI/HO/DSR/3375/2021 dated January 27, 2022 (hereinafter referred to as '**SCN'**) was issued to the Noticees under Rule 4(1) of the

Rules advising them to show cause as to why an inquiry should not be held and penalty be not imposed under section 15HA of SEBI Act and Section 23E of SCRA for the alleged violations. However, the noticees failed to submit reply in the matter. In terms of the said Rules, vide hearing notice dated June 27, 2022, Noticees were granted an opportunity of personal hearing in the matter on July 20, 2022 at 3.00 PM through virtual mode. Authorised Representatives (Advocate Saurabh Bachawat and Advocate Deepak Dhane from Corporate Pleaders) of the Noticee company i.e. Vitan Agro appeared and denied the allegations. They also undertook to submit written submissions along with documentary evidence . Accordingly, the Noticee was advised to submit written submissions by July 29, 2022. However, the noticee company submitted reply vide Email dated September 9,2022 in the matter. There was no response from the second noticee Dinanth Shyamsundar. The Noticee company vide email dated September 9,2022 submitted reply ,inter-alia, contending as under.

> "From the above it is clear that the SCN has been issued after an inordinate delay of almost 8 years from the date of preferential issue i.e. 15.02.2014. Such delay has caused great prejudice to the company as today the management of the company has also changed and the present Directors are not aware as to why the Board of Directors in the year 2014 had deviated or not from the objects of the preferential issue. Therefore, on this ground alone the captioned SCN is liable to be disposed of without imposition any penalty.
>
> 6. In this regard your attention is drawn to the Judgment of Hon'ble Tribunal in the matter of Mr. Rakesh Kathotia vs. SEBI (Appeal No. 7 of 2016, Date of Decision 27th May,2019), wherein it was inter alia held as under:
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> *"21 ....In our view, there has been an inordinate delay on the part of the respondent in initiating proceedings against the appellant for the*

alleged violation. In our opinion, much water has flown since then and, at this belated stage, the appellant cannot be penalized for the alleged violation which in any case was substantially complied with under Chapter 1II of the Regulations.

22...The Tribunal, however, in the aforesaid decisions further went on to hold that in the absence' of a time limit prescribed for issuing a show cause notice or for completing the adjudicating proceedings, SEB1 cannot arbitrarily delay the procedure and must take all reasonable steps to initiate and complete the proceedings in accordance with law as expeditiously as possible. The Tribunal also held that the Regulator should always make an endeavor to take prompt action against the defaulting Companies in order to, render speedy and timely justice.

23. It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Supreme Court in Government of India vs, Citedal Fine Pharmaceuticals, Madras and Others, [AIR(1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case. This proposition of law has been consistently reiterated by the Supreme Court in Bhavnagar University v. Palitana Sugar Mill (2004) Vol.12 SCC 670, State of Punjab vs. Bhatinda District Coop. Milk P. Union Ltd (2007) Vol.11 SCC 363 and Joint Collector Ranga Reddy Dist. &

Anr. vs. D. Narsing Rao & Ors. (2015) Vol. 3 SCC 695. The Supreme Court recently in the case of Adjudicating Officer, SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294 held:

> *"There are judgments which hold that when the period of limitation is not prescribed such power must qe exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc."*

7. The ratio laid down by the aforesaid Judgment has been followed in the matter of *Ashok Shivlal Rupani & Anr. Vs. SEBI* (Appeal No. 417 of 2018, Date of Decision 22nd August, 2019) and *Ashlesh Shah vs. SEBI* (Appeal No. 169 of 2019, Date of Decision 31st January, 2020) also.

8. It is also to be noted that the Company was under suspension till February 11, 2016. In the High Court conveyed meeting held on February 05, 2016 at BSE Ltd., specific query was raised regarding the nature of business of the Company and about the utilization of preferential issue funds by the .Company, which were replied to the satisfaction of BSE Ltd., in furtherance to which the suspension on the Company was revoked by BSE Ltd. on February 11, 2016. Therefore all the aspects of the present matter.were already gone into by BSE Ltd. while revoking the suspension of the Company and therefore the present matter is effectively covered by *Res Judicata.*

……………………….

10. Firstly the object of the preferential 1ssue must be noted which is as under:

"The purpose of the issue is to achieve long term plans of the company and to meet the funding requirements including ongoing capital expenditure. With t/zis inflow or capital, the Company will augment its financial position"

11. It has been alleged that the Comp ny has made deviation / mis-utilization from the above object and used the issue proceeds for lending money and purchasing shares of private limited companies.

