BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO: ORDER/SBM/VS/2022-23/17215

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

In respect of

Tamarind Capital Pte. Ltd.
(PAN No.: AAACO9131D)
Level 46, UOB Plaza 1,
80 Raffles Place,
Singapore-048624

In the matter of

Indiabulls Ventures Limited (now known as Dhani Services Limited)

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received a letter dated June 08, 2020 from Tamarind Capital Pte. Ltd. (hereinafter referred to as '**Noticee**'), wherein it was mentioned that Noticee along with its person acting in concert ('**PAC**'), Jasmine Capital Investment Pte. Ltd. (hereinafter referred to as '**Jasmine**') (a SEBI registered foreign portfolio investor ('**FPI**')), having acquired an entitlement to voting rights by a marginal extent of 0.14% in excess of the prescribed threshold of 25% as stipulated under the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as the '**SAST Regulations**') in Indiabulls Ventures Limited (now known as Dhani Services Limited) (hereinafter referred to as '**IBVL**'/ ' **Target Company'**). It is also mentioned in the letter that the said acquisition of voting rights was as a result of the allotment of equity shares to the Noticee by IBVL pursuant to the scheduled mandatory conversion of compulsorily convertible debentures ('**CCDs**') held by the Noticee and also as a result of an inadvertent error of arithmetic calculations with regard to the calculation of the combined entitlement of voting rights/capital acquired by Noticee and Jasmine put together.

2. It is noted that IBVL has, on March 16, 2018, under its Rights Issue, allotted 8,29,48,313 Partly Paid-up Equity Shares ('**PPES**') with face value of ₹2 each, with the application money of ₹0.50 per share

(25% of face value) with voting rights proportionate to the paid-up amounts per PPES to certain entities, including Noticee. On June 3, 2020, the 1,34,54,545 CCDs held by Noticee were compulsorily converted into fully paid up equity shares of IBVL and Noticee was allotted 1,34,54,545 fully paid up equity shares of IBVL on June 03, 2020. The scrip of IBVL is listed on Bombay Stock Exchange ('**BSE**') and National Stock Exchange (**'NSE'**).

3. In view of the above observations and in light of the letter received from the Noticee, SEBI conducted an examination into the matter for possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') and the violation of Regulation 3 (1) of the SAST Regulations allegedly committed by the Noticee.

4. During the course of the examination by SEBI, it was observed that pursuant to the compulsory conversion of 1,34,54,545 CCDs held by Noticee on June 03, 2020, the collective voting rights of the Noticee and Jasmine (its PAC) put together had crossed the threshold limit of 25% of the total voting rights of IBVL during the relevant period i.e. June 03, 2020 and therefore, it is alleged that the Noticee has triggered the provisions of Regulation 3(1) of the SAST Regulations. It is alleged that Noticee has failed to make a public announcement of open offer and therefore, adjudication proceedings have been initiated against the Noticee under the provisions of section 15H(ii) of the SEBI Act.

5. In the context of the present proceedings, as already stated above, the Noticee and Jasmine were PACs in terms of the Regulation 2(1)(q)(1) of the SAST Regulations, which define PAC as "…*persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company*…" . The fact that Jasmine was its PAC is also not disputed by the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

6. Ms Anitha Anoop was appointed as the Adjudicating Officer ('**AO**') in the matter vide *communique* dated September 14, 2020. Pursuant to the transfer of Ms. Anitha Anoop to another department of SEBI, the undersigned was appointed as the AO in the matter, vide *communique* dated November 03, 2020, under the provisions of section 19 read with section 15-I of the SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of section 15H(ii) of the SEBI Act the aforementioned alleged violation of the provisions of law by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

7. Show Cause Notice ref. SEBI/EAD-1/AA/JR/2020 dated October 06, 2020 (hereinafter referred to as '**SCN**') was issued to the Noticee in terms of rule 4 of the Adjudication Rules requiring the Noticee to show cause as to why an inquiry should not be held against the Noticee and why penalty, if any, should not be imposed on it under the provisions of section 15H(ii) of the SEBI Act. The SCN issued to the Noticee, *inter alia*, mentioned/alleged the following-

   a. *SEBI was in receipt of a letter dated June 8, 2020 wherein Noticee submitted that as on June 2, 2020 it held the following securities of Indiabulls Ventures Limited (hereinafter referred to as "IBVL"):*

      i. *6,22,13,000 fully paid up equity shares of face value of INR 2 each*

      ii. *1,11,03,288 partly paid up equity shares of face value paid up to INR 1.10 each*

      iii. *1,34,54,545 compulsorily convertible debentures ("CCDs") convertible into an equivalent number of fully paid up equity shares*

      This constituted 13.37% of the equity shares/ voting rights of IBVL.

   b. *Further Jasmine Capital Investments Pte Ltd. (hereinafter referred to as "Jasmine"), a person acting in concert with Tamarind as on June 2, 2020, held the following securities of IBVL:*

      i. *4,94,91,871 fully paid up equity shares of face value of INR 2 each*

      ii. *72,87,296 partly paid up equity shares of face value paid up to INR 1.10 each*

      This constituted 10.71% of equity shares/ voting rights of IBVL.

      Collectively Noticee and Jasmine held 24.08% of the equity shares/ voting rights of IBVL.

   c. *On June 3, 2020, the 1,34,54,545 CCDs held by Noticee were compulsorily converted into fully paid up equity shares of IBVL and Noticee was allotted 1,34,54,545 fully paid up equity shares of IBVL.*

   d. *Prior to the compulsory conversion of the CCDs scheduled to occur on June 3, 2020, Noticee (through Jasmine) sold an aggregate of 19,53.276 fully paid up equity shares of IBVL pursuant to a series of trades in the month of May 2020.Thsis was undertaken for the purpose of ensuring that aggregate holding remains below 25% of the total paid up share capital/ voting rights of IBVL even after conversion of CCDs on June 3, 2020.*

   e. *Subsequently, on June 6, 2020, Noticee was informed by IBVL that pursuant to the conversion of the CCDs, Noticee's aggregate holding in the paid up share capital/voting rights of IBVL is 25.14%.*

   f. *Since equity shares were allotted to Noticee upon conversion of CCDs, the said transaction has triggered the Open Offer obligation. Noticee has failed to make open offer as required under regulation 3(1) of SAST Regulations.*

Further as per information available on record, no public announcement has been made by Noticee for acquisition of shares.

g. *In view of the above, it is alleged that Noticee failed to make a public announcement to acquire the shares upon crossing the threshold limit of 25% of the total paid up share capital/ voting rights of IVBL, violating regulation 3(1) of SAST Regulations*

8. The said SCN was sent to the Noticee at email id: eoin.saadien@clermont.com on October 06, 2020. In the SCN, Noticee was advised to file reply to SCN within 14 days of receipt of the same, however, no reply was received from the Noticee. Consequent to the transfer of the erstwhile AO, vide email dated November 10, 2020, Noticee was informed about the appointment of the undersigned as the AO in the matter and was advised to submit reply to the SCN i.e., by November 27, 2020. It was observed that no reply/communication was received from the Noticee till December 15, 2020. Therefore, alternative email id i.e. leroy.langeveld@clermont.com of the Noticee was ascertained from the custodian of the Noticee and the SCN was re-sent at the above email id on December 16, 2020. In response, AZB & Partners, the Authorized Representative ('**AR**') on behalf of the Noticee vide its email dated December 17, 2020, requested for inspection of documents relating to the SCN. In this regard, vide email dated December 18, 2020, Noticee was informed that its request for inspection of documents has been forwarded to concerned department of SEBI. The concerned department of SEBI, vide email dated December 29, 2020 informed that the ARs inspected the said documents relating to SCN on December 29, 2020 and in this regard, the concerned department also submitted a scanned copy of the minutes of inspection. Thereafter, vide email dated January 14, 2021, Noticee was advised to submit reply to the SCN by January 25, 2021. Noticee vide its reply dated January 21, 2021 submitted its reply to the SCN and *inter alia,* mentioned the following: -

a. *As on June 2, 2020, it held the following securities of IBVL:*

   i. *6,22,13,000 fully paid up equity shares of face value of ₹2 each*

   ii. *1,11,03,288 partly paid up equity shares of face value paid up to ₹1.10 each*

   iii. *1,34,54,545 CCDs converted into an equivalent number of fully paid up equity shares*

   iv. *This constituted 13.37% of the equity shares/ voting rights of IBVL.*

b. *Further, Jasmine, a PAC with Noticee as on June 2, 2020, held the following securities of IBVL:*

   i. *4,94,91,871 fully paid up equity shares of face value of ₹2 each*

   ii. *72,87,296 partly paid up equity shares of face value paid up to ₹1.10 each*

   iii. *This constituted 10.71% of equity shares/ voting rights of IBVL.*

   iv. *Collectively, Noticee and Jasmine held 24.08% of the equity shares/ voting rights of IBVL.*

c. *On June 3, 2020, the 1,34,54,545 CCDs held by Noticee were compulsorily converted into fully paid up equity shares of IBVL and Noticee was allotted 1,34,54,545 fully paid up equity shares of IBVL on June 03, 2020.*

d. *Prior to the compulsory conversion of the CCDs which was scheduled to occur on June 3, 2020, Noticee (through Jasmine/PAC of Noticee) sold an aggregate of 19,53.276 fully paid up equity shares of IBVL pursuant to a series of trades in the month of May 2020. This was undertaken for the purpose of ensuring that aggregate shareholding of both Noticee and Jasmine put together (both in terms of shares and voting capital) remains below the threshold of 25% of the total paid up share capital/ voting rights of IBVL even after conversion of CCDs on June 3, 2020.*

e. *For this purpose, Noticee relied upon the information published on the website of the stock exchange with respect to its voting rights and shareholding percentage as part of the shareholding pattern disclosed by IBVL to the stock exchanges on a quarterly basis, as required under regulation 31 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('**LODR Regulations**').*

f. *Pursuant to calculations and based on the same, Noticee anticipated that they would hold an aggregate of 24.95% of the total share capital/voting rights of IBVL subsequent to conversion of CCDs on June 03, 2020.*

g. *Subsequently, on June 6, 2020, Noticee were verbally informed by IBVL that pursuant to the conversion of the CCDs, Noticee's aggregate holding in the paid up share capital/voting rights of IBVL was 25.14%.and not 24.95%. The increase in the percentage was solely on account of the manner in which voting rights* **were calculated in respect of the partly paid up shares issued by IBVL**.

h. *Accordingly, Noticee understood that owing to an inadvertent error of arithmetic calculations in respect of the partly paid up shares which did not take into account that partly paid up shares carry voting rights only to the extent that they have been paid up, it was the case of Noticee that it had exceeded 25% of the voting rights in IBVL by a nominal amount of 0.14% as on June 3, 2020.*

i. *Upon being made aware of the above on June 06, 2020, Noticee sold 10,50,000 fully paid up equity shares of IBVL on June 08, 2020 on the floor of the stock exchange, through Jasmine (its PAC) in order to ensure that Noticee remedies the inadvertent error at the earliest and bring back the aggregate paid up share capital and voting rights held in IBVL to below 25%.*

j. *Noticee submitted that it was always their intention to hold less than 25% of the total paid up shares capital/ voting rights of IBVL. For this reason, they sold certain shares prior to the conversion of CCDs on June 03, 2020 as mentioned in para d and also sold the shares specified at para i, within 1 working day of being made aware of the error in their computation, albeit at a significant loss as compared to the price at which they had acquired these shares.*

k. *Noticee submitted that due to reliance placed by it on the erroneous public shareholding filings made by IBVL, it had inadvertently sold fewer number of shares before June 3, 2020 and no sooner the error was* *realized by it on June 6, 2020 (Saturday), its PAC i.e. Jasmine sold 10,50,000 shares representing 0.19% voting rights of IBVL on the immediate next trading day i.e., June 08, 2020 (Monday) and demonstrated its objective of keeping the shareholding below 25% of the total share capital of IBVL.*

9. In terms of the Adjudication Rules, Noticee was provided with an opportunity of personal hearing in the matter on March 02, 2021, through the online webex platform. On March 02, 2021, due to severe technical/connectivity issues, the hearing did not take place on the scheduled date and the hearing was rescheduled to March 05, 2021. Mr. Somasekhar Sundaresan, Advocate along with Mr. Abhishek Venkataraman, Mr. Ian Chye, Mr. Leroy Lengeveld, Mr. Vaidhyanadhan Iyer, Ms. Divya Mundra, Ms. Devika Nayak and Ms. Farah Titina appeared as the Authorized Representative ('**ARs**') on behalf of the Noticee on the stipulated date of hearing i.e. March 05, 2021. During the course of hearing, the AR reiterated the submissions made by the Noticee in its reply dated January 21, 2021 and also made a request to file additional submissions in the matter. Vide letter dated March 19, 2021, the Noticee filed additional submissions and mainly reiterated its earlier submissions made vide letter dated January 21, 2021. Further, the Noticee also drew reference to various judgments of the Hon'ble SAT and Hon'ble SC in support of its submissions.

10. During the course of the proceedings and subsequent submission made by the Noticee, it was contended that the shareholding filings made by IBVL were erroneous and specifically the voting percentages set out in IBVL's disclosures, which had treated partly paid share as carrying full voting rights had led to the erroneous interpretation by the Noticee. Pursuant to the hearing a letter dated March 14, 2022 was also received from AR of the Noticee i.e. AZB & Partners. In view of the same, during the course of the proceedings, clarifications were ascertained from IBVL w.r.t. the contention raised by the Noticee regarding its shareholding and voting rights in IBVL. The target company i.e. IBVL was specifically advised to confirm the shareholding/voting rights of the Noticee and Jasmine, (put together) in respect of the pre and post conversion of CCDs in a specified format. The fact that clarification was sought from IBVL as regards the shareholding/voting rights of the Noticee was also informed to the Noticee vide email dated May 10, 2022. IBVL vide its email dated May 19, 2022 *inter alia* made the following submissions :
    a. *In accordance with the terms and conditions of the letter of offer dated February 1, 2018 (hereinafter referred to as "LOF"), IBVL on March 16, 2018, allotted 82,948,313 Partly Paid-up Equity Shares (hereinafter referred to as "PPES") of face value of ₹2/- each, pursuant to the Rights Issue. The application money paid by the eligible shareholders at the time of allotment was ₹0.50 per PPES (25 % of the face value) with voting rights proportionate to the paid up amount per PPES.*

b. *In compliance with the applicable laws, the LOF was uploaded at the respective websites of BSE, NSE, SEBI and IBVL for the information of public shareholders. Further, we have specifically disclosed on page 20, 21 and 49 of the LOF that the voting rights of eligible shareholders on each PPES held by them will be proportionate to the amount paid by such shareholders.*

c. *Also, the disclosure in relation to proportionate voting rights with respect to PPES held by eligible shareholders has been subsequently disclosed in the Annual Reports of IBVL for the FY 2017-18, 2018-19 and 2019-20* **(relevant extracts attached).**

d. *These Annual Reports were also uploaded on the portals of exchanges and IBVL for the information of all its stakeholders.*

e. *It is also pertinent to note that the proportionate voting rights held by the eligible shareholders of IBVL with respect to PPES held by them were accounted and considered by IBVL in all shareholders meetings which were held on May 31, 2018, September 21, 2018, November 21, 2018, November 28, 2018 and September 28, 2019, subsequent to the Rights Issue.*

f. *Further, in accordance with* **Section 47** *of the Companies Act, 2013, as amended (the "***Companies Act***") (extracts of which are reproduced herein below) and the relevant disclosures made in LOF, it is abundantly clear that the voting rights in respect of PPES held by the eligible shareholders will be proportionate to the amount paid up on such PPES.*

> ***47 Voting Rights***
>
> *(1) Subject to the provisions of section 43, sub-section (2) of section 50 and sub section (1) of section 188 –*
>
> *a) every member of a company limited by shares and holding equity share capital therein, shall have a right to vote on every resolution placed before the company; and*
>
> *b) his voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company…..*

g. *SEBI after examination of our earlier communication with the exchanges in the matter, had issued a warning letter dated June 25, 2021, which was placed by IBVL before its Board and also disseminated the same to the stock exchanges on July 2, 2021, in compliance with SEBI direction vide its said letter.*

h. *Since, in the shareholding pattern template, available on the website of the exchanges, there was no provision to capture the proportionate voting rights in respect of PPES, hence the same could not get mentioned, in the available shareholding pattern template.*

i. *As demonstrated in the annexures submitted with the points above, we have made all the necessary disclosures at various places, in respect of PPES and the applicable provisions of the Companies Act for determining/calculating voting rights applicable to the shareholding of PPES.*

j. *As advised, please find below information in prescribed format:*

of shareholder	Immediately before the conversion of the CCDs		Date of CCDs conversion	Shareholding position as on the date of the conversion of CCDs	
	Shareholding (%)	**Voting Rights (%)**		**Shareholding (%)**	**Voting Rights (%)**
Tamarind Capital Pte. Limited	*13.37*	*13.37*	*June 3, 2020*	*15.08*	*15.20*
Jasmine Capital Investments Pte. Ltd.	*10.71*	*10.85*	-	*9.86*	*9.94*
Total	***24.08***	***24.22***		***24.94***	***25.14***

ISSUES FOR CONSIDERATION AND FINDINGS

11. I have carefully perused the allegations levelled against the Noticee in the SCN, the replies of the Noticee and also the submissions made by IBVL in this regard. I have also perused the examination report along with the enclosures to the said report. Before moving forward, the relevant provisions of law allegedly violated by the Noticee and as mentioned in the SCN are mentioned as under:

    ***SAST* Regulations**

    Substantial acquisition of shares or voting rights.

    3. (1) *No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty-five percent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.*

12. In the instant matter, it is not in dispute that during the relevant period i.e June 2020 the Noticee and Jasmine were PACs within the meaning of the SAST Regulations. As per the examination report, from the shareholding filing/information of IBVL, as available on the BSE website, it is observed that as on quarter ending March 2020, Noticee held 13.37% and Jasmine held 10.71% voting rights of IBVL, i.e. they were collectively holding 24.08% voting rights in IBVL. Pursuant to conversion of 1,34,54,545 CCDs and the allotment of as many equity shares against the CCDs on June 03, 2020 to the Noticee, the combined holding of Noticee and Jasmine put together crossed the prescribed threshold limit of 25% of the total paid up voting rights of IBVL on June 03, 2020, which is specified under the provisions of Regulation 3(1) of the SAST Regulations. Further, in terms of the provisions of Regulation 3(1) of the SAST Regulations, if pursuant to any acquisition, shares or voting rights in Target Company held by the acquirer along with the PAC exceed 25% in the Target Company, the

acquirer is required to make a public announcement of an open offer. Since, equity shares were allotted to Noticee (i.e. the acquirer), upon the conversion of the CCDs, the said transaction has triggered the open offer obligation as on the date of conversion of 1,34,54,545 CCDs and allotment of as many equity shares against the CCDs to the Noticee on June 03, 2020. The Acquirer (Noticee) has failed to make a public announcement of open offer as required under regulation 3(1) of the SAST Regulations. Further, as per the information available on record, no Public announcement has been made by the Noticee for acquisition of shares/voting rights in IBVL pursuant to the conversion of CCDs.

13. The Noticee submitted that prior to the compulsory conversion of the CCDs, which was scheduled to occur on June 3, 2020, Noticee (through Jasmine) sold an aggregate of 19,53,276 fully paid up equity shares of IBVL pursuant to a series of trades in the month of May 2020. This was undertaken for the purpose of ensuring that aggregate holding remains below the threshold of 25% of the total voting rights of IBVL even after the conversion of CCDs on June 3, 2020. Subsequently, on June 6, 2020, Noticee was verbally informed by IBVL that pursuant to the conversion of the CCDs, Noticee's aggregate holding in terms of voting rights of IBVL was 25.14%. The Noticee has contended that for this purpose, it had relied on the information published on the website of the stock exchange w.r.t. its voting rights and shareholding percentage/position as part of the shareholding pattern /filings submitted/disclosed by IBVL to the stock exchange on a quarterly basis, as required under Regulation 31 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('**LODR Regulations**'). In this context, I note from the submissions of IBVL that in accordance with the terms and conditions of the letter of offer dated February 1, 2018 (hereinafter referred to as '**LOF**'), IBVL on March 16, 2018, allotted 8,29,48,313 Partly Paid-up Equity Shares (hereinafter referred to as '**PPES**') of face value of ₹2/- each, pursuant to the Rights Issue. The application money paid by the eligible shareholders at the time of the allotment was ₹0.50/- per PPES (i.e. 25% of the face value) with voting rights proportionate to the paid up amount per PPES. IBVL has further submitted that the proportionate voting rights held by the eligible shareholders of IBVL with respect to PPES held by them were accounted and considered by it in all their shareholders' meetings which were held on May 31, 2018, September 21, 2018, November 21, 2018, November 28, 2018 and September 28, 2019 and to support its submissions, IBVL has provided the disclosures of events or information as prescribed under regulations 30 & 44 of the LODR Regulations. Further, on perusal of the relevant extracts of the Annual Reports of IBVL for the FYs 2017-18, 2018-19 and 2019-20, it is noted that IBVL has categorically mentioned that *"…The Company has only one class of equity shares having a face value of ₹2 per share. Each holder of fully paid up equity share is entitled to one vote per share. Voting rights of each holder of partly paid up equity share if*

proportionate to the paid up amount of such share…" Therefore, in view of the above, the contention of the Noticee that it had relied on the various shareholding filings made by the target company i.e. IBVL, shareholding filings of the target company are erroneous etc. are not acceptable. It was expected that Noticee being a significant shareholder of IBVL was required to carry out its independent due diligence as regards its overall shareholding/voting rights position in IBVL and exercise its role judiciously. It was the duty of the compliance team of the Noticee to ensure the factual position w.r.t. its shareholding/voting rights both at the time of pre and post conversion of CCDs. If the Noticee along with its PAC had any doubt in their mind w.r.t. its shareholding/voting rights position, they could have very well brought the same to the notice of IBVL. There is nothing on record to show that such steps were taken by the Noticee.

14. In this context, confirmation/clarification on the shareholding/voting rights position of the Noticee and its PAC i.e. Jasmine was ascertained from IBVL in a specific format. I find from the submissions made by IBVL vide its email dated May 19, 2022 w.r.t. the specific queries/clarifications sought regarding the shareholding position and voting rights of the Noticee and its PAC i.e. Jasmine in the target company as on the date of the conversion of the CCDs i.e. June 3, 2020 and in this regard, the target company i.e. IBVL has confirmed the following :
    a. Shareholding (in % terms) of Noticee and Jasmine : 24.94% as on June 3, 2020
    b. Voting rights (in % terms) of Noticee and Jasmine : 25.14% as on June 3, 2020

15. From the submissions of the target company i.e. IBVL, as aforesaid, it is noted that as on the date of the conversion of the CCDs i.e. on June 3, 2020, the Noticee along with its PAC had crossed the threshold of 25 % of the voting rights/capital in the target company. Further, it is observed from the material on record that on June 6, 2020, Noticee was verbally informed by the target company i.e IBVL that pursuant to the conversion of the CCDs, Noticee's aggregate holding in the paid up voting rights of IBVL was 25.14% and subsequently, on June 06, 2020, Noticee sold 10,50,000 fully paid up equity shares of IBVL on June 08, 2020 on the floor of the stock exchange, through Jasmine (its PAC) in order to ensure that Noticee remedies the inadvertent error at the earliest and bring back the aggregate paid up share capital and voting rights position in IBVL to below the threshold of 25%. It was mentioned by the Noticee that it was always their intention to hold less than 25% of the total paid up shares capital / voting rights in IBVL. For this reason, they sold certain shares prior to the conversion of the CCDs on June 03, 2020 and also sold the shares post CCD conversion upon being made aware by IBVL about the crossing of the threshold limit of 25% pursuant to the conversion of the CCDs. The Noticee stated that it took immediate steps to remedy the error i.e. within 1 working day of being made aware of the error in their computation, albeit, at a significant loss as compared

to the price at which they had acquired these shares. Noticee also submitted that due to reliance placed by it on the erroneous public shareholding filings made by IBVL, it had inadvertently sold fewer number of shares before June 3, 2020 and no sooner the error was realized by it on June 6, 2020 (Saturday), its PAC i.e. Jasmine sold additional 10,50,000 shares representing 0.19% voting rights of IBVL on the immediate next trading day i.e., June 08, 2020 (Monday) and demonstrated its objective of keeping the shareholding below 25% of the total share capital /voting rights of IBVL.

16. In this context, it is observed from the submissions of IBVL that as per its Annual report and disclosures made under regulations 31 & 44 of LODR Regulations, it is amply clear that PPES were having voting rights as proportionate to the paid up amount of such share and Noticee and Jasmine collectively were holding 25.14% of voting rights post conversion of CCDs. As already stated, the compliance team of the Noticee and its PAC (who were also holding PPES) were expected to know the factual position w.r.t. PPES and their entitlement to voting rights/capital in light of the disclosures made by IBVL in their various filings/Annual report etc. Further, in my view, the sale of 10,50,000 fully paid up equity shares of IBVL by Noticee through Jasmine (its PAC) on June 08, 2020, which was made on the very next trading day upon being made aware of the crossing of threshold limit of 25% of voting rights by Noticee, clearly demonstrates the fact that Noticee became aware of the mistake committed by it w.r.t. its calculations/error of keeping itself under the threshold limit of 25% and in order to remedy its mistake, Noticee through Jasmine (its PAC) immediately sold the shares on June 08, 2020 and also informed SEBI about the same. From the above, it is clear that the acquisition of the Noticee along with its PAC had crossed the threshold limit of 25 % prescribed under Regulation 3 (1) of SAST Regulations as on the date of the CCD conversion i.e June 3, 2020 and therefore, the Noticee was duty bound to make a public announcement of open offer in respect of the aforementioned acquisition.

17. The SEBI Act, 1992 is a legislation which is intended for the protection of the investors in the securities market and it is the paramount duty to interpret its provisions and to adopt such an interpretation that would further the purposes of law and if possible, abstain the one which frustrates it. Hence, it is necessary to uphold the obligation to make a public announcement of open offer to the investors at large which obligation has not been complied with by the Noticee till date. Acceptance of any argument for not making a public announcement of open offer would tantamount to total disregard to the concerns of the public share-holders. It is pertinent to mention that the disclosure requirements/open offer/public announcement under the respective regulations serve very important purposes. The public announcement that is required to be made under the SAST Regulations is the announcement made by the acquirers to make an open offer, primarily disclosing

his intention to acquire the shares of the Target Company from the existing shareholders, thereby giving an opportunity of exit to the public shareholders at a specified price during a specified time period and not a mere intimation of the acquisition of shares to the general public. The Public Announcement made by the acquirer contains vital information relating to the open offer like the offer price, the size of the offer, mode of payment of the consideration, conditions as to minimum level of acceptances, if any, etc. The shareholders may, on the basis of such disclosures made through the Public Announcement, take a decision whether to continue with the Target Company or decide to exit from it. If the Public Announcement is not made by the acquirer within the time frame prescribed under the SAST Regulations, the shareholders would be deprived of the important information at the relevant point of time. Further, the stock exchanges are informed so that the investing public will come to know of the position enabling them to stick on with or exit from the Target Company. In this context, it is noted that the Hon'ble Supreme Court in the matter of *Nirma Industries vs SEBI [2013 (8) SCC 20]* has held that *"...the takeover code is meant to ensure fair and equal treatment of all shareholders in relation to substantial acquisition of shares and takeovers and that the process does not take place in a clandestine manner without protecting the interest of the shareholders..."*. Therefore, in the facts and circumstances of the present case, the failure to make the public announcement of open offer by the Noticee, would defeat the very purpose of the provisions of regulation 3(1) of the SAST Regulations.

18. Therefore, from the foregoing paragraphs and the observations/findings contained therein, I am inclined to hold that Noticee had crossed the threshold limit of 25% of voting rights of IBVL as on June 3, 2020 and it had failed to make the public announcement of open offer, which was required to be made in terms of Regulation 3(1) of the SAST Regulations. Thus, in the facts and circumstances of the case, I hold that the Noticee has violated the provisions of Regulation 3(1) of the SAST Regulations.

19. In view of the failure on the part of the Noticee, as aforesaid, the Noticee is liable for monetary penalty under the provisions of section 15H(ii) of the SEBI Act, which reads as under: -

    Penalty for non-disclosure of acquisition of shares and takeovers.

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

    (i) …

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

    (iii) …

    (iv) …

he shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

20. For the purpose of adjudging the quantum of the penalty, it is relevant to mention that under section 15I of the SEBI Act, imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The guidelines in this regard are provided by the legislature in section 15J of the SEBI Act. As per the explanation appended to section 15J, vide Part VIII of Chapter VI of the Finance Act, 2017, which was brought after the Judgment of the Hon'ble Supreme Court in the case of Roofit Industries, while adjudging the quantum of penalty, the adjudicating officer has discretion and such discretion should be exercised having due regard to the factors specified in section 15J of the SEBI Act, which reads as under: -

    15J. *While adjudging the 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 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."

21. Having regard to the factors listed in section 15J, by evading the mandatory obligations of making the public announcement, as established in this case, Noticee has profited from the same, as it has avoided incurring costs of compliance of open offer obligations, which entail appointment of a SEBI registered merchant banker, making advertisements in newspapers regarding public announcement, making public announcement, payment of consideration to the public shareholders who opt to exit in open offer at the price determined in terms of the SAST Regulations etc. To this extent, it can be said that the Noticee has made disproportionate gain or unfair advantage. At the same time, I note that there is no change in control in the target company as a result of the above acquisition which had taken place due to the above transactions of the Noticee. The material made available on record do not bring out the exact amount of disproportionate gain or unfair advantage to the Noticee or amount of loss caused to the shareholders of the Target Company at the relevant time. I have taken note of the fact that Noticee took steps to sell the shares even before the conversion date of the CCDs and also sold shares through its PAC after the error was brought to its notice by IBVL. At the same time, one cannot lose sight of the fact that the Noticee has violated the statutory provisions of law by its failure to make the public announcement. The Noticee has also admitted to the fact that

due to error in calculations, it had sold fewer number of shares before the date of CCD conversion. In this context, reliance is placed in the matter of *Ranjan Varghese vs. SEBI* (Appeal no. 177 of 2009 and order dated April 08, 2010) wherein Hon'ble SAT had observed "…*Once it is established that the mandatory provisions of Takeover code was violated, the penalty must follow"*. Further, Hon'ble Supreme Court of India in the matter of *Chairman, SEBI Vs Shriram Mutual Fund* {[2006]5 SCC 361} has 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 and hence the intention of the parties committing such violation becomes wholly irrelevant..."*

ORDER

22. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15 I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose monetary penalty of ₹10,00,000/- (Rupees Ten Lakh only) upon the Noticee viz. Tamarind Capital Pte. Ltd. under the provisions of section 15H(ii) of the SEBI Act for its violations of the provisions of Regulation 3(1) of the SAST Regulations. I am of the view that the said penalty is commensurate with the default committed by the Noticee.

23. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of the receipt of this order either by way of Demand Draft (DD) in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai and the said DD should be forwarded to the Division Chief, Enforcement Department -I (EFD), Division of Regulatory Action -III [EFD1-DRA-3] SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai –400 051 and also send an email to tad@sebi.gov.in with the following detail:

1	Case Name	
2	Name of the 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)	

24. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html.

25. 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, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia,* by attachment and sale of movable and immovable properties.

26. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee viz. Tamarind Capital Pte. Ltd. and also to the Securities and Exchange Board of India.

Date: June 21, 2022
Place: Mumbai

SURESH B MENON
ADJUDICATING OFFICER