## SECURITIES AND EXCHANGE BOARD OF INDIA

## ADJUDICATION ORDER NO. EAD-8/JS/SP/60-66/2017-18

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

**In respect of:**

1. Shri M Sivasubramaniam (PAN: Not Available)
2. Shri Venkatachalam RVE (PAN: Not Available)
3. Ms. Muthulakshmi Lakshmi Balasubramaniam (PAN :AGOPM5848A )
4. Shri Tarunkumar G Brahmbhatt (PAN: ADSPB2534M)
5. Shri Jinesh Bhatt (PAN: AKDPB6133C)
6. Ms. Kiran R Jain (PAN: AEVPJ6128H)
7. Shri Anil J Mistry (PAN : ACSPM6415F)

**In the matter of Velan Hotels Ltd.**

## BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**), examined the change in promoters shareholding of Velan Hotels Ltd. (hereinafter, referred to as **'Company/Velan'**), observed during quarters ending March 2009- December 2009, shareholding of Promoter / Promoter Group of the Company has increased from 58.28% to 59.80% of the share capital of the Company, on account of change in shareholding of the promoters / promoter group of Velan including Shri M Sivasubramaniam, Shri Venkatachalam, Ms. Muthulakshmi Lakshmi Balasubramaniam, Shri Tarunkumar G Brahmbhatt, Shri Jinesh Bhatt, Ms. Kiran R Jain and Shri Anil J Mistry (hereinafter, individually referred by their respective name and collectively referred to as "**Noticees**").

2. Velan, vide its letter dated November 15, 2013 inter-alia informed that the promoters/ promoter group of Velan namely EV Muthukumara Ramlingam, MR Gautham, M Sasikala during November 2009 – February 2010 transferred a portion of their shareholding amounting to 14,50,000 shares through off-market to the Noticees, in terms of a pledge agreement with Jinesh Bhatt and Tarunkumar Brahmbhatt for an amount of Rs. 4,00,00,000/-. The cheque given on transfer of the shares were dishonored on account of insufficient funds. The promoters of Velan recovered 12,16,067 shares and remaining 2,33,933 shares were yet to be recovered.

3. Further, Velan informed that during the period March 2009 to December 2009 the promoter group was a net seller of 4,87,791 shares including purchase of 1,12,209 shares through Off-market transactions and transfer of 6,00,000 shares in honoring the pledge Agreement which is a part of the total transfer of 14,50,000 shares.

4. Velan had made disclosure in terms of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as 'Takeover Regulations') for the shares pledged and revoke of pledge for the shares which were returned by the lenders/pledgees to the Promoters of Velan. Also the Noticees namely Tarunkumar Brahmbhatt, Jignesh Bhatt, Kiran R Jain and Anil Mistry were shown as the promoters/promoter group of Velan for the quarter ended December 2009 and March 2010.

5. During the acquisition made by the Noticees, the holding of the promoters in the Company was above 55% of the Share capital of the Company. Thus, it was alleged that the change in shareholding of the seventeen promoter entities as at the end of December 2009 including the Noticees, required the said seventeen promoter entities including the Noticees/ Promoters and Promoter group entities to comply with provisions of Regulation 11(2) read with regulation 14(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as **'Takeover Regulations'**). However, allegedly, there was failure on the part of the Noticees/ promoters and promoter group of Velan to make public announcement for the change in the shareholding.

## APPOINTMENT OF ADJUDICATING OFFICER

6. An Adjudicating Officer was appointed vide order dated May 06, 2014 under Section 15-I read with Section 19 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 by Adjudicating Officer) Rule, 1995 (hereinafter referred to as **'Adjudicating Rules'**), to inquire into and adjudge under Section 15H(ii) of SEBI Act. Consequent to transfer vide Office Order dated October 04, 2017, the proceedings are now being continued further for the aforesaid alleged violations against the Noticees.

## SHOW CAUSE NOTICE, INSPECTION OF DOCUMENTS, REPLY AND HEARING

7. A Show Cause Notice (hereinafter referred to as 'SCN') in terms of provisions of Rule 4 of Adjudication Rules read with Section 15I of SEBI Act was issued on April 29, 2016 to the Noticees calling upon the Noticees to show cause as to why an inquiry should not be held against them under Rule 4 of the Adjudication Rules and penalty be not imposed for the alleged violation.

8. Apart from the above Noticees, SCN was issued to the other ten (10) promoter/promoter group entities of Velan, who subsequently, settled the matter vide settlement order dated November 08, 2017. The remaining seven (7) entities assailed in the SCN are being dealt now through this order.