12. It is submitted that the company did not deviate or made variation from the objects of the preferential issue and had actually utilized the proceeds in line with· the ongoing business activities, in conformity with the objects of the issue and with the objects of Memorandum of Association of the company.

13. In this regard the objects Clause – III A of the company may be noted:

"1. To open, promote, acquire, run, maintain, manage, supervise, purchase or otherwise acquire, sell, take on lease, hire, grant licence for chain stores, marketing outlets, departmental stores, ware houses, super bazaars, mandis, fixed price shops and other such shopping malls and centers in India and abroad.

2. To manufacture, buy, sell, refine, prepare, grow, import, export and deal in provisions of all kinds, both wholesale and retail and whether solid or liquid

3. To carry on business of bakers, confectioners, butchers, milk sellers, butter sellers, dairymen, grocers, poulterers, green grocers, farmers and ice merchants.

;

4. To establish exhibitions, tourist attractions, display of Indian advancement in science and technology, arts and crafts, fruit land, sweet land, toy land, video games and video clubs.

....

5. To carry on the trade of importers and brokers of goods, and produce of all descriptions, hairdressers, perfumers, chemist, reading, writing and new papers room, libraries.

6. *To process, assemble, repair service, buy, sell, import, export, distribute, or otherwise deal in all types of consumer durables, kitchen eq14ipments and plastic wares, groceries, processed and tinned foods, textile and garments, hosiery items, furnishings, drugs, fancy goods, stables, fruits, haber-dashery goods, travel accessories, handicrafts, interior decoration pieces, electrical and electronic appliances and gadgets, jewellery including imitation jewellery, packaging materials, cleaning and personal hygienic products, cosmetics and toilet articles, gifts, toys, medicines, and their co-products.*

7. *To carry on the business of restaurant, cafe, tavern, beer house, licensed victuallers, and laundries, wine, beer and spirit merchants, importers and manufacturers of aerated, mineral and artificial water and other drinks, purveyors and caterers for public amusements generally.*

8. *To carry on the business of leasing and hire purchase and finance company in the relation to all products dealt with by the company and to acquire or buy interest in a leasing I hire purchase company.*

9. *to do all acts and thin.gs as a may be permitted for an export house by an import and export trade control regulations of the Govt. of India as modified from time to time.*

10. *To acquire, sell, import or export or. otherwise deal in chemicals, preservatives, processing materials of all kinds and varieties used for processing, cooking, preserving, canning, freezing, transporting and storing marine produces and food items of all kinds.*

11. *To purchase, sell impart, export or otherwise deal in tobacco, tobacco products, c1garettes and goods of all kinds used in processing of tobacco, tobacco products.*

12. *To carry on as its principal business of investments company as to invest and acquire, hold and deal or undertake in shares, tocks, debentures, bonds,*

negotiable instruments, obligations and securities, issued or guaranteed by any company constructed or carrying on business in India or elsewhere and debent11res, bonds, obligations and securities, issued or guaranteed by any Government, sovereign ruler, comm1sswners, public body of supreme authority, municipal, local or other whether in India or abroad.

13. *To carry on the business of Developers, Processor, traders, dealers, distributors, buyers, sellers, importers, Electronic Goods, Computer, Scanner, Printer, Multimedia Modems and all other allied peripherals and to deal in/provided all kinds of goods and services.*
14. *To carry on the business Computers Software, hardware, Computers Products (),/lied service and activates connected with, documentation, production, including development of software packages and programs. Networked solutions, off shore contract software development and IT enabled services and data processors and doing back-office process outsourcing for National & International Companies.*

15. *To carry on the business of rendering service and development of software Packages for industrial, commercial, entertainment, personal, domestic, training, education, defense and all other purpose and to establish and run training centers, showrooms, display centers for computers, software's hardware's and other electronic produces for the students to be trained by the company.*

16. *To offer consultancy and placement service for students trained by the company and others and to take up turn-key assignment in India and abroad."*

[Emphasis supplied!

Hereto annexed and marked as Annexure A is copy of the Memorandum of Association of the Company.

14. Also important to note is the segment in which the company was into at the time of making the preferential issue i.e.

- **Pulses:**

Procuring Pulses/ Gram in the package of 50/ 100KG, which meets our quality and quantity standard, which are grown organically, from various farmers/agents/dealers. The same in then graded under various categories and are resold in the more sophisticated and channelized market.

- **Spices:**

Spices are an integral part of every Indian food and have significant nutritional and health advantage for consumers. Our in-depth Product knowledge, and High-Quality Standard makes us a leading trader in Spices. Engaged in trading of Spices such as Red Chili, Turmeric and Pepper.

