BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PKB/AO–12/2012]

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

In respect of:

1) Pratik Rameshchandra Shah

(PAN – ALWPS7673Q)

2) Dhrumal Vaidya

(PAN – ABQPV0547E)

3) Anindo Achinto Banerjee

(PAN – AMUPB9384L)

4) Nikita Dave

(PAN – AGWPD0810H)

5) Vashi Constructions Pvt. Ltd.

(PAN – AACCV0861H)

6) Ashok Hiralal Shah; Director, Vashi Constructions Pvt. Ltd.

(PAN – ACTPS7672M)

7) Rajesh C Shah; Director, Vashi Constructions Pvt. Ltd.

(PAN – AABPS8425J)

8) Bhavana Rajesh Shah; Director, Vashi Constructions Pvt. Ltd.

(PAN – AABPS8414R)

9) Neha R Shethwala; Director /Authorised Signatory, Vashi Constructions Pvt. Ltd.

(PAN – BNJPS1826B)

10) Rudra Securities and Capital Ltd.

(PAN – AACCR2292G)

11) Nileshkumar T. Kava; Director, Rudra Securities and Capital Ltd.

(PAN – AQHPK1533F)

12) Ketan D Sorathiya; Director, Rudra Securities and Capital Ltd.

(PAN – AQIPS6607D)

13) Vipul Shantilal Trivedi; Director, Rudra Securities and Capital Ltd.

(PAN – ADNTP1112G)

14) Neha R Shethwala; Director /Authorised Signatory, Rudra Securities and Capital Ltd.

(PAN – BNJPS1826B)

15) Dhanlaxmi Lease Finance Ltd.

(PAN – AABCD6189R)

16) Bipin Ratilal Shah; Director, Dhanlaxmi Lease Finance Ltd.

(PAN – AWMPS5368K)

17) Bharat Ratilal Shah; Director, Dhanlaxmi Lease Finance Ltd.

(PAN – AYJPS6082M)

18) Girish G Doshi; Director, Dhanlaxmi Lease Finance Ltd.

(PAN – AFZPD2380J)

19) Neha R Shethwala; Director /Authorised Signatory, Dhanlaxmi Lease Finance Ltd.

(PAN – BNJPS1826B)

In the Matter of: Platinum Corporation Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted investigations relating to buying, selling or dealing in the shares of Platinum Corporation Limited (hereinafter referred to as "**the Company**"). Investigations, *inter-alia,* had revealed that the Company had issued 2,90,00,000 shares through preferential allotment of ₹ 1 each at a premium of ₹ 0.25 per share and the shares were allotted to seven persons on January 13, 2009, who were connected to the Company. Details of the same are tabulated below:

S.No.	Name of the Allottee	Relationship with the Company	No. of shares allotted	Amount in Rs.
1	Dhrumal Vaidya	Director	25,00,000	31,25,000
2	Anindo Achinto Banerji	Director	25,00,000	31,25,000
3	Pratik R Shah	Director	50,00,000	62,50,000
4	Nikita B Dave	Former Director	50,00,000	62,50,000
5	Vashi Constructions Pvt. Ltd.	Ashok Hiralal Group	50,00,000	62,50,000
6	Dhanlaxmi Lease Finance Ltd.	Bipin Ratilal Group	40,00,000	50,00,000
7	Rudra Securities and Capital Ltd.		50,00,000	62,50,000
			2,90,00,000	3,62,50,000

2. It was alleged that the allottees acted in concert for the purpose of acquiring shares of the Company through preferential allotment but failed to come out with a public announcement to acquire shares of the Company in compliance with Regulation 10 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter

referred to as "**SAST Regulations**"). Therefore, Adjudication Proceedings were initiated by SEBI in respect of Mr. Pratik R Shah [hereinafter also referred to as "**Noticee 1)**"]; Mr. Dhrumal Vaidya [hereinafter also referred to as "**Noticee 2)**"]; Mr. Anindo A Banerjee [hereinafter also referred to as "**Noticee 3)**"]; Ms. Nikita B Dave, [hereinafter also referred to as "**Noticee 4)**"]; M/s. Vashi Constructions Pvt. Ltd. [hereinafter also referred to as "**Noticee 5)**"]; Mr. Ashok H Shah, Director of Noticee 5) [hereinafter also referred to as "**Noticee 6)**"]; Mr. Rajesh C Shah, Director of Noticee 5) [hereinafter also referred to as "**Noticee 7)**"]; Ms. Bhavana R Shah, Director of Noticee 5) [hereinafter also referred to as "**Noticee 8)**"]; Ms. Neha R Shethwala, Director /Authorised Signatory, of Noticee 5) [hereinafter also referred to as "**Noticee 9)**"]; M/s. Rudra Securities and Capital Ltd. [hereinafter also referred to as "**Noticee 10)**"]; Mr. Nileshkumar T Kava, Director of Noticee 10) [hereinafter also referred to as "**Noticee 11)**"]; Mr. Ketan D Sorathiya, Director of Noticee 10) [hereinafter also referred to as "**Noticee 12)**"]; Mr. Vipul S Trivedi, Director of Noticee 10) [hereinafter also referred to as "**Noticee 13)**"]; Ms. Neha R Shethwala, Director /Authorised Signatory of Noticee 10) [hereinafter also referred to as "**Noticee 14)**"]; M/s. Dhanlaxmi Lease Finance Ltd. [hereinafter also referred to as "**Noticee 15)**"]; Mr. Bipin R Shah, Director of Noticee 15) [hereinafter also referred to as "**Noticee 16)**"]; Mr. Bharat R Shah, Director of Noticee 15) [hereinafter also referred to as "**Noticee 17)**"]; Mr. Girish G Doshi, Director of Noticee 15) [hereinafter also referred to as "**Noticee 18)**"]; Ms. Neha R Shethwala, Director /Authorised Signatory of Noticee 15) [hereinafter also referred to as "**Noticee 19)**"] and the undersigned was appointed as the Adjudicating Officer vide Order dated March 23, 2011 and the said appointment was conveyed vide proceedings of the Whole Time Member dated July 04, 2011 to inquire into and adjudicate under Section 15 H (ii) of the SEBI Act, 1992, the alleged violation of provisions of Regulation 10 of SAST Regulations.

SHOW CAUSE NOTICE, HEARING & REPLY

3. A Show Cause Notice (hereinafter referred to as "**SCN**") in terms of the provisions of Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") was issued to Pratik R Shah, Dhrumal Vaidya, Anindo A Banerjee, Nikita B Dave; Ashok H Shah, Vashi Constructions Pvt. Ltd., Rajesh C Shah, Bhavana R Shah, Rudra Securities and Capital Ltd., Nileshkumar T Kava, Ketan D Sorathiya, Vipul S Trivedi, Dhanlaxmi Lease Finance Ltd., Bipin R Shah, Bharat R Shah, Girish G Doshi and Neha

R Shethwala on July 28, 2011, calling upon to show cause why an inquiry should not be held against them under Rule 4(3) of the Adjudication Rules for the alleged violations.

4. The aforesaid SCN was duly delivered to Pratik R Shah on August 17, 2011. Since no reply was received from Pratik R Shah, Notice of Inquiry dated September 23, 2011 was issued under Rule 4(3) of the Adjudication Rules vide which an opportunity of personal hearing was given to Pratik R Shah which was scheduled for October 12, 2011. However, Pratik R Shah failed to appear for personal hearing on the scheduled date. Thereafter, another opportunity of personal hearing was granted to Pratik R Shah on November 09, 2011, which was subsequently rescheduled to November 24, 2011. However, Pratik R Shah vide email dated November 23, 2011 requested for another hearing date which was acceded to and accordingly the personal hearing was rescheduled to December 14, 2011. Pratik R Shah vide email dated December 13, 2011, expressed his inability to attend the hearing on the scheduled dated and once again his personal hearing was rescheduled to December 19, 2011. However, Pratik R Shah failed to attend the hearing on the scheduled date, i.e., December 19, 2011. I note that sufficient time and opportunity has been given to Pratik R Shah, but he failed to submit reply to the SCN and also failed to appear for hearing.

5. The aforesaid SCN was duly delivered to Dhrumal Vaidya on August 20, 2011. Since no reply was received from Dhrumal Vaidya, Notice of Inquiry dated September 23, 2011 was issued under Rule 4(3) of the Adjudication Rules vide which an opportunity of personal hearing was given to Dhrumal Vaidya which was scheduled for October 12, 2011. However, Dhrumal Vaidya failed to appear for personal hearing on the scheduled date. Thereafter, another opportunity of personal hearing was granted to Dhrumal Vaidya on November 09, 2011, which was subsequently rescheduled to November 24, 2011. However, Dhrumal Vaidya failed to attend the hearing on the scheduled date, i.e., November 24, 2011. I note that sufficient time and opportunity has been given to Dhrumal Vaidya, but he failed to submit reply to the SCN and also failed to appear for hearing.

6. The aforesaid SCN was duly delivered to Anindo A Banerjee on August 11, 2011. Since no reply was received from Anindo A Banerjee, Notice of Inquiry dated September 23, 2011 was issued under Rule 4(3) of the Adjudication Rules vide which

an opportunity of personal hearing was given to Anindo A Banerjee which was scheduled for October 12, 2011. However, Anindo A Banerjee failed to appear for personal hearing on the scheduled date. Thereafter, another opportunity of personal hearing was granted to Anindo A Banerjee on November 09, 2011, which was subsequently rescheduled to November 24, 2011. However, Anindo A Banerjee vide email dated November 22, 2011 requested for another hearing date which was acceded to and accordingly his personal hearing was rescheduled to December 14, 2011. However, Anindo A Banerjee failed to attend the hearing on the scheduled date, i.e., December 14, 2011. I note that sufficient time and opportunity has been given to Anindo A Banerjee, but he failed to submit reply to the SCN and also failed to appear for hearing.

7. The aforesaid SCN was duly delivered to Nikita B Dave by way of affixture. Since no reply was received from Nikita B Dave, Notice of Inquiry dated September 23, 2011 was issued under Rule 4(3) of the Adjudication Rules vide which an opportunity of personal hearing was given to her which was scheduled for October 11, 2011. However, Nikita B Dave failed to appear for personal hearing on the scheduled date. Thereafter, another opportunity of personal hearing was granted to Nikita B Dave on November 09, 2011, which was subsequently rescheduled to November 24, 2011. However, Nikita B Dave vide email dated November 23, 2011 requested for another hearing date which was acceded to and accordingly her personal hearing was rescheduled to December 14, 2011. Nikita B Dave vide email dated December 13, 2011, expressed her inability to attend the hearing on the scheduled dated and once again her personal hearing was rescheduled to December 19, 2011. However, Nikita B Dave failed to attend the hearing on the scheduled date, i.e., December 19, 2011. I note that sufficient time and opportunity has been given to Nikita B Dave, but she failed to submit reply to the SCN and also failed to appear for hearing.

8. The aforesaid SCN was duly delivered to Vashi Constructions Pvt. Ltd., Ashok H Shah, Rajesh C Shah and Bhavana R Shah on August 04, 2011. Subsequently, vide letters dated August 25, 2011 (received through email), Vashi Constructions Pvt. Ltd., Ashok H Shah, Rajesh C Shah and Bhavana R Shah requested for additional time to submit reply. Vide letters dated September 02, 2011, Vashi Constructions Pvt. Ltd., Ashok H Shah, Rajesh C Shah and Bhavana R Shah were informed that the time limit for submission of reply to the SCN was extended to September 26, 2011. However,

vide letters dated September 20, 2011 (received through email), Vashi Constructions Pvt. Ltd., Ashok H Shah and Bhavana R Shah once again requested for additional time to submit reply. Since no reply was received from Vashi Constructions Pvt. Ltd., Ashok H Shah, Rajesh C Shah and Bhavana R Shah, Notices of Inquiry dated September 30, 2011 were issued under Rule 4(3) of the Adjudication Rules vide which an opportunity of personal hearing was given to Vashi Constructions Pvt. Ltd., Ashok H Shah, Rajesh C Shah and Bhavana R Shah which was scheduled for October 21, 2011. However, Vashi Constructions Pvt. Ltd., Ashok H Shah, Rajesh C Shah and Bhavana R Shah failed to appear for personal hearing on the scheduled date.

9. Vashi Constructions Pvt. Ltd., Rajesh C Shah and Bhavana R Shah submitted reply vide letter dated October 17, 2011 and *inter alia* made the following submissions:
   - *We hereby state that entities as mentioned in SCN No. 24510 dated 28th July, 2011 are not known to us.*
   - *Further, we state that we don't have any relations directly or indirectly with the directors and other persons as mentioned in such notice.*
   - *Ms. Neha Shethwala, mentioned in your SCN as noticee no. 9 was authorized signatory for day to day accounting purpose.*
   - *The company has raised debt for acquisition of shares of Platinum Corporation Limited.*
   - *The company has acted in good faith.*
   - *We strongly state that we were not involved in this matter at all.*
   - *This reply is to be treated as a reply from company and its all directors.*
   - *We plead you to resolve this matter.*

10. Thereafter, another opportunity of personal hearing was granted to Vashi Constructions Pvt. Ltd., Rajesh C Shah and Bhavana R Shah on November 24, 2011 vide Notices of Inquiry dated October 25, 2011. However, Vashi Constructions Pvt. Ltd., Rajesh C Shah and Bhavana R Shah vide letter dated November 10, 2011 requested for another hearing date in the next week which was acceded to and accordingly the personal hearing of Vashi Constructions Pvt. Ltd., Rajesh C Shah and Bhavana R Shah was rescheduled to November 15, 2011. Neha R Shethwala, Authorised Representative of Vashi Constructions Pvt. Ltd., Rajesh C Shah and Bhavana R Shah appeared for hearing on November 15, 2011 and reiterated the submissions previously made vide letter dated October 17, 2011. It was observed that vide letter dated October 17, 2011, it was submitted that "*The company has raised debt for acquisition of shares of Platinum Corporation Limited*", and hence, Vashi Constructions Pvt. Ltd. was advised to submit proper documentary evidence in support of its claim. However, the Authorised Representative stated that there were no documents available for submission.

11. Ashok H Shah submitted reply vide letter dated October 14, 2011 and *inter alia* made the following submissions:

- *Firstly, at that time I was not a director in Vashi Construction Pvt. Ltd. because I had resigned from the director post since back.*
- *And because of my resignation from that co. I was not aware about the company's transactions and other dealings.*
- *And also I was also not knowing the other entities and not acting in concert at all.*
- *For my individual acquisition through off market on 19th January, 2004, I made a proper disclosure to the company i.e. PCL on 21st January, 2004, Ahmedabad Stock Exchange and complied with the regulations. (Annexure)*
- *Further, I would like to submit also that I got these shares from off market only and not traded in the market.*

So, I would like to request you to keep me aside from this matter as I was not a director at all and made all required disclosures as per the rules and regulations which show that the proceedings against me should be dropped.

12. Thereafter, another opportunity of personal hearing was granted to Ashok H Shah on November 24, 2011 vide Notice of Inquiry dated October 25, 2011. However, Ashok H Shah vide letter dated November 10, 2011 requested for another hearing date in the next week which was acceded to and accordingly the personal hearing of Ashok H Shah was rescheduled to November 15, 2011. However, Ashok H Shah once again requested for another hearing date on November 17, 2011 which was also acceded to and accordingly the personal hearing of Ashok H Shah was rescheduled to November 17, 2011. Ms. Ragini Chokshi, Authorised Representative of Ashok H Shah appeared for hearing on November 17, 2011 and reiterated the submissions previously made by Ashok H Shah vide letter dated October 14, 2011. It was observed that vide letter dated October 14, 2011, it was submitted that "*I was not a director in Vashi Construction Pvt. Ltd. because I had resigned from the director post since back*", and hence, Ashok H Shah was advised to submit proper documentary evidence in support of his claim. Subsequently, vide email dated November 18, 2011, Ashok H Shah submitted his Form – 32 evidencing his resignation as director of Vashi Constructions Pvt. Ltd.

13. The aforesaid SCN was duly delivered to Rudra Securities and Capital Ltd., Nileshkumar T Kava, Ketan D Sorathiya and Vipul S Trivedi. Subsequently, vide letters dated August 31, 2011 (received through email), Rudra Securities and Capital Ltd., Nileshkumar T Kava, Ketan D Sorathiya and Vipul S Trivedi requested for additional time to submit reply. Vide letters dated September 02, 2011; Rudra Securities and Capital Ltd., Nileshkumar T Kava, Ketan D Sorathiya and Vipul S Trivedi were informed that the time limit for submission of reply to the SCN was

extended to September 26, 2011. However, vide letters dated September 20, 2011 (received through email), Rudra Securities and Capital Ltd., Nileshkumar T Kava, Ketan D Sorathiya and Vipul S Trivedi once again requested for additional time to submit reply. Since no reply was received from Rudra Securities and Capital Ltd., Nileshkumar T Kava, Ketan D Sorathiya and Vipul S Trivedi, Notices of Inquiry dated September 30, 2011 were issued under Rule 4(3) of the Adjudication Rules vide which an opportunity of personal hearing was given to Rudra Securities and Capital Ltd., Nileshkumar T Kava, Ketan D Sorathiya and Vipul S Trivedi which was scheduled for October 21, 2011. However, Rudra Securities and Capital Ltd., Nileshkumar T Kava, Ketan D Sorathiya and Vipul S Trivedi failed to appear for personal hearing on the scheduled date.

14. Rudra Securities and Capital Ltd., Nileshkumar T Kava, Ketan D Sorathiya and Vipul S Trivedi submitted reply vide letter dated October 15, 2011 and *inter alia* made the following submissions:

- *With reference to your Show Cause Notice, we hereby submit that we have never met/talked to any director/persons as stated in your Show Cause Notice No. EIF – 41/OW/24527/2011 dated 28th July, 2011 in the case of PCL.*
- *Further, we state that we have invested in Platinum Corporation Limited from our own source. The money was received from M/s. Hirak Biotech Ltd. which was due to us.*
- *We state that we are not involved in this matter.*
- *So, we request you to leave this matter aside.*

15. Thereafter, another opportunity of personal hearing was granted to Rudra Securities and Capital Ltd., Nileshkumar T Kava, Ketan D Sorathiya and Vipul S Trivedi on November 24, 2011 vide Notices of Inquiry dated October 25, 2011. However, Rudra Securities and Capital Ltd., Nileshkumar T Kava, Ketan D Sorathiya and Vipul S Trivedi vide letter dated November 10, 2011 requested for another hearing date in the next week which was acceded to and accordingly the personal hearing of Rudra Securities and Capital Ltd., Nileshkumar T Kava, Ketan D Sorathiya and Vipul S Trivedi was rescheduled to November 15, 2011. Mr. Gulab Singh, Authorised Representative of Rudra Securities and Capital Ltd., Nileshkumar T Kava, Ketan D Sorathiya and Vipul S Trivedi appeared for hearing on November 15, 2011 and reiterated the submissions previously made vide letter dated October 15, 2011.

16. The aforesaid SCN was duly delivered to Dhanlaxmi Lease Finance Ltd., Bipin R Shah, Bharat R Shah and Girish G Doshi. Subsequently, vide letters dated August 25, 2011 (received through email), Dhanlaxmi Lease Finance Ltd., Bipin R Shah and Bharat

R Shah and vide letter dated August 31, 2011 (received through email) Girish G Doshi requested for additional time to submit reply. Vide letters dated September 02, 2011; Dhanlaxmi Lease Finance Ltd., Bipin R Shah, Bharat R Shah and Girish G Doshi were informed that the time limit for submission of reply to the SCN was extended to September 26, 2011. However, vide letters dated September 20, 2011 (received through email), Dhanlaxmi Lease Finance Ltd., Bipin R Shah, Bharat R Shah and Girish G Doshi once again requested for additional time to submit reply. Since no reply was received from Dhanlaxmi Lease Finance Ltd., Bipin R Shah, Bharat R Shah and Girish G Doshi, Notices of Inquiry dated September 30, 2011 were issued under Rule 4(3) of the Adjudication Rules vide which an opportunity of personal hearing was given to Dhanlaxmi Lease Finance Ltd., Bipin R Shah, Bharat R Shah and Girish G Doshi which was scheduled for October 21, 2011. However, Dhanlaxmi Lease Finance Ltd., Bipin R Shah, Bharat R Shah and Girish G Doshi failed to appear for personal hearing on the scheduled date.

17. Dhanlaxmi Lease Finance Ltd., Bipin R Shah, Bharat R Shah and Girish G Doshi submitted reply vide letter dated October 18, 2011 and *inter alia* made the following submissions:

- *This is a reply from company and its directors.*
- *With reference to your Show Cause Notice No. EIF – 46/OW/24549/2011 dated 28th July, 2011, we hereby state that the amount was received from M/s. Hirak Biotech Ltd. was due to us and the same was invested I shares of Platinum Corporation Limited.*
- *We further state that we are no where associated or connected directly or indirectly with any entities as shown in the Show Cause Notice.*
- *We acted in good faith.*
- *We were not involved in this case.*

18. Thereafter, another opportunity of personal hearing was granted to Dhanlaxmi Lease Finance Ltd., Bipin R Shah, Bharat R Shah and Girish G Doshi on November 24, 2011 vide Notices of Inquiry dated October 25, 2011. However, Dhanlaxmi Lease Finance Ltd., Bipin R Shah, Bharat R Shah and Girish G Doshi vide letter dated November 10, 2011 requested for another hearing date in the next week which was acceded to and accordingly the personal hearing of Dhanlaxmi Lease Finance Ltd., Bipin R Shah, Bharat R Shah and Girish G Doshi was rescheduled. Mr. Ashok Jain, Authorised Representative of Dhanlaxmi Lease Finance Ltd., Bipin R Shah, Bharat R Shah and Girish G Doshi appeared for hearing on November 15, 2011 and reiterated the submissions previously made vide letter dated October 18, 2011.

19. The aforesaid SCN was duly delivered to Neha R Shethwala [Noticee 9), Noticee 14) and Noticee 19)]. Subsequently, vide letter dated August 25, 2011, (received through email) Neha R Shethwala submitted that she was just authorised signatory and not the director of Vashi Constructions Pvt. Ltd. Subsequently, vide letters dated August 31, 2011 (received through email) Neha R Shethwala also submitted that she was just authorised signatory and not the director of Rudra Securities and Capital Ltd. and Dhanlaxmi Lease Finance Ltd. Neha R Shethwala submitted reply vide letter dated October 13, 2011 and inter alia made the following submissions:

- *At that time I was just providing my service to these companies as,*
  - *Vashi Construction Pvt. Ltd.*
  - *Rudra Securities and Capital Ltd.*
  - *Dhanlaxmi Lease Finance Ltd.*
- *And because of providing service, I was just an authorized signatory and not the director in any of these companies.*
- *I was not knowing the other entities and not acting in any role at all.*

So that, I would like to request you to keep me set apart from all these facts and don't involve me in this matter.

20. Subsequently, the Neha R Shethwala appeared for personal hearing on November 15, 2011 and reiterated the submissions made vide letter dated October 13, 2011 that she was authorised representative only and was not Director of any of these companies. During the course of personal hearing, Neha R Shethwala was shown a copy of a cheque No. 325484 dated 08/01/2009 drawn on Shri Vinayak Sahakari Bank Ltd. Ahmedabad, wherein she had signed as Director of Vashi Constructions Pvt. Ltd. Neha R Shethwala submitted that it might have been due to oversight; however, she was never a director of Vashi Constructions Pvt. Ltd.

21. I note that sufficient time and opportunity has been provided to all the Noticees to submit reply and appear for personal hearing. However, Pratik R Shah, Dhrumal Vaidya, Anindo A Banerjee and Nikita B Dave have neither submitted any reply nor did they appear for personal hearing. Hence, I am proceeding with the inquiry taking into account the material available on record.

ISSUES FOR CONSIDERATION

22. After perusal of the material available on record, I have the following issues for consideration, viz.,

A. Whether Noticee 1), Noticee 2), Noticee 3), Noticee 4), Noticee 5), Noticee 6), Noticee 7), Noticee 8), Noticee 9), Noticee 10), Noticee 11), Noticee 12), Noticee 13),

Noticee 14), Noticee 15), Noticee 16), Noticee 17), Noticee 18) and Noticee19) have violated provisions of Regulation 10 of SAST Regulations?

B. Whether Noticee 1), Noticee 2), Noticee 3), Noticee 4), Noticee 5), Noticee 6), Noticee 7), Noticee 8), Noticee 9), Noticee 10), Noticee 11), Noticee 12), Noticee 13), Noticee 14), Noticee 15), Noticee 16), Noticee 17), Noticee 18) and Noticee19) are liable for monetary penalty under Section 15H (ii) of the SEBI Act, 1992?

C. What quantum of monetary penalty should be imposed on Noticee 1), Noticee 2), Noticee 3), Noticee 4), Noticee 5), Noticee 6), Noticee 7), Noticee 8), Noticee 9), Noticee 10), Noticee 11), Noticee 12), Noticee 13), Noticee 14), Noticee 15), Noticee 16), Noticee 17), Noticee 18) and Noticee19) taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

FINDINGS

23. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

ISSUE 1: Whether Noticee 1), Noticee 2), Noticee 3), Noticee 4), Noticee 5), Noticee 6), Noticee 7), Noticee 8), Noticee 9), Noticee 10), Noticee 11), Noticee 12), Noticee 13), Noticee 14), Noticee 15), Noticee 16), Noticee 17), Noticee 18) and Noticee19) have violated provisions of Regulation 10 of SAST Regulations?

24. The provisions of Regulation 10 of SAST Regulations read as under:

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997

Acquisition of fifteen per cent or more of the shares or voting rights of any company

10: *No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations.*

25. I note that Regulation 10 of SAST Regulations is quite clear in its import and *inter-alia* requires an acquirer acquiring shares which (taken together with shares already held by him or by persons acting in concert with him) would entitle him to exercise fifteen per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations.

26. It is observed that the Company had issued 2,90,00,000 shares through preferential allotment of ₹ 1 each at a premium of ₹ 0.25 per share and the shares were allotted to seven persons on January 13, 2009, who were connected to the Company. Details of the same are tabulated below:

S.No.	Name of the Allottee	Relationship with the Company	No. of shares allotted	Amount in Rs.
1	Dhrumal Vaidya [Noticee 2)]	Director	25,00,000	31,25,000
2	Anindo A Banerjee [Noticee 3)]	Director	25,00,000	31,25,000
3	Pratik R Shah [Noticee 1)]	Director	50,00,000	62,50,000
4	Nikita B Dave [Noticee 4)]	Former Director	50,00,000	62,50,000
5	Vashi Constructions Pvt. Ltd. [Noticee 5)]	Ashok Hiralal Group	50,00,000	62,50,000
6	Dhanlaxmi Lease Finance Ltd. [Noticee 15)]	Bipin Ratilal Group	40,00,000	50,00,000
7	Rudra Securities and Capital Ltd. [Noticee 10)]		50,00,000	62,50,000
			2,90,00,000	3,62,50,000

27. It is observed that the Company in its notice for EGM to its shareholders held on December 29, 2008, inter-alia, mentioned purpose of raising funds through preferential allotment of shares. The notice stated that, "the funds flow for this Agri-biotechnology project will be vested into installing Hi-tech R&D Center, where right from seed hybridization to genome analysis will be taken into consideration with acquisition of land for development nurseries and subsequently model farms followed by contract/ corporate farming". From the above, it is observed that the Company raised capital for the purpose of setting up R&D centre and acquisition of land for the purpose of its biotechnology project.

28. It is observed that in regard to receipt of funds, the Company was having a current account no. CA-2349 at Shri Vinayak Sahakari Bank Ltd. and it was used for the purpose of receiving share allotment money. It is observed that the allottees and the Company rotated banking transactions with the help of M/s. Sarang Chemicals Ltd., M/s. Hirak Biotech Ltd., Mr. Dinkar B. Shreemali and created entries to the tune of ₹ 3.625 Crores in the books of the Company, to make an impression of receipt of funds by the Company towards allotment money. Thereafter, the Company on the strength of such transactions, had allotted 2.90 crore shares of ₹ 1/- each to the seven persons. It is observed that the seven allottees along with three others were also having bank account with Vinayak Sahakari Bank Ltd., Ahmedabad. It is further observed that the bank accounts of Vashi Constructions Pvt. Ltd., Rudra Securities and Capital Ltd. and Dhanlaxmi Lease Finance Ltd. were opened just before allotment of shares.

29. It is observed that in all bank accounts of seven allottees, the Company and three other persons, there was not enough opening and closing bank balance to suggest actual flow of funds in the banking system, details of which are tabulated below –

(amount in ₹)

A/c no.	Name of the account holder	Opening balance on 07/01/09	Closing balance on 07/01/09	Opening balance on 08/01/09	Closing balance on 08/01/09	Opening balance on 12/01/09	Closing balance on 12/01/09
CA-2349	Platinum Corporation Ltd.	900.00	12,900.00	12,900.00	12,900.00	12,900.00	12,62,822.00
SB-2418	Pratik R. Shah	2,860.00	2,860.00	2,860.00	2,860.00	2,860.00	2,860.00
SB-2417	Nikita Baldevbhai Dave	120.00	1,100.00	1,100.00	1,100.00	1,100.00	1,100.00
SB-2415	Anindo Achinto Banerji	30.00	1,010.00	1,010.00	1,010.00	1,010.00	1,010.00
SB-2413	Dhrumal K. Vaidya	1,880.00	1,880.00	1,880.00	1,880.00	1,880.00	1,880.00
CA-2425	Vashi Construction P Ltd.	NA	NA	2,000.00	1,988.00	1,988.00	1,988.00
CA-2427	Rudra Securities & Capital Ltd.	NA	NA	NA	NA	1,952.00	1,952.00
CA-2426	Dhanlaxmi lease Finance Ltd.	NA	NA	NA	NA	1,952.00	1,952.00
CA-2285	Sarang Chemicals Ltd.	1,750.00	1,750.00	1750.00	1690.00	1690.00	1606.00
SB-2414	Dinker B. Shrimali	1,060.00	960.00	960.00	960.00	960.00	960.00
CA-2345	Hirak Biotech Ltd.	1,000.00	1,000.00	1000.00	940.00	940.00	940.00

30. TRANSACTIONS ON JANUARY 07, 2009 – It is observed that the Company had shown to have received allotment money of ₹ 62,50,000 from Nikita B Dave and ₹ 62,50,000 from Pratik R Shah. The Company immediately transferred the amount of ₹ 1,25,00,000/- to Hirak Biotech Ltd. and there were 25 cash withdrawal transactions of ₹ 5 Lakhs each amounting to ₹ 1.25 Crore in the account of Hirak Biotech Ltd. In regard to source of funds to Nikita B Dave, it is observed that she received ₹ 50 Lakhs from Sarang Chemicals Ltd. and ₹ 12.50 Lakhs from Hirak Biotech Ltd. Pratik R Shah received ₹ 62.50 Lakhs from Hirak Biotech Ltd. On the same day Hirak Biotech Ltd. received 5 cash deposits of ₹ 15 Lakhs each, amounting to ₹ 75 Lakhs and Sarang Chemicals Ltd. received 3 cash deposits amounting to ₹ 50 Lakhs. It is observed that the cash of ₹ 1.25 Crores shown to have withdrawn from account of Hirak Biotech Ltd. was once again shown to have credited ₹ 75 Lakhs in the account of Hirak Biotech Ltd. and ₹ 50 Lakhs in the account of Sarang Chemicals Ltd., thereby completing circular rotation of transactions and in the process, the Company created entries of receipt of application money of ₹ 1.25 Crore in their books of accounts for the purpose of allotment of shares.

31. TRANSACTIONS ON JANUARY 08, 2009 – It is observed that the Company had shown to have received allotment money of ₹ 31,25,000 from Anindo A Banerjee, ₹ 31,25,000 from Dhrumal Vaidya and Rs. 62,50,000 of Vashi Constructions Pvt. Ltd. The

Company had immediately transferred the amount of ₹ 1,25,00,000/- to Sarang Chemicals Ltd. and there were 25 cash withdrawal transactions of ₹ 5 Lakhs each amounting to ₹ 1.25 Crore in the account. In regard to source of funds to Anindo A Banerjee, Dhrumal Vaidya and Vashi Constructions Pvt. Ltd., it is observed that they had received the amount of ₹ 1.25 Crores from Hirak Biotech Ltd. Hirak Biotech Ltd. in turn had received 8 cash deposits amounting to ₹ 75 Lakhs and received ₹ 50 Lakhs from Pratik R Shah. Pratik R Shah had, in turn, received 5 cash deposits amounting to ₹ 50 Lakhs. It is observed that the cash of ₹ 1.25 Crores shown to have withdrawn from account of Sarang Chemicals Ltd. was once again shown to have credited ₹ 75 Lakhs in the account of Hirak Biotech Ltd. and ₹ 50 Lakhs in the account of Pratik R Shah, thereby completing circular rotation of transactions and in the process, the Company created entries of receipt of application money of ₹ 1.25 Crore in their books of accounts for the purpose of allotment of shares.

32. TRANSACTIONS ON JANUARY 12, 2009 – It is observed that the Company had shown to have received allotment money of ₹ 62,50,000 from Rudra Securities and Capital Ltd. and ₹ 50,00,000 of Dhanlaxmi Lease Finance Ltd. The Company had immediately transferred the amount of ₹ 1,00,00,000/- to Sarang Chemicals Ltd. and transferred ₹ 12,50,000 to Hirak Biotech Ltd. on January 13, 2009. It is observed that thereafter, there were 20 cash withdrawal transactions in the account the Sarang Chemicals Ltd. In regard to source of funds to Rudra Securities and Capital Ltd. and Dhanlaxmi Lease Finance Ltd., it is observed that they had received the amount of ₹ 1.125 Crore from Hirak Biotech Ltd. Hirak Biotech Ltd. in turn received 10 cash deposits amounting to ₹ 1 Crore and also received ₹ 12.50 Lakhs through a transfer entry. It is observed that the cash of ₹ 1 Crore shown to have withdrawn from account of Sarang Chemicals Ltd. was once again shown to have credited in the account of Hirak Biotech Ltd., thereby completing circular rotation of transactions to the tune of ₹ 1 Crore and in the process, the Company had created entries of receipt of application money of ₹ 1.125 Crore in their books of accounts for the purpose of allotment of shares.

33. It is observed that Anindo A Banerjee, Dhrumal Vaidya and Pratik R Shah were directors of the Company and Nikita B Dave was also a director of the Company. It is further observed that Vashi Constructions Pvt. Ltd. belonged to Ashok H Shah and the bank account Vashi Constructions Pvt. Ltd. showed that Rajesh C Shah and

Bhavana R Shah were directors of Vashi Constructions Pvt. Ltd. It is also observed that Bhavana R Shah is sister of Ashok H Shah and wife of Rajesh C Shah. Further, it is observed that Dhanlaxmi Lease Finance Ltd. belonged to Bipin R Shah and Bharat R Shah. The address of Rudra Securities and Capital Ltd. prior to 11/11/2008 was shown to have been residential address of Ashok H Shah.

34. Further, in regard to connection between these persons, it is observed from the KYC documents obtained from Depository Participant's that Ashok H Shah and his father Hiralal Popatlal Shah were directors of Vashi Constructions Pvt. Ltd. and Ashok H Shah was signed as director of the Company in a Tripartite Agreement dated 30/03/2000. It is observed that Meena Ashok Shah is wife and Sarlaben Hiralal Shah is mother of Ashok H Shah. It is also observed that Bipin R Shah and Mrs. Mita Bipin Shah were directors of Parvati Minerals Pvt. Ltd. and Pratik Minerals Pvt. Ltd. Rudra Securities and Capital Ltd. was connected to promoters of the Company by way of receipt of shares through off-market from Jayesh D. Shah. It is observed that one of the directors of the Company, Mr. Dinkar Bhanuprasad Shrimali, was also director of Sarang Chemicals Ltd. It is also observed that Pratik R Shah, Nikita B Dave and Mr. Jayesh D. Shah were directors of Hirak Biotech Ltd., who were also directors of the Company. Thereby, the three entities, Sarang Chemicals Ltd., Hirak Biotech Ltd. and Mr. Dinkar B. Shreemali are connected to each other.

35. It is observed that the Company for the purpose of setting up R&D centre and for acquisition of land for setting up nursery, raised capital through preferential allotment of shares, whereas, the Company immediately (on same day) transferred funds received from the preferential allottees, to its group company Sarang Chemicals Ltd. and its director Mr. Dinkar Shrimali to camouflage rotation of entries for the purpose of creation of equity. It is also observed that 2.90 crore shares issued through preferential allotment were pledged with Ahmedabad Peoples Co-operative Bank Ltd. towards collateral security towards the loan taken by the Company and its group companies namely, Hirak Biotech Ltd., Sarang Chemicals Ltd., Jignesh Bullion, Gokul Marketing, Arihant Jewellers, Kasushal Traders, Sagar Bullion, Gokul Distributors, Spiran Jewelers & PCL-mortgage loan. It is observed that the facts and circumstances of creating entries in the bank, allotment of shares, pledge of the shares with the bank and subsequent default of the loan, showed that the object (as stated to shareholders of the Company) of raising capital through preferential allotment was not fulfilled.

Therefore, it appears that the scheme of preferential allotment was done with a fraudulent motive.

36. It is observed that the Company, seven allottees along with Hirak Biotech Ltd., Sarang Chemicals Ltd. and Mr. Dinkar B. Shrimali conspired with each other, created fictitious liabilities to the Company to the tune of ₹ 3,62,50,000/- without actual infusion of funds, resulted into fraudulent allotment of 2,90,00,000 shares of ₹ 1/- each per share. Further, it is observed that the Company applied for listing of these shares with the stock exchanges. Therefore, it appears that the scheme of preferential allotment of shares and subsequent application for listing of the same at the BSE was fraudulent.

37. It is observed that out of aggregate allotment amount of ₹ 3,62,50,000; ₹ 3,12,50,000 had been provided to the preferential allottees by Hirak Biotech Ltd. and the remaining amount of ₹ 50 Lakhs had been provided by Sarang Chemicals Ltd. A pictorial flow of funds towards preferential allotment is given as Annexure I. Further, it is observed that Nikita B Dave, Mr. Jayesh Shah and Pratik R Shah were directors of Hirak Biotech Ltd. and all the cheques issued to preferential allottees were signed by Pratik R Shah. As already observed, Pratik R Shah, Dhrumal Vaidya and Anindo A Banerjee were directors of the Company; Nikita B Dave was former director of the Company and director of Hirak Biotech Ltd.; Vashi Constructions Pvt. Ltd. was being controlled by Ashok H Shah, who was director of the Company during the year 2000, the registered office of Rudra Securities and Capital Ltd. was residential address of Ashok H Shah and Dhanlaxmi Lease Finance Ltd. belong to Bipin R Shah and Bharat R Shah. It is observed that all these persons were connected and known to each other for more than 5 years prior to the allotment of shares. Further, it is observed that the cheques issued by Vashi Constructions Pvt. Ltd., Rudra Securities and Capital Ltd. and Dhanlaxmi Lease Finance Ltd. to the Company were signed by a single authorised signatory, Neha R Shethwala.

38. I note that Pratik R Shah was a director of the Company as well as Hirak Biotech Ltd. and that Pratik R Shah, Dhrumal Vaidya, Anindo A Banerjee, Vashi Constructions Pvt. Ltd., Rudra Securities and Capital Ltd. and Dhanlaxmi Lease Finance Ltd. received their entire money for subscribing to the shares of the Company from Hirak Biotech Ltd. I note that Nikita B Dave, who was a former director of the Company and

a director of Hirak Biotech Ltd., received ₹ 12,50,000 from Hirak Biotech Ltd. and rest amount of ₹ 50,00,000 from Sarang Chemicals Ltd. for subscribing to the shares of the Company. Further, the cheques issued to preferential allottees were signed by Pratik R Shah. Moreover, one of the directors of the Company, Mr. Dinkar B Shrimali, was also director of Sarang Chemicals Ltd. Hence, it is apparent that Pratik R Shah, Dhrumal Vaidya, Anindo A Banerjee, Nikita B Dave, Vashi Constructions Pvt. Ltd., Rudra Securities and Capital Ltd. and Dhanlaxmi Lease Finance Ltd. were known to each other.

39. It is observed that the allottees were not having sufficient bank balance in their respective bank accounts towards making payment of allotment amount. However, they received a credit transaction in their bank account from Hirak Biotech Ltd. for the purpose of issuing cheques to the Company. It is observed that the transactions in their bank accounts were being orchestrated by Pratik R Shah, Ashok H Shah, Bipin R Shah and Bharat R Shah. They managed banking transactions within the group through circular transactions and shown to have paid allotment amount to the Company. From the facts and circumstances it is evident that all the preferential allottees, i.e., Pratik R Shah, Dhrumal Vaidya, Anindo A Banerjee, Nikita B Dave, Vashi Constructions Pvt. Ltd., Rudra Securities and Capital Ltd. and Dhanlaxmi Lease Finance Ltd. were acting in concert for subscribing shares of the Company through preferential allotment. It is also observed that the total 2.90 crore shares allotted were placed as collateral security with Ahmedabad Peoples Co-operative Bank for the purpose raising loans for the Company and its group companies.

40. Now I deal with the submissions of the Noticees. I note that despite duly receiving the SCN and Notices of Inquiry, Pratik R Shah, Dhrumal Vaidya, Anindo A Banerjee and Nikita B Dave have failed to submit any reply to the SCN and have not refuted the charges. The Hon'ble Securities Appellate Tribunal in *Classic Credit Ltd. vs. SEBI*, Appeal No. 68/2003 has, *inter-alia*, held – "*the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them*". The Order passed by Hon'ble SAT is relied upon in this case for guidance. Therefore, I presume that Pratik R Shah, Dhrumal Vaidya, Anindo A Banerjee and Nikita B Dave have admitted the charges alleged in the SCN.

41. I note that Vashi Constructions Pvt. Ltd., Rajesh C Shah and Bhavana R Shah have submitted that they don't have any relation with the directors and other persons mentioned in the SCN and that Vashi Constructions Pvt. Ltd. had raised debt for acquisition of shares of the Company. I do not find any merit in the submissions as Vashi Constructions Pvt. Ltd. has not been able to submit any documentary evidence to prove that the money which it received from Hirak Biotech Ltd. to subscribe to the shares of the Company was a result of raising debt. I note that Rudra Securities and Capital Ltd., Nileshkumar T Kava, Ketan D Sorathiya, Vipul S Trivedi and Dhanlaxmi Lease Finance Ltd., Bipin R Shah, Bharat R Shah, Girish G Doshi have made similar submissions and have stated that the money received by Rudra Securities and Capital Ltd. and Dhanlaxmi Lease Finance Ltd. from Hirak Biotech Ltd. was due to Rudra Securities and Capital Ltd. and Dhanlaxmi Lease Finance Ltd. from Hirak Biotech Ltd. I do not find the submissions plausible because Rudra Securities and Capital Ltd. and Dhanlaxmi Lease Finance Ltd. have not submitted any documentary evidence to substantiate their claim. Further, it is too much of a coincidence that all the preferential allottees, including Vashi Constructions Pvt. Ltd., Rudra Securities and Capital Ltd. and Dhanlaxmi Lease Finance Ltd. received funds from Hirak Biotech Ltd., through cheques signed by Pratik R Shah (who was a director of Hirak Biotech Ltd. and also of the Company) in the ordinary/normal course almost at the same time which was utilised to subscribe to the shares of the Company. As already observed, the bank accounts of Vashi Constructions Pvt. Ltd., Rudra Securities and Capital Ltd. and Dhanlaxmi Lease Finance Ltd. were opened just before allotment of shares and the cheques issued by Vashi Constructions Pvt. Ltd., Rudra Securities and Capital Ltd. and Dhanlaxmi Lease Finance Ltd. to the Company were signed by a single authorised signatory, Neha R Shethwala. Further, I note that the entire 2.90 crore shares of the Company issued through preferential allotment were pledged with Ahmedabad Peoples Co-operative Bank Ltd. towards collateral security towards loan taken by the Company and its group companies, reinforcing the fact that all the preferential allottees were acting in concert.

42. I note that the Company had issued 2,90,00,000 shares through preferential allotment and the shares were allotted to seven persons on January 13, 2009, which was 21.32 % of post issue paid up capital of the Company. Hence, from the facts of the case, especially from the fund flow, it is evident that all the preferential allottees, i.e., Pratik R Shah, Dhrumal Vaidya, Anindo A Banerjee, Nikita B Dave, Vashi Constructions Pvt.

Ltd., Rudra Securities and Capital Ltd. and Dhanlaxmi Lease Finance Ltd. were persons acting in concert who for a common objective of acquiring shares, acquired more than 15% of shares of the Company through preferential allotment, without making a public announcement to acquire shares of the Company in accordance with the SAST Regulations.

43. Further, since directors are persons who are responsible for conduct of the business of a company, therefore Rajesh C Shah and Bhavana R Shah (being directors of Vashi Constructions Pvt. Ltd.); Nileshkumar T Kava, Ketan D Sorathiya, Vipul S Trivedi (being directors of Rudra Securities and Capital Ltd.), Bipin R Shah, Bharat R Shah, Girish G Doshi (being directors of Dhanlaxmi Lease Finance Ltd.) are also liable for violation of Regulation 10 of SAST Regulations. Since a company acts through its board of directors, the directors of Vashi Constructions Pvt. Ltd., Rudra Securities and Capital Ltd. and Dhanlaxmi Lease Finance Ltd. should have ensured compliance with Regulation 10 of SAST Regulations.

44. I note that Ashok H Shah has submitted that he was not a director of Vashi Constructions Pvt. Ltd. and he had resigned from the director post since back. Subsequently, Ashok H Shah has also submitted his Form – 32 evidencing his resignation as director of Vashi Constructions Pvt. Ltd. This has also been confirmed by SEBI that Ashok H Shah had resigned as a director of Vashi Constructions Pvt. Ltd. in February 25, 2007. Since Ashok H Shah was not a director of Vashi Constructions Pvt. Ltd. when the preferential allotment of shares of the Company took place, the allegation of violation of Regulation 10 of SAST Regulations does not stand established in respect of Ashok H Shah.

45. I note that Neha R Shethwala has submitted that she was just an authorised signatory and not a director of Vashi Constructions Pvt. Ltd., Rudra Securities and Capital Ltd. and Dhanlaxmi Lease Finance Ltd. and she was just providing her services to these three companies. During the course of personal hearing Neha R Shethwala was shown a copy of cheque No. 325484 dated 08/01/2009 drawn on Shri Vinayak Sahakari Bank Ltd. Ahmedabad, wherein she had signed as Director of Vashi Constructions Pvt. Ltd. However, Neha R Shethwala submitted that she was never a director of Vashi Constructions Pvt. Ltd. and that it might have been due to oversight. In this regard, Vashi Constructions Pvt. Ltd. in its reply dated October 17, 2011 has also submitted

that Neha R Shethwala was authorised signatory for day to day accounting purpose. This has been subsequently confirmed by SEBI that Neha R Shethwala was not the director of Vashi Constructions Pvt. Ltd., Rudra Securities and Capital Ltd. and Dhanlaxmi Lease Finance Ltd. and was only their authorised signatory. In view of the aforesaid submissions, I find it difficult to hold Neha R Shethwala guilty of violation of Regulation 10 of SAST Regulations. It is my considered opinion that a person who acts only as an authorised signatory of a company is bound by the directions of that company including its board of directors and per-se cannot be held responsible for the conduct of the business of that company. Further, there is no material on record which conclusively establishes that the violation was committed by Vashi Constructions Pvt. Ltd., Rudra Securities and Capital Ltd. and Dhanlaxmi Lease Finance Ltd. with the consent or connivance of, or is attributable to any neglect on part of Neha Shethwala. Therefore, I tend to give benefit of doubt to Neha R Shethwala [Noticee 9), Noticee14) and Noticee 19)].

46. In view of my considerations discussed in the previous paragraphs, I find that Pratik R Shah, Dhrumal Vaidya, Anindo A Banerjee, Nikita B Dave, Vashi Constructions Pvt. Ltd., Rajesh C Shah, Bhavana R Shah, Rudra Securities and Capital Ltd., Nileshkumar T Kava, Ketan D Sorathiya, Vipul S Trivedi, Dhanlaxmi Lease Finance Ltd., Bipin R Shah, Bharat R Shah and Girish G Doshi have violated the provisions of Regulation 10 of SAST Regulations by not making a public announcement to acquire shares of the Company in accordance with the SAST Regulations.

ISSUE 2: Whether Noticee 1), Noticee 2), Noticee 3), Noticee 4), Noticee 5), Noticee 6), Noticee 7), Noticee 8), Noticee 9), Noticee 10), Noticee 11), Noticee 12), Noticee 13), Noticee 14), Noticee 15), Noticee 16), Noticee 17), Noticee 18) and Noticee19) are liable for monetary penalty under Section 15H (ii) of the SEBI Act, 1992?

47. The provisions of Section 15 H of the Act reads,

"15H Penalty for non-disclosure of acquisition of shares and takeovers.

If any person, who is required under this Act or any rules or regulations made thereunder, fails to,-
(i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or
(ii) make a public announcement to acquire shares at a minimum price;
(iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or

(iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer.
he shall be liable to a penalty twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher."

48. As already observed, Pratik R Shah, Dhrumal Vaidya, Anindo A Banerjee, Nikita B Dave, Vashi Constructions Pvt. Ltd., Rajesh C Shah, Bhavana R Shah, Rudra Securities and Capital Ltd., Nileshkumar T Kava, Ketan D Sorathiya, Vipul S Trivedi, Dhanlaxmi Lease Finance Ltd., Bipin R Shah, Bharat R Shah and Girish G Doshi failed to make a public announcement to acquire shares of the Company in accordance with the SAST Regulations. Therefore, I find that Pratik R Shah, Dhrumal Vaidya, Anindo A Banerjee, Nikita B Dave, Vashi Constructions Pvt. Ltd., Rajesh C Shah, Bhavana R Shah, Rudra Securities and Capital Ltd., Nileshkumar T Kava, Ketan D Sorathiya, Vipul S Trivedi, Dhanlaxmi Lease Finance Ltd., Bipin R Shah, Bharat R Shah and Girish G Doshi are liable for monetary penalty under Section 15H (ii) of the SEBI Act, 1992. Also, since no violation has been established against Ashok H Shah and Neha R Shethwala, Ashok H Shah and Neha R Shethwala are not liable for any monetary penalty under Section 15H (ii) of the SEBI Act, 1992.

ISSUE 3: What quantum of monetary penalty should be imposed on Noticee 1), Noticee 2), Noticee 3), Noticee 4), Noticee 5), Noticee 6), Noticee 7), Noticee 8), Noticee 9), Noticee 10), Noticee 11), Noticee 12), Noticee 13), Noticee 14), Noticee 15), Noticee 16), Noticee 17), Noticee 18) and Noticee 19) taking into consideration the factors mentioned in Section 15J of the Act?

49. While imposing monetary penalty it is important to consider the factors stipulated in Section 15J of the Act, which reads as under:

> ***"15J - Factors to be taken into account by the adjudicating officer***
> *While adjudging quantum of penalty under section 15-I, 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."*

50. It is difficult, in cases of this nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. Further, there is no material on record which dwells on the extent of specific gains made by Pratik R Shah, Dhrumal Vaidya, Anindo A Banerjee, Nikita B Dave, Vashi Constructions Pvt. Ltd., Rajesh C Shah, Bhavana R Shah, Rudra Securities and

Capital Ltd., Nileshkumar T Kava, Ketan D Sorathiya, Vipul S Trivedi, Dhanlaxmi Lease Finance Ltd., Bipin R Shah, Bharat R Shah and Girish G Doshi. Further it is also not possible to ascertain the loss to the investors in monetary terms. However, by not complying with the regulatory obligation of making the public announcement, Pratik R Shah, Dhrumal Vaidya, Anindo A Banerjee, Nikita B Dave, Vashi Constructions Pvt. Ltd., Rajesh C Shah, Bhavana R Shah, Rudra Securities and Capital Ltd., Nileshkumar T Kava, Ketan D Sorathiya, Vipul S Trivedi, Dhanlaxmi Lease Finance Ltd., Bipin R Shah, Bharat R Shah and Girish G Doshi had deprived the shareholders of the Company the statutory right to exit through the open offer mechanism. Also, there is no material on record to indicate that such default was repetitive.

51. In the forgoing paragraphs it is now established that Pratik R Shah [Noticee 1)]; Dhrumal Vaidya [Noticee 2)]; Anindo A Banerjee [Noticee 3)]; Nikita B Dave [Noticee 4)]; Vashi Constructions Pvt. Ltd. [Noticee 5)]; Rajesh C Shah, Director of Vashi Constructions Pvt. Ltd. [Noticee 7)]; Bhavana R Shah, Director of Vashi Constructions Pvt. Ltd. [Noticee 8)]; Rudra Securities and Capital Ltd. [Noticee 10)]; Nileshkumar T Kava, Director of Rudra Securities and Capital Ltd. [Noticee 11)]; Ketan D Sorathiya, Director of Rudra Securities and Capital Ltd. [Noticee 12)]; Vipul S Trivedi, Director of Rudra Securities and Capital Ltd. [Noticee 13)]; Dhanlaxmi Lease Finance Ltd. [Noticee 15)]; Bipin R Shah, Director of Dhanlaxmi Lease Finance Ltd. [Noticee 16)]; Bharat R Shah, Director of Dhanlaxmi Lease Finance Ltd. [Noticee 17)] and Girish G Doshi, Director of Dhanlaxmi Lease Finance Ltd. [Noticee 18)] failed to make necessary public announcement to acquire the shares of the Company in accordance with SAST Regulations. Considering the facts and circumstances of the case and the violation committed, I find that imposing a penalty of ₹ 20,00,000/- (Rupees Twenty Lakhs only) on Pratik R Shah; Dhrumal Vaidya; Anindo A Banerjee; Nikita B Dave; Vashi Constructions Pvt. Ltd.; Rajesh C Shah, Director of Vashi Constructions Pvt. Ltd.; Bhavana R Shah, Director of Vashi Constructions Pvt. Ltd.; Rudra Securities and Capital Ltd.; Nileshkumar T Kava, Director of Rudra Securities and Capital Ltd.; Ketan D Sorathiya, Director of Rudra Securities and Capital Ltd.; Vipul S Trivedi, Director of Rudra Securities and Capital Ltd.; Dhanlaxmi Lease Finance Ltd.; Bipin R Shah, Director of Dhanlaxmi Lease Finance Ltd.; Bharat R Shah, Director of Dhanlaxmi Lease Finance Ltd. and Girish G Doshi, Director of Dhanlaxmi Lease Finance Ltd. would be commensurate with the violations committed by them.

ORDER

52. Considering the facts and circumstances of the case, in terms of the provisions of Section 15H(ii) of SEBI Act, 1992 and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹ 20,00,000/- (Rupees Twenty Lakhs only) on Pratik R Shah; Dhrumal Vaidya; Anindo A Banerjee; Nikita B Dave; Vashi Constructions Pvt. Ltd.; Rajesh C Shah, Director of Vashi Constructions Pvt. Ltd.; Bhavana R Shah, Director of Vashi Constructions Pvt. Ltd.; Rudra Securities and Capital Ltd.; Nileshkumar T Kava, Director of Rudra Securities and Capital Ltd.; Ketan D Sorathiya, Director of Rudra Securities and Capital Ltd.; Vipul S Trivedi, Director of Rudra Securities and Capital Ltd.; Dhanlaxmi Lease Finance Ltd.; Bipin R Shah, Director of Dhanlaxmi Lease Finance Ltd.; Bharat R Shah, Director of Dhanlaxmi Lease Finance Ltd. and Girish G Doshi, Director of Dhanlaxmi Lease Finance Ltd. and shall be jointly and severally liable to pay the said monetary penalty. As no violation has been established against Ashok H Shah and Neha R Shethwala, therefore the Adjudication Proceedings in respect of Ashok H Shah and Neha R Shethwala are disposed off.

53. 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 Deputy General Manager, Investigation Department, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.

54. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this Order are being sent to Pratik R Shah; Dhrumal Vaidya; Anindo A Banerjee; Nikita B Dave; Ashok H Shah; Vashi Constructions Pvt. Ltd.; Rajesh C Shah, Director of Vashi Constructions Pvt. Ltd.; Bhavana R Shah, Director of Vashi Constructions Pvt. Ltd.; Rudra Securities and Capital Ltd.; Nileshkumar T Kava, Director of Rudra Securities and Capital Ltd.; Ketan D Sorathiya, Director of Rudra Securities and Capital Ltd.; Vipul S Trivedi, Director of Rudra Securities and Capital Ltd.; Dhanlaxmi Lease Finance Ltd.; Bipin R Shah, Director of Dhanlaxmi Lease Finance Ltd.; Bharat R Shah, Director of Dhanlaxmi Lease Finance Ltd.; Girish G Doshi, Director of Dhanlaxmi Lease Finance Ltd.; Neha R Shethwala and also to Securities and Exchange Board of India.

Date: January 19, 2012 **P. K. Bindlish**
Place: Mumbai **Adjudicating Officer**