**9.** The Company vide letter dated June 17, 2016 has informed that Shri M Sivasubramaniam and Shri Venkatachalam R.V.E, have expired on January 23, 2011 and July 26, 2011 respectively. The copy of the death certificates of the deceased is on records.

**10.** Based on the last known address of the Noticees namely Tarunkumar Brahmbhatt, and Jinesh Bhatt, SCNs were delivered vide letter dated June 23, 2016. The SCN addressed to Kiran Jain was affixed at her last known address on June 23, 2016. With respect to Anil Mistry, the SCN was delivered vide letter dated June 24, 2016. Tarunkumar Brahmbhatt, Jinesh Bhatt, Kiran Jain and Anil Mistry (hereinafter, individually referred by their respective name and collectively referred to as **"Four Noticees**").

**11.** Tarun Brahmabhatt, vide letter dated July 12, 2016 has sought time to reply to the SCN. Jinesh Bhatt through his authorised representative (Law Juris) has submitted its reply vide letter dated July 04, 2016 to the SCN, as follows:

*a. "had received shares of Velan from the promoters for raising funds from the market. However, as raising funds from the market did not materialize, the shares of Velan were returned to the promoters except 75200 shares which were not returned and adjusted towards travelling expenses, hotel expenses etc incurred by Jinesh.*
*b. Also traded in the shares of the Company on the basis that the price of the scrip of Velan may go up.*
c. *Hence, it should not construed that Jinesh is the acquirer, acting in concert etc and holding 55% or more shares in the Company and therefore merely because the promoters of the company transferred certain shares in Jinesh' account for some time where were returned to the promoters, he could not be saddled with responsibility of having committed breach of Takeover Regulations"*.

**12.** Anil Mistry, vide letter dated July 06, 2016 submitted its reply to the SCN, as follows:
*a. "I never associated with the Company or its Promoters/Directors.*
*b. To allow me inspect all the related documents.*
*c. Accordingly, authorized Shri Vikas Bengani to take inspection of the documents on his behalf".*

**13.** Vide Notice dated November 15, 2017, Tarunkumar Brahmbhatt and Jinesh Bhatt were granted an opportunity for personal hearing on December 15, 2017. Also, Anil Mistry was informed to conduct inspection of documents within November 23-30, 2017 and an opportunity for personal hearing was granted on December 15, 2017.

**14.** Vide notice dated November 16, 2017, an opportunity for personal hearing was granted to Kiran Jain. Also, vide the notice a copy of SCN dated April 29, 2016 were delivered to the address of Kiran Jain i.e."22, 2nd Floor, Kamla Bhavan 1, Opp. Garware House Sahar Road, Andheri East, Mumbai- 400 069". The address of Kiran

Jain were obtained from Anand Rathi Securities Ltd., Stock Broker, through whom she carried out trades.

**15.** Kiran Jain, vide letter dated November 21, 2017 and December 09, 2017, has submitted her reply to the SCN, which are as follows:

*a. Purchased the stock of Velan from the open market and not as "off market" as alleged. Accordingly, provided copy of the contract note for the trades carried out.*
*b. She haven't met the promoter of the company till date and are not even aware how her name has appeared in promoter group.*

**16.** Anil Mistry, through his authorised representative, carried out inspection of following documents on November 29, 2017.

a. Copy of SCN dated April 29, 2016
b. Communication of Order appointing Adjudicating Officer
c. Original letter of Velan Hotels Ltd dated November 15, 2013 along with annexure of excel sheet containing holdings of the promoters of the Company.
d. Copy of Shareholdings of the promoters of Velan for the quarter ended March 2009, June 2009, September 2009 and December 2009.

**17.** Anil Mistry, vide letter dated November 30, 2017 has informed that he has not provided inspection of documents as sought such as "Investigation Report, annexure to the Investigation Report, off-market transactions detail, communication made with the Velan Hotels ltd., its director and promoter and clarification regarding why he was shown as promoter of the company or documents in support of this if any". Further, he has submitted the following:

*a. It is an admitted position that I was never controlling the affair of the Company. The promoter had not transferred a single shares into my account.*
*b. I have no directed or indirect connection/relation with the Promoter/Director of Velan Hotels Ltd.*
c. *I had never purchased any shares from the promoters of the Company nor did the promoters have pledged the shares of the Company with Anil. Merely because the Company had made wrong shareholding disclosures with the exchange showing me as a promoter of the Company, I cannot be held guilty of violating Regulation 11(2) of the Takeover Regulations.*

**18.** With respect to the submission of Anil Mistry on inspection of documents, it is to be stated that the documents which were relied upon in the issuance of the SCN and the present proceedings were duly provided to the Noticee. Further, it was clarified to the entity that no other documents other than those provided to the Noticee shall be relied upon in the present proceedings.

**19.** Tarunkumar vide letter dated December 14, 2017 has made the following submission:

a. *"I am not involved or connected with the Company in any other capacity such as director, promoter, employee management.*
b. *His interaction with the company was in a specific transaction or dealing. Hence, I cannot be considered as a promoter of the company.*
c. *My name is wrongly included as a promoter during the quarters December 2009 and March 2010 by Velan.*
d. *I have not given my consent to be considered as a promoter group entity.*
e. *It is pertinent to mention that post March 31, 2010, I am not considered as a promoter and it appears that my name is removed/deleted from the company's promoter group.*
f. *Therefore, I cannot be treated as PAC under group 2,3,4,5,7,8 as alleged any my holding cannot be clubbed with the holding of the promoter category".*

**20.** The Four Noticees/ authorised representatives of the Four Noticees, attended the personal hearing on December 15, 2017 and *"reiterated since Velan has clarified that the Notices are not the promoter of Velan the matter may be concluded accordingly".*

## CONSIDERATION OF ISSUES AND FINDINGS:-

**21.** Charges levelled against the Noticees as per SCN, submissions of the Noticees in reply to SCN, and the documents available on record have been perused. The issues that arise for consideration in the present case are:-

a. **Whether these proceedings can be continued against deceased entities Shri M Sivasubramaniam and Shri Venkatachalam R.V.E**
b. **Whether these proceedings can be continued against Muthulakshmi Lakshmi Balsubramanium PAN No. AGOPM5848A**
c. **Whether, the four noticees namely Tarunkumar Brahmabhatt, Anil Mistry, Jinesh Bhatt and Kiran Jain can be considered as promoters/promoter group of Velan**
d. **If yes, whether these four noticees have violated Regulation 11(2) read with Regulation 14(1) of the Takeover Regulations**
e. **If yes, then, what would be the monetary penalty that can be imposed upon them taking into consideration the factors mentioned in Section 15J of the SEBI Act read with Rule 5(3) of the Adjudication Rules.**

### Issue a) Whether these proceedings can be continued against deceased entities Shri M Sivasubramaniam and Shri Venkatachalam R.V.E

**22.** With respect to Shri M Sivasubramaniam and Shri Venkatachalam R.V.E: At the outset, it is noted that In the matter of Padmalaya Telefilms Ltd. (November 2, 2006), the Hon'ble WTM, SEBI inter-alia held that *"...Since the proceedings were initiated against the personal acts of omission of a person who is no more alive to face the penalty, the proceedings against him are liable to be abated"*.

**23.** Further, in Girijandini vs. Bijendra Narain (AIR 1967 SC 2110), the Hon'ble Supreme Court, inter-alia observed that in case of personal action, i.e. the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives, and in such cases, the maxim *actio personalis moritur cum persona* (personal action dies with the death of the person) would apply. Hence, the proceedings initiated against Shri M Sivasubramaniam and Shri Venkatachalam R.V.E are liable to be abated without going into the merits of the case. The matter in respect of late Shri M Sivasubramaniam and Shri Venkatachalam R.V.E is accordingly disposed of.

**Issue b) Whether these proceedings can be continued against Muthulakshmi Lakshmi Balsubramanium PAN No. AGOPM5848A**

**24.** With respect to the Noticee Muthulakshmi Lakshmi Balsubramanium, the Company vide letter dated June 17, 2016 informed that the persons "*Muthulakshmi Lakshmi Balasubramanium and Muthulakshmi G are one and the same person having a PAN No. AGOPM5848A*". The company and concerned entities during the settlement proceedings also reiterated the submission. Since, the notice Muthulakshmi G is already covered under the settlement order dated November 08, 2017, the SCN issued to Muthulakshmi Lakshmi Balasubramanium by name treated as having dealt with in the Settlement Order and thus abated.

**Issue c) Whether, the four noticees namely Tarunkumar Brahmabhatt, Anil Mistry, Jinesh Bhatt and Kiran Jain can be considered as promoters/promoter group of Velan**

**25.** Before going forward, it is important to refer the following provisions alleged to have been violated:

> **Consolidation of holdings.**
>
> *11(1)…*
>
> *(2) No acquirer, who together with persons acting in concert with him holds, fifty-five per cent (55%) or more but less than seventy-five per cent (75%) of the shares or voting rights in a target company, shall acquire either by himself or through 1[or with] persons acting in concert with him any additional shares 2[entitling him to exercise voting rights] or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations:*
>
> *Provided that in a case where the target company had obtained listing of its shares by making an offer of at least ten per cent (10%) of issue size to the public in terms of clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted from strict enforcement of the*

*said rule, this sub-regulation shall apply as if for the words and figures seventy-five per cent (75%) the words and figures ninety per cent (90%) were substituted.*

*Provided further that such acquirer may, notwithstanding the acquisition made under regulation 10 or sub-regulation (1) of regulation 11, without making a public announcement under these Regulations, acquire, either by himself or through or with persons acting in concert with him additional shares or voting rights entitling him upto five per cent (5%) voting rights in the target company subject to the following:-*

*(i) The acquisition is made through open market purchase in normal segment on the stock exchange but not through bulk deal/ block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buyback of shares by the target company;*
*(ii) the post acquisition shareholding of the acquirer together with person acting in concert with him shall not increase beyond seventy five per cent (75%).*

*Timing of the Public Announcement Offer*

*14(1) The public announcement referred to Regulation 10 or Regulation 11 shall be made by the merchant banker not later than four working days of entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein:*

*Provided that in case of disinvestment of a Public Sector Undertaking, the public announcement shall be made by the merchant banker not later than 4 working days of the acquirer executing the Share Purchase Agreement or Shareholders Agreement with the Central Government or the State Government as the case may be for the acquisition of shares or voting rights exceeding the percentage of shareholding referred to in Regulation 10 or Regulation 11 or the transfer of control over a target Public Sector Undertaking.*

**26.** The core issue emanates from the finding that the Four Noticees so alleged were promoters/promoter group of Velan and have failed to make public announcement for the shares acquired along with the other promoters / promoter group of Velan and thus violated the provisions and thus in turn liable for action.

**27.** In terms of the submission of Velan dated November 15, 2013, the promoter shareholding of Velan in March 2009 and December 2009 are as follows:

| Sr. No | Name | Category | Shareholding-March 2009 | % of Shareholding | Shareholding-December 2009 | % of shareholding |
|---|---|---|---|---|---|---|
| 1 | EV Muthukumara Ramalingam | Promoter | 27,20,040 | 35.10% | 25,22,349 | 32.55% |
| 2 | RVE Venkatachalam | Promoter | 3,72,700 | 4.81% | 3,72,700 | 4.81% |
| 3 | M Sasikala | Promoter | 4,95,670 | 6.40% | 3,95,770 | 5.11% |
| 4 | MR Gautham | Promoter | 4,07,470 | 5.26% | 2,17,270 | 2.80% |
| 5 | M Pallavi | Promoter | 1,63,950 | 2.12% | 1,63,950 | 2.12% |
| 6 | Sharmada Gautham | Promoter | 32,070 | 0.41% | 32,070 | 0.41% |
| 7 | Shree Valley enterprises P Ltd | Promoter | 2,41,500 | 3.12% | 2,41,500 | 3.12% |
| 8 | P Ganesan | PAC with promoters | 33,050 | 0.43% | 33,050 | 0.43% |
| Sr. No | Name | Category | Shareholding-March 2009 | % of Shareholding | Shareholding-December 2009 | % of shareholding |
| 9 | M Sivasubramaniam | PAC with promoters | 50 | 0.00% | 50 | 0.00% |
| 10 | G Arun | PAC with promoters | 20,500 | 0.26% | 20,500 | 0.26% |
| 11 | G Vishnu | PAC with promoters | 14,000 | 0.18% | 14,000 | 0.18% |
| 12 | Muthulakshmi and Lakshmi Balasubramanian | PAC with Promoters | 15,500 | 0.20% | 15,500 | 0.20% |
| 13 | G Muthulakshmi | PAC with Promoters | 500 | 0.01% | 500 | 0.01% |
| 14 | Jinesh D Bhatt | Pledgee | - | - | 4,13,680 | 5.34% |
| 15 | Tarunkumar G Brahmbhatt | Pledgee | - | - | 21,969 | 0.28% |
| 16 | Kiran R Jain | Pledgee | - | - | 1,00,000 | 1.29% |
| 17 | Anil J Mistry | Pledgee | - | - | 70.000 | 0.90% |
| | Total | | 45,17,000 | 58.28% | 46,34,858 | 59.80% |

**28.** Thus, the four Noticees were categorized as promoters of Velan by virtue of shares pledged by the promoters of Velan. Further, the four Noticees held 7.81% of the Share Capital/ voting rights of Velan for the quarter ended December 2009. Velan, also has provided a copy of two pledge agreements dated November 02, 2009 and December 19, 2009, entered between the Promoters of Velan namely EV Muthukumara Ramalingam & Gautham MR and the lenders namely Jinesh D Bhatt and Tarunkumar G Brahmbhatt.

**29.** In order to address the core issue, as the information available on records was deficient to determine the issue as to whether the noticees were indeed the promoters, the relevant information was called for from company and the registrar and share transfer agent of the company.

**30.** Vide letter dated November 14, 2017, the Company and SKDC Consultants Ltd., the Registrar and Share Transfer Agents (hereinafter referred to as **'SKDC'**) of Velan, were required to provide the basis on which Tarunkumar, Anil Mistry, Jinesh Bhatt and Kiran Jain - '**Four Noticees'** were shown as part of the promoter and promoter group of Velan for the quarter ended December 2009.

**31.** SKDC, vide email dated November 16, 2017, has informed that *"Velan vide letter dated December 24, 2009 and email dated January 05, 2010 has informed SKDC to include the names of Jinesh Bhatt, Tarunkumar Brahmabhatt, Kiran Jain and Anil Mistry as Person acting in Concert"*.

**32.** Velan in its letter dated November 29, 2017 stated that the promoter had provided its shares as part of pledge *….. "the intention of such transfer was not to transfer the ownership in shares but to create a security in favour of Brahmbhatt Group. The Company was advised to categorize the pledged shares in promoter's holding and accordingly, in December 2009, the Company categorized pledged shares in promoter holdings."*

**33.** Given the above, Velan, vide email dated November 30, 2017 was informed to clarify, whether the four noticees were part of the promoters/ promoter group of Velan at any point of time.

**34.** Velan, vide email dated December 04, 2017, stated that the basis on which the four Noticees were shown as promoter of Velan, that *"Ramneek Jain, Tarunkumar Brahmabhatt, Anil Mistry and Jinesh Bhatt were categorized as promoters of Velan Hotels ONLY on the ground that the promoter holding of shares of Velan were pledged with them and accordingly reflected as promoters of Velan Hotels Ltd. ('the company') We have detailed this in the said letter dt. November 29, 2017.*

*<u>Other than for this pledge transaction</u>, the company and/or its promoters have nothing to do with them and they ARE NOT the promoters/promoter group of Velan Hotels Ltd."*
*Emphasis as contained in the email*

**35.** The above submission of SKDC and Velan were provided to the Four Noticees vide letter dated December 04, 2017 and a copy of which was also emailed.

**36.** It is thus observed that these Four Noticees were classified as promoters/ promoters group of the Company for the quarters ended December 2009- March 2010, during this period the promoters pledged their shares with the Noticees. Subsequent to, from the quarter ended June 2010, the Four Noticees were not part of the promoters/promoter group of the Company, and the contentions of the four entities that has been vehemently argued is tenable.

**37.** There is no further information available on records to bundle these Four Noticees either with the promoters or as PAC or as promoters themselves. Given the lack of evidence in the matter, it is concluded that the violation of Regulation 11(2) read with Regulation 14(1) of the Takeover Regulations, does not stand established against the Noticees.

**Issue d) If yes, whether these four noticees have violated Regulation 11(2) read with Regulation 14(1) of the Takeover Regulations**

**Issue e) If yes, then, what would be the monetary penalty that can be imposed upon them taking into consideration the factors mentioned in Section 15J of the SEBI Act read with Rule 5(3) of the Adjudication Rules.**

**38.** As the violations are not established against the Four Noticees namely Tarunkumar Brahmabhatt, Jinesh Bhatt, Kiran R Jain and Anil J Mistry therefore, consequent issues c and d requires no further examination.

## Order

**39.** For the aforesaid reasons, Show Cause Notice EAD-6/AK/VG/12403/2016 dated April 29, 2016, alleging violations of provisions of Regulation 11(2) read with Regulation 14(1) of Takeover Regulations by the Four Noticees i.e. Tarunkumar Brahmabhatt, Jinesh Bhatt, Kiran R Jain and Anil J Mistry is disposed of without imposition of any penalty.

**40.** With respect to Noticees M Sivasubramaniam (late), Venkatachalam RVE (late), the proceedings in the matter of Show Cause Notice EAD-6/AK/VG/12403/2016 dated April 29, 2016, are abated.

**41.** As regards Muthulakshmi Lakshmi Balasubramaniam, as the matter has already been dealt with in consent order dated November 08, 2017, the proceedings in the matter Show Cause Notice EAD-6/AK/VG/12403/2016 dated April 29, 2016, is abated.

**42.** In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees / persons who replied for the deceased Noticees and also to the Securities and Exchange Board of India.

**Date: January 10, 2018** **JEEVAN SONPAROTE**

**Place: Mumbai** **ADJUDICATING OFFICER**