- **Edible Oil:**

Edible Oil is consumed for various applications in Food, Medicine and industry. We are well known in the industry for manufacturing and trading of Coconut oil and Palm oil for our quality and timely product delivery.

- The Future Plans of the company was to start and/or acquire Chain of Fine Dine Restaurants and Quick Service Restaurants.

15. It is submitted that the above business plan was rightly summarized in the objects of the preferential issue (as quoted above). However, no time frame was mentioned therein to attain these

objects. As it was a long-term plan, which generally involves a time.span of 5 to 10 years it was decided by the then management to invest the funds lying idle till the time they are used to materialize the long terms objects of the company.

16. At this stage it is important to note the second part of the object of the preferential issue *viz."With this inflow or capital, the Company will augment its financial position".*

17. The actual utilization. of the preferential 1ssue proceeds has in fact strengthened / augmented the financial provision of the company during that time. The same can be evidenced from the following:

i. The Company at the Board Meeting held on December 14, 2013forfeited 1,71,500 Partly Paid Up Equity Shares of the Company for non-payment of call money to the tune of Rs.6,51,000/- ;

ii. The Company had reserves to a tune of (Rs. 4.77 Crores) in the FY 2012-2013 which reduced to reserves of (Rs. 1.08 Crores) in the FY 2013-14 and reserves (Rs. 68.17 lakhs) in the FY 2014-2015 and (Rs. 45.63 lakhs) in the FY 2015-2016.

iii. Before the Preferential issue the turnover of the company was only to a tune of Rs. 21.72 14tkhs in the FY 2012-2013 which has increased to a turnover of Rs. 64.43 Lakhs in FY 2013-2014, Rs.5.16 Crores in the FY 2014-2015 and Rs.8.99 Crores in the FY 2015-2016.

iv. The profitability of the Company increased from Rs. 1.03 Lakhs in the FY 2012-2013 to Rs. 16.26 Lakhs in the FY 2013-2014, Rs.32.91 Lakhs in the FY 2014-2015 and Rs. 7.77 Lakhs in the FY 2015-2016.

v. The company had also acquired a subsidiary under the name and style of "Amirdam Food Pvt. Ltd." which owns chain of Vegetarian Restaurants and thereafter also started a "Quick Service Restaurants" for non-vegetarian segments.

18. From the above it is clear that the company had in fact augmented its financial position because of such issue proceeds and its actual utilization. This read along with the Clause No. III (A)(8) and III (A) (12) of the Object Clause of the Company (as quoted above) makes it evident that the funds raised by the company through preferential issue used to purchase securities and give loans was also in line with the main objects of the company.

19. It is general practice in the industry to invest the idle funds and earn a reasonable return keeping in view the short term and long terms plans of the company.

20. At this stage it is also important to note that as on date the Company have received back all the funds given as loans and stock advances given out of the preferential issue proceeds and it is also not an allegation in the SCN that the funds have been diverted or siphoned by the Company.

21. The loans given by the Company to the 7 entities was returned back to the company with interest. Hence there was no loss caused to the company because of such loans given. With respect to the stock advance given by the Company to Carewell Industries it must be noted that Carewell Industries Ltd. had later vide letter dated 22.02.2014 inter alia informed the Company that they will be unable to supply the goods as per the order and will·be refunding the advance before 31^{51} March, 2014. Out of the Rs. 1 Crore paid to Carewell, Rs. 70 Lakhs had come back and balance Rs. 30 Lakhs was utilized by the Company towards share. application of Carewell Industries Ltd. for 2,00,000 equity shares @ Rs. 15 each. The said shares are still lying with the company.

23. With respect to the shares purchase made by the company out of the issue proceeds it must be noted that the company had purchased shares worth

Rs. 90 Lakhs from Gajanan Enterprises of the following companies:

i. RKKR holding Pvt. Ltd. (30000 shares@ Rs. 100 per share)
ii. Siddarth Mercantile Pvt. Ltd. (62500 shares@ Rs. 40 per share)
iii. Ultra Veneers & Boards Pvt. Ltd. (50000 shares @ Rs. 30 per share)
iv. Sheet N Blank Pvt. Ltd. (30000 shares @ Rs. 100 per share).

24. These shares were sold by the company during the latter part of 2014, on which the company earned a profit of Rs. 25,000/-.

25. At the relevant time post receiving the show cause notice from BSE Ltd. and also queries from SEBI, the Audit Committee had reviewed the performance of the company and the utilization of issue proceeds. The audit committee was also of the opinion that the issue proceed funds had been utilized appropriately and that there has been no violation of the provisions of the SEBI Act and the Rules/Regulations made thereunder. The same was also informed to SEBI vide letter dated May 27, 2017 by the company.

26. It is thus submitted that the company did not deviate or mis-utilize the funds received from the preferential issue and had in fact used it as per the main objects of the company to achieve its long-term plan as stated in the objects of the preferential issue and therefore cannot be alleged to have violated Regulation 3(a), (b), (c), (d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations r/w Section 12A(a)(b)(c) of SEBI Act.

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Now dealing with the violation of Clause 43 of the Listing Agreement (which is now regulation 32\.of LODR Regulations) r/w Section 21 of SCR Act, 195(:). In this regard the allegation against the company is that the company did not make disclosure to the Stock :Exchange under Clause 43 of the Listing Agreement indicating the !variation between the projected and actual utilization of preferential issue proceeds.

28. Firstly, according to us there has been no variation between the objects of the preferential issue and its actual utilization. Secondly, if at all there was a variation from the objects of the preferential issue then the present case is only a case relating to non-disclosure and not of fraud.SEBI cannot at one hand state that the company was required to make a disclosure for the alleged variation and on the other hand state that the actual utilization of issue proceeds was fraudulent and in violation of provisions of PFUTP Regulations and SEBI Act. The allegations is the captioned SCN are counter intuitive.

30. It must further be noted that penalty under Section 23E of the SCR Act, 1956 provides for penalty for failure to comply with, inter alia, listing conditions by *"a company or any person managing collective investment scheme or mutual fund or real estate investment trust or infrastructure investment trust or alternative investment fund'.* In the present case, it has been alleged that the Company is in violation of listing conditions, however, the Company i.e. Vitan Agro is not managing any collective investment scheme or mutual fund or real estate investment trust or infrastructure investment trust or alternative investment fund, so as to attract penalty under Section 23E of SCR Act, 1956.

31. In this regard the following judgments/orders be noted:

i. SEBI WTM Order dated 28.05.2021 in the matter of Tatia Global Venture Limited, wherein it was inter alia held as under:

"60…I also not that Section 23E of SCRA, 1956 provides for penalty for failure to comply with, inter alia, listing conditions by "a company or any person managing collective investment scheme or mutual fund". In the present case, it has been found that TGVL is in violation of listing conditions, however, TGVL is not managing any collective investment scheme or mutual fund, so as to attract penalty under Section 23E of SCRA."

ii. Order dated 03.05.2021 passed by the Hon'ble Securities Appellate Tribunal in the matter of Suzlon Energy Ltd. vs. SEBI (Appeal No.201 of 2018) wherein it was inter alia held as under:

"18. Section 23E has nothing to do with the violation of the provisions of the Listing Agreement especially Clause 36. Section 23E provides that where a Company fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof then penalty would be a minimum of Rs. 5 lakh upto maximum of Rs. 25 crore. The words "fails to comply with the listing conditions" cannot mean failure to comply with the conditions in the Listing Agreeement. One of the requirements in the Listing Agreement which is required to be complied with is Clause 36 whereas Section 23E refers to the conditions which are imposed upon a Company when it is applying for its shares

to be listed on the stock exchange platform. Section 23E has to be read along with Rule 19 of the Securitie Contracts (Regulation) Rules, 1957 ('SCRR' for short). Rule 19 of the SCRR provides certain requirement.!!.. with respect to a listing of securities on a recognized stock exchange. Rule 19A provides that a Company has to continuously maintain listing requirements. Rule 21 provides conditions for delisting of securities. Failure to comply with the listing conditions which . qre stated in Rule 19 would entail a penalty as provided under Section 23E. Thus, in our view violation of Clause 36 of the Listing Agreement will attract Section 23A(a) of the SCRA and will not attract Section 23E. The AO has made an error. "

32. Without prejudice to the above, in case it is held that the Company has violated the provisions of securities law as alleged in the SCN, the following factors be taken into consideration while imposing penalty on the Company:

i. The money has come back to the company;

ii. There is no diversion or siphoning of funds by the company;

iii. No loss has; been caused to any investor or group of investor;

iv. There is no allegation of any price manipulation or falsification of accounts by the company;

v. The allegation against the company is not repetitive in nature; and

vi. No disproportionate gain or unfair advantage has been made by the company because of such utilization of preferential issue proceeds.

33. Hence in view of the submissions made above it is clear that the company has not violated any provisions of securities law as alleged in the captioned SCN and it is prayed that the captioned SCN be disposed of without imposition of any penalty."

