BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. IVD-ID7/SVIL-DDL/AO/DRK/SS/EAD3/156-09/59-2010]

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5(1) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

Against
Divya Dealers Limited
(PAN – AABCD0794L)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) had conducted an investigation into the dealings in the shares of Silicon Valley Infotech Limited (hereinafter referred to as **'SVIL/Company'**) during the period November 01, 2002 to April 23, 2003 (hereinafter referred to as the **'investigation period'**). The shares of the Company were traded on The Calcutta Stock Exchange Limited (hereinafter referred to as **'CSE'**) and the Bombay Stock Exchange Limited (hereinafter referred to as **'BSE'**) during the investigation period. SVIL was grouped under B1 segment in BSE.

2. SVIL was incorporated as a Public Limited Company on 29.08.1983. The Company is primarily carrying out the business of financing loans and investment of shares and securities and is a NBFC registered with RBI.

3. The price of the scrip of SVIL opened at Rs.8.60/- on 01.11.2002 and reached Rs.9.50/- on 26.12.2002. Thereafter the scrip picked up momentum and went upto Rs.65.75/- on 23.04.2003. On a few days (i.e.

on 28.01.2003, 29.01.2003, 03.02.2003 and 11.04.2003) the volumes were exceptionally higher.

4. Total traded quantity as provided by CSE in the scrip was 70,15,661 shares. The trading by major stock-brokers was as follows:

Name of the Stock Broker	**Buy Quantity as reported by CSE**	**Sell Quantity as reported by CSE**
Bubna Stock Broking Services Ltd.	22,40,000	24,10,000
Prakash Nahata & Co.	20,23,848	20,36,177
M. Bhiwaniwala & Co.	17,27,411	16,93,100

5. Majority of the trades were cross deals. Although the transactions were claimed to be for different clients, the client codes were entered randomly and the reason being quoted is 'to avoid margins'. The trades were then distributed to the respective clients. There was no settlement-wise pay-in / pay-out of funds as well as securities to clients. Promoter related entities were major sellers through all the stock-brokers.

6. The promoter companies of SVIL holding more than 1% during the investigation period were Arihant Ltd. and ATN International Ltd., where both are listed companies. Also, Arihant Ltd., ATN International Ltd. and Blue Chip India Ltd. were 'companies under the same management' as SVIL as defined under Section 370(1B) of the Companies Act, 1956.

APPOINTMENT OF ADJUDICATING OFFICER

7. I was appointed as the Adjudicating Officer vide order dated December 10, 2008 (subsequent to the transfer of the previous Adjudicating Officer Shri Biju S.), under Section 15 I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the **'SEBI Act'**) read with Rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry

and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **'Adjudication Rules'**) to inquire into and adjudge under Sections 15HA and 15A(b) of the SEBI Act, the violations of Regulation 4(a), (b), (c) and (d) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as **'PFUTP Regulations, 1995'**) read with the provisions of Regulation 13 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as **'PFUTP Regulations, 2003'**), Regulation 7(1A) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as **'Takeover Regulations'**) and Regulation 13(3) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **'Insider Trading Regulations'**), alleged to have been committed by Divya Dealers Limited (hereinafter referred to as the **'noticee'**).

SHOW CAUSE NOTICE, REPLY AND HEARING

8. A Show Cause Notice No. A&E/SVIL/DRK/SS/162472/2009 dated May 06, 2009 (hereinafter referred to as the **'SCN'**) was served on the noticee through Registered Post Acknowledgment Due (**RPAD**) in terms of the provision of Rule 4(1) of the Adjudication Rules, seeking reply of the noticee as to why an inquiry should not be held against it in respect of the violations alleged to have been committed by the noticee.

9. In the SCN it was alleged that the noticee as a promoter related selling entity of SVIL along with other promoter related selling entities had colluded with the stock-broker Bubna Stock Broking Services Ltd. (hereinafter referred to as **'Bubna'**) and purchasers, Rocky Marketing Pvt. Ltd. (hereinafter referred to as **'Rocky'**) and Prince Securities, in order to

create artificial volumes and manipulate the price of the scrip of SVIL. It was alleged that the noticee had sold 3.5 lakh shares through the stock-broker Bubna. It was alleged that Rocky had returned 5 lakh shares to the noticee through the same stock-broker. It was also alleged that the noticee had sold 5.35 lakh shares of SVIL in collusion with the stock-broker M. Bhiwaniwala & Co.

10. It was stated in the SCN that the share price at CSE was much at variance when compared to the price of BSE, which could have been attributable to the cross deals executed at CSE wherein the price discovery as well as volumes were artificial and manipulated.

11. It was stated in the SCN that the Director of Divya Dealers Ltd., Shri Sandeep Dey, was an employee of ATN International Ltd. (wherein ATN International Ltd. was a promoter of SVIL). Hence it was alleged that the noticee was under the same management as SVIL or its promoters (i.e ATN International Ltd. and Arihant Ltd.) and as such was a person acting in concert (**PAC**) with the promoters / promoter related selling entities.

12. It was also alleged that the noticee as a PAC had individually sold more than 2 percent of the share capital of SVIL without making any disclosures as required under Regulation 7(1A) of the Takeover Regulations.

13. It was also alleged that the noticee was holding 8.02 percent shares of SVIL, i.e. more than 5 percent, as on December 31, 2002, and had sold more than 2 percent of its holdings (since the noticee's shareholding as on March 31, 2003 was 1.16 percent) without making any disclosures as required under Regulation 13(3) of the Insider Trading Regulations (as seen from the share holding pattern of SVIL for the quarter ending 31/12/02 and 31/03/03).

14. A reply dated May 23, 2009 was received in reference to the SCN. The noticee in its reply submitted that:

i. It had never indulged in any act which results in reflection of prices of securities based on transactions that are not genuine trade transactions.
ii. It had never indulged in any act which was calculated to create false or misleading appearance of trading on the securities market.
iii. It had never taken part in nor entered into any transactions in securities with the intention of artificially rising or depressing the prices of securities.
iv. It had never indulged in any act, which resulted in reflection of prices of securities based on transactions that were not genuine trade transactions.
v. The noticee had its separate legal entity. The noticee was not under the same management of SVIL as defined under the Companies Act though Mr. Sandeep Dey, Director of the noticee, was an employee of ATN International Ltd. Since the shareholding of the noticee was 8.02% of SVIL, it was not within the limit of more than 15% and less than 55% disclosure requirement under Regulation 7 (1A) of the Takeover Regulations and hence the same was not applicable to the noticee.
vi. The noticee submitted that the requirement to make disclosure to the Company about the change of more than 2% under Regulation 13(3) of the Insider Trading Regulations was if the holding was more than 5%. It was submitted that the noticee had made timely disclosure vide its letters dated 28/01/2003 & 22/02/2003.
vii. It would be applying for consent.

15. Subsequently the noticee applied for consent vide its letter dated 12/06/2009. However, the consent application was rejected by SEBI vide letter dated 24/12/2009. Thereafter, a personal hearing notice dated February 03, 2010 was served on the noticee through RPAD and also through hand delivery by SEBI, Eastern Regional Office, Kolkata, scheduling a hearing on February 22, 2010.

16. The noticee's Authorized Representative (**AR**), Shri Vijay Kumar Chandak, Chartered Accountant and promoter of VC Corporate Advisors Private Limited, a SEBI Registered Merchant Banker, attended the hearing on the scheduled date on behalf of all the 9 allegedly associated promoter related selling entities, namely, Divya Dealers Limited, Amluckie Investment Company Limited, Arihant Limited, Dhansafal Vyapaar Limited, Ojas Suppliers Limited, , Acme Resources Ltd. (formerly Mantra Online Ltd.), Hanurang Projects Ltd., Casecade Power Limited (formerly Casecade Dealcom Pvt. Ltd.) and Udgam Commercial Limited. The AR submitted that all the 9 entities had only client-broker relationship with the stock-broker, Bubna.

17. The AR undertook to clarify and submit within ten days the following:
    i. How the noticee did not fall under the category of the companies under the same management as SVIL or its promoters as per the provisions of the Companies Act, 1956 and how the noticee did not act as PAC.
    ii. Why the Takeover Regulations violations were not applicable.
    iii. The relationship if any, of the noticee with the purchasers Rocky and Prince Securities.
    iv. In case of the alleged violations of the Insider Trading Regulations, submissions of proof of disclosers by the noticee to the Company.
    v. Volume of shares sold and the price at which the shares were sold.
    vi. Wherever the noticee had sold the shares at BSE, the details of those trades – the entire volume and the sale consideration.
    vii. In the trades of Divya Dealers Limited, why were the 5 lakh shares returned by Rocky Marketing Pvt. Ltd. and whether any consideration was paid.

18. The noticee's reply dated March 01, 2010 came via email on March 03, 2010. Subsequently, the reply came via post. The noticee submitted that:

i. Regulation 7(1A) of the Takeover Regulations was not applicable to it as the shareholding pattern of the noticee was less than 15% of the paid-up equity & voting rights of the share capital of SVIL.

ii. The noticee was holding more than 5% equity shares of SVIL as on 31/12/2002 and it had sold more than 2%, since on 31/03/2003 the holding of the noticee was 1.6%. Since the requirement of Regulation 13(3) of the Insider Trading Regulations, is to make disclosure about the change of more than 2% shareholding at any point of time, to the target company, if the holding is more than 5%, the noticee had made timely disclosures to the target company, i.e. SVIL, vide letters dated 28/01/2003 and 22/02/2003 in compliance with the regulation.

iii. As per Section 370(1B) of the Companies Act, 1956, the noticee does not fall under any of the sub-clauses which detail the nature of the companies which fall under the preview of 'companies under the same management'. Therefore, the noticee was not a 'companies under the same management' with SVIL.

iv. The noticee submitted that persons falling under the category of 'Person Acting on Concert' has been defined under Regulation 2(i)(e) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

v. The details of the shares of SVIL sold by the noticee during the investigation period was also submitted as detailed hereinafter:

Through CSE:

Date	Volume of shares sold	Price (in Rs.)	Value (in Rs.)
20.01.2003	1,50,000	5.24	7,85,500.00
10.02.2003	1,42,200	11.47	16,31,034.00
04.03.2003	57,800	34.27	19,80,806.00

Through BSE:

Date	Volume of shares sold	Price (in Rs.)	Value (in Rs.)
31.03.2003	5,20,000	22.65	1,17,76,180.00
02.04.2003	15,000	19.24	2,88,600.00

19. Subsequently, further information was sought vide an email dated March 10, 2010 wherein the noticee was advised to submit:
    i. The date and rate of purchase of all the shares sold by the noticee.
    ii. How the shares were purchased. (Off market or through the system - If it was off market then the counter party to the trades and the consideration paid if any and the mode of payment i.e. cash/cheque. If it was through the system then the names of the stock-brokers through whom the trades were done.)
    iii. Any case laws / judgments relating to Section 370(1B) of the Companies Act, 1956, as discussed during the personal hearing.

20. The AR's reply came via email on 15/03/2010 and the purchase details of 95,200 shares sold during the investigation period (out of total of 8,85,000 shares) were provided. It was submitted that the remaining 7,54,800 shares (i.e. 8,85,000 – 95,200 shares) were purchased in or before 1999-2000, for which records were not available. The AR also submitted that there were no case laws / judgments relating to Section 370(1B) of the Companies Act, 1956.

CONSIDERATION OF EVIDENCE AND FINDINGS

21. I have taken into consideration the facts and circumstances of the case and the materials made available on record.

22. The allegation against the noticee in the SCN was that it was in violation of Regulation 4 (a), (b), (c) and (d) of the PFUTP Regulations, 1995 read

with Regulation 13 of the PFUTP Regulations, 2003, Regulation 7(1A) of the Takeover Regulations and Regulation 13(3) of the Insider Trading Regulations since its actions had resulted in fraudulent and unfair trade practices and non-disclosures as required under both the regulations. The provisions of the said regulations are as hereinafter:

PFUTP Regulations, 1995

"Prohibition against Market Manipulation

4. No person shall -

(a) effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person;

(b) indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market;

(c) indulge in any act which results in reflection of prices of securities based on transactions that are not genuine trade transactions;

(d) enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress, or cause fluctuations in the market price of securities;"

PFUTP Regulations, 2003

"Repeal and savings

13. (1) The Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 is hereby repealed.

(2) Notwithstanding repeal of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, any violation of regulations 3, 4, 5 and 6 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 shall be investigated and proceeded against in accordance with the procedure laid down in these regulations.

(3) Notwithstanding repeal of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities

Market) Regulations, 1995, any investigation pending, at the commencement of these regulations shall be continued and disposed of in accordance with the procedure laid down in these regulations."

Takeover Regulations

"7. [(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.]"

"Consolidation of holdings.

11. (1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, [15 per cent or more but less than [fifty five per cent (55%)]] of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than [5] per cent of the voting rights, [in any financial year ending on 31st March] unless such acquirer makes a public announcement to acquire shares in accordance with the regulations."

Insider Trading Regulations

"Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies
- Continual disclosure.

13. (3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company."

23. The violations mentioned in the above paragraphs make the noticee liable to penalty under Sections 15HA and 15A (b) of the SEBI Act. The relevant text of the Sections are stated hereinafter:-

> **"[15HA. <u>Penalty for fraudulent and unfair trade practices.-</u>**
> **If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.]"**
>
> **"<u>Penalty for failure to furnish information, return, etc.</u>**
>
> **15A. If any person, who is required under this Act or any rules or regulations made thereunder,—**
> **(*b*) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to [a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less];"**

24. The ***first allegation*** against the noticee in the SCN was that it had violated Regulation 4 (a), (b), (c) and (d) of the PFUTP Regulations, 1995 read with Regulation 13 of the PFUTP Regulations, 2003.

25. In this context, the noticee has submitted that it had only a client-broker relationship with the stock-broker Bubna. However, it is to be noted that:
    i. All the 9 selling entities were promoter related entities as alleged in the SCN.
    ii. All the 15 directors (approx.) of the 9 selling entities are in one way or the other connected to either SVIL or ATN International Ltd. or Blue Chip India Ltd.
    iii. SVIL is the target company. ATN International Ltd. is one of the promoter companies of SVIL and is also classified as 'companies under the same management' as SVIL, as confirmed by SVIL vide its letter dated December 18, 2006. Blue Chip India Ltd. is also 'companies under same management' as SVIL, as confirmed by SVIL vide its letter dated December 18, 2006.

iv. All the 15 directors are also either the relatives of the Managing Director of SVIL, or an employee or retainer in the above mentioned three companies, i.e SVIL, ATN International Ltd. and Blue Chip India Ltd. or is Managing Director of SVIL. For example, Shri Sandeep Dey, one of the Directors of the noticee is also an employee of ATN International Ltd.

26. All the 9 promoter related selling entities sold huge quantities of shares of SVIL through the same stock-broker, namely Bubna and during the same period. Also, all these shares sold by the promoter related selling entities, including the noticee have been bought mainly by the two purchasers, namely, Rocky and Prince Securities. These purchasers also bought the shares through Bubna. All these events cannot be a mere coincidence. The table hereinafter illustrates the shares bought and sold by the above mentioned entities through the stock-broker Bubna during the investigation period:

Serial No.	**Name of the Entity**	**Bought**	**Sold**
01	**Divya Dealers ltd.**		**3,50,000**
02	Ojas Suppliers Ltd.		1,50,000
03	Amluckie Investment Co.Ltd		10,00,000
04	Prince Securities	8,75,000	
05	Abhijeet Cement Ltd. (earlier known as Sabera TradeLink Pvt. Ltd.)		2,50,000
06	Dhansafal Vyapaar Ltd.		2,10,000
07	Acme Resources Ltd. (earlier known as Mantra Online Ltd.)		1,50,000
08	Pramod Agarwal	3,00,000	
09	Casecade Power Ltd. (earlier known as Casecade Dealcom Pvt. Ltd.)		1,50,000
10	Hanurang Projects Ltd.		1,50,000
11	Rocky Marketing Pvt. Ltd.	10,55,000	

Serial No.	Name of the Entity	Bought	Sold
	Total Qty reported by the Stock-Broker	**22,30,000**	**24,10,000**

27. As per the Investigation Report (**IR**), the noticee sold 3.5 lakh shares through the stock-broker Bubna at CSE. It was also observed from the IR that Rocky had purchased 10.50 lakh shares approximately through Bubna. However 13 lakh shares were delivered to Rocky by Bubna, out of which 3 lakh shares were returned to Bubna, whereas 5 lakh shares were returned to the noticee and the balance 5 lakh shares were sold by Rocky through another CSE stock-broker, Prakash Chand Nahata. The noticee was advised during the personal hearing to submit why the 5 lakh shares were returned by Rocky Marketing Pvt. Ltd. to the noticee and whether any consideration was paid for the same. However the noticee failed to make any submissions regarding the same. The noticee had sold 3.5 lakh shares through Bubna from January 2003 to March 2003 at the price range between Rs.5.24/- to Rs.34.27/- for a value of approximately Rs.43,97,340/-.

28. The noticee also sold 5.35 lakh shares through another stock-broker of CSE namely, M. Bhiwaniwala & Co. The following table illustrates the shares of SVIL traded by the stock-broker on behalf of its clients during the investigation period:

Serial No.	Name of the Entity	Bought	Sold
01	**Divya Dealers Ltd.**		**5,35,000**
02	Kishore Kr Jain	70,000	
03	Kishore Kr Jain HUF	65,000	
04	Ramila Jain	95,000	
05	SwarnaGanga	1,39,900	4,39,450
06	Anushree TradeLink	2,78,501	2,26,650
07	ATN International Ltd.		1,90,000

Serial No.	Name of the Entity	Bought	Sold
08	Twenty First Century India Ltd.		3,00,000
	Total Qty reported by the Stock-Broker	**6,70,201**	**16,99,100**

29. From the table above it is observed that Twenty First Century India Limited, another promoter related selling entity, sold 3,00,000 shares of SVIL. It had also sold shares of SVIL through another stock-broker, namely, Prakash Chand Nahata. ATN International Ltd. also sold 1,90,000 shares. The noticee had sold 5.35 lakh shares of SVIL at the price range of Rs.19.24/- to Rs.22.65/- for a value of Rs.1,20,64,780/-. Hence, the noticee had in total sold 8.85 lakh shares through the two stock-brokers, Bubna and M. Bhiwaniwala & Co.

30. The price rose from Rs.8.60/- on 01.11.2002 to Rs.65.75/- on 23.04.2003 (i.e. an increase of approximately 664.53%). The number of shares traded by the noticee was also very high. The noticee itself individually sold 8.85 lakh shares during the investigation period as can be observed from the tables above. Such huge amount of trading in the scrip was calculated to create a false and misleading appearance of trading in the scrip. Further it was also observed from the IR that Prince Securities had dealt in the scrip of SVIL only.

31. It was observed from the records made available that out of the 3 Directors of the noticee during the investigation period, Shri Sandeep Dey, Director of the noticee is also Director of other promoter related selling entities, namely, Acme Resources Ltd. (formerly Mantra Online Ltd.), and Amluckie Investment Company Limited. Shri Niraj Jain and Shri Anil Kumar Jain, two other Directors of the noticee, are also Directors of Udgam Commercial Ltd. Shri Anil Kumar Jain is also Director of Casecade Power Ltd. (formerly Casecade Dealcom Ltd.). The noticee is also

observed to be a PAC with other promoter related selling entities of SVIL as detailed later in the order.

32. It is further observed from the IR that there was no settlement wise pay-in / pay-out of funds as well as securities to the promoter related selling entities by the stock brokers Bubna and M. Bhiwaniwala & Co. The difference in shares bought / sold and delivered leads to the conclusion that there was a prior understanding amongst the promoter related selling entities (where the noticee is also part of the same), the purchasers (i.e. Rocky and Prince Securities) and the stock-brokers, to create artificial volumes and manipulate the price of the scrip of SVIL.

33. Therefore it can be stated that the 9 promoter related selling entities including the noticee, along with the two purchasers, Rocky and Prince Securities and the stock broker Bubna and also the noticee with the stock-broker M. Bhiwaniwala & Co. acted together to create artificial and false appearance of trading in the scrip.

34. In view of the above events as discussed in pre paras, it can be concluded that the noticee indulged in artificially creating volumes and manipulated the price of the scrip of SVIL in violation of the provisions of the PFUTP Regulations, 1995 read with PFUTP Regulations, 2003 as stated in pre-paras.

35. The noticee submitted that it cannot be classified as ‘companies under the same management’ with SVIL or its promoters as per Section 370(1B) of the Companies Act, 1956. On an examination of the provisions of Section 370(1B) of the Companies Act, 1956 and the submissions made by the noticee, I am inclined to agree with the submissions of the noticee that the noticee could not be classified as ‘companies under the same management’ as SVIL or its promoters (i.e. ATN International Ltd. and

Arihant Ltd.). Therefore the allegation against the noticee that it was 'companies under the same management' as SVIL or its promoters, does not seem to be established.

36. The ***second allegation*** against the noticee in the SCN was that it had violated Regulation 7(1A) of the Takeover Regulations.

37. In this context, the noticee had submitted that it could not be classified as a PAC with the promoters as per Regulation 2(i)(e) of the Takeover Regulations. However, it is observed from the documents made available that the noticee, an investment company held more than 2% of the paid up share capital of Amluckie Investment Company Ltd. which is also an investment company and a promoter related selling entity. This makes both the entities, (i.e. the noticee and Amluckie Investment Company Ltd.) as deemed to be PACs under Regulation 2(1)(e)(2)(x) of the Takeover Regulations. Further, it is observed from the available Annual Reports, that the noticee, held more than 2% of the paid up equity capital as on March 31, 2003 of Udgam Commercial Ltd. another investment company and promoter related selling entity. It was also observed that Arihant Ltd. (one of the promoters of SVIL and also 'companies under same management' as SVIL) held more than 2% of the paid up equity capital of the noticee as on March 31, 2003. This classifies the noticee as PAC with Amluckie Investment Company Ltd., Udgam Commercial Ltd. and Arihant Ltd. as per Regulation 2(1)(e)(2)(x) of the Takeover Regulations.

Regulation 2(1)(e)(2)(x) of the Takeover Regulations is quoted below for the sake of convenience:

"Definitions.
2. (1) In these regulations, unless the context otherwise requires :—
.
.
(e) **"person acting in concert" comprises,—**
.
.

(*2*) without prejudice to the generality of this definition, the following persons will be deemed to be persons acting in concert with other persons in the same category, unless the contrary is established :

.

.

(x) any investment company with any person who has an interest as director, fund manager, trustee, or as a shareholder having not less than 2 per cent of the paid-up capital of that company or with any other investment company in which such person or his associate holds not less than 2 per cent of the paid-up capital of the latter company."

38. Hence, the noticee's submission that it is not a PAC with the promoter / promoter related selling entities appears to be incorrect.

39. In this context, the judgment of The Hon'ble Securities Appellate Tribunal in the matter of Mr. Ranjan Verghese Vs. Securities Exchange Board of India in the Appeal No. 177 of 2009 dated April 08, 2010 can be referred to wherein it has been observed that-

"The fact that the appellants acting in concert with each other had made the acquisitions which triggered the Takeover Code, it was incumbent upon them to make a public announcement which, admittedly, they have failed to do so. This failure has seriously prejudiced the public investors / shareholders of the company who have been deprived of their valuable right to exit by offering their shares to the acquirer. We cannot lose sight of the fact that one of the primary objects of the Takeover Code is to allow the public shareholders an exit route when the target company is either taken over by an acquirer or an acquirer makes a substantial acquisition therein. Since the public shareholders were deprived of this valuable right, we do not think that this is a fit case where penalty should be reduced."

40. Further, the Hon'ble Securities Appellate Tribunal in the matter of *Mr. Ranjan Verghese* Vs. *The Adjudicating Officer, SEBI* Appeal No. 152 of 2009 dated September 22, 2009 has observed that-

"Once it is established that the mandatory provisions of the Takeover Code were violated, the penalty must follow"

41. Hence the noticee can be classified as PAC with Amluckie Investment Co. Ltd., Arihant Ltd. and Udgam Commercial Ltd. under Regulation 2(1)(e)(2)(x) of the Takeover Regulations. The combined shareholding of all these 4 entities in SVIL was 26.05% (as per the shareholding pattern of SVIL for the quarters ending September 30, 2002 and December 31, 2002), which is more than 15% of the paid - up capital of SVIL. Individually the noticee did not hold more than 15% of the shares of SVIL, however, along with its PACs it fell in the range of 15% - 55% as required in the Takeover Regulations. Hence, the noticee triggered Regulation 7(1A) of the Takeover Regulations when it sold more than 2% of the shareholding of SVIL during the investigation period (i.e. from 8.02% as on December 31, 2002 to 1.16% as on March 31, 2003). However, the noticee has failed to make the necessary disclosures to the Company and to the stock exchanges on which the shares of the Company were listed, as required under Regulation 7(1A) of the Takeover Regulations. Therefore the noticee has violated Regulation 7(1A) of the Takeover Regulations by not disclosing the sale of the shares to the target company i.e. SVIL and to the stock exchanges on which the shares of SVIL were listed.

42. The ***third allegation*** against the noticee in the SCN was that it had violated Regulation 13(3) of the Insider Trading Regulations.

43. In respect of this allegation the noticee has submitted that as per the Insider Trading Regulations, the noticee had submitted letters to the target company (SVIL), upon its change in the shareholding pattern.
    i. However, the disclosure made to SVIL does not match with the actual number of shares sold by the noticee as per the details submitted by the noticee itself. As per the noticee's letter of disclosure to the Company dated 28/01/2003, the noticee had sold 3,00,000 shares on 27/01/2003 through off market and its

shareholding had decreased from 8.02% to 5.71%. However, from the details submitted by the noticee, it is observed that NO SALE occurred on 27/01/2003. The only sale in the month of January 2003 was on 20/01/2003 at CSE and that too of only 1,50,000 shares of SVIL as against 3 lakh shares sold as per the disclosure. Thus, there is a discrepancy in the disclosure made by the noticee.

ii. Similarly in the letter of disclosure to the Company dated 22/02/2003 the date of sale is mentioned as 20/02/2003 and the number of shares sold were 2,00,000 shares. However, from the details submitted by the noticee, it is observed that NO SALE occurred on 20/02/2003. The only sale in the month of February 2003 was on 10/02/2003 at CSE and that too of only 1,42,200 shares of SVIL. Therefore, there is again a discrepancy in the disclosure made by the noticee itself.

Considering all of the above, the noticee can be held liable for not making full and complete disclosure of the change in shareholding pattern to the Company as per the requirement of Regulation 13(3) of the Insider Trading Regulations.

44. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Rules require that while adjudging the quantum of penalty, 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"

45. In this case, it also becomes necessary to quote the judgment of the Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC) dated May 23, 2006 where it was held that :

"*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties*

committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow".

46. Considering the above facts and findings, it can be concluded that the noticee has violated all of the above regulations, i.e. Regulation 4(a), (b), (c) and (d) of the PFUTP Regulations, 1995 read with Regulation 13 of the PFUTP Regulations, 2003, Regulation 7(1A) of the Takeover Regulations and Regulation 13(3) of the Insider Trading Regulations. It is also to be noted that the IR has not quantified the profit / loss for the nature of violations carried out by the noticee and no quantifiable figures are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the fraudulent trade practices and non-disclosures.

47. Considering the violations committed by the noticee, I hereby impose a penalty of Rs.30,00,000/- (Rupees Thrity Lakhs only) under Section 15HA and Rs.10,00,000/- (Rupees Ten Lakhs only) under Section 15A(b) of the SEBI Act, on the noticee which is appropriate in the facts and circumstances of the case.

ORDER

48. In exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I impose a consolidated penalty of Rs.40,00,000/- (Rupees Forty Lakhs only) on Divya Dealers Limited (PAN – AABCD0794L) having its address at 28, Strand Road, 2nd Floor, Kolkata – 700001, in terms of the provisions of Sections15HA and 15A(b) of the Securities and Exchange Board of India Act, 1992 for its violations of the provisions of Regulation 4(a), (b), (c) and (d) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995

read with Regulation 13 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, Regulation 7(1A) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and Regulation 13(3) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992.

49. The penalty shall be paid by way of Demand Draft drawn in favour of "SEBI – Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this order. The said Demand Draft shall be forwarded to the Chief General Manager, IVD-ID7, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

50. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995 copies of this order are being sent to Divya Dealers Limited and also to the Securities and Exchange Board of India, Mumbai.

Place: Mumbai
Date: May 31, 2010

D. RAVI KUMAR
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER