BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: ID-2/VIL/AO/DRK-JP/EAD -3/ 424/90 to 430/96 of 2013)

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 BY ADJUDICATING OFFICER) RULES, 1995.

In respect of:

(1) Sunil Mangilal Bachawat HUF (PAN: AADHS6128Q)
(2) Mr. Pramod Nathmal Bachawat (PAN: AACPB5424B)
(3) Mr. Nathmal Mangilal Bachawat (PAN: AABPB7527N)
(4) Mangilal Deepchand Bachawat HUF (PAN: AADHM5909B)
(5) Nathmal Mangilal Bachawat HUF(PAN: AABHN8399A)
(6) Mr. Mitesh Nathmal Bachawat(PAN: AAEPB3778Q)
(7) Pramod N. Bachawat HUF (PAN: AAHHP2828N)

In the matter of:

(Vaswani Industries Limited)

Background:

1. The Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation into the alleged irregularity in the Initial Public Offering (IPO / Issue) of Vaswani Industries Ltd. (VIL) for the period covering from April 01, 2011 to March 31, 2012 (hereinafter referred to as 'Investigation Period').

2. The investigation revealed that VIL came out with an IPO for 100 lac equity shares of face value of ₹ 10/- each at a premium of ₹ 39/- per share. The issue was a 100% book built issue and the price band fixed by the VIL was in the range of ₹ 45/- to ₹ 49/- per share. The bidding for the Issue started on April 29, 2011 and closed on May 3, 2011. At the time of closure of the Issue, it was observed that bids for 8,00,040 shares were received from the category of Qualified Institutional Buyers (QIBs) which was 2% of the total bids size and 16% of the QIB category, the bids for 1,69,35,240 shares were received from the category of Non Institutional Investors (NIIs) which was 41% of the total bids and

the bids for 2,38,87,440 shares were received from Retail Individual Investors (RIIs) which was 57% of the total bids. The oversubscription levels on closure of bids were 0.16 times for QIBs, 11.29 times for NIIs and 6.82 times for RIIs. Based on these figures, the oversubscription in the Issue was calculated at 4.16 times. However, after taking into consideration cheques returned, withdrawn and technical rejections, the oversubscription level fell to 1.28 times and the Issue price was fixed at ₹ 49/- per share.

3. The bids in the IPO of VIL were made at the highest price level of the price band, by the several applicants/clients through the terminal of their sub –syndicate member(s), and subsequently large numbers of such bids were withdrawn or cheques were either not banked along with bid applications or were stopped later on in the RII and NII categories. Also, a group of entities namely - (1) Sunil Mangilal Bachawat HUF (2) Pramod Nathmal Bachawat (3) Nathmal Mangilal Bachawat (4) Mangilal Deepchand Bachawat HUF (5) Nathmal Mangilal Bachawat HUF (6) Mitesh Nathmal Bachawat (7) Pramod N Bachawat HUF (hereinafter referred to as 'the Noticee No.1 to 7' respectively) or (all may be collectively referred to as 'the Noticees') made bids in the IPO of VIL at the upper price level and subsequently withdrawn the same with an intent to artificially inflate the bid book, to create an interest for other investors/public to subscribe in the Issue and thereby created misleading appearance of bidding.

Appointment of Adjudicating Officer:

4. SEBI appointed Shri P. K. Kuraichen as Adjudicating Officer under section 15-I of the Securities and Exchange Board of India Act 1992 (hereinafter known as 'SEBI Act') read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') vide order dated January 10, 2013, to inquire into and adjudge under section 15HA of the SEBI Act, the alleged violations of section 12 A (a), (b) & (c) of the SEBI Act, Regulation 3 (b) & (d), 4 (1) and 4 (2) (a) & (b) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations'), by the Noticees. Subsequently, vide order dated July 30, 2013 the undersigned has been appointed as Adjudicating Officer in these matters.

Show Cause Notice, Reply of Noticees and Hearing:

5. A common Show Cause Notice dated March 21, 2013 (herein after referred to as ("SCN") was served on the Noticees under rule 4(1) of the Adjudication Rules

through Regd. Post A.D., to show cause as to why an inquiry be not held against them and penalty be not imposed under section 15 HA of the SEBI Act for the aforesaid violations of SEBI Act and PFUTP Regulations, alleged to have been committed by the Noticees.

6. It was stated in the SCN that there were 147 bid applications in High Networth Individual (HNI) category for a total of 1,69,35,240 shares and 7,343 applications in RII category for a total of 2,38,87,440 shares before rejections and withdrawals. However, large number of bids were withdrawn / rejected or cheques were not banked along with bid applications or payment were stopped / cheque returned, in the RII and NII-HNI categories as observed in the investigation report. The relevant extracts of the IR were provided to the Noticees along with SCN.

7. It was stated that the Noticees were the clients/applicants who made the bid applications for 18,360 shares each in said IPO through the terminal of KGR Securities Ltd. (sub -syndicate member) under the category of NII-HNI. It was stated in the SCN that the said bids were subsequently withdrawn by the Noticees due to the 'cheques returned'. It was also stated that the Noticees are related / connected to each other as they were having common address "22, Dhangat Bhavan, 3rd Floor, R.No - 35, Old Hanuman 1st X Lane Kalbadevi, Mumbai 400002", and in concert they applied and withdrawn the bids. Copy of common address details of the Noticees were provided to the Noticees along with SCN.

8. It was alleged that the Noticees have acted in concert and have withdrawn the bids from the Issue due to the reason of 'insufficient funds'. They have thereby contributed in inflating the bid book by 0.35% by placing bids and have also contributed to 1.47% of Issue size. It was alleged that the Noticees made their bids at the highest price of the price band on the second day of the bidding process i.e. May 02, 2011, and have thereby contributed in discovery of upper price level in the said price band. Copy of said details of bids and its withdrawal by the Noticees were provided to the Noticees along with SCN.

9. It was also alleged that the Noticees made bids for the same numbers of shares / amount and all within a period of half an hour which were placed by them in a well determined way with the intention of withdrawing at a later stage and with the intention to show a good response to the IPO by placing bids at the highest

price of ₹ 49/-. Allegedly, such practices of bidding by Noticees in the IPO which were subsequently withdrawn, were not bonafide in nature, but were done with a motive to artificially inflate the bid book and to create misleading appearance of bidding.

10. In view of the above, it was alleged that by adopting and indulging into such kinds of act/practices/device/artifice, the Noticees have violated section 12 A (a), (b) & (c) of the SEBI Act, Regulation 3 (b) & (d), 4 (1) and 4 (2) (a) & (b) of the PFUTP Regulations. The said provisions of laws are produced as under;

SEBI Act

12A. No person shall directly or indirectly –

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

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

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

FUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practice

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

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

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

(b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;

11. In response to the SCN, the Noticee No. 2 on his behalf, as well as on behalf of other Noticees, submitted a common reply dated April 05, 2013. For the purpose of enquiry, a notice of hearing dated June 10, 2013 was issued to all the Noticees by the erstwhile Adjudicating Officer providing them an opportunity of hearing on June 25, 2013. The hearing on June 25, 2013 was attended by the authorized representatives of the Noticees and submissions were recorded. On the day of hearing, the Noticees also filed their additional common reply dated June 22, 2013. Further, on appointment of undersigned as Adjudicating Officer, another opportunity of hearing was provided to the Noticees on September 06, 2013 vide notice dated August 21, 2013. The hearing was attended by the authorized representative of the Noticees namely- Mr. Sunil M Bachawat and Mr. Ravi Ramaiya, and submissions were recorded. Thereafter, the Noticees vide their letter dated September 11, 2013 *inter-alia* provided the Federal Bank Statement showing the balance amount was in the account of Sunil Investment.

12. The main submissions made by the Noticees under their aforesaid common replies, are produced hereunder:

   (a) *Noticees are member of family and our primary business is dealing in securities in our own account as well as through the HUFs of our family. We applied for the shares of VIL in normal course of business. In around January and May 2011, we applied for multiple IPO/FPOs.*
   (b) *The funds of our family are collectively maintained in our account M/s Sunil Investment (A/c No. 00040510000007) and M/s Sunil Kumar Bachawat (A/c No. 00040510000090), who enjoy a cash credit limit of ₹ 27,00,000/- and ₹ 9,50,000/- respectively against their fixed deposit maintained with UCO Bank.*
   (c) *As on May 04, 2011, the withdrawalable balance in A/c No. 00040510000007 was in excess of ₹ 51 Lakh and in A/c No. 00040510000090 was about ₹10 lakh.*
   (d) *The remaining amount of ₹ 2 lakh was available in Account No. 10995500012991 maintained with the Federal Bank Ltd. at Fort branch. Balance in the Account was ₹10 lakh as on May 04, 2011.*
   (e) *The use of cash credit facility results in charging of interest at a rate of about ₹ 30 per lakh per day, and the total interest on ₹ 61 Lakh worth of applications would have been more than ₹ 1800/- per day, had we transferred the funds to our respective accounts on May 03, 2011 instead of May 04, 2011. As a result, we decided to make the funds available on May*

04, 2011, so that the cheque issued for IPO could get cleared in the clearing that takes place on May 05, 2011.

(f) *We had not purposely returned or made stop payment of the cheque, as we assumed that the cheque will come for debiting in our Bank on third day from the last day of the closure of Issue, but, unfortunately it came to our Bank for debit on second day from the closure of Issue. Before, we could transfer funds on the same day from our other account, the cheques were returned by the Bank with reason as 'balance insufficient'.*

(g) *It is evident that we have adequate amount of money to honour the cheque if they would have been presented to our Bank on May 05, 2011 like in case of other IPOs.*

(h) *The management of VIL and the merchant banker were aware that a large number of applicants will withdraw their applications, and as a result, they banked the cheque in a hurried fashion just on next day after closure of Issue i.e. May 04, 2011.*

(i) *Our family and HUFs made 8 applications including one Mr. Sunil M. Bachawat whose bid was successful and was allotted 18,360 shares which he sold later on at the rate of ₹ 23/- per share and suffered loss.*

(j) *It is stated that if we had been party to the fraud of loading order book in the said IPO and intended to withdraw lateron just to create an impression of high oversubscription, then, why we would have allowed one of our application to go successful. Further, we had transferred ₹ 20,90,000/- only from the account of Mr. Sunil M Bachawat to Sunil Investment on may 04, 2011 and maintained adequate balance to honour his cheque. If we had malafide intention, we could have transferred the entire amount to dishonour his cheque.*

(k) *We have applied the bids with a bonafide intent and rather, we are the victim of entire purported fraud of management of VIL and merchant banker.*

(l) *As a result, we grossly deny the allegations and request to dismiss the allegations against us.*

Consideration of Issues and Finding:

13. After taking into account the allegations, replies of the Noticees and other evidences/material available on records, I hereby, proceed further to inquire the case on merit. The issues that arise for consideration in the present case are as under:

    (a) Whether the Noticees made bids in the IPO of VIL at the upper price level and subsequently withdrawn (due to insufficiency of funds in Bank

Account) the same with an intent to artificially inflate the bid book and to create misleading interest for other investors/public to subscribe in the Issue?

(b) If yes, then whether such act/practices/device/artifice of the Noticees created any misleading appearance of bidding and were in violation of section 12 A (a), (b) & (c) of the SEBI Act, regulation 3 (b) & (d), 4 (1) and 4 (2) (a) & (b) of the PFUTP Regulations?

(c) If yes, then whether the Noticees are liable for monetary penalty prescribed under section 15 HA of the SEBI Act for the aforesaid violations and what should be the quantum of monetary penalty?

14. It is observed from the records that the fact of their *inter- se* connection/relation, making of huge bid applications at the price of ₹ 49/- per share (highest price) and subsequent withdrawal of bids by the Noticees are not in dispute, as the same is admitted by the Noticees in their aforesaid common reply.

15. Now, only issue arises for consideration is that as to whether submitting of bid applications by the Noticees through their sub syndicate member and subsequent withdrawal of such bids (due to insufficiency of funds in Bank Account), were misleading in nature and were intended to artificially inflate the bid book or /and to create an interest for other investors/public to subscribe in the Issue?

16. Before going into the detailed merits of the case, firstly, I cannot ignore the fact that during the said period of Issue, the QIB category was barred from withdrawing the bids as per Clause (j) of Schedule XI read with regulation 28 of the ICDR Regulations, however, there was no bar for withdrawal of bids by the NII & RII categories in IPO under said ICDR Regulations. It is on records that the Noticees were not the QIBs, but were NII – HNI. It was only from October 12, 2012, the NII category was also barred from withdrawing or lowering the size of its bids at any stage of IPO. Therefore, as per the ICDR Regulations, the Noticees could withdraw their bids from the IPO during the said period of Issue.

17. However, despite liberty to withdraw the bids under law at that point of time, the mechanism /modus operandi adopted by the Noticees in applying and withdrawing the aforesaid bids during the IPO, is being examined as under.

18. It is observed from the records that the bidding process in the IPO started on April 29, 2011 and closed on May 3, 2011. It is observed from the available

records that a total of 50,00,000 shares were offered under the said IPO for QIB category and for that the bids for only 8,00,040 shares were received. Further, a total of 15,00,000 shares and 35,00,000 shares were offered for the NIIs and RII category respectively, and for that the bids for 1,69,30,800 shares and 2,38,59,720 shares were received from the said categories. Except QIB category, there were huge withdrawals/rejection of bids i.e. 1,56,71,160 shares and 1,31,35,200 shares in NII and RII category respectively. However, the Issue price was fixed at ₹ 49/- per share.

19. It is noted from the available records that the Noticees had made their bids under High Networth Individual (HNI) category for a total of 1,28,520 shares through their said sub syndicate member only on May 02, 2011 between 10:12 a.m. to 10:40 a.m. (second day of bid).

20. It is further observed from the available records that there were total 147 bid applications in HNI category for subscription to a total of 1,69,35,240 shares including 1,28,520 shares of the Noticees, and after withdrawals/rejection of the bids, only 12,59,640 shares were allotted to the investors in HNI category. That means in the HNI category, apart from the Noticees, the bids of other investors/applicants for 1,56,71,160 shares were also withdrawn/rejected. Similar kind of withdrawals / rejections also took place in the RII category where bids for 2, 38, 59,720 shares were made by the applicants/investors and only 79,40,320 shares were allotted and rest of them were rejected/withdrawn (due to insufficiency of funds).

21. From the aforesaid, it is clear that the Noticees were not the only investors who had withdrawn the bids from said IPO, rather, several other investors whose bids were also either withdrawn or rejected at large scale. As regards to the allegation of misleading appearance of bids with an intention to artificially inflate the bid book or /and to create an interest for other investors/public to subscribe in the Issue, in light of the facts and circumstances of case, it is difficult to arrive at conclusion that the bids of Noticees which were made in a single day i.e. on the second day of IPO (May 02, 2011) that too for a total of 1,28,520 shares only which is approximately 0.31% of the total bid book size and 0.76% in the NII category, can influence other investors to bid in the said IPO.

22. Further, in their support, the Noticees stated that they were collectively maintaining funds in the account of M/s Sunil Investment (A/c No.

00040510000007) and Mr. Sunil Kumar Bachawat (A/c No. 00040510000090), and were having /enjoying the cash credit facility for ₹ 27,00,000/- and ₹ 9,50,000/- respectively with UCO Bank as on May 04,2011. They also submitted that as on May 04, 2011, the withdrawalable balance in their UCO Bank accounts was ₹ 51 Lakh in A/c No. 00040510000007, ₹ 10 lakh in A/c No. 00040510000090. Further, the Noticees also during the current proceedings, submitted a certificate from Federal Bank Ltd. dated September 10, 2013 showing that M/s Sunil Investment was enjoying an overdraft limit (A/c No. 10995500012991) of ₹ 12,90,000/- against Fixed Deposit and on May 04, 2011 the balance in this account was ₹ 10,06,708/-. The Noticees stated that said amount was in excess of their total obligation to meet the bids payment. The Noticees also submitted that they had not purposely returned or made stop payment of the cheques, as they assumed that the cheque will come for debiting in their Bank Account on third day from the last day of the closure of Issue, but, it came to their Bank for debit on second day from the closure of Issue, before, they could transfer funds on the same day from their other account, the cheques were returned by the Bank with reason as 'balance insufficient'.

23. The Noticees also submitted that use of cash credit facility results in charging of interest at a rate of about ₹ 30 per lakh per day, and the total interest on ₹ 61 Lakh worth of applications would have been more than ₹ 1800/- per day, and for that reason they decided to make the funds available in their Bank Account on May 04, 2011 instead of on May 03, 2011, so that the cheques issued for IPO could get cleared on May 05, 2011.

24. Upon scrutiny of the avaialble records / two certificates of UCO Bank dated June 18, 2013, it is observed that the cash credit limit of ₹ 51,19,466.22 and ₹ 9,90,283.00 on May 04, 2011 was there in A/c of Sunil Investment and in A/c of Mr. Sunil Kumar Bachawat respectively. Further, as per the certificate of Federal Bank Ltd. dated September 10, 2013 it is shown that M/s Sunil Investment (A/c No. 10995500012991) was enjoying an overdraft limit of ₹ 12,90,000/- against Fixed Deposit and on May 04, 2011 the balance in the account was ₹ 10,06,708/- . The said three certificates shows that the funds available on May 04, 2011 was to the extent of ₹ 71, 16,457/-. The said Bank certificates were also forwarded to the Investigation Department for comments, if any. The Investigation Department reiterated their stand as they took under the investigation. It is also observed that on May 04, 2011, an amount of ₹ 20,90,000/- was also transferred from Bank Account of Mr. Sunil M. Bachawat to

the Bank Account of Sunil Investment vide cheque dated May 03, 2011, which shows their readyness to transfer certain amount to honour the bid application. Keeping in view of the said Bank Certificates, I rely that sufficient funds were available in said three Bank Accounts to meet all the Noticee's collective bid payment obligation of approximately ₹ 62.97 Lakh.

25. It is further observed from the available records that another family/group related entity of the Noticees namely- Mr. Sunil M. Bachawat also made bids for 18,360 shares in the said IPO and was allotted the said shares which were sold by him at the rate of ₹ 23 per share suffering loss. Here, the submission of the Noticees was that if they had been party to the fraud of loading order book in the said IPO and intended to withdraw lateron just to create an impression of high oversubscription, then, why they would have allowed one of their applicant to go successful, appears to be acceptable. As submitted by the Noticees, it is also examined from the available records (UCO Bank Statement) that only ₹ 20,90,000/- were transferred from the account of Mr. Sunil M. Bachawat to Sunil Investment (Noticees's collective account) on May 04, 2011 and rest of the adequate amount were left in his account to honour his cheque for which he was allotted shares in said IPO. Further, the submission of the Noticces that if there were any malafide intention on their part, then entire amount could have been transferred from the account of Mr. Sunil M. Bachawat to dishonour even his cheque also, appears to be acceptable.

26. In view of above, it is noted that the aforesaid submissions of the Noticees are reasonable. As observed above, it is difficult to believe that the bids made by the Noticees on the second day which is approximately 0.31% of the total bid book, can influence other investors to bid in the said IPO. Also, at that point of time, no restriction under ICDR Regulations was applicable for the NII category in withdrawing bids applications. Further, there were several other investors whose bids were also either withdrawn or rejected at large scale. The important fact cannot be ignored that the Noticees were having the sufficient money to honour their entire bid applications in the IPO of VIL and no collusion or any relation of Noticees with VIL was alleged. It is also noted that Whole Time Member (WTM) of SEBI vide ad-interim order dated July 11, 2011 issued certain directions to the VIL and the same was challenged by the VIL before the Hon'ble Securities Appellate Tribunal (SAT). The Hon'ble SAT vide order dated August 25, 2011 with certain modifications of aforesaid WTM's order, also *inter-alia* directed the VIL to provide withdrawal option to the investors of RII category to the extent of 15,00,348 shares, within 7 days from date of order. The Hon'ble SAT further,

directed the VIL to make bonus shares to the investors in this IPO at the ratio of one share for every four shares held. Keeping in mind the entirety of case, it is difficult to hold the Noticees liable for such serious charge of fraudulent exercise in the matter.

27. Therefore, in light of aforesaid observations, facts , circumstance and records of the case, I am of the view that withdrawal of said bids by the Noticees (due to insufficiency of funds), cannot be considered to have been placed with an intent to artificially inflate the bid book and to create misleading interest for other investors/public to subscribe in the Issue. Therefore, contravention of provisions of SEBI Act and PFUTP Regulations, are not proved against the Noticees. Accordingly, they are not liable to be punished under section 15HA of the SEBI Act.

Order:

28. In view of the above, after considering all the facts / circumstances and records of the case and exercising the powers conferred upon me under section 15-I of the SEBI Act, 1992 read with rule 5 of the Adjudication Rules, I hereby conclude that the alleged violations do not stand established against all the Noticees. Therefore, the matter is disposed off accordingly.

29. Copy of this order is being sent to the Noticees namely - (1) Sunil Mangilal Bachawat HUF (2) Pramod Nathmal Bachawat (3) Nathmal Mangilal Bachawat (4) Mangilal Deepchand Bachawat HUF (5) Nathmal Mangilal Bachawat HUF (6) Mitesh Nathmal Bachawat (7) Pramod N Bachawat HUF, and also to the SEBI, in terms of rule 6 of the Adjudication Rules.

Date: November 29, 2013
Place: Mumbai

D. RAVI KUMAR
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER