ORDER OF THE ADJUDICATING OFFICER UNDER SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 AGAINST

1) SHRI VINAI RAI,

2) SHRI ANIL RAI
3) RKKR AGENCIES LTD.
4) UTILITY TRADE LINKS (P) LTD.
5) PUKHRAJ HOLDINGS (P) LTD.

FOR VIOLATION OF REGULATION 11(2) OF SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997 READ WITH SECTION 15H(ii) OF SEBI ACT, 1992 IN THE MATTER OF ACQUISITION OF SHARES OF M/S. INFORMATION TECHNOLOGIES (INDIA) LTD.

I was appointed as Adjudicating Officer by SEBI vide order dated 18 July, 2002, to inquire into and adjudge the alleged failure of Shri Vinai Rai, Shri Anil Rai, RKKR Agencies Ltd., Utility Trade Links (P) Ltd. and Pukhraj Holdings (P) Ltd., Sumac Iron & Steels (P) Ltd., New Age Commercial (P) Ltd., Ambika Ferro Alloys (P) Ltd., Vedant Steel Castings (P) Ltd., Deep Traders And Advances (P) Ltd., Eureka Machineries (P) Ltd., Arunoday Vinimay (P) Ltd., Anjali Flat Rolled Sheets (P) Ltd., Amit Share Trading (P) Ltd., Parvati Casting (P) Ltd., KRP Consultants (P) Ltd., Taurus Portfolio Ltd., Decent Dealers and Advances (P) Ltd., Varren Financial Services (P) Ltd., Classic Dealers and Advances (P) Ltd., Aquarius Steels (P) Ltd. (hereinafter referred to as the acquirers and persons acting in concert with them) to make public announcement to acquire further shares of M/s.Information Technologies (India) Ltd. (hereinafter referred to as "ITIL") in terms of Regulation 11(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

NOTICE

Accordingly, show cause notice dated 24th July 2002 was issued to the acquirers and persons acting in concert with them (PAC)) as detailed above under Rule 4 of SEBI (Procedure for Holding Enquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995. It is alleged that the acquirers which include promoters of ITIL and PACs with them who held 92.41% of its equity as on 7th January 2000 had contravened the provisions of Regulation 11(2) of SEBI(SAST)Regulations, 1997 by failure to make a PA to acquire further shares of ITIL. It was alleged that during the period September 1999 and September 2000, the acquirers had acquired 2,415,532 shares of ITIL, without

making public announcement to acquire further shares of ITIL in accordance with the Regulations.

Show cause notices were issued to all the 21 noticees referred above. Except in the case of Shri Vinai Rai, Shri Anil Rai, RKKR Agencies Ltd. Utility Trade Links Pvt Ltd., Pukhraj Holdings Pvt Ltd and Tauras Portfolio Ltd., all other show cause notices were returned undelivered.

RKKR and Utility did not reply to the show cause notice and also did not attend the adjudicating proceedings.

Pukhraj replied to the SCN vide letter dated 12th August 2002 but did not attend the personal hearing.

Copies of the statements of the following persons were furnished to explain the circumstances appearing against them besides copy of the Investigation Report.

1) Shri B M Joshi, AGM, Finance of Usha Housing Development Co.Ltd. along with the list of companies.
2) Shri R P Sharma, Manager, M/s.Srichakra Management & Finance Pvt Co.Ltd.
3) Shri Vijay Bhushan, partner of M/s.Bharat Bhushan & Co.
4) Shri V K Ahuja, (2 statements of M/s.Victory Financials)
5) Shri V K Aggarwal, Director, M/s.Amit Share Trading Pvt.Ltd. and employee in the Accounts Department of Usha Group.
6) Shri Manohar Thairani.
7) Letter from Bonanza Portfolio dated May 9, 2002
8) Letter from M/s.Bharat Bhushan & Co. dated May 15, 2002.

REPLY

Shri Vinai Rai and Shri Anil Rai replied to the show cause notices vide letters dated 8th August 2002 denying the allegations. Shri Pawan Sharma, Advocate appeared on their behalf. It was submitted that they made the necessary disclosures about their holding in ITIL along with that of other promoters to the Stock exchanges regularly. They had also annexed copies of their replies to SEBI dated 10th July 2002 and 4th July 2002

respectively, wherein the details pertaining to their share holding in ITIL, alongwith that of other promoters, is given as under

Date	**% of shareholding**
31st May 2002	44.24%
1st September 1999	52.91%
30th September 2000	52.35%

It was also contended that the promoter group of ITIL including Shri Anil Rai and Shri.Vinai Rai had not acquired any shares in ITIL during the said period.

It was argued that even as per SEBi's own version, the promoter's holding in ITIL was 92% even in the year 1993. Hence, the question of promoters and PACs violating Regulation 11(2) of SEBI(SAST)Regulations, 1997 does not arise. Then, the Defence Counsel was advised to advance arguments based on the list of shareholders of ITIL as on 7th January 2000, a copy of which was furnished.

Additional reply vide letter dated 13th December 2002 was filed questioning the evidentiary value of the relied upon documents stating that it was inconsistent. It was also stated that the other noticees cannot be treated as`persons acting in concert' within the meaning of the said term as per SEBI (SAST) Regulations, 1997. It was submitted that even assuming without admitting that 21,15, 532 shares were acquired between September 1999 and September 2000 by the noticees as alleged in the show cause notice since 223,73,610 shares were sold during the same period as per the relied upon document, it cannot be alleged that there is violation of Regulation 11(2) of SEBI(SAST)Regulations, 1997 as the acquisition was liquidated without change in control or management in any manner.

Referring to the reply dated 8/8/2003, it was stated that the promoters' holding in ITIL was at 52.35% as on 30th September 2000. Since it is below the 75% mark, the provisions of 11(2) of SAST Regulations are not attracted, it was argued.

Referring to the definition of persons acting in concert in terms of Regulation 2(e) of SEBI (SAST) Regulations, 1997, it was argued that both Shri Anil Rai and Shri Vinai Rai are not deemed to be persons acting in concert with other noticees in terms of Regulations 2(1)(e)(2).

As regards Regulations 2(1)(e)(1), it was submitted that there is no material furnished by SEBI to suggest that there was an agreement, formal or informal, between his clients and other noticees for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company i.e. ITIL.

It was submitted that the holding of his clients Shri Vinai Rai, Shri Anil Rai and relatives was 4.6% of ITIL's equity as on 7th January 2000. Further, the holding of the other promoters namely RKKR Agencies Ltd. (20.73%), Utility Trade Links Ltd. (20.68%) and Pukhraj Holdings Ltd. (6.78%) was 47% of ITIL's equity as on that date. The learned counsel submitted that the other noticees are not PACs with his clients merely on the basis of common address, telephone numbers, directors, as alleged. The learned counsel also questioned the evidentiary value of the statements of the brokers in the absence of opportunity to cross examine the persons who made these statements.

RKKR Agencies Ltd., Utility Trade Links (P) Ltd. & Pukhraj Holdings (P) Ltd.

RKKR and Utility did not reply to the show cause notice and also did not attend the adjudicating proceedings.

Pukhraj replied to the SCN vide letter dated 12th August 2002. It denied the allegation and submitted that noticees made the necessary disclosure to the exchanges in its capacity as a promoter of ITIL and that it has no connection with the other noticees. It did not attend the hearing on scheduled dates despite being given fair and reasonable opportunity. It has sought adjournment vide letter dated 22nd November 2002 for the hearing scheduled on 27th November, citing preoccupation.

Tauras Portfolio Ltd.

Tauras Portfolio replied to the show cause notice vide its letters dated 5th August 2002 and 30th September 2002. It denied the allegation stating that it was a broking and investment company and merely by transacting in the scrip of ITIL and holding it for a very short period does not attract the provisions of 11(2) of SEBI (SAST) Regulations, 1997. It was submitted that there is no link whatsoever with the Usha Group in terms of common directors, addresses, contact persons etc.

In the personal hearing held on 12th November 2002, Shri Manoj Gupta, CA, the authorized representative of Tauras reiterated the contents of the replies.

APPRECIATION OF EVIDENCE AND FINDINGS

ITIL was a part of the Usha group of companies promoted by Shri Vinai Rai and family. The following three companies are the main promoter companies as reported by ITIL :

1. Pukhraj Holdings Pvt. Ltd.
2. RKKR Agencies Pvt. Ltd.
3. Utility Tradelinks Pvt. Ltd.

The allegations against the acquirer and the PACs are that they had contravened the provisions of 11(2) of SEBI(SAST)Regulations, 1997 as on 7th January, 2000 when they had acquired further shares of ITIL without making a public announcement to acquire further shares.

Regulation 11(2) of SEBI (SAST) Regulations 1997 reads as under:

11(2) Consolidation of Holdings

No acquirer who, together with persons in concert with him has acquired, in accordance with the provisions of law, 75% of the shares or voting rights in a company, shall acquire by himself or through persons acting in concert with him any additional shares or voting rights, unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.

The expression promoter has been defined in regulation 2 (1) (h) as under:

(h) "Promoter" means:
(1) (i) the person or persons who are in control of the company, or
(ii) person or persons named in any offer document as promoters;

(2) a relative of the promoter within the meaning of section 6 of the Companies act, 1956 (1 of 1956); and

(3) in case of a corporate body,

(i) a subsidiary or holding company of that body, or

(ii) any company in which the ‘Promoter’ holds 10% or more of the equity capital or which holds 10% or more of the equity capital of the Promoter, or

(iii) any corporate body in which a group of individuals or corporate bodies or combinations thereof who hold 20% or more of the equity capital in that company also hold 20% or more of the equity capital of the ‘Promoter’; and

(4) in case of an individual,

(i) any company in which 10% or more of the share capital is held by the ‘Promoter’ or a relative of the ‘Promoter’ or a firm or Hindu Undivided family in which the ‘Promoter; or his relative is a partner or co-partner or a combination thereof,

(ii) any company in which a company specified in (i) above, holds 10% or more of the share capital, or

(iii) any HUF or firm in which the aggregate share of the Promoter and his relatives is equal to or more than 10% of the total."

According to Regulation 2 (1) (b):

"acquirer means any person who, directly or indirectly, acquirers or agrees to acquire shares or voting rights in the target company or acquires or agrees to acquire control over the target company, either by himself, or with any person acting in concert with the acquirer".

As per Regulation 2 (1) (e), a person acting in concert comprises:
(1) persons who, for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal), directly or indirectly co-operate by acquiring or

agreeing to acquire shares or voting rights in the target company or control over the target company.

(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:

(i) a company, its holding company, or subsidiary of such company or company under the same management either individually or together with each other;

(ii) a company with any of its directors , or any person entrusted with the management of the funds of the company;

(iii) directors of companies referred to in sub-clause(i) of clause (2) and their associates;

(iv) mutual fund with sponsor or trustee or asset management company;

(v) foreign institutional investors with sub account (s);

(vi) merchant bankers with their client(s) as acquirer;

(vii) portfolio managers with their client(s) as acquirer;

(viii) venture capital funds with sponsors;

(ix) bank with financial advisers, stock brokers of the acquirer or any company which is a holding company, subsidiary or relative of the acquirer.

Provided that sub-clause (ix) shall not apply to a bank whose sole relationship with the acquirer or with any company, which is a holding company or a subsidiary of the acquirer or with a relative of the acquirer, is by way of providing normal commercial banking services or such activities in connection with the offer, such as confirming availability of funds, handling acceptances and other registration work.

(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% of the paid up capital of that company or with any other investment company in which such person or his associates hold not less than 2%of the paid up capital of the latter company.

Note: For the purposes of this clause 'associate' means:

(a) any relative of that person within the meaning of section 6 of the Companies Act, 1956 (1 of 1956); and

(b) family trusts and Hindu Undivided Families.

The first precondition to be satisfied to attract the provisions of Regulation 11(2), is that the acquirer and PACs, should hold more that 75% of the target company's equity.

The shareholding distribution schedule of the Company dated the 7th January 2000 shows that the largest percentage of holding is in the 'other body corporate' category. The list of bodies corporate as given with the distribution schedule submitted by the company, consists of 57 bodies corporate in all and revealed that almost all these bodies corporate were owned / controlled / managed either directly or indirectly by the promoters' group as discussed later.

Shri Vinai Rai and Anil Rai were promoter directors of the company

Besides the promoter companies the following 16 promoter group / associate companies which form part of the above mentioned promoter group / associate holdings had dealt in the shares of ITIL during the above period through the members of NSE, DSE and OTCEI. Their shareholding as on 7/1/2000 is as under:-

Promoters Shareholding as on 7/1/00

	No of shares	**%**
1. Vinai Rai		4.60
2. Anil Rail		20.63
RKKR Agencies Ltd		20.68
Pukhraj Holdings (P) Ltd		6.78

		52.79%
PACs		
1. Sumac Iron & Steels Pvt. Ltd.	188	0.00

2. New Age Commercial Pvt. Ltd.	36,200	0.05
3. Ambika Ferro Alloys Pvt. Ltd.	2,548,000	3.67
Ambika Ferro Alloys Pvt Ltd	203,200	0.29
4. Vedant Steel Casings Pvt. Ltd.	-	0.00
5. Deep Traders and Advances P. Ltd	-	0.00
06. Eureka Machineries Pvt. Ltd.	54,800	0.08
7. Arunoday Vinimay Pvt. Ltd.	170,656	0.25
8. Anjali Flat Rolled Sheets Pvt.	-	0.00
9. Amit Share Trading Private Ltd.	3,600	0.01
10 Parvati Casting Pvt. Ltd.	1,400,000	2.02
11 KRP Consultants Pvt. Ltd.	-	0.00
12 Tauras Portfolio Ltd.	-	0.00
13 Decent Dealers and Advances P. Ltd	16,700	0.02
14 Varren Financial Services (P) Ltd	4,500	0.01
15 Classic Dealers and Advances P Ltd	8,200	0.01
16 Aquarius Steels Pvt. Ltd.	26,000	0.04

	4,472,044	**6.44**
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The above companies were interconnected through common addresses / common directors / common introductions / common contact persons / common telephone numbers etc. amongst themselves and with the promoter group entities.

The share trading activities of the promoters' group were controlled from two secret offices at E-127 and E-58, Sarita Vihar, New Delhi which were owned / leased by Malvika Steels Ltd. an Usha group company. Shri Vinai Rai and Shri Anil Rai are the promoters and Chairman and Co Chairman of the group. *The lease tenure of the*

aforesaid premises were extended till 31st May 2002 vide letter dated 14th September 2000 by the lessee namely Malvika Steel Ltd.

The front companies of the promoters group had bought 24,15,532 shares worth Rs.369.26 crores across BSE, NSE & OTCEI during the period September 1999 to September 2000 through the brokers.

Many of these companies are appearing in the list of shareholders of the company under the head 'Corporate Bodies'. The above front companies of Usha Group which have traded in this scrip of ITIL such as Pukhraj Holdings Pvt. Ltd., Sumac Iron & Steel, Arunoday Vinimay Pvt. Ltd. etc. were operating from Usha Bhavan, A-41, Mohan Co-op. Estate, Mathura Road, New Delhi – 110 044 or their secret offices at Sarita Vihar, New Delhi. The employees of Usha group namely Shri P K Rao, Shri V K Aggarwal, Shri R P Sharma were the Directors of these front companies.

Prior to the dissemination of information on stock split to the public, the promoters group had purchased 7,27,200 shares.

The shareholding pattern of ITIL as on January, 7, 2000 and May 30, 2000 is as under:

Sr. No	**Category**	**Distribution Schedule as on 7th January , 2000**		**Distribution Schedule as on 30th May 2000**	
1.	Directors & Relatives and holding /subsidiaries /affiliates companies	31,68,000	4.56%	63,36,000	4.56%
2	Other Bodies Corporate	6,10,18,338	87.85%	12,61,60,180	90.78%
3	Government Sponsored FI's /IF's	17,25,330	2.48%	45,48,780	3.27%
4	Indian Public	35,47,888	5.11%	19,35,152	1.39%
5	Total	6,94,59,556	100%	13,89,80,112	100%

"Other Bodies Corporate" category shareholders include the following :

Sr. No	**Name of Company**	**No. of Shares**	**% of shareholding**

1	Amit Share Trading Pvt Ltd	3600	0.00518
2	Ambika Ferro Alloys Pvt Ltd	203200	0.29254
3	Paravati Casting P Ltd	1400000	2.01556
4	Ambika Ferro Alloys Pvt Ltd	2548000	3.66832
5	Omega Iron Foundaries P Ltd	46200	0.06651
6	Classic Dealer & Advances Pvt Ltd	8200	0.01180
7	Decent Dealer & Advance P Ltd	16700	0.02404
8	Aquarius Steet P Ltd	26000	0.03743
9	Arunoday Vinimay P. Ltd	170656	0.24569
10	Sumac Iron & Steel Pvt Ltd	188	0.00027
	Total		**6.36734**
	Promoter Companies		
11	Utility Trade Links P Ltd	13416840	19.31604
12	Pukhraj Holdings Pvt Ltd	3729010	5.36860
13	RKKR Agencies P Ltd	14400000	20.73148

In the instant case, the undisputed holding of the promoter group in ITIL as on 7th January 2000 is 53% of ITIL's equity as conceded is as under:-

Promoters Group of ITIL	**%**
Vinai Rai, Anil Rai & Relatives	4.60
RKKR Agencies Ltd.	20.73
Utility Trade Links (P) Ltd.	20.68
Pukhraj Holdings (P) Ltd.	6.78
Total	**52.79**

It is seen that atleast 19 entities out of the 59 shareholders of ITIL as per the distribution schedule as on 7th January, 2000 are the front companies of the Usha Group and held shares of ITIL as under as on 7th January, 2000:-

*** Sr.No.**	**Name**	**Shares**	**% of ITIL's equity**
7	Gulshan Leasing Pvt Ltd.	243,800	0.35%

8	Krishna Akash Mercantile Pvt.	37,200	0.05%
11	Deepti Deposit & Advances Pvt Ltd.	3,000,000	4.32%
12	Orphic Investment Pvt Ltd.	3,000,000	4.32%
13	Gopal Deposits & Advances Pvt Ltd	3,343,800	4.81%
14	Sushil Leasing & Finance Co Pvt Ltd.	109,600	0.16%
15	Frooti Investment Pvt Limited	2,400	0.00%
16	Amit Share trading Pvt Ltd	3,600	0.01%
27	Samidha Machineries Pvt Ltd.	4,600	0.01%
30	Omega Iron Foundaries Pvt Ltd.	116,200	0.17%
32	Antique Forgings (P) Ltd	2,400,000	3.46%
33	Parbati Forgings (P) Ltd.	2,560,000	3.69%
34	Liberty Machines & Fabricators	2,440,000	3.51%
40	Veena Steels Pvt Ltd	101,600	0.15%
41	Omega Iron Foundaries (P) Ltd.	46,200	0.07%
44	Aquarius Steels Pvt Ltd.	26,000	0.04%
46	Arunoday Vinimay Pvt Ltd.	170,656	0.25%
49	Varren Financial Services (P) Ltd	4,500	0.01%
57	Sumac Iron & Steels (P) Ltd.	188	0.00%
	Total……	**17,605,656**	**25.35%**

* Sr.Nos. as appearing in the distribution schedule of shareholders (As per Annexure I to the SEBI IR)

The combined holding of promoters of ITIL and PACs as shown in the above table is 78.14% as on 7/1/2000 which is in excess of 75% limit for the purpose of Regulation 11(2). Together with other entities the shareholding is much more but for the purpose of Regulation 11(2), it is sufficient if the shareholding of the acquirer and persons acting with them is beyond 75%.

It may further be noted that entities Ankita Deposits and Advances (P) Ltd and Spline Steel Pvt Ltd. who are in the list of shareholders of ITIL as on 7th January 2000, had common address with that of front companies Annu Machines (P) Ltd. and Aquarius Steel (P) Ltd. These entities Ankita Deposits and Advances (P) Ltd and Spline Steel (P)

Ltd. held 4.32% and 3.46% of ITIL as on 7th January 2000. Therefore, if their shareholding is also added, the holding of acquirers and PACs would be even higher.

From the material on record, there is no linkage of Tauras Portfolio Ltd. with the Usha Group and it is not a deemed PAC in terms of Regulation 2(1)(e)(2) of SEBI (SAST) Regulation 1997.

Further, unlike the other PACs, there is no evidence like common directors, common phone numbers, common contact persons etc to treat Tauras as a PAC in terms of Regulation 2(1)(e)(1) of SEBI (SAST) Regulation 1997. There is no material to suggest that it had a common objective with the Usha Group to rig up the price of ITIL. It has traded for a meagre 200 shares in settlement # 16 & 17 in NSE through member Victory Financial Services and its total trades are insignificant compared to the artificial volumes generated by the others. Therefore, the charges are not conclusively established against Tauras.

The books of accounts, cheque books of these companies, statutory records like MOA, minutes books, etc of the aforesaid companies were maintained at E-127 and E-58 Sarita Vihar, New Delhi which is the leased premises of Malvika Steel Ltd., a company belonging to the Usha Group and promoted by Shri Anil Rai and Shri Vinai Rai. As per the Investigation Report the staff of Usha Group were posted in this office and all the bank accounts of these companies were at Delhi although they had their registered office all over India.

As per the statement of Mr.Bhupender M Joshi, working as AGM (Finance) with Usha Housing Dev Co Ltd. all these companies are managed/ controlled by “Usha Group”. According to the statement, he had gone to Hyderabad alongwith Mr.V N Sharma of Bansal & Co., C.A. for formation of about 25-30 companies. According to him, no business was ever done in the 25-30 companies. Mr. K C Gupta, the then Director of Usha Group of Companies used to arrange the formation of the said 25-30 companies. Employees of Usha Group were made as Directors. He states as under

“New companies are formed on the instructions of Shri Vinai Rai in consultation with S.K. Bansal and the instructions are passed to me through Dr. M.C. Gupta”.

Mr. V.K. Aggarwal who worked with USHA Group in the accounts dept. has stated that he is not even aware that he is a director of Amit Share Trading and that being an

employee of USHA Group, he had to sign the papers as per the instructions of Shri V.P. Gupta, cousin of Shri Vinai Rai.

It was contended by the learned counsel that copies of the statements of the persons cannot be relied upon unless he is permitted to cross examine them. However, it may be noted that Mr. B M Joshi and Mr.V K Aggarwal are not outsiders and they are the employees of Usha Group companies and they are under the management, direction and control of the Usha Group. It would have been easier for him to bring them as his own witnesses if there was any contradiction in their statements which was not done.

Even dehors these statements there is sufficient evidence to show that the promoters of ITIL through the front companies had acquired shares of ITIL beyond 75% of its paid up capital in violation of Regulation 11(2) of SEBI (SAST) Regulations, 1997. The front companies which shared common address, common telephone number, common director, common premises taken on lease by Malvika Steels Ltd., employees of Usha Group working at the said address, frequent transfer of funds amongst the entities and Usha Group Companies is only a pointer towards their common management, direction and control which is discussed in detail elsewhere in this report.

The standard of proof required in a proceeding of this nature is at variance with the standard of proof required in criminal cases. It is sufficient if the preponderance of probabilities suggests towards the indulgence of the delinquent in the misconduct. The strict rules of Evidence Act and proof beyond reasonable doubt are not applicable to a proceeding of this nature. The Supreme Court's decision in Gulabchand vs Kudilal AIR, 1966, SC 1734 and the decision of the Special Court for trial of offences relating to transactions in securities in the matter of National Housing Bank versus ANZ Grindlays Bank, 1998 (2) LJ 153 is relied upon in this regard

The above 19 entities are persons acting in concert with the promoters of ITIL and the combined shareholding of promoters of ITIL and the above PACs itself as on 7/1/2000 is more than 75% of its equity and they further acquired shares of ITIL after 7th January 2000 without making a public announcement to acquire further shares from the general public (other shareholders) as required in terms of Regulation 11(2) of SEBI (SAST) Regulations, 1997.

Acquisition on or after 7th January, 2000

It is noted that the common clients of Lloyd, Victory, and Bharat Bhushan were – 1) Pukhraj Holdings Pvt. Ltd, 2) Sumac Iron & Steels Pvt. Ltd, 3) New Age Commercial Pvt. Ltd, 4) Ambika Ferro Alloys Pvt. Ltd, 5) Vedant Steel Casings Pvt. Ltd, 6) Deep Traders and Advances Pvt. Ltd, 7) Eureka Machineries Pvt. Ltd; 8) Arunoday Vinimay Pvt. Ltd; 9) Anjali Flat Rolled Sheets Pvt. Ltd; 10) Amit Share Trading Private Ltd; 11) Parvati Casting Pvt. Ltd; 12) KRP Consultants Pvt. Ltd; 13) Tauras Portfolio Ltd; 14) Decent Dealers and Advances Pvt. Ltd; 15)Varren Financial Services (P) Ltd; 16) Classic Dealers and Advances (P) Ltd and 17) Aquarius Steels Pvt. Ltd. These are the front entities which were not only inter-connected with each other, but were also connected to ITIL and were controlled by Shri Vinai Rai.

It is to be seen if there has been any acquisition of shares by any of promoter entities or their PACs on or after 7th January 2000. It is seen that Pukhraj Holding (P) Ltd. one of the promoters of ITIL had bought shares of ITIL in NSE as follows.

Broker	**Settlement #**	**Date**	**Bought**	**Sold**
Victory Financial Services	2000007	16-22 Feb 2000	40,000	60,000
Victory Financial Services	2000009	23-29 Feb 2000	198,800	181,900
Victory Financial Services	2000010	1-7 March 2000	196,000	245,000
Victory Financial Services	2000011	8-14 March 2000	133,500	123,400
Victory Financial Services	2000012	16-21 March 2000	55,300	44,000
Victory Financial Services	2000013	22-28 March 2000	154,900	145,200
Victory Financial Services	2000014	29 Mar – 3 Apr 2000	4,000	-
Alankit Assignments Ltd.	2 & 3 March 2000		17,100	17,100
Victory Financial Services	2000017	19-25 April 2000	18,000	-
Total			**817,600.00**	**817,600.00**

Between January 16, 2000 and February 2001, prior t the dissemination of information on stock split to the public the promoters' group had purchased 7,27,200 shares and sold 8,39,300 shares through broker, Lloyd Credit Ltd, Victory Financial Services Ltd and Bonanza Portfolio Ltd and Bharat Bhushan Equity Traders Pvt Ltd and Alankit Assignments Ltd at NSE and OTCEI.

It was noticed from the bank statements of Sumac Iron & Steels Pvt. Ltd. and Arunodaya Vinimay Pvt. Ltd. that there were frequent transfer of funds to other front companies of the promoters group. A few such instances are given below.

On February 3, 2000 there was a payment of Rs.20,00,000 by Sumac Iron & Steels Pvt. Ltd.in favour of K. R. P. Consultant Pvt. Ltd.

On March 23, 2000 there was a debit (Cheque issued) of Rs.30,00,000 in the bank statement of Arunoday Vinimay Pvt. Ltd. in favour of Ambika Steels

On March 30, 2000 there was a debit (cheque issued) of Rs.15,00,000 in the bank statement of Arunoday Vinimay Pvt. Ltd in favour of Tauras Portfolio.

It was found from the issuing bank that the cheques dated February 16, 2000 amounting to Rs.25,00,000 and Rs.5,00,000, deposited in the bank accounts of Anjali Flat & Rolled Steels and Rs. 16,00,000 and Rs.15,00,000 deposited in the bank accounts of Parvati Castings Pvt. Ltd. were issued by Ambika Ferro Alloys Pvt. Ltd. in the first two instances and by Accord Steel Engineering Pvt. Ltd. in the the last two instances.

Payment of Rs. 31,02,325 on February 19, 2000 in favour of Malavika Steels Ltd. (a flagship company of the Usha Group) was noticed in the bank statement of Parvati Castings Pvt. Ltd.

It was also observed that there were frequent movement of funds from/to these front companies to ITIL as well as other companies of the promoters group. The details of some of these transactions noticed are given below.

Transfer from	**Transfer to**	**Date**	**Amount (Rs.)**	**Bank Name**
Sumac Iron & Steel	KRP Consultants Pvt Ltd	3/2/2000	2000000	ICICI Bank
Aronoday Vinimay	Ambika Steels Tauras Portfolio	23/3/2000	3000000	ICICI Bank
Parvati Castings	ITIL ITIL ITIL Ambika Ferro Alloys Accord Steel Eng Malvika Steel	24/12/1998 8/2/1999 11/2/1999 14/3/2001 15/3/2001 19/2/2001	2500000 800000 1500000 1600000 1501500 3102325	Bank of Punjab “ “ “ “

				"

One of the common objective for the aforesaid acquisition as per material on record appears to be the loan transaction of the promoters from financial institution by pledge of shares of ITIL. The promoters of ITIL have pledged 24,680,420 shares of ITIL to IFCI and IDBI to raise loans for Usha group companies namely Usha Ispat Corp, Koshika Telecom etc.

Details of shares of ITIL pledged by the promoters are as under:-

Pledgor/ Promoter Company	**No of shares pledged**	**Value considered (at Rs 10/- face value)**	**Pledge in favour of**	**Purpose of pledge**	**Amt of Benefit /loan sanctioned (Rs crores)**	**Amt Disbursed (Rs crores)**	**Date of pledge**	**Date of Disimbursemnet**
Utility Trade Links Pvt Ltd	3,200,000	NA	IFCI Ltd	Usha ISpat Corp Loan	15.00	NA	31.03.97	NA
RKKR Agencies Pvt Ltd	2,265,000	415.00 (Rs 5/- paid up)	IFCI Ltd	Koshika Telecom Bank Guarantee	131.08	131.08	**21.09.00** (revalued and extended)	27.08.97 to 04.05.01
					33.00	18.4	**30.09.00** (revalued and extended	31.10.00
RKKR	4,800,000	NA	IFCI LTd	Vetro Tech Interim Security	19.00	N.A	15.10.98	N.A.
Utility Trade Links Pvt Ltd	4,905,000	570.90 (Rs 5/- paid up)	IDBI	Koshika Telecom Loan	140.00	100.00	**06.09.00**	09.09.00

Utility Trade Links Pvt Ltd	9,000,420	600.00 (Rs 5/- paid up)	Alcatel	Koshika Telecom Suppliers Credit	70.00	70.00	**07.09.00**	Towards outstanding dues
Utility Trade Links Pvt Ltd	250,000	200.00 (Rs 10/- paid up)	Punjab & Sind bank	ITIL Bank Guarantee	2.00	2.00	**29.12.99**	29.12.99
Utility Trade Links Pvt Ltd	160,000	N.A	Economic Development bank	ITIL Loan	N.A	N.A	N.A	N.A
	100,000	N.A	-do-	Burr Brown Loan	N A	N.A	N.A	N.A
Total	24,680,420				410.08			
Note : Rate of Conversion of Rs 60 has been taken for loan in pound sterling								

During the period September 1999 to September 2000, the front entities of the Usha group had bought and sold 2,415,532 and 2,373,610 shares of ITIL respectively in NSE, BSE and OTCEI through various brokers.

Dealing in shares by the promoters and front companies may be seen against the background of unusual movements in the share prices and volumes traded in the scrip of ITIL as a result of which the scrip of ITIL which was quoting at Rs.124 as on 24/2/1999 moved to Rs.2,806.60 paise on 8/3/2000. Subsequently, the price had fallen to Rs.4 in NSE on 28/5/2002. The size of the loan sanctioned is linked to the value of the goods pledged, in this case, the shares of ITIL. If the value of shares pledged is high, the loan component would also be high.

As per the material on record, the Usha group was sanctioned Rs 410 crores as loan by pledging the price inflated shares of ITIL. Out of this about Rs. 322 crores was disbursed.

While acquiring the shares of ITIL by the acquirers through various front entities as discussed above, the holdings of the promoters and PACs with them has crossed 75% of the paid up capital of ITIL and in terms of Regulation 11(2), no public announcement was made to acquire further shares.

Acting in concert is something about which actual evidence is normally difficult to come. *The Hon'ble Supreme Court in the case of CIT vs East Coast Commercial Co.Ltd. AIR (1967) SC 768 (Kedia Family case) in the context of Section 23A of the Indian Income Tax Act, 1922 wherein the question was whether Kedia family had acted in concert to control the affairs of the concerned company. In the facts of that case, there was no evidence of any overt act showing that they were acting in concert and thereby constituted and acted as a block. In para 14 of the judgment, the SC observed as follows:*

"….. *if the members of the Kedia family form a block and had more than 75 per cent of the voting power, it was not necessary to prove that they actually exercised controlling interest. It is the holding in aggregate of a majority of the shares issued by a person or persons acting in concert in relation to the affairs of the company which establishes the existence of a block. It is sufficient, if having regard to their relation, etc., their conduct and their common interest, that it may be inferred that they must be acting together, evidence of actual concerted acting is normally difficult to obtain, and is not insisted upon." (p.772)(italics added)*

Lifting the corporate veil:

In Aron Salomon v. Salomon & Company Limited, (1897 Appeal Cases 22), the House of Lords had observed,

"the company is at law a different person altogether from the subscriber. . .; and though it may be that after incorporation the business is precisely the same as it was before and the same persons are managers and the same hands received the profits, the company is not in law agent of the subscribers of trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by that Act". Since then, however, the Courts have come to recognise several exceptions to the said rule. While it is not necessary to refer to all of them, the one relevant to us is "when the corporate personality is being blatantly used as a cloak for

fraud or improper conduct". (Gower : Modern Company Law - 4th Edn. (1979) at P. 137). Pennington (Company Law - 5th Edn. 1985 at P. 53) also states

that "where the protection of public interests is of paramount importance or where the company has been formed to evade obligations imposed by the law", the Court will disregard the corporate veil.

A Professor of Law, S. Ottolenghi in his article "From Peeping Behind the Corporate Veil, to Ignoring it Completely" says "the concept of 'piercing the veil' in the United States is much more developed than in the U. K. The motto, which was laid down by Sanborn, J. and cited since then as the law, is that

'when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons. The same can be seen in various European jurisdictions". ((1990) 53 Modern Law Review 338). Indeed, as far back 1912, another American Professor L. Maurice Wormser examined the American decisions on the subject in a brilliantly written article

"Piercing the veil of corporate entity" (published in (1912) XII Columbia Law Review 496) and summarised their central holding in the following words:

'The various classes of cases where the concept of corporate entity should be ignored and the veil drawn aside have now been briefly reviewed. What general rule, if any, can be laid down? The nearest approximation to generalization which the present state of the authorities would warrant is this; When the concept of corporate entity is employed to defraud creditors, to evade an existing obligation, to circumvent a statute, to achieve or perpetuate monopoly, or protect knavery or crime, the Courts will draw aside the web of entity, will regard the corporate company as an association of live, up-and-doing, men and women shareholders, and will do justice between real persons."

In Palmer's Company Law, this topic is discussed in Part-II of Vol-I. Several situations where the Court will disregard the corporate veil are set out. It would be sufficient for our purposes to quote the eighth exception. It runs: "The Courts have further shown themselves willing to 'lifting the veil' where the device of incorporation is used for some illegal or improper purpose.... Where a vendor of land sought to avoid the action for specific performance by transferring the land in breach of contract to a company he had

formed for the purpose, the Court treated the company as a mere 'sham' and made an order for specific performance against both the vendor and the company".

In Tata Engineering and Locomotive Company Limited v. State of Bihar, (1964) 6 SCR 895: (AIR 1965 SC 40). The following passage from the decision is extracted below. (para 27 of AIR):

"Gower has classified seven categories of cases where the veil of a corporate body has been lifted. But, it would not be possible to evolve a rational consistent and inflexible principle which can be invoked in determining the question as to whether the veil of the corporation should be lifted or not. Broadly, where fraud is intended to be prevented, or trading with enemy is sought to be defeated, the veil of corporation is lifted by judicial decisions and the shareholders are held to be 'persons who actually work for the corporation'."

In DHN Food Distributors Ltd. v. London Borough of Tower Hamlets, (1976) 3 All ER 462, the Court of Appeal dealt with a group of companies.

Lord Denning quoted with approval the statement in Gower's Company Law that "there is evidence of a general tendency to ignore the separate legal entities of various companies within a group, and to look instead at the economic entity of the whole group". The learned Master of Rolls observed that "this group is virtually the same as a partnership in which all the three companies are partners". He called it a case of "three-in-one" --and, alternatively, as "one-in-three".

In this context, the Hon'ble Supreme Court decision in Delhi Development Authority vs Skipper Construction Co. Pvt Ltd. (1996) 4 Comp LJ 233 (SC) … AIR 1996 SC 2005 that (para 27 at page 247 of COMP LJ) may be referred to. The following is extracted from the said judgement.

"The concept of corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or defrauding others , the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned. The fact that an individual and members of his family have created several corporate bodies would not prevent the court from treating all of them as one

entity belonging to and controlled by that individual and family. If it is found that these corporate bodies are merely cloaks behind which lurks the individual and /or members of his family and that the device of incorporation was really a ploy adopted for committing illegalities and /or to defraud people" (underlining supplied).

In Bank of Baroda vs SEBI (Appeal No. 2 and 4 of 2000) decided on 27/7/2000, the Hon'ble Securities Appellate Tribunal had observed as under:-

"It is needless to say that investors by and large are often at the receiving end in the hands of certain unscrupulous market players. There was no focused attention to protect their interest in the securities market. Their plight was in no way different from the plight of consumers. In view of the comparable position in which the investors and the consumers are placed, it is felt appropriate to cite the following observations made by the Supreme Court in Lucknow Development Authority v M K Gupta [1994] 1 SCC 243 recognising the need for a specific consumer protection legislation enacted by the Parliament and a constructive approach in interpreting the provisions of the law. The Supreme Court observed that :

" it appears appropriate to ascertain the purpose of the Act, the objective it seeks to achieve and the nature of social purpose it seeks to promote as it shall facilitate in comprehending the Issue involved and assist in construing various provisions of the Act effectively. To begin with the preamble of the Act which can afford useful assistance to ascertain the legislative intention, it was enacted, to provide for the protection of the interest of consumers'. Use of the word `protection' furnishes key to the minds of makers of the Act. Various definitions and provisions which elaborately attempt to achieve this objective have to be construed in this light without departing from the settled view that a preamble cannot control otherwise plain meaning of a provision. In fact the law meets long felt necessity of protecting the common man from such wrongs for which the remedy under ordinary law for various reasons has become illusory. Various legislations and regulations permitting the state to intervene and protect interest of the consumers have become a heaven for unscrupulous ones as the enforcement machinery either does not move or it moves ineffectively, inefficiently and for reasons which are not necessary to be stated. The importance of the Act lied in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as `a network of rackets' or a society in which, producers have

secured power to `rob the rest' and the might of public bodies which are degenerating into storehouses of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked. The malady is becoming so rampant, widespread and deep that the society instead of bothering, complaining and fighting against it, is accepting it as part of life……"

These observations, it is felt, are in equal force applicable to the cause of helpless investors as well, and also to the Securities and Exchange Board of India Act."

Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 1997 made under the SEBI Act, is the governing regime for takeovers. The Regulation was framed basically taking into consideration the recommendations of a committee chaired by Justice P. N. Bhagwati. It is necessary to go behind the regulatory requirements to discover their raison de etre and the fundamental principles on which these regulations are predicated. The Committee's report is helpful in this regard. Therefore, it is considered necessary to note the basic principles underlying the Regulations, as stated in the committee's report. The cardinal principle of the Regulation is to provide equality of opportunity to all shareholders, protection of minority interests, transparency and fairness. It has been observed in the report that:

"Committee also recognized that the process of takeovers is complex and is inter-related to the dynamics of the market place. It would, therefore, be impracticable to devise regulations in such detail as to cover the entire range of situations, which could arise in the process of substantial acquisition of shares and takeovers. Instead there should be a set of General Principles which should guide the interpretation and operation of the Regulations, especially in circumstances which are not explicitly covered by the Regulations.

These principles are :-

Equality of treatment and opportunity to all shareholders, Protection of interests of share holders …….. ……

In the event of any ambiguity or doubt as to the interpretation of the regulations, the concerned authority shall pay adequate attention to and be guided by any one or more of the aforesaid general principles having a bearing on the matter"

A seven Judge Bench of the Honorable Supreme Court in R S Joshi, STO Vs. Ajit Mills Ltd. AIR 1977 SC2279 held that it is not necessary that penalty should be confined only to willful acts of omission and commission in contravention of the provisions of the enactment. For proper enforcement of provisions of Law, it is common knowledge that absolute liability is imposed and the acts without mens rea are made punishable.

In para 19 of the Judgment, the Apex Court observed as under:-

"The notion that a penalty or a punishment cannot be cast in the form of an absolute or no fault liability but must be preceded by mens rea must be rejected. The classical view that "no mens rea, no crime" has long ago been eroded especially regarding economic crimes".

In case of SEBI v/s Cabot International Capital Corporation in Appeal no 7 of 2001 in SEBI Appeal No 24 of 2000 , the Hon'ble High Court of Bombay, the following was observed.....

"The penalty imposable under the SEBI Act and the Regulations under Section 15I and 15J, is deterrent in nature to see that the parties or person concerned complies with the Regulations strictly. This imposition of the penalty under SEBI Act and Regulations is civil in nature and cannot be equated with penal in character as referred and submitted by the respondents and /or observed by the Appellate Authority. It is also clear that the word "penalty" has different colour and shades and facets and that has to be interpreted and imposed on the basis of particular act and policies or scheme. It is also clear that there can be two distinct liabilities under the same act i.e. civil and/or criminal. The authorities or Regulatory Authority have ample power to initiate both proceedings, if case is made out, within the framework of the SEBI Act or the Regulations.

The SEBI Act and the Regulations, are intended to regulate the security market and the related aspects, the imposition of penalty, in the given

facts and circumstances of the case, cannot be tested on the ground of "no mens rea, no penalty". For breaches of provisions of SEBI Act and Regulations, according to us, which are civil in nature, mens rea is not essential."

Regulation 11(2) of SEBI (SAST) Regulations, 1997 reads as under :

"No acquirer who, together with persons acting in concert with him has acquired, in accordance with the provisions of law, 75% of the shares or voting rights in a company, shall acquire either by himself or through persons acting in concert with him any additional shares or voting rights, unless such acquirer makes a public announcement to acquire shares in accordance with the regulations".

The combined shareholding of the promoters group of ITIL in the company as on January 7, 2000 is 52.79% as detailed in pg 13 of the report. Together with the shareholding of the PACs as on the said date, their shareholding was 78.14% as on the said date. The detail of the shareholding of the PACs are as given in pg 14. Despite having over 75% of the shareholding of ITIL as on 7.1.2000, the promoters acquired further shares of ITIL as discussed earlier without making a Public Announcement which is a condition precedent to acquiring further shares in terms of Regulation 11(2) of SEBI(SAST) Regulations, 1997 as cited above. Therefore, violation of the cited Regulation is established.

Section 15H of SEBI Act, 1992 (as it existed prior to the amendment) reads as under:-

15H - Penalty for non disclosures of Acquisition of Shares and Takeovers

If any person who is required under this Act or any Rules or Regulations made there under fails to …….

make a public announcement to acquire shares at a minimum price …….

……..

he shall be liable to a penalty not exceeding five lakh rupees.

ORDER

It is pertinent to refer to the order of the SAT in Appeal No.151/2004 dated 7.2.2005 in the matter of Man Industries. It has been held by the Hon'ble Tribunal that for irregularities that were committed prior to the amendment of the SEBI Act on 29.10.2002, penalty as existing at the relevant period only is to be imposed and not the new penalties under the amended Act. The SAT held that it is the common ground that at the relevant period the maximum penalty was Rs.5 lacs. The amendment enhancing the penalty to Rs.5 crores came into force with effect from 29th October, 2002. The Hon'ble SAT at page 16 of the order held as under :

"Penalties unless specifically made retrospective must inevitable be only with effect from the date of amendment. Accordingly, we hold that at the relevant time, the maximum penalty was Rs.5.00 lakhs".

For the aforesaid reasons, the penalty imposed is limited to Rs 5.00 lakhs (Rupees five lakhs only) for failure to make public announcement in accordance with the Regulations in term of Section 15 H (ii) of SEBI Act, 1992.

Having regard to the submissions made, the factors contained in section 15J of SEBI Act,1992, the gravity of the charges established, the facts and circumstances and following the order of the Hon'ble SAT in Man Industries Ltd. cited above, I hereby impose a consolidated penalty of Rs.5.00 lakhs (Rupees Five Lakhs only) on Shri Vinai Rai, Shri Anil Rai, RKKR Agencies Ltd., Utility Trade Links (P) Ltd. and Pukhraj Holdings (P) Ltd. who contravened the provisions of Regulation 11(2) of SEBI (SAST) Regulations, 1997 read with Section 15H(ii) of SEBI Act, 1992 in the matter of acquisition of shares of Information Technologies (India) Ltd. They are jointly and severally liable to pay the penalty. It shall be remitted by way of a crossed Demand Draft drawn in

favour of “SEBI – PENALTIES REMITABLE TO GOVERNMENT OF INDIA” and forwarded immediately to Shri C.S. Kahlon, Executive Director, SEBI, 224, Mittal Court, “B” Wing, Nariman Point, Mumbai – 400 021.

Date : June 01, 2005 **S. V. KRISHNA MOHAN**

Place : Mumbai **ADJUDICATING OFFICER**