BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BS/PG/2022-23/19922-19931]

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

In respect of:

1. Sanklap Vintarde Private Limited (PAN: AAOCS2360L) 34, C.R. Avenue 1st Floor, Cabin No- 2 Kolkata- 700 012	**2. Mudra Dealtrade Private Limited (PAN: AAGCM5263L)** 5, Weston Street Kolkata- 700 012
3. Newedge Vinimay Pvt Ltd (CIN-U51909WB2009PTC137369) 1, Muktaram Babu, 2nd Floor, Kolkata, 700 007	**4. Silverson Tradelinks Pvt Ltd (CIN- U51909WB2009PTC136914)** 20A, Brabourne Road, Kolkata- 700 001
5. Unicon Tie-up Pvt Ltd (CIN- U51909WB2009PTC137340) 16B Madan Chatterjee Lane, 2nd Floor Kolkata- 700 007	**6. Vedant Commodeal Pvt Ltd (CIN- U51909WB2009PTC137579)** 114 Rabindra Sarani 1st Floor, Room No. 39/1 Kolkata 700 007
7. Swift Dealmark Pvt Ltd (CIN- U52190WB2010PTC155470) 31,Rakhal Das Auddy Road Kolkata – 700 027	**8. Anunay Commosale Pvt Ltd (CIN- U52190WB2011PTC164175)** 196/C, C.R. Avenue, Kolkata- 700 007
9. Nayan Impex Pvt Ltd (CIN- U52190WB2008PTC123060) 2A Rama Nath Sadhu Lane, Kolkata- 700 007	**10. Ishwar Commercial Pvt Ltd (CIN- U52190WB2008PTC123058)** 19B. B Ganguly Street 2nd Floor, Suite No.8 Room No.3 Kolkata 700 012

In the matter of

Worth Investment and Trading Company Limited

BACKGROUND:

1. VC Corporate Advisor Pvt. Ltd. (hereinafter referred to as "**Merchant Banker/MB**") vide letter dated January 25, 2018, submitted a Draft Letter of Offer (hereinafter referred to as **"DLOF"**) to Securities and Exchange Board of India (hereinafter referred to as **SEBI**) pertaining to Open Offer made by Nimit Rajesh Ghatalia, Mihir Rajesh Ghatalia, Bina Rajesh Ghatalia and Damiyanti Pranlal Ghatalia to the public shareholders of M/s Worth Investment and Trading Company Ltd. (hereinafter referred to as **"Target Company")**

2. SEBI examined the DLOF filed by the Merchant Banker. While examining the said DLOF, to verify the status of compliance with the provision of Chapter II of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997 (hereinafter referred to **SAST Regulations, 1997**), and Chapter V of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011 (hereinafter referred to **SAST Regulations, 2011**), the violations of Regulation 12 of the SAST Regulations, 1997 and Regulation 3(1) of the SAST Regulations, 2011 on the part of the erstwhile promoters and certain public shareholders were observed.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI, vide communique dated July 20, 2021 appointed the undersigned as the Adjudicating Officer under Section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act, 1992'**) r/w Section 19 of the SEBI Act, 1992 and 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 section 15H(ii) of the SEBI Act,1992 the alleged violation of Regulation 12 of the SAST Regulations, 1997 by 1.) Sanklap Vintarde Pvt. Ltd. and 2.) Mudra Dealtrade Pvt. Ltd. (hereinafter referred to as **Noticee 1 and 2** respectively) and Regulation 3(1) of the SAST Regulations, 2011 by 3.) Newedge Vinimay Pvt. Ltd., 4.) Silverson Tradelinks Pvt. Ltd. , 5.) Unicon Tie-up Pvt. Ltd., 6.) Vedant Commodeal Pvt. Ltd., 7.) Swift Dealmark Pvt. Ltd., 8.) Anunay Commosale Pvt.

Ltd., 9.) Nayan Impex Pvt. Ltd., and 10.) Ishwar Commercial Pvt. Ltd (hereinafter referred to as **Noticee 3 to 10** respectively)

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice (hereinafter referred to as **"SCN"**) dated August 10, 2021 was issued to the Noticees under rule 4(1) of the Adjudication Rules calling upon them to show cause as to why an inquiry should not be held against them in terms of Rule 4 of Adjudication Rules read with Section 15-I of the SEBI Act, 1992 and why penalty, if any should not be imposed under Section 15H(ii) of the SEBI Act, 1992 for the aforesaid alleged violations.

5. From the documents available on record, it is noted that the SCN issued to Noticees, was sent on their last known addresses through Speed Post Acknowledgement Due (SPAD) and SCN in respect of Noticee 1 to 5 , 7 and 10 were returned undelivered, whereas SCN were duly delivered to Noticee 6, 8 and 9 as per postal acknowledgement to said SCN. However, no reply is received from the Noticee 6 and 8. Further, it is noted that Hearing Notice issued to Noticee 6 subsequently on May 26, 2022 was also returned undelivered.

6. In view of the facts and circumstance of the case and in the interest of natural justice and in terms of Rule 4(3) of the Adjudication Rules, vide Hearing Notice dated November 22, 2021, it was opined that an inquiry needs to be held in the matter and accordingly, in terms of Rule 7(c) of the Adjudication Rules, an attempt was made to serve the SCN along-with the Hearing Notice granting an opportunity of personal hearing on December 23, 2011 to the Noticees by way of affixture at their last known addresses on record. However, it is noted from the record that the said attempt failed and SCN could not be affixed.

7. In reply to SCN, the Noticee No 9 submitted the letter dated January 24, 2022 along with the copy of PAN Card received by SEBI on June 08, 2022. Vide the said letter, the Noticee No. 9, *inter- alia*, submitted as under:-

"………..

6. *We respectfully submit that SEBI has not provided any evidence or proof to show that there exist common shareholdings between alleged companies as on the said event date*

i.e. 26 th October 2013 (date of preferential allotment) except the shareholdings pattern as on 31.3.2015, 31.3.2016 and 31.3.2017 which has been submitted by the Merchant Banker, VC Corporate Advisors Pvt. Ltd to the SEBI.

7. *There is more than six year delay in issuance of Show Cause Notice. Even though there is no period of limitation prescribed in the SEBI act and Regulations in the issuance of SCN or completion of adjudication proceedings, the authority is required to exercise its powers within reasonable period as held recently in Adjudicating officer, SEBI VS Bhavesh Pabari (2019). In this case power to adjudicate has not been exercised within a reasonable period, therefore no penalty could be imposed and show cause notice should be dropped.*

8. *We hereby respectfully submit that it is admitted position by SEBI that we have no common shareholding or some other relation with Noticee nos. 3 to 6 of abovementioned showcause notice.*

9. On analysis of annexures provided to us alongwith the Show Cause Notice, we understand that it is alleged that there was some common shareholding between us and noticee no. 7,8 and 10 based on which the allegations is alleged on us. The common holding as mentioned in abovementioned notice is as following:

- In the Notice Company, the shareholdings of Ishwar Commercial Private Limited:

Nayan Impex Private Limited																		
Name	2013	Change	C%	2014	Change	C%	31.3.2015		Change	C%	31.3.2016		ChAnge	C%	31.3.2017		Change	C%
							Share	%			Share	%			Share	%		
Ishawar Commer Ial Pvt.Ltd	Data not availabe on MCA						45050	14.63%	0	0	45050	14.63%	0	0	45050	14.63%	0	0

- In Ishwar Commercial Private Limited, the Shareholdings of Notice Company

Ishwar Commercial Private Limited																		
Name	2013	Change	C %	2014	Change	C %	31.3.2015		Change	C %	31.3.2016		Change	C %	31.3.2017		Change	C %
							Share	%			Share	%			Share	%		
Nayan Impex Pvt Ltd	Data not available on MCA						40000	17.21%	-40000	-17.21%	0	0	0	0	0	0	0	0

➢ In Swift Dealmark Private Limited, the Shareholdings of Notice Company and Ishawar Commercial Pvt.Ltd.

Swift Dealmark Private Limited																		
Name	2013	Change	C %	2014	Change	C %	31.3.2015		Change	C %	31.3.2016		Chane	C %	31.3.2017		Change	C %
							Share	%			Share	%			Share	%		
Nayan Impex Pvt.Ltd.	Date not available on MCA						510	2.52%	-510	-2.52%	0	0	0	0	0	0	0	0
Ishawar Comercial Pvt.Ltd.							2500	12.37%	-2500	-12.27%	0	0	0	0	0	0	0	0

10. We hereby submit that, there is no common shareholding directly in the Anunay Commosale Pvt. Ltd. of this Noticee or vice-versa.

11. In this regard, we would like to submit that we do not hold 20% or more shareholdings in any of the noticee companies no. 7, 8 & 10 nor they hold in our company, so we are not person acting in concert for any noticee company. Therefore we submit that neither we individually nor with any person acting in concert have acquired the 25% or more shares or voting rights in the Target Company, for which the Regulation 3(1) shall be applicable to us and/or therefore we are not required to make open offer as allege in the SCN.

12. We hereby further submit that, there is no any Person acting in concert as defined in the SEBI (SAST) Regulations, 2011, on our behalf within the other referred in noticee companies no. 7, 8 and 10.

13. In this regards we would like to submit that as per the SEBI (SAST) Regulations, 2011, regulation 3(1) state the follows:

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 per cent 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.

……………..

We, with the above referred definition of the 'Person acting in concert' submit that

(A)We do not have common objective with any noticee companies no. 7, 8 and 10.

(B) We have positive and enough networth/ capital to acquire equity shares in preferential allotment of M.S Worth Investment and Trading Company and we did not receive any fund from any noticee companies no. 7, 8 and 10. to subscribe shares of M.S Worth Investment and Trading Company and we did not give any fund to anv noticee companies no. 7, 8 and 10. to subscribe shares of M.S Worth Investment and Trading Company.

(C) We did not have any control over target company with anv noticee companies and further there is no subsidiary or holding company relations with any of the said noticee companies.

……………………

16. *The Noticee further submits that nor we individually, neither with any of the associate companies have acquired the 25% or more shares or voting rights in the Target Company, for which the Regulation 3(1) shall be applicable to us and/or therefore we were/are not required to make open offer as allege in the SCN.*

17. *We further submits that, there is no any 'associate company' of our as defined in the Companies Act, 2013 within the other referred noticee companies no. 7, 8 and 10 who has acquired the shares or voting rights in the Target Company as allege in the SCN.*

18. *In this regards, we refer hereby refer to the definitions of the Associate Company as defined in the Companies Act, 2013:*

Sec 2 (6) —associate company, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation.—For the purposes of this clause, —significant influence:- means control of at least twenty per cent. of total share capital, or of business decisions under an agreement;

19. *We therefore submit that as per the definitions referred hereinabove under SEBI (SAST) Regulations, 2011 or as per the Companies Act, 2013, we are not under any obligation to make Open offer under regulation 3(1) of the SEBI (SAST) Regulations 2011.*

20. *We submit that, though as on 31.3.2015 the noticee and above said 2 companies namely 1) Ishwar Commercial Pvt. Ltd. and 2) Swift Dealmark Pvt. Ltd, had shareholdings within each other, but the percentage of their shareholdings doesn't make them liable as definition of Person acting in concert or associate company as defined under the SEBI (SAST) Regulations 2011 or Companies Act, 2013 to allege the violation of the Regulation 3(1) of the SAST Regulations, 2011.*

21. *We further submit that, we doesn't fall in any definitions as per the SEBI (SAST) Regulations, 2011 and/or the Companies Act, 2013 or SEBI (ICDR) Regulations, 2009 namely: associate company, promoter group and lor persons acting in concert.*

22. *We state that the allotment received from the Target Company was independent of any other entities allotted on the same day and based on our limited understanding of SEBI rules and regulations.*

23. *Therefore we submit there is no person acting in concert within other 3 entities as shown in the abovementioned SCN, to prove the violations of the Regulation 3 of the SAST Regulations, 2011.*

24. *In summary, with regard to allotment to us vide preferential allotment dated 23.10.2013 by the M/S Worth Investment and Trading Company, we would like to clarify as under:*

25. *We acted as bonafide allottee.*

26. *We are not person acting in concert to the said noticees as per the definitions defined in the SEBI SAST Regulations 2011 and/or Companies Act, 2013 or meet any provisions therein to trigger the Open Offer post the allotment of equity shares on 23.10.2013 to us as alleged in your said SCN.*

27. *Based on our aforesaid submissions, it is apparent that we were not liable to make Open Offer as applicable nor there was any trigger any time post such allotment of equity shares. Therefore, there is no violation of the aforesaid provisions of Regulation 3(1) of SAST Regulations, 2011 as alleged on the undersigned notice Company. There is enough material on record to suggest that no further enquiry is required in the matter. It is, therefore, humbly requested that the Show Cause Notice dated August 10, 2021 be dropped without imposing any monetary penalty on us.*

28. *We humbly request the lad. Adjudicating Officer that a lenient view be taken in the matter and we be discharged from captioned proceedings.*

……….”

8. In the interest of natural justice and in terms of Rule 4 (3) of the Adjudication Rules, vide letter dated May 26, 2022, the Noticee 6, 8 and 9 were granted an opportunity of personal hearing on June 14, 2021. However, Noticee 8 and 9 failed to avail the opportunity of personal hearing on the scheduled date whereas the said letter issued to Noticee 6 was returned undelivered. Furthermore, vide email dated June 16, 2022, Noticee 9 prayed for adjournment of personal hearing scheduled on June 14, 2021.

Accordingly, vide email dated June 15, 2022, hearing in respect of Noticee 9 was re-scheduled to June 17, 2022. However, vide email dated June 17, 2022, Noticee 9, *inter-alia*, submitted that they do not wish to avail the opportunity of hearing in the matter and prayed to consider its reply dated January 24, 2022 as final submission. Further, vide letter dated June 22, 2022, a final opportunity of hearing on July 14, 2022 was also granted to the Noticee 8. However, Noticee 8 has also failed to avail the final opportunity of hearing.

9. In view of the same and considering the facts and circumstances of the case, as it was felt that an inquiry needs to be held in the matter, the SCN was again issued to the Noticee no 1 to 7 and 10 by way of Public Notice in terms of Rule 7(d) of the Inquiry Rules, 1995. Vide the said Public Notice, the Noticee was also provided with an opportunity of hearing on July 29, 2022. I note that the said Public Notice was published on July 07, 2022 in the Newspapers i.e. Times of India (Kolkata Edition), Bartaman (Newspaper in Bengali) and Sanmarg (Newspaper in Hindi, Kolkata Edition).

10. However, I note that the Noticee 1 to 8 and 10 failed to submit any reply and Noticees also failed to appear before me on the date of hearing. In this regard, I would like to refer to the observations of the Hon'ble Securities Appellate Tribunal (SAT) in the matter of **Dave Harihar Kirtibhai Vs SEBI** (Appeal No. 181 of 214 dated December 19, 2014), wherein the Hon'ble SAT observed as under:

> *"...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal..."*

11. In view of the observations made by the Hon'ble SAT, I am of the view that considering the aforesaid steps taken and as per Rule 4(7) of AO Rules, if any person fails, neglects or refuses to appear as required by sub-rule (3) before the Adjudicating Officer, the inquiry may be proceeded with in the absence of such person. Thus, I am proceeding with the matter on the basis of material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

12. I have taken into consideration the facts and circumstances of the case and the material available on record. The issues that arise for consideration in the present case are:

ISSUE I: Whether Noticee 1 and 2 have violated the provisions of Regulation 12 of the SAST Regulations, 1997?

ISSUE II: Whether Noticee 3 to 10 have violated the provisions of Regulation 3(1) of the SAST Regulations, 2011?

ISSUE III: If the answers to the Issue I and/or Issue II are in affirmative, whether the Noticees' are liable for monetary penalty under Section 15H (ii) of the SEBI Act, 1992?

ISSUE IV: If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

FINDINGS

13. On perusal of the material available on record and having regard to the facts and circumstances of the case, I record my findings hereunder:

ISSUE I: Whether Noticee 1 and 2 have violated the provisions of Regulation 12 of the SAST Regulations, 1997?

14. In the instant case, I noted that SCN issued to Noticee 1 and 2 was issued on August 10, 2021 alleging as hereunder:

" On July 10, 2011, the erstwhile promoters viz Mr Laxmi Kumar Mohta and Mrs. Kusum Mohata ("Erstwhile promoters") sold their entire shareholding of 1,83,750 equity shares constituting 91.88% of the then paid- up equity shares and voting shares capital of the Target Company to various public shareholders and also to the new promoters viz M/s Sankalp Vintrade Pvt. Ltd and M/s Mudra Dealtrade Pvt Ltd. Pursuant to acquisition of 14,500 equity shares (7.25%) each by the promoters viz M/s Sankalp Vintrade Pvt. Ltd and M/s Mudra Dealtrade Pvt Ltd on July 10, 2011 ("Acquisition Date") the promoters acquired control and management of the target Company. Pursuant to this transaction, there was change in control and hence M/s Sankalp Vintrade and M/s Mudra Dealtrade Pvt Ltd. were liable to make an open offer under Regulation 12 of SAST Regulations, 1997, however no open offer was made by the promoters."

15. While perusing the records, I note that the name of the Noticee 1 have been inadvertently spelled as Sankalp Vintrade Pvt Ltd. while issuing SCN instead of " Sanklap Vintarde Private Limited". Further, I have verified the name of the Noticee 1 with the company master data available on MCA website and information obtained through PAN number of Noticee 1.

16. While perusing the Company Master data of the Noticee 1 and 2 obtained from the MCA website, it is noted that the name of the Noticee 1 i.e. Sanklap Vintarde private Limited (CIN: U52100WB2010PTC148414) having registered address as 34, C.R. Avenue 1st Floor, Cabin No-02 Kolkata West Bengal 700 012 and Noticee 2 i.e. Mudra Dealtrade Private Limited (CIN: U52100WB2010PTC148410) are being shown as "Strike Off". Since the status of the Noticee 1 and 2 is showing as "Struck Off", it is imperative to see whether the Noticees' are existing or not at the time of issuance of SCN. In this regard, it is noted from the Company Master Data that last AGM of both the Noticees was held in the year of 2018. Similarly, the Balance Sheets of both the Noticees were last submitted in the year of 2018. In view of the same, considering the

information available on the website of MCA, it may be concluded that Noticee 1 and 2 were not in existence at the issuance of SCN.

17. It is an established fact that when a company's name is struck-off from the RoC list, then it is a non-existing company and the adjudication proceedings against such entity cannot be proceeded with.

18. Further, Black's Law Dictionary explains 'dissolution' as termination or winding up. It further clarifies that the dissolution of a corporation is the termination of its legal existence. Strike off essentially means removing the name of the company from the Register maintained by the Registrar of Companies.

19. As noted above, the date of issuance of the SCN to the Noticee 1 and 2 i.e. August 10, 2021, the Noticee 1 and 2 names have been stuck-off from the ROC list and the companies were not in existence at the time of issuance of SCN. Therefore, in view of the the fact that the name of Noticee 1 and 2 have been struck-off from the RoC list, I conclude that the present adjudication proceedings initiated against the Noticee 1and 2 vide SCN dated August 10, 2021 cannot be proceeded with.

ISSUE II: Whether Noticee 3 to 10 have violated the provisions of Regulation 3(1) of the SAST Regulations, 2011?

20. Before advancing into the merits of the ISSUE II, I would like to deal with the issue pertaining to the delay, as contended by the Noticee 9 in its reply dated January 24, 2022.

21. In this regard, I primarily note that as per Section 11C of the SEBI Act, 1992, SEBI can initiate investigation for any alleged violation of the provisions of Act and Rules and Regulations made thereunder and no specific limitation has been provided in this regard. Further, I note that there is no provision under the SEBI Act, 1992 which provides a time limit for taking cognizance of a breach of the provision of the SEBI Act, 1992 and Rules and Regulations made thereunder. In this regard, it is pertinent to note that, in the

matter of **SEBI Vs Bhavesh Pabari** {(2019) SCC Online SC 294}, the Hon'ble Supreme Court of India has, *inter alia*, held as follows:

"There are judgments which hold that when the period of limitation is not prescribed, such power must be 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."

22. In view of the aforesaid and considering the facts of the present matter, I do not find any merit in the submission of the Noticee that there has been any unreasonable delay. The violations were noticed at the time of examination of the DLOF as stated in the paragraph 1 of the order. Hence as the violation is primarily in respect of the failure on the part of the Noticees to make public announcement as consequent open offer as prescribed under the provisions of the Takeover Regulations which were noticed only during the examination of DLOF in respect of the target company, there is no delay on the part of SEBI in initiating adjudication proceedings in the matter.

23. Before proceeding further, I note the provisions of Regulation 3(1) of the SAST Regulations, 2011 read as under:

Substantial acquisition of shares or voting rights.

(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 per cent 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.

24. It is alleged in the SCN that Noticee No 3 to 10 were allotted preferential allotment on October 26, 2013. Vide the said allotment, Noticee no 3 to 10 were allotted 2,10,000 equity shares at Rs 15 of the Target Company which is 51.20% of post preferential issue capital of the Target Company. It is further alleged that Notice 3 to 10 had some common shareholding and therefore attracted an open offer obligation under SAST

Regulations, 2011. However, no open offer was made by the Noticee 3 to 10 who acquired the shares and voting rights of the Target Company.

25. Vide preferential allotment dated October 26, 2013, Noticee 3 to 10 were allotted 2,10,000 equity shares each at Rs. 15 per share as provided hereunder:

Table 1

Name of the Allottee	**Equity shares allotted**	**"%" of post preferential capital**	**Price per share(Rs.)**
Newedge Vinimay Pvt Ltd	2,10,000	6.40%	15/-
Silverson Tradelinks Pvt Ltd	2,10,000	6.40%	15/-
Unicon Tie Up Pvt Ltd	2,10,000	6.40%	15/-
Vedant Commodeal Pvt Ltd	2,10,000	6.40%	15/-
Swift Dealmark Pvt Ltd	2,10,000	6.40%	15/-
Anunay Commosale Pvt Ltd	2,10,000	6.40%	15/-
Nayan Impex Pvt Ltd.	2,10,000	6.40%	15/-
Ishwar Commercial Pvt Ltd	2,10,000	6.40%	15/-
Total	**16,80,000**	**51.20%**	**15/-**

26. With regard to the Noticee 3-6, I note that vide letter dated May 28, 2018 and vide email dated February 01, 2022 the Merchant Banker provided the shareholding of Noticee 3 to 10. In this regard, after perusing the shareholding of Noticees, I note that Noticee 3 to 6 are stated to have common shareholding at time of preferential allotment to Noticee 3 to 6. The shareholding of Noticee 3 to 6 with each other observed from the data provided by merchant banker are as under:

Table 2: Details of shareholding of Noticee 4, 5 & 6 in Noticee 3 (Newedge Vinimay Pvt Ltd)

Shareholder	**30.09.2013**		**26.09.2014**	
	Share	**%**	**Share**	**%**
Vedant Commodeal Pvt Ltd (Noticee 6)	38500	4.05%	38500	4.05%
Silverson Tradelinks Pvt Ltd (Noticee 4)	36000	3.78%	36000	3.78%
Unicon Tie Up Pvt Ltd (Noticee 5)	45525	4.79%	45525	4.79%

Table 3: Details of shareholding of Noticee 5 & 6 in Noticee 4 (Silverson Tradelinks Pvt Ltd)

Shareholder	**27.09.2013**		**29.09.2014**	
	Share	**%**	**Share**	**%**
Vedant Commodeal Pvt Ltd (Noticee 6)	5340	3.37%	5340	3.37%
Unicon Tie Up Pvt Ltd (Noticee 5)	9140	5.77%	9140	5.77%

Table 4: Details of shareholding of Noticee 3, 4 & 6 in Noticee 5 (Unicon Tie Up Pvt Ltd)

Shareholder	**30.09.2013**		**26.09.2014**	
	Share	**%**	**Share**	**%**
Vedant Commodeal Pvt Ltd (Noticee 6)	92335	12.77%	92335	12.77%

Silverson Tradelinks Pvt Ltd (Noticee 4)	100075	13.84%	100075	13.84%
Newedge Vinimay Pvt Ltd (Noticee 3)	3000	0.41%	3000	0.41%

Table 5: Details of shareholding of Noticee 4 & 5 in Noticee 6 (Vedant Commodeal Pvt Ltd)

Shareholder	**30.09.2013**		**26.09.2014**	
	Share	**%**	**Share**	**%**
Unicon Tie Up Pvt Ltd (Noticee 5)	41605	6.05%	41605	6.05%
Silverson Tradelinks Pvt Ltd (Noticee 4)	31175	4.87%	31175	4.87%

27. From the above Table 2 to 5, I note that as on the date of preferential allotment,

a) Noticee 3 was having shareholding in Noticee 5,

b) Noticee 4 was having shareholding in Noticee 3, 5 & 6,

c) Noticee 5 was having shareholding in Noticee 3, 4 & 6 and

d) Noticee 6 was having shareholding in Noticee 3, 4 & 5.

Therefore, as evident from the data provided by the Merchant Banker, I note that Noticee 3 to 6 were having common shareholding with each other as on the date of preferential allotment i.e. October 26, 2013. Further, as noted in Table 1, Noticee 3 to 10 have acquired 6.40% each of the preferential capital on October 26, 2013 and Noticee 3 to 6 have collectively acquired 25.6% of preferential share capital of the Target Company.

28. As noted above, with regards to Noticee no 7 to 10, the charge is emanating from the allegation that they along with the rest of the Noticees acquired shares of the target

company triggering the open offer requirement. In this regard, while it is alleged that all the Noticee companies had common shareholding in each other, however, no document showing such common shareholding on Noticee-7 to 10 as on the date of preferential allotment are available on record. It is observed from the shareholding details provided by the Merchant Banker that shareholding details of Noticee 7 to 10 are not available with MCA for the period 2013- 2014. It is pertinent to note that preferential allotment associated with the cause of action in the instant matter was made on October 26, 2013, which is during the aforesaid period i.e. 2013-2014 for which shareholding details are not available. While the open offer requirement would still be triggered with the acquisition by Noticees-3 to 6, the acquisition of shares by Noticee-7 to 10 is not conclusively forthcoming to fasten the liability to make open offer along with rest of the Noticees in the absence of documentary proof. In view of the same, I am of the opinion that a benefit of doubt should be extended to the Noticees-7 to 10 and therefore the instant issue is answered in negative as regards Noticees-7 to 10.

29. In view of the foregoing, I note that even if the shares of Noticee 7 to 10 are excluded, as details of common shareholding is not provided in the records, the requirement of open offer would still be triggered with the acquisition of preferential share capital of the Target Company by Noticees 3 to 6 as they collectively acquired 25.6% of the preferential share capital of the Target Company, thus, Noticee 3 to 6 were under obligation to make open offer under the SAST Regulations 2011. However, no public announcement of an open offer was made by Noticee 3 to 6. It is noted that the Noticees 3 to 6 failed to submit any reply in the adjudication proceedings. In the absence of any reply, considering their acquisition of shares of the Target Company, I note that Noticee 3 to 6 have violated the provisions of Regulation 3 (1) of the SAST Regulation 2011.

30. In view of above, I conclude that Noticee 3 to 6 are in violation of Regulation of Regulation 3 (1) of the SAST Regulations, 2011.

ISSUE III. If the answers to the Issue I and/or Issue II are in affirmative, whether the Noticee is liable for monetary penalty under Section 15H(ii) of the SEBI Act, 1992?

31. The provisions of Section 15 H of the SEBI Act, 1992 read as under:

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

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

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

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].

32. From the conclusion arrived at para 29 above, it is further concluded that the Noticee 3 to 6 are liable for monetary penalty under Section 15 H(ii) of the SEBI Act, 1992.

ISSUE IV: If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

33. While determining the quantum of penalty under sections 15 H(ii) of the SEBI Act, 1992, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

    15J - Factors to be taken into account by the adjudicating officer
    While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-
    (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
    (b) the amount of loss caused to an investor or group of investors as a result of the default;
    (c) the repetitive nature of the default."

34. I observe, that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticees. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors

on account of non-compliance by the Noticees. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default cannot be computed. However, I note that losing an exit opportunity by the shareholders at the right time as a result of the failure on the part of the Noticees to make the public announcement within the stipulated time period prescribed under the Takeover Regulations, is a loss to the investor.

35. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act as stated above. The main objective of the SAST Regulations is to afford fair treatment to the shareholders who are affected by any change in shareholdings. The Regulation also seeks to achieve fair treatment by inter alia mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change.

ORDER

36. Having considered the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the Securities and Exchange Board of India Act,1992 the purpose of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, taking note of Section 15H(ii) of the Securities and Exchange Board of India Act, 1992 and in exercise of power conferred upon me 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, I hereby impose penalty of Rs. 10,00,000 (Rupees Ten Lakh Only) on 1.) Newedge Vinimay Pvt. Ltd., 2) Silverson Tradelinks Pvt. Ltd. , 3.) Unicon Tie-up Pvt. Ltd., and 4.) Vedant Commodeal Pvt. Ltd., under Section 15H(ii) of the Securities and Exchange Board of India Act, 1992 to be paid jointly and severally, for violation of Provisions of Regulation 3(1) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

37. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees.

38. 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

39. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to the "The Division Chief, Division of Regulatory Action-2, Enforcement Department (EFD1 – DRA IV), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051". Noticees shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity
b) Name of the case / matter
c) Purpose of Payment – Payment of penalty under AO proceedings
d) Bank Name and Account Number
e) Transaction Number

40. 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 Securities and Exchange Board of India 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.

41. I hereby dispose of the Adjudication Proceedings initiated against the Noticee 1.) Sanklap Vintarde Pvt. Ltd. and 2.) Mudra Dealtrade Pvt. Ltd., 3.) Swift Dealmark

Pvt. Ltd., 4.) Anunay Commosale Pvt. Ltd., 5.) Nayan Impex Pvt. Ltd., and 6.) Ishwar Commercial Pvt. Ltd viz vide Show Cause Notice dated August 10, 2021

42. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, a copy of this order is being sent to 1.) Sanklap Vintarde Pvt. Ltd. and 2.) Mudra Dealtrade Pvt. Ltd., 3.) Newedge Vinimay Pvt. Ltd., 4.) Silverson Tradelinks Pvt. Ltd. , 5.) Unicon Tie-up Pvt. Ltd., 6.) Vedant Commodeal Pvt. Ltd., 7.) Swift Dealmark Pvt. Ltd., 8.) Anunay Commosale Pvt. Ltd., 9.) Nayan Impex Pvt. Ltd., and 10.) Ishwar Commercial Pvt. Ltd and also to the Securities and Exchange Board of India, Mumbai.

Place: Mumbai **BIJU S**

Date: September 30, 2022 **ADJUDICATING OFFICER**