26. The noticee company vide email dated September 10,2022 submitted a scanned copy of its Memorandum & Articles of association. Thereafter, the noticee company was advised to refer to para 20 and 21 of the their reply dated September 09,2022 and submit documentary evidence such as Bank statements indicating the receipt of Loan amount by the company from the Loanee entities .It was further advised that documentary evidence viz., Bank statements regarding the receipt of 70 lacs and also copies of the share certificates regarding the purchase of shares worth 30 lacs (as mentioned in para 23 &24 of the reply) should also be submitted .The noticee company was advised to submit the said documentary evidence by September 16,2022. However, the noticee company failed to submit the said information. It is noted that SEBI , in the past, vide summons dated June 30, 2021 also sought details and copy of share certificates from VAIL w.r.t. shares purchased through Gajanan Enterprises. The noticee company failed to submit the same.

27. As regards the second noticee, Dinanath Shyamsundar, the SCN was sent through Speed Post and the same came back undelivered with the remark "left". Subsequently, the SCN was affixed on February 15, 2022 by Southern Regional Office at the last known address of the Noticee. The affixture report is available on record.Thereafter, a public notice was published in The Hindu and Daily Thanthi (in English and Tamil) on June 07,2022 advising the Noticee, inter -alia, to submit reply to the SCN and also attend the personal hearing on June 27,2022. However, the Noticee has failed to submit reply to the SCN and also failed to avail the opportunity of hearing. I am of the view that sufficient opportunity has been granted

to him and am inclined to proceed further based on the material available on record in terms of Rule 4(7) of said Rules. Since the noticee failed to submit reply, therefore, it can be concluded that Dinanath shyamsundar is presumed to have admitted the charges levelled against him in the SCN dated January 27,2022.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

28. I have carefully perused the allegations levelled against the Noticees in the SCN and the reply dated September 9,2022 submitted by the noticee company and the material/documents available on record. I do not see any merit in the preliminary objection raised by the noticee company that there was an inordinate delay in initiating the current Adjudication proceedings in that no prejudice as such has been caused to the noticee company. The following table indicates the details of the SCN issued to Vitan Agro and its response thereof in the matter.

SR. NO.	DATE OF LETTER/ EMAIL	DETAILS
1.	Letter : 24/01/2022	SCN Issued
2	SCN delivered on : 29/01/2022	SCN delivery report from Indian post
3.	EMAIL : 06/05/2022 11:13 am	EMAIL from Vitan Agro informing about the non-receipt of SCN
4.	EMAIL : 06/05/2022 14:39	Copy of SCN forwarded vide email to Vitan Agro
5.	EMAIL: 06/05/2022 16:50	EMAIL from Vitan Agro requesting for 45 days, time for filing reply. Request was partially acceded to.
6.	EMAIL : 06/05/2022 17:00	Advised to submit reply on or before 23/05/2022
7.	EMAIL 23/05/2022 13:50	Request to provide one month’s time more to submit reply.

		Request was partially acceded to.
8.	EMAIL : 23/05/2022 14:54	Advised to submit reply on or before 07/06/2022.
9.	EMAIL : 07/06/2022 15:52	EMAIL from Vitan Agro: Appointed counsel to appear and 15 days to prepare the reply.
10.	Letter : 08/06/2022	Hearing notice to Vitan Agro advising it to appear on 27.06.2022 at 4:00 pm
11.	Hearing notice delivered on : 10/06/2022	Hearing notice delivery report from Indian post.
12.	EMAIL : 24/06/2022 11:21 AM	EMAIL from Corporate Pleaders, Advocates - to reschedule hearing by 6 weeks.
13.	Hearing Notice : 27/06/2022	Hearing notice to Vitan Agro advising it to appear on 15/07/2022 at 3:00 pm.
14	Hearing Notice Delivered On : 29/06/2022	Hearing notice delivery report from Indian post.
15.	EMAIL : 12/07/2022 14:13	EMAIL from Corporate Pleaders, Advocates - to provide inspection of documents.
16.	EMAIL : 12/07/2022 16:39	Provided chronology of opportunities given and also mentioned about providing relevant documents along with the SCN (19 Annexures)
17.	EMAIL : 19/07/2022 14:41	EMAIL From Corporate Pleader Advocates – Informing that Adv. Deepak Dhane will appear for the hearing.
18.	EMAIL : 29/07/2022 14:15	Informed the Vitan Agro about the non-receipt of written submissions in the matter.
19.	EMAIL : 01/08/2022 14:03	EMAIL from Corporate Pleaders, Advocates requesting extension of 3 days to file written submissions.
20	EMAIL : 01/08/2022 14:18	Request was acceded. advised to submit written submissions by Aug 05, 2022.

21	EMAIL: 22/08/2022 20:43	Request for extension of time from the Advocate of Vitan Agro for filing reply by the end of week i.e. August 26,2022. They failed to submit reply till date i.e. September 06,2022. Noticee company submitted reply vide Email dated September 9,2022.
22	EMAIL: 12/09/2022 15:34	Company was advised to submit bank statements and copies of share certificates by September 16,2022. Company failed to submit the same.

29. The issues that arise for consideration in the instant case are:

ISSUE 1:

Whether the Noticee company has violated clause 43 of the erstwhile Listing Agreement [now regulation 32 of the SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015] read with section 21 of SCRA and section12A (a) (b) (c) of the SEBI Act, 1992 read with regulation 3 (a) (b) (c) (d), 4(1), 4(2)(f) and 4(2)(r) of PFUTP Regulations? If so, does the violation attract monetary penalty under section 15HA of SEBI Act and Section 23E of SCRA?

As per the Notice dated December 23, 2013 to EGM and the resolution passed by VAIL, the funds raised by preferential allotment of shares shall be utilized to achieve long term plans of the company and to meet the funding requirements including ongoing capital expenditure. As observed herein, out of the preferential issue proceeds of Rs 6.01 crores, total amount of Rs 4.16 Crores (i.e. approx. 69% of total funds) was transferred by VAIL to 5 entities as “loan”. It is also observed that VAIL vide its letter dated February 04, 2016 to BSE inter-alia stated

“*Our prime line of business is agro based products & our growth rate is at a reasonable phase from year to year….*

…We are engaged in to the business of trading of Pulses, Spices, Edible Oil

…We also own chain of Vegetarian Restaurants under our Subsidiary Amirdam Food Pvt Ltd.
…Our Future Business Modules as under: We wish to enlarge our Restaurant base throught India and be a leading chain of Restaurants.
...Further, we are also devising strategies to start Quick Service Restaurants or Food on Wheels where by entering the segment of packed Foods/meals to tap the potential of the busy working class population…"

30. Further, VAIL in the Information Memorandum submitted to BSE for direct listing on Exchange Platform inter-alia stated "Our prime matter of business is agro based products. The objects of the preferential issue of shares as presented to the shareholders in the notice for extra ordinary general meeting of members of the company held on January 18, 2014 were to achieve long term plans of the company and to meet the funding requirements including ongoing capital expenditure. With this inflow of the capital the company will augments its financial position".

31. Thus, in view of the above and documents available on record, it is observed that lending money and purchasing of Shares of private limited companies is neither the core activity of the company nor the object or purpose of the preferential issue made by the company. It is further noted, as per the record, that there was no repayment of the loan amount by the loanee/borrower entities namely Radhasoami Resources Ltd ,Salasar Multitrade Private Limited ,Laurus Textiles Private Limited, Voilet Infra Trading (P) Ltd, Haripriya Buildcon Private Limited. It indicates diversion and misutilisation of preferential issue proceeds by the Company . The company had transferred a sum of Rs 1 Crore to Gajanan Enterprises (out of the preferential issue proceeds of Rs 6.01 crores) to purchase shares of RKKR Holding Private Limited, Siddarth Mercantile Private Limited, Ultra Veneers & Boards Private Limited and Sheet N Blank Private Limited. Further, it is observed that after cancellation of order for purchase of inventory by Carewell Industries Ltd, VAIL had purchased shares of Carewell for Rs 30 Lacs on February 14, 2014. Summary of purchase of shares are as under:

S.No	Name of Company of which Shares purchased	Number of shares	Rate	Total Amount(in Rs)
1	RKKR Holding Private Limited	30000	100	3000000
2	Siddarth Mercantile Private Limited	62500	40	2500000
3	Ultra Veneers & Boards Private Limited	50000	30	1500000
4	Sheet N Blank Private Limited	30000	100	3000000
5	Carewell industries Limited	200000	15	3000000
	Total			13000000

32. As can be observed from the above analysis, out of the preferential issue proceeds of Rs 6.01 crores, total amount of Rs 1.30 Crores (i.e. approx. 22% of total funds) was transferred by VAIL to 2 entities viz Gajanan Enterprises, Carewell Industries Limited for purchasing shares of private limited companies which was neither the core activity of the company nor the object or purpose of the preferential issue made by the company. It is also observed from the record that SEBI had vide summons dated June 30,2021 sought details and copies of share certificates. But the company failed to submit the same thus giving raise to suspicion. BSE vide email dated July 26, 2021 also confirmed to SEBI that exchange is not in receipt of any disclosure/announcement indicating the variation between projected utilization and actual utilization of funds raised through preferential allotment issue. At this juncture, it is noted that the Explanation to Regulation 4(1) of PFUTP Regulations, 2003 reads as under:

" For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market." The noticee company also failed to submit bank statements indicating the receipt of loan amount from the loanee entities. The company also failed to submit copies of share certificates.

33. Therefore, I am of the view that the objects of the preferential issue (as informed to the allottees) in the Notice of EGM dated 23/12/2013 were not true and the Noticees misled the investors. Section 21 of SEBI Act mandates that Noticee company shall comply with the conditions of the Listing Agreement with stock exchange. Clause 43 of the Listing Agreement, inter alia, mandates a listed company to furnish a statement on a quarterly basis to stock exchanges indicating the variations between projected utilization of funds made by it in its prospectus or letter of offer or object/s stated in the explanatory statement to the notice for the general meeting for considering preferential issue of securities, and the actual utilization of funds. In view of this, it can be concluded that the company did not utilize the funds raised from preferential allotment of shares for the purposes for which it was approved in the EGM. The noticee company also failed to submit statement to the exchange indicating the variations between projected and actual utilization of funds. In view of the above, it is concluded that VAIL violated clause 43 of the erstwhile Listing Agreement [now regulation 32 of the SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015] read with section 21 of SCRA and section12A (a) (b) (c) of the SEBI Act, 1992 read with regulation 3 (a) (b) (c) (d), 4(1), 4(2)(f) and 4(2)(r) of PFUTP Regulations and thus liable for penalty under section 23E of SCRA and Section 15 HA of the SEBI Act.

ISSUE 2:

34. Whether the Noticee Dinanath Shyamsundar has violated the provisions of Regulation 3 (a), (b), (c), (d), 4 (1), 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations r/w Section 12A (a), (b),(c) of the SEBI Act? If so, does the violation attract monetary penalty under section 15HA of SEBI Act?

35. It is observed that Dinanath Shyamsundar was in the board of the company from the date of passing of board resolution for issue of preferential shares i.e. January 18, 2014 to the date when the preferential allotment money of Rs 6.01 crores was fully utilized i.e. February 17, 2014.The Notice to EGM had the signature of Dinanath Shyamsundar, Director of VAIL. SEBI vide email dated July 23, 2021 Advised the noticee company to share the Minutes of Board Meeting held on January 18, 2014, but it didn't provide the same. Minutes of Board meeting held on January 18, 2014 are not available on MCA website. As per Annual report 2014 available on bseindia.com, Dinanath Shyamsundar is Whole Time Director and member of the Audit Committee.

36. Moreover, Dinanath Shyamsundar has executed all the loan agreements on behalf of VAIL for disbursing loans to 5 entities i.e. Laurus Textiles Private Limited, Voilet Infra Trading (P) Ltd, Haripriya Buildcon Private Limited, Salsar Multitrade Private Limited, Radhasoami Resources Limited.It is observed that the KYC for Bank account 300500301000576 that Dinanath Shyamsundar and Kokila Gangan were the authorized signatories of the Bank account through which loan amount was disbursed and money was transferred to purchase shares and towards loans. The Whole Time Director, Dinanath Shyamsundar was in charge of and was responsible for the conduct of the business of the company during the period of contravention of the provisions of law by the company. Therefore, it is concluded that the whole time director Dinanath Syamsundar was involved in the fraudulent act of diverting and misutilising the preferential issue proceeds as explained herein and violated Regulation 3 (a), (b), (c), (d), 4 (1), 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations r/w Section 12A (a),(b),(c) of the SEBI Act and thus liable for penalty under Section 15HA of SEBI Act.

Section 15HA of SEBI Act reads as under:

"If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty not exceeding twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."

Section 23E of SCRA reads as under:

"If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding to twenty- five crore rupees."

37. The Hon'ble Securities Appellate Tribunal (SAT) vide order dated 03/05/2021 in the matter of Suzlon Energy Ltd. Ors. vs. SEBI (Appeal No. 201 of 2018), inter alia, held as under. "The AO held that since Clause 36 of the Listing Agreement was violated, in addition to the penalty imposed under Section 23A(a), the provisions of Section 23E of the SCRA is also invoked. In our view, the imposition of penalty under Section 23E is patently erroneous. The AO has committed a manifest error in invoking Section 23E of the SCRA, 1956. Section 23E has nothing to do with the violation of the provisions of the Listing Agreement especially Clause 36. Section 23E provides that where a Company fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof then penalty would be a minimum of Rs. 5 lakh upto maximum of Rs. 25 crore. The words "fails to comply with the listing conditions" cannot mean failure to comply with the conditions in the Listing Agreement. One of the requirements in the Listing Agreement which is required to be complied with is Clause 36 whereas Section 23E refers to the conditions which are imposed upon a Company when it is applying for its shares to be listed on the stock exchange platform. Section 23E has to be read along with Rule 19 of the Securities Contracts (Regulation) Rules, 1957 ('SCRR' for short). Rule 19 of the SCRR provides certain requirements with respect to a listing of securities on a recognized stock exchange. Rule 19A provides that a Company has to continuously maintain listing requirements. Rule 21 provides conditions for delisting of securities. Failure to comply with the listing conditions which are stated in Rule 19 would entail a penalty as provided under Section 23E. Thus, in our view violation of Clause 36 of the Listing Agreement will attract Section 23A(a) of the SCRA and will not attract Section 23E.....".

In this regard, it is noted that SEBI had filed Civil Appeal no. 4741 of 2021 before Hon'ble Supreme Court against the said order of SAT. A stay application was also filed by SEBI in the matter. The stay application and appeal are pending before Hon'ble Supreme Court. It may be noted that the Hon'ble Tribunal had upheld the imposition of penalty under section 23E of SCRA for the violation of clauses of the Listing Agreement in the matter of NDTV vs. SEBI (Appeal No. 358 of 2015) order dated 07.08.2019, and Oasis Securities Ltd. & Ors. vs. SEBI (Appeal No. 316 of 2018) order dated 17.03.2020. The purpose of examining the violation of Listing Agreement by Noticee company is to determine the extent of contravention of the provisions of law and also to impose monetary penalty. However, the enforcement of penalty under section 23E of SCRA shall be subject to the outcome of the said appeal pending before the Hon'ble Supreme Court.

38. The Hon'ble Supreme Court in The Chairman, SEBI vs. Shriram Mutual Fund & Anr., (2006) 5 SCC 361, inter -alia ,held as under: "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 and hence the intention of the parties committing such violation becomes wholly irrelevant." In view of the same, it is a fit case for imposition of monetary penalty on the noticee company under section 23E of SCRA and Section 15 HA of the SEBI Act and on Dinanath Syamsundar under Section 15 HA of the SEBI Act.

ISSUE 3:

39. What would be the quantum of monetary penalty that can be imposed on the Noticees ?

As regards the quantum of monetary penalty that can be imposed on the noticees, it is important to consider the factors stipulated in section 15J of the SEBI Act, 1992 which reads as under:

"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. In the instant case, it is not possible from the material available on record to quantify the amount of disproportionate gain or unfair advantage resulting from the default of Noticees or the consequent loss caused to investors as a result of the default. The conduct of Noticees in diverting the proceeds of preferential issue is a fraud and the same is in violation of provisions of law as explained herein and the same attracts monetary penalty.

ORDER

40. Having considered all the facts and circumstances of the case, the material available on record, the submissions of the Noticee and in exercise of the powers conferred upon me under Section 23-I of SCRA read with Rule 3 of SCR Adjudication Rules and Section 15-I of SEBI Act read with Rule 3 of Adjudication Rules, I hereby impose the following penalties on the Noticees under Section 23E of SCRA and Section 15HA of SEBI Act.

S. No.	**Name of the Noticee**	**Penalty Section**	**Penalty Amount (Rs.)**
1.	Vitan Agro Industries Ltd.	Section 15HA of SEBI Act.	1,00,00,000/- (Rs. One Crore)
		Section 23E of SCRA	10,00,000/- (Rupees Ten Lakhs)
2.	Dinanath Shyamsundar	Section 15HA of SEBI Act	1,00,00,000/- (Rs. One Crore)

41. I am of the view that the said penalties are commensurate with the violations committed by the Noticees. The monetary penalty imposed on Noticee company

under section 23E of the SCRA shall be payable depending upon the outcome of the said appeal pending before the Hon'ble Supreme Court in the Suzlon Energy(supra) matter.

42. The Noticees shall remit/pay the said amount of penalty within 45 days of receipt of this order either by way of demand draft in favour of 'SEBI - Penalties Remittable to Government of India', payable at Mumbai, OR 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 or https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html.

43. The Noticees shall forward the demand draft or the details/confirmation of penalty so paid to 'The Division Chief (Enforcement Department 1, DRA-5), Securities and Exchange Board of India, SEBI Bhavan-2, Plot No. C–4 A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai– 400051'. The noticees shall also provide the following details while forwarding the demand draft/payment information:

- Name and PAN of the noticees;
- Name of the case/matter;
- Purpose of Payment – Payment of penalty under AO proceedings;
- Bank Name and Account Number;
- Transaction Number.

44. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties of the Noticees.

45. In terms of rule 6 of said Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

Date : September 20, 2022

Place : Mumbai

D S REDDY

CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER