BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/GG/AS/2022-23/18733-18736

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

In respect of:

S No	Name of Noticee
1	VCK Share and Stock Broking Services Ltd *(CIN: U67110WB1989PLC046799)*
2	VCK Investments Pvt. Ltd *(CIN: U65999WB1992PTC055225)*
3	Sandip Kampani *(PAN: AFJPK8093D)*
4	Hemal Kampani *(PAN:AFWPK0687E)*

In the matter of VCK Capital Market Services Ltd

A. BACKGROUND OF THE CASE

1. SEBI examined the Draft Letter of Offer in the matter of Open Offer made by Yashveer Singh, Shrey Parekh and Vijay Champaneri to the public shareholders of M/s VCK Capital Market Services Limited (hereinafter referred to as **"Target Company"**), submitted by Aryaman Financial Services Ltd. (Merchant Banker) vide letter dated March 05, 2019. Based on the said examination, it was observed that VCK Share and Stock Broking Services Ltd. had acquired certain shares of the Target Company on June 29, 2015, resulting in violation of certain provisions of the SAST Regulations by M/s VCK Share and Stock Broking Services (**Noticee no: 1**), M/s VCK Investments Pvt Ltd. (**Noticee no: 2**), Sandip Kampani (**Noticee no: 3**) and Hemal Kampani (**Noticee no: 4**) (hereinafter collectively referred to as **"Noticees/you"**), as promoters of the Target Company.

2. Based on the findings of Examination, it was observed that the Noticees violated the provisions of Regulation 10(5), 10(6) and 10(7) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **"SAST Regulations"**).

B. APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI initiated adjudication proceedings and appointed me as the Adjudicaitng officer under Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "**Adjudication Rules**") to inquire into and adjudge the violations alleged against the Noticees, vide communication dated May 09, 2022.

C. SHOW CAUSE NOTICE AND PERSONAL HEARING

4. A common Show Cause Notice dated May 26, 2022 (hereinafter referred to as "**SCN**") was issued against the Noticees. The SCN was issued under Rule 4(1) of the Adjudication Rules by way of electronic mail along with digital signature, and by Speed Post Acknowledgement Due (SPAD) to show cause as to why inquiry should not be initiated against the Noticees, and penalty, if any, should not be imposed under the provisions of Section 15A(b) of the SEBI Act. In the SCN, it was observed that the Noticees as acquirers failed to intimate and/ or make disclosures to the exchange as per provisions of Regulation 10(5), (6) and (7) of the SAST Regulations, pursuant to acquisition of shares of the target company by Noticee No: 1 on June 29, 2015. The allegations have been elaborated and considered along with the replies of the Noticees, in the latter part of this order; after narration of the preliminary dates and events.

5. The common SCN dated May 26, 2022 was served on the Noticees vide digitally signed emails and SPAD. Noticees submitted replies dated June 15, 2022. Further, they availed of the opportunity of hearing on July 06, 2022. Mr Anil Shah, Advocate from Juris Matrix Partners LLP Advocates & Solicitors, appeared on behalf of the Noticees and made submissions relying on the replies of the Noticees.

D. FACTUAL MATRIX

6. As seen from the facts narrated under the heading '**BACKGROUND OF THE CASE**', the SCN was based on SEBI's Examination of the Draft Letter of Offer in the matter of Open Offer made by Yashveer Singh, Shrey Parekh and Vijay Champaneri to the public shareholders of the Target Company. Pursuant to the said Examination, allegations were levelled against the Noticees and the same have been summarized below:

6.1. Noticee No: 1 acquired 12,15,562 (13.43%) equity shares of the Target Company from Noticee No: 2 on June 29, 2015. It was observed in the SCN that the said transaction being an inter se promoter transfer , it was exempt from the obligation to make an Open Offer under Regulation 3 and 4 of the SAST Regulations, in terms of provisions of Regulation 10(1)(a)(ii) of the SAST Regulations. However, sub-regulations 5, 6 and 7 of Regulation 10 of the SAST Regulations cast certain obligations *interalia* on the acquirers, to enable the acquirers to avail the exemption.

6.2. It was alleged that the Noticees, as the erstwhile promoters of the Target Company, did not intimate BSE about the details of acquisitions made on June 29, 2015, at least four working days prior to the date of proposed acquisition, as mandated under Regulation 10(5), and made delayed submission of the report pertaining to the said transaction under Regulation 10(6) and 10(7) of the SAST Regulations to BSE. Therefore, it was alleged that the Noticees had violated the provisions of Regulations 10(5), (6) and (7) of the SAST Regulations.

6.3. The relevant provisions are elaborated hereunder:

General Exemptions

10.

(1)……….

(2)……….

(3)……….

(4)……….

(5) In respect of acquisitions under clause (a) of sub-regulation (1), and clauses (e) and (f) of sub-regulation (4), the acquirer shall intimate the stock exchanges

where the shares of the target company are listed, the details of the proposed acquisition in such form as may be specified, at least four working days prior to the proposed acquisition, and the stock exchange shall forthwith disseminate such information to the public.

(6) In respect of any acquisition made pursuant to exemption provided for in this regulation, the acquirer shall file a report with the stock exchanges where the share of the target company are listed, in such form as may be specified not later than four working days from the acquisition, and the stock exchange shall forthwith disseminate such information to the public.

(7) In respect of any acquisition of or increase in voting rights pursuant to exemption provided for in clause (a) of sub-regulation (1), sub-clause (iii) of clause (d) of sub-regulation (1), clause (h) of sub-regulation (1), sub-regulation (2), sub-regulation (3) and clause (c) of sub-regulation (4), clauses (a), (b) and (f) of sub-regulation (4), the acquirer shall, within twenty-one working days of the date of acquisition, submit a report in such form as may be specified along with supporting documents to the Board giving all details in respect of acquisitions, along with a non-refundable fee of rupees [one lakh fifty thousand]50[by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI or] by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board.

Explanation.—For the purposes of sub-regulation (5), sub-regulation (6) and sub-regulation (7) in the case of convertible securities, the date of the acquisition shall be the date of conversion of such securities.

E. SUMMARY OF REPLIES

7. Replies of the Noticees have been summarized below:

7.1. Noticee No: 1

7.1.1. The issuance of the SCN after around 7 years of the Examination period is unreasonable, and the Adjudication Proceedings must be withdrawn on this ground alone. Noticee has further relied on the judgements of the Hon'ble SAT in the matters of Rajeev Bhanot vs SEBI, Ashok Rupani vs SEBI, Rakesh Kathotia vs SEBI, and judgements of the Hon'ble Supreme Court in the matter of Mansaram vs S.P. Pathak and Others, and contended interalia that due to inordinate delay on part of SEBI for initiating proceedings, appellants cannot be penalized.

7.1.2. The delay in compliance was on account of lack of procedural knowledge and was unintentional, not being in defiance of law.

7.1.3. Doctrine of mitigation applies as Noticees have already complied with the provisions of Regulation 10(6) and (7) of the SAST Regulations. Further, any penalty will be prohibitive in terms of financial constraints due to the problems being faced by the Noticees on account of COVID pandemic.

7.2. Noticee No: 2

7.2.1. The obligation to make prior intimation under Regulation 10(5) and submit reports under Regulations 10(6) and (7) of the SAST Regulations lies on the acquirer. However, Noticees were not acquirers as regards the relevant acquisition as referred in the SCN. Therefore, SCN against the Noticees must be withdrawn.

7.3. Noticee Nos: 3 and 4

7.3.1. SCN is issued to the Noticee Nos 3 and 4 as Directors of Noticee No: 1. However, as common SCN is issued to VCK Share and Stock Broking Services Ltd and to the Noticees 3 and 4, no separate proceedings must lie against them in the interest of natural justice.

F. ISSUES

8. Based on the allegations levelled in the SCN, the following issues have been identified:

8.1. Whether the Noticees, as the erstwhile promoters of the Target Company, complied with the requirements contained in sub-regulations (5), (6) and (7) of Regulation 10 of the SAST Regulations, while effecting inter se transfer of shares on June 29, 2015, as alleged in the SCN, while availing of the benefit of automatic exemption from open offer provided under regulation 10(1)(a)(i), and

8.2 whether all the Noticees can be held liable for such breach, if established?

G. CONSIDERATION OF ISSUES

9. I proceed to consider the issue on merits.

9.1. Allegations pertaining to the issue are elaborated herewith. It was observed in the SCN that Noticee No: 1 acquired shares of the Target Company from Noticee No: 2 on June 29, 2015 as per the details given below:

Table No: 1

Name of the promoter	**Pre-Transaction**		**Post-Transaction**	
	No. of shares held	Shareholding of the Target Company	No. of shares held	Shareholding of the Target Company
VCK Share & Stock Broking Services Ltd (Noticee No: 1)	12,18,952	13.47%	24,34,514	26.90%

9.2. It was observed that the above transaction was exempt from the obligation to make an Open Offer under Regulation 3 and 4 of the SAST Regulations, in terms of provisions of Regulation 10(1)(a)(ii) of the SAST Regulations. The said provisions provided that the acquisition of shares pursuant to inter se transfer of shares between the persons named as promoters in the shareholding pattern filed by the target company in terms of the listing agreement or the SAST Regulations for not less than three years prior to the proposed acquisition, is exempt from the obligation to make open offer. However, Noticees were obligated to make intimation and disclosures as mandated under Regulations 10(5), (6) and (7) of the SAST Regulations. In terms of Regulation 10(5) of the SAST Regulations, the Noticees as the acquirer(s) were mandated to intimate the stock exchanges where the shares of the Target Company were listed, the details of the proposed acquisition at least 4 working days prior to the proposed acquisition. In terms of Regulation 10(6) of the SAST Regulations, in respect of the acquisitions made pursuant to exemption provided, the Noticees were mandated to file a report with the stock exchanges where the shares of the Target Company were listed, not later than 4 working days from the date of acquisition. Further, in terms of Regulation 10(7) of the SAST Regulations, the Noticees were required to submit a report to SEBI along with supporting documents giving all details in respect of acquisitions, and a non-refundable fee of Rs 1,50,000/-, within 21 working days of the date of acquisition.

9.3. Further, in response to SEBI's letter dated May 28, 2019, Noticee Nos: 1 and 2, through separate letters dated June 24, 2019 submitted reports in terms of Regulation 10(7) of the SAST Regulations to the BSE. Also, BSE vide its email dated March 12, 2020 informed *interalia* that Noticee No: 1 had filed the report mandated under the provisions of Regulation 10(6) of the SAST Regulations for the acquisition made on June 29, 2015, with the Exchange belatedly on October 23, 2018.

9.4. Therefore, it was alleged that the Noticees, as the erstwhile promoters of the target company, did not intimate BSE about the details of acquisitions made on June 29, 2015, within the timeline as mandated under Regulation 10(5), and made delayed submission of the report pertaining to the said transaction under Regulation 10(6) and 10(7) of the SAST Regulations to BSE. Therefore, it was alleged that the Noticees violated the provisions of Regulations 10(5), (6) and (7) of the SAST Regulations.

10. Findings:

10.1. Noticees have *interalia* contended that the issuance of the SCN after around 7 years of the "Examination period" is unreasonable, and the Adjudication Proceeding must be withdrawn on this ground alone. I note that the instant proceedings resulted from SEBI's examination of the Draft Letter of Offer in the matter of Open Offer made by Yashveer Singh, Shrey Parekh and Vijay Champaneri to the public shareholders of the Target Company, submitted by Aryaman Financial Services Ltd (Merchant Banker) vide letter dated March 05, 2019. Thus, it is noted that the violation came to the knowledge of SEBI only in March, 2019, when the said Letter of Offer was received. Further, SEBI had not examined the operations of the target company, during any 'Examination period', as has been contended, and therefore, reference to 'Examination Period' made by the Noticees is misleading and it could only mean the date of the transaction or the transfer of shares that the Noticees have executed, which had not come to the knowledge of SEBI prior to 2019 March. To sum up, there was a time gap of around 3 years in the issuance of SCN from the date of knowledge of non-disclosure to the date of initiation of enforcement proceeding. The question therefore is whether this period of 3 years can be treated as a delay in initiating the action which would go to vitiate the proceedings as bad in law. The answer to this question, would depend on the facts and the significance of the provisions that have been alleged to be violated.

10.2. I note that after receiving the said letter of offer, vide letter dated May 28, 2019, SEBI advised the acquirers to file requisite reports under Regulation 10(7) of the SAST Regulations. The acquirers submitted the said report vide respective letters dated June 27, 2019. Thereafter, Adjudication Proceeding in the matter was approved on October 15, 2020. Vide communication dated May 09, 2022, the matter was allocated to me for adjudication as seen from the AO appointment communication. Thereafter, the SCN was issued on May 26, 2022. The issuance of SCN was a result of the sequence of events as narrated. Moreover, any acquisition or transfer of shares inter se promoters stands exempted in law from the open offer obligation only if the attendant conditions are fulfilled by the acquirers. If not, then the acquisition does not qualify for an automatic exemption. Even assuming that there is a delay as contended by the Noticees, in initiation of proceedings against them, it is a matter of fact that there was a delay of around 4 years on the side of the Noticees to make the requisite post-acquisition reports. The prior intimation contemplated under sub-regulation (5) still remains unperformed and has become impossible of performance at this point of time. The facts being as stated above, I do not find this to be a fit case to drop the allegations against the Noticees on the ground of delay.

10.3. I note that Noticee No: 1 acquired 12,15,562 shares (13.43%) of the target company from Noticee No: 2 on June 29, 2015. Due to the said transaction, shareholding of Noticee No: 1 increased from 12,18,952 shares (13.47%) to 24,34,514 shares (26.90%) in the target company.

10.4. Further, as observed in the SCN, both Noticee Nos: 1 and 2 were promoters in the target company at the time of transaction. The said acquisition of shares was exempt from the obligation to make open offer under Regulation 3 and 4, because in terms of provisions of Regulation 10(1)(a)(ii) of the SAST Regulations, the acquisition of shares pursuant to inter se transfer of shares between the persons named as promoters in the shareholding pattern filed by the target company in terms of the listing agreement or the SAST Regulations for not less than three years prior to the proposed acquisition, is exempt from the said obligation to make open offer.

10.5. However, Regulations 10(5), (6) and (7) of the SAST Regulations cast certain obligations *interalia* on the acquirers, who make acquisitions which are exempt from making Open Offer as per provisions of Regulation 10(1)(a) of the SAST Regulations. Therefore, relevant question to examine is whether the Noticees were acting as acquirers in terms of SAST Regulations, such that the obligation to make said disclosures lay collectively on them. I note that in terms of Regulation 2(1)(a) of the SAST Regulations, “acquirer” means any person who, directly or indirectly, acquires or agrees to acquire whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over a target company. Further, in terms of Regulation 2(1)(q)(2) of the SAST Regulations, the promoters and members of the promoter group, should be deemed to be ‘persons acting in concert’ unless the contrary is established. Further, I note that the Noticees were promoters in the target company as per the shareholding pattern disclosed to the BSE for the quarters ending March, 2015 and June, 2015 (provided as Annexure B to the SCN). Moreover, the transferor (Noticee No: 2) and being the directors of VCK

Share and Stock Broking Services Ltd, Noticee Nos: 3 and 4 were also having knowledge of the acquisition and have acted as PACs.

10.6. The Noticees were obligated to submit intimations or submit report under provisions of Regulation 10(5), (6) and (7) of the SAST Regulations. In terms of Regulation 10(5) of the SAST Regulations, Noticees were mandated to make prior intimation, at least 4 working days before the date of proposed acquisition. However, I note from the available record that Noticees did not make such intimation to the BSE.

10.7. I also note that the format for disclosure under Regulation 10(5), (6) and (7) contains *interalia* information pertaining to price at which shares are proposed to be acquired. Said information should have been made available to the investors and market at large at the relevant time, that is, prior to the acquisition in terms of Regulation 10(5) and post the acquisition in terms of Regulation 10(6) and (7) of the SAST Regulations. By not doing so in the instant matter, Noticees deprived the shareholders of the said essential information, which was needed for them to take investment decisions, as regards their shareholding in the target company.

10.8. Further, Noticees were mandated to submit reports in terms of Regulations 10(6) and (7), within 4 and 21 working days of the acquisition to the BSE. However, I note that only Noticee No: 1 and 2, vide their respective letters dated June 24, 2019 made delayed submission of reports in terms of Regulation 10(7) of the SAST Regulations to the BSE, vide letters dated June 24, 2019. Also, Noticee No: 1 had filed the report mandated under the provisions of Regulation 10(6) of the SAST Regulations, with the Exchange belatedly on October 23, 2018.

10.9. Noticees have contended that the delay in compliance was on account of lack of procedural knowledge and was unintentional. I note that ignorance of law cannot be an excuse in law. Noticee No: 2 has further contended that he was not an acquirer as regards the referred transaction. Further, Noticee Nos: 3 and 4 have contended that as Noticee No: 1 (the acquirer) has since been served SCN in the matter, they should not be made party to the proceedings as directors of Noticee No: 1. I note that, as observed in para no 10.5 above, Noticee Nos: 1 to 4 were promoters in the target company at the time of relevant transaction. Further, Noticee Nos: 3 and 4 were not just promoters, they were also the directors of VCK Share and Stock Broking Services Ltd (acquirer) and Noticee No: 2 was the transferor. Thus, the obligation to make disclosures under Regulations 10(5), (6) and (7) of the SAST Regulations devolve on the Noticees as a group of persons acting in concert. Therefore, I find that the contentions of the Noticees in this regard do not merit consideration.

10.10. Therefore, I note that the Noticees failed to intimate BSE about the proposed acquisition, resulting in violation of provisions of Regulation 10(5) of the SAST Regulations. Further, Noticees made delayed submission of reports in terms of Regulation 10(6) and (7) of the SAST Regulations, resulting in violation of the said provisions.

10.11. In conclusion, I note that Regulation 10 of the SAST Regulations is titled 'General Exemptions'. While Regulation 10(1) lists the acquisitions which are exempt from the obligation to make an open offer under Regulations 3 and 4, *interalia* involving inter se transfer between promoters of the target company, Regulation 10(5), (6) and (7) state the intimations/ reports which have to be submitted in time bound manner, even while availing of the said exemption. The exemption under Regulation 10(1) can only be availed if the provisions of Regulation 10(5), (6) and (7) are also adhered to. The failure by the Noticees to abide by the provisions of Regulation 10 (5), (6) and (7) of the SAST Regulations in the instant matter, therefore, is an offence which merits imposition of penalty.

10.12. In this connection, to emphasize the importance of compliance with conditions attached to exemptions, I would like to refer to the Constitution Bench in the case of *Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal, (2011) 1 SCC 236* followed the ratio in Hansraj Gordhandas Case (supra), to reiterate the law on the aspect of interpretation of exemption clause in para 29 as follows:

22."The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or *concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved.* ***If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption.***" *(emphasis supplied)*

24."…..…the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. …"

10.13. In my view, in case of an inter se transfer between promoters, though there is no change of control , the constitution of control changes and the investors are entitled to be aware of the same. The change in share-holding or the fact that one of the promoters have relinquished his/its ownership rights to another co-promoter is a relevant information from the perspective of an investor and hence the Takeover Code has provided for such disclosures and prior intimation to the stock exchange as well as the Board. In this case, I note that by the instant acquisition, the shareholding of VCK Shares and Securities Ltd. has increased from 13.47% to 26.90%, which is above the threshold of 25%, when taken individually. It is evident from the quantum of acquisition that the compliance with conditions in Regulation 10(5), (6) and (7) was significant/relevant and therefore, substantive in nature as opposed to procedural/technical compliance. Irrespective of the quantum, the relevance of compliance with the said provision cannot be undermined in any view of the matter, as otherwise, the requirements stipulated in the Regulations would become redundant in the case of exempted transactions between promoters. Thus, I am inclined to impose appropriate penalty on the Noticees, keeping in mind all the facts including the fact that the delay in initiation of proceedings was avoidable; that the acquirers filed the report mandated under Regulation 10(6) on June 29, 2015 and under Regulation 10(7) on June 24, 2019; that the subject transaction would not have come to the knowledge of SEBI but for the filing of the Letter of Offer by Aryaman Financial Services Ltd and that the Noticees acted together as PACs and formed part of the promoter group.

H. ORDER

11. I hereby hold the Noticees liable for penalty as shown below:

Table No: 2

S No	Noticees	Violation of provisions	Actions Recommended	Penalties
1	VCK Share and Stock Broking Services Ltd (Noticee no: 1),	Regulation 10(5), (6) and (7) of the SAST Regulations	Section 15A(b) of the SEBI Act	INR 4,00,000/- (Rs Four Lakhs) to be paid jointly and severally
2	VCK Investments Pvt. Ltd (Noticee no: 2)		Section 15A(b) of the SEBI Act	
3	Sandip Kampani (Noticee no: 3)		Section 15A(b) of the SEBI Act	
4	Hemal Kampani (Noticee no: 4)		Section 15A(b) of the SEBI Act	

I note that the penalties imposed on the Noticees is commensurate with the violations committed by them.

12. 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 favor 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

13. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department-1 DRA-4), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.". The Noticee shall also provide the following details while forwarding DD / payment information:

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

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

15. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees and also to the SEBI.

Date: August 30, 2022	**GEETHA G**
Place: Mumbai	**ADJUDICATING OFFICER**