

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

ORDER

Under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 and regulation 32 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

In respect of –

1. Mr. Ramanujam Sesharathnam (PAN AERPR6301N)
2. Mr. Sudarshan Venkataraman (PAN AWJPS4793B)
3. Mr. Parthasarathy Srikanth (PAN AAQPS9253H)
4. Ms. Sripriya Srikanth (PAN AZAPS0630H)
5. Sthithi Insurance Services Private Limited (PAN AAKCS6316E)

1. **Zylog Systems Limited** ("ZSL" or "Zylog") is a public limited company having its shares listed on Bombay Stock Exchange Ltd. ("BSE") and National Stock Exchange of India Ltd. ("NSE"). Securities and Exchange Board of India ("SEBI") vide an *ad interim ex-parte* order dated **June 13, 2013** ("interim order") restrained Sthithi Insurance Services Pvt. Ltd. (promoter of ZSL), Mr. Sudarshan Venkataraman (Promoter, Chairman and Chief Executive Officer of ZSL), Mr. Ramanujam Sesharathnam (Promoter, Managing Director and Chief Operating Officer of ZSL), Mr. Parthasarathy Srikanth (Whole Time Director of ZSL), Mrs. Srikanth Sripriya (wife of Mr. Parthasarathy Srikanth) and Mr. S. P. Srihari (Chief Financial Officer of ZSL) from buying, selling or dealing in securities in any manner whatsoever till further directions.

2. The aforesaid *interim directions* were issued against the noticees on the basis of *prima facie* finding that they had contravened the provisions of regulations 3(a), (b), (c), (d) and 4 (1), (2) (d), (e), (f), & (r) SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market), 2003, regulations 13(4), 13(4A), and 13(5) of SEBI (Prohibition of Insider Trading)

Regulations, 1992 (PIT Regulations), regulations 3(2), 31(1), 31(2) and 31(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Regulations, 2011), section 77(2) of the Companies Act, 1956 and clauses 35, 41, 32 and 49 Listing Agreement. The interim order also *prima facie* found the promoters of ZSL along with Mrs. Srikanth Sripriya, acting in concert acquired shares in ZSL beyond the threshold stipulated under regulation 3(2) of the Takeovers Regulations, 2011 without complying with the obligation of making open offer.

3. Thereafter, vide Order dated **July 30, 2015** (“the **confirmatory order**”), the directions issued vide the interim order were confirmed with respect to the said persons. With respect to the alleged violation of regulation 3(2) of the Takeovers Regulations, 2011, Mr. Ramanujam Sesharathnam, Mr. Sudarshan Venkataraman, Mr. Parthasarathy Srikanth, Ms. Sripriya Srikanth and Sthithi Insurance Services Private Limited (“Sthithi”) were called upon to show cause as to why appropriate action under the provisions of Regulation 32 of the Takeovers Regulations, 2011 read with provisions of sections 11 and 11B of the SEBI Act, 1992 including the direction to make public announcement to acquire shares in accordance with Takeover Regulations, 2011 should not be taken against them.

4. The basis for the charge of alleged violation of regulation 3(2) of the Takeover Regulations by the aforesaid persons as made out in the confirmatory order is reproduced below:

28. With regard to alleged violation of regulation 3(2) of the Takeover Regulations, 2011, It is noted that as on April 1, 2012, the promoters alongwith persons acting in concert with them were holding 49.86% equity shares in ZSL. It is admitted position that, during the period July 05, 2012 to December 31, 2012, Ms. Sripriya had acquired 27, 71,280 shares (8.43%) of ZSL on a gross basis. During the same period, Sthithi also acquired 2,08,116 shares (0.63%) of ZSL. It has been prima facie found that the promoters of ZSL along with person acting in concert (Ms. Sripriya) with them have acquired more than 5% of voting rights in ZSL during the financial year 2012-2013 without making public announcement as required under regulation 3(2) of the Takeovers Regulations, 2011 and contravened the same. These noticees have, however, contended that merely on the basis of their relationships/positions in the company, they cannot be stated to be PACs with each other. It has also been contended as there was no common objective/purpose

with the other persons to acquire shares of ZSL beyond prescribed threshold, any association however close cannot be a determining factor for alleging that the two persons are acting in concert.

29. *In this regard, it is necessary to refer to the definition of the expressions "acquirer" and "persons acting in concert" as defined under regulation 2(1) of the Takeover Regulations, 2011. As per regulation 2(1) (a) :*

"(a) "acquirer" means any person who, directly or indirectly, acquires or agrees to acquire whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over a target company;

Further, as per regulation 2(1) (q)

"(q) "persons acting in concert" means,—

(1) persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company.

(2) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established,—

(i) a company, its holding company, subsidiary company and any company under the same management or control;

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

(iii) directors of companies referred to in item (i) and (ii) of this sub-clause and associates of such directors;

(iv) promoters and members of the promoter group;

(v) immediate relatives;

(vi)

Explanation.— For the purposes of this clause "associate" of a person means,—

(a) any immediate relative of such person;

- (b) trusts of which such person or his immediate relative is a trustee;*
- (c) partnership firm in which such person or his immediate relative is a partner; and*
- (d) members of Hindu undivided families of which such person is a coparcener;"*

30. *In this case, it is admitted position that Mr. Ramanujam and Mr. Sudarshan are promoters-directors of ZSL and Mr. Srikanth is a whole time director of ZSL. Ms. Sripriya is wife and dependent of Srikanth and Sthithi, wherein Mr. Ramanujam and Mr. Sudarshan are shareholders and directors, is one of the promoters of ZSL. Accordingly, in terms of regulation 2(1) (q) (2) (ii) (iii) (iv) and (v) all these five persons viz; Mr. Ramanujam, Mr. Sudarshan, Mr. Srikanth, Ms. Sripriya, and Sthithi are deemed to be persons acting in concert with each other with regard to the aforesaid acquisition of Ms. Sripriya and Sthithi in the ZSL. It is noted that regulation 2(1)(q) provides a rebuttable presumption with regard to status of a person acting in concert with other persons within the same category specified in said regulation. The contrary has to be established by the persons deemed as persons acting in concert. In this case, Mr. Ramanujam, Mr. Sudarshan, Mr. Srikanth, Ms. Sripriya, and Sthithi have not been able to establish the contrary to the deemed presumption on the basis of any evidence. This apart, as observed in the interim order and discussed hereinabove, the loans obtained by Ms.Sripriya from NBFCs to acquire shares of ZSL was repaid by her out of the funds received from ZSL and Sthithi. Similarly, the loans obtained by Sthithi from NBFCs to acquire shares of ZSL were repaid out of funds received from ZSL. Such funding by ZSL and Sthithi to Ms.Sripriya and by ZSL to Sthithi, has to be with the decision of board of directors of ZSL/ Sthithi. Thus, Mr.Ramanujam, Mr.Sudarshan and Mr.Srikanth, being part of board of directors of concerned companies had active role in such funding for acquisition of shares. It is also observed from the documents provided by the stock brokers TCSS and IFIN, the electronic contract notes for the trading by Sthithi during the examination period were sent to email id of Mr.Srikanth. The phone number provided to the stock broker IFIN in the account of Sthithi belongs to Mr.Srikanth. Such facts further indicate that Mr.Srikanth was not only a person acting in concert with his wife Ms.Sripriya but also with regard to acquisition of Sthithi. It is further noted that during the period May 9, 2012 to September 27, 2012, there were repeated off market transfers of ZSL shares between Sthithi and Ms. Sripriya. These facts and circumstances, strongly suggest that these five noticees were interested or involved in the common objective or purpose of acquisition of shares of ZSL and they co-operated for the common objective of acquisition of shares of ZSL. I, therefore, reiterate the findings in the interim order in this regard and prima facie hold*

that these five noticees acted in concert with regard to acquisitions of shares of ZSL by Ms. Sripriya and Sthithi?

5. Ms.Sripriya (vide email dated October 07, 2015 read with letter dated August 14, 2015), Sthithi (vide email dated October 09, 2015 read with letter dated August 17, 2015), Mr. Ramanujam (vide letter dated August 17, 2015), Mr. Srikanth (vide letter dated August 14, 2015), Mr. Sudarshan (vide email dated October 09, 2015) requested for time for filing their submissions and also requested for an opportunity of personal hearing.

6. The above said noticees were afforded an opportunity of personal hearing in respect of the SCN (related to violation of reg. 3(2) of the Takeover Regulations) was afforded on December 10, 2015.

7. Thereafter, **Mr. Ramanujam**, vide letter dated December 09, 2015 *inter alia* made the following submissions:

- (a) Submissions advanced by his previous attorney was totally incorrect.
- (b) SEBI had recorded adverse observations and remarks on the basis of such submissions.
- (c) He was unable to be personally present in the personal hearing and therefore effective representation could not be made.
- (d) He should be afforded an opportunity of personal hearing to bring on record the facts that had been missed out earlier. Till such opportunity of provided, there cannot be any response filed with SEBI in connection with the notice for violation of Takeover Regulations.
- (e) Therefore, availing the opportunity of hearing only on the issue of Takeover Regulations would be inadequate.
- (f) SEBI has not updated him regarding the investigation and that no summons was issued to him. As there has been no development in the matter, SEBI's insistence to proceed with

the hearing on the limited issue without giving an opportunity to present the correct facts would be against fair play.

- (g) Citing the heavy rains in Chennai, the noticee also sought adjournment of the hearing and requested for another opportunity to place complete facts in the matter.

8. **Srikanth and Sripriya** also made similar submissions as that of Mr. Ramanujam.

9. In response, SEBI vide letter dated December 23, 2015 *inter alia* stated the following-

- (a) Pursuant to the passing of the confirmatory order, request for a full-fledged personal hearing was not acceded to.
- (b) Investigation in the matter is on-going and final view would be taken in the proceedings on completion of investigation.
- (c) The personal hearing with respect to the SCN issued through the confirmatory order pertaining to the violation of Takeover Regulations is afforded on January 13, 2016.

10. Thereafter, vide separate letters dated December 31, 2015, Sripriya and Srikanth reiterated their earlier submissions and requested for a hearing in the matter in totality.

11. In the personal hearing held on January 13, 2016, Mr. S. Murugan, Advocate appeared and requested for another date on the ground that the advocate representing Mr. Sudarshan was not in station. Noticees, Mr.Srikanth, Ms.Sripriya and Mr.Ramanujam were represented by Mr.Somasekhar Sundaresan, Advocate. The advocate requested for further time as he wanted to peruse the data pertaining to the matter and thereafter an opportunity of personal hearing. He also requested for copies of the replies filed by the noticees pursuant to the interim order. The further hearing in the matter was fixed on February 11, 2016.

12. Further hearing was held on February 11, 2016. The following is the record of proceedings of the said personal hearing:

- (a) Mr. Somasekhar Sunderasan and Mr. Ravi Hegde, Advocates appeared for noticees, Mr. Srikanth and Mrs. Sripriya. Mr. Srikanth was also present.

The learned advocate made oral submissions and sought liberty to file written submissions along with documents. The request was allowed and such submissions were to be filed within a period of 15 days.

- (b) Noticees, Mr. Sudarshan Venkatraman, Mr. Ramanujam Seshrathnam and Sthithi Insurance Services Pvt. Ltd. were represented by Mr. N. Rajaraman, Advocate. The learned advocate made a request for documents pertaining to the matter and the submissions made by the other noticees. He requested that he would file his reply after receipt of such documents. The counsel for noticees mentioned in paragraph (a) above volunteered to supply the same.

The above noticees are directed to file their submissions within a period of one week after receipt of documents.

13. Pursuant to the personal hearing, Ms. Sripriya, vide letter dated April 19, 2016 *inter alia* made the following submissions:

- (a) The allegation against her in the present proceedings was that she failed to make an open offer under the Takeover Regulations and such allegation was made on an incorrect finding that she is a 'person acting in concert' with the promoters of Zylog and her shareholding had increased beyond the threshold limit of 5% during the period between July 2012 to October 2012, which warranted an open offer.
- (b) The present proceedings are premature as she had requested for an opportunity of personal hearing as there were inconsistencies and factually incorrect observations recorded in the confirmatory order.
- (c) The deemed SCN is issued based on incomplete facts and baseless observations which goes to the root of the controversy in the present proceedings and would even affect the outcome of the present proceedings.
- (d) **Key submissions:**

- (a) *“The Confirmatory Order cannot be considered as a show cause notice admittedly when the said order is passed on the basis of a preliminary investigation and when the investigation in the matter is not yet completed; in other words, it would be incorrect to issue a show cause notice based on preliminary and incomplete investigation;*
- (b) *The consequence of any direction under Regulation 3(2) of the SAST 2011 can be far reaching and disastrous. Given such magnitude, there cannot be any allegations against any entity without providing an opportunity of inspection of documents or providing all the relevant details in support of the such serious allegations. The allegation against me is vague and generic in as much as the basic details and particulars of the alleged failure and trigger to make an open offer under the SAST 2011 has not yet been provided by SEBI either in the Confirmatory Order or prior to the personal hearing;*
- (c) *It was but reasonable and logical for SEBI to conclude the investigation in the matter before initiating the present proceedings, which according to SEBI is limited and confined to just one specific issue, namely the alleged violation of the SAST Regulations, 2011, which issue is wholly based on the incorrect findings in the Confirmatory Order;*
- (d) *The allegation that an open offer was triggered in the matter was recorded in the Confirmatory Order without even providing the basic as to when the open offer was triggered or when the shareholding crossed the threshold limits specified under SAST 2011. No details as regards my shareholding before and after the triggering event is provided by SEBI before scheduling a personal hearing in the matter in relation to the deemed SCN.*
- (e) *The lacunae and inconsistencies in the present proceedings can only be cured by SEBI by completing the investigation into the matter to find out if at all there was a trigger to make an open offer and then to issue appropriate show cause notice with all the particular details and information which would enable the Noticees to effectively participate in the proceedings and assist the Whole Time Member in deciding the issue. Therefore, the proceedings in relation to the deemed SCN is premature and bad in law, and deserves to be withdrawn at this stage.*
- (f) *The very basic ingredient for the trigger of an open offer under the SAST Regulations 2011 is the “entitlement to exercise voting rights”. In the present case, the voting rights vested with the lenders and I had no entitlement to vote. Even assuming for the sake of argument, that the Noticee was a person acting in concert with the promoters of Zylog, it is important to note that the relevant shares along with the underlying voting rights were vested evidently and clearly in J M Financial and Motilal Oswal, who were lenders who lent me funds for the acquisition of shares. The voting rights with respect to the shares were at all times vested in them. In addition to controlling the*

shares which were purchased by me, the financial institutions had rights over such shares which ultimately were sold by them for the defaults in repayment of dues by me;

- (g) *The fund flow and the flow of funds into my account from Zylog was an advance payment received from Zylog towards the sale of immovable property as per the Memorandum of Understanding between Zylog and the Noticee and has no correlation with the purchase or acquisition of shares of Zylog. The advance payment of around Rs. 5.8 Crores which has raised suspicion in the matter was in effect an advance payment towards the purchase of land and the same was refunded to Zylog in the same financial year after the sale transaction could not be completed. Further a Deed of Cancellation dated December 03, 2012 was executed. The details and facts were never available with the Whole Time Member who passed the Confirmatory Order. Therefore, it was important to appreciate all these submissions with a view to arrive at a correct finding in the matter, more particularly when the same receipt of funds in relation to the land purchase is viewed as “funding” and as rendering financial assistance by Zylog in acquisition of shares;*
- (h) *The only allegation recorded in the deemed SCN is that all the Noticees have failed to establish and provide a rebuttable presumption with regard to status of a person acting in concert with other persons within the same category as specified in Regulation 2(1)(q), 2(ii) (iii) (iv) and (v) of the SAST 2011. It is alleged that the Noticees have not been able to establish the contrary to the deemed presumption on the basis of any evidence. However, SEBI has failed to even show how the rebuttable presumption is attracted in the present matter to begin with”.*
- (e) The confirmatory order recorded that as on April 01, 2012, the promoters of Zylog held 49.86% of the paid-up equity share capital of Zylog. When she bought 27,71,280 equity shares of Zylog aggregating 8.43% during the period July 05, 2012 to December 31, 2012, she along with the other noticees had allegedly crossed 5% threshold provided under regulation 3(2). However, no details as regards the triggering event or the acquisitions are provided by SEBI.
- (f) According to the noticee, she has endeavoured to explain the correct facts and demonstrate how the proceedings, without the completion of the investigation in relation to the takeover violation is not maintainable.
- (g) As held by the Hon’ble Supreme Court in Orix Fisheries case, the notice should contain all the required details and information which can be dealt with by the noticee. The hearing

cannot be a mere formality and therefore all the relevant documents and allegations are to be provided with precise and specific facts and not vague or bald allegations.

- (h) The moot question which falls for consideration is whether she can be considered as a person acting in concert with other noticees under regulation 2(1) (q) of the Takeover Regulations consequently whether the shareholding of other noticees in Zylog could be aggregated with her shareholding for the purposes of calculating the threshold limits provided in regulation 3(2), merely because there has been transfer of funds from the bank account of Zylog into my account. It is the noticee’s case that she cannot be considered as PAC with any entity mentioned in the Orders nor can her acquisitions be considered as funded by Zylog. In any case, without even having voting rights, whether she was a person acting in concert with the promoters is wholly irrelevant.
- (i) The Ex-parte Order was passed way back on June 13, 2013 and it is surprising to note that SEBI has not yet completed the investigation in the matter and has merely relied upon submission purportedly made by the advocates.
- (j) For her trades in the scrip of Zylog, she had not used any fund of Zylog or its promoters. To trade in the scrip of Zylog, she had availed of loans from NBFCs and Brokers. The details of these loans were:

NBFC / Broker Name	Loan Sanctioned	Loan Utilized (in Rs.)	Interest Rate per annum	Date of Agreement
JM Financial Products Limited (“JM”)	Rs. 20 Cr	20 Cr	14.50%	April 1, 2010
MotilalOswal Financial Services Limited (“MOSL”)	Rs. 5 Cr	5 Cr	15.25%	May 21, 2012
Narayanan Sriram Investments Pvt. Ltd. (now IFIN Securities Finance Ltd)	Rs. 5 Cr	5 Cr	19%	February 28, 2012
Aditya Birla Finance Limited	Rs. 14 Cr	12.30 Cr	16%	June 2012

Fortune Credit Capital Limited	Rs. 2.50 Cr	2.50 Cr	18%	July 31, 2012
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- (k) As per the agreements entered into for the above loans, all the shares acquired by her were pledged with the said lenders. The loan agreements executed with JM Financial and MOSL also ensured that the voting rights and all rights attached to such shares were vested with the lenders.
- (l) Pursuant to the aforesaid pledge of shares, she ceased to exercise any control over the shares which were held by her in Zylog as the shares were held in the demat accounts maintained with such lenders and under their absolute control. This was evident from the fact that she had requested JM repeatedly for transfer of 2,50,000 shares of Zylog to another demat account for meeting the margin requirements. While computing and aggregating the shareholding, the percentage of shareholding which were pledged with the financial institutions have to be considered and accordingly the quantum of shares pledged by her ought not to be added while computing the entire shareholding with the promoters. This submission was without prejudice to her submission that her shareholding cannot be clubbed with that of the promoters.
- (m) Wrong interpretation of deeming fiction provision:

For a person to be deemed to be acting in concert with another person, such person must fall within the same category of relationship set out in regulation 2(1)(q)(2). It is settled law that the deeming relationship applies and is limited only to persons falling within the same category and does not extend to entities across different categories. This position was laid down by the Hon'ble High Court in K.K. Modi vs. SAT. Furthermore, the SAT in Alliance Capital Mutual Fund and others vs. SEBI had observed “..... *The words “in the same category” are important and they make it clear that the deeming provision if sub-regulation (2) would apply only in respect of persons who are referred to in the same category. It follows that the deeming fiction shall not extend to entities across the different categories.*”

She does not fall within any category of deeming relationship under regulation 2(1)(q)(2) with the promoters of Zylog i.e. Ramanujam and Sudarshan or with Sthithi and accordingly not a person deemed to be acting in concert with Ramanujam, Sudarshan and Sthithi. While it is correct that she is a person deemed to be acting in concert with her husband Mr. Srikanth under regulation 2(1)(q)(2)(iv), Mr. Srikanth does not hold and has never acquired any equity shares of Zylog. Therefore, aggregating her holding of 8.43% of paid up equity capital of Zylog with the shareholding of the promoters of Zylog does not arise and consequently there cannot be any obligation to make an open offer under regulation 3(2).

- (n) As per definition of PAC, the relevant persons are required to act with a common objective or purpose for the acquisition of shares or voting rights in, or exercising control over a target company with an agreement or an understanding with each. The noticee submitted that the interim order had alleged that the promoters were facilitating their exit from the Company whereas she was buying shares of the Company. According to the noticee, she (who was buying shares of Zylog) cannot be a PAC with the promoters when they were selling shares of Zylog.
- (o) The noticee referred to the cases of Technip SA vs. SMS Holdings (P) Limited and Daiichi Sankyo Company Ltd vs. Jayaram Chigurupati and others.
- (p) She has been holding 11,00,000 shares (6.7%) of Zylog even before the IPO days in August 2007. She was holding 17,86,412 shares as on March 31, 2012 which represented 10.87%. She has been trading in Zylog shares since 2008. None of the trades were pursuant to any agreement or understanding with the other noticees. The subject funds which has created controversy was returned to Zylog immediately when the proposed sale of her land did not fructify. SEBI has not been able to show any relationship between her and the other noticees and meeting of minds to acquire substantial shares of Zylog or gain control over it. It was therefore erroneously observed that she was a PAC with the other noticees.
- (q) **Funding received from NBFCs and the alleged repayment made to NBFCs by Zylog:**

According to the noticee the following was the correct factual position:

- i. *“On April 2, 2012, Zylog and I entered into an agreement for sale (“**Sale Agreement**”) of a piece of land owned by me, situated at Mallaipattu village, Kancheepuram District, Tamil Nadu, for a consideration of Rs.12 Crores. A copy of Sale Agreement is annexed and marked here to as **Annexure A**.*
 - ii. *As per the Sale Agreement, part consideration of Rs. 6 Crores was to be paid to me on or before June 30, 2012 and the remaining Rs. 6 Crores was to be paid on the completion of the sale.*
 - iii. *Zylog made payment to me to the tune of Rs. 5,78,44,609.85 under the Sale Agreement. After making such payment, Zylog, on account of some financial difficulties, requested to cancel and terminate the Sale Agreement.*
 - iv. *As such, I and Zylog mutually decided to terminate the Sale Agreement and I, in good faith, agreed to return the advance received from Zylog. This understanding was recorded by way of a deed of cancellation dated December 3, 2012. The Whole Time Member has erroneously not taken note of the Sale Agreement and the deed of cancellation dated December 3, 2012.*
 - v. *I repaid the entire amount of Rs. 5,78,44,609.85 to Zylog. Details, along with dates, of such repayment by me to Zylog is set out in the Deed of Cancellation annexed and marked hereto as **Annexure B**. This fact is further certified by a chartered accountant. The said certificate is annexed and marked hereto as **Annexure C**.*
30. *Under Clause 11 of the Sale Agreement, I was entitled to forfeit a sum of Rs. 3 Crores since Zylog failed to complete the sale. However I have acted in good faith and returned the entire sum advanced to me by Zylog, which fact has not been considered in the Confirmatory Order. With these facts, I fail to understand how could there be any allegation that my acquisition of shares was funded by Zylog or its promoters. As already stated above, such fundamental submissions and arguments in the said matter were not advanced before SEBI on account of complete miscommunication with the instructions given to my earlier advocates and my inability to effectively participate in the proceedings and therefore I had addressed the letter to the Whole Time Member seeking an opportunity of personal hearing in the matter, which is not yet responded.”*

(r) **No co-relation between the funds received from Zylog and the trades executed by the noticee:**

31. *“The amount transferred to my account from Zylog amounted to Rs. 5,78,58,609/- while the purchase through various brokers amounted to approximately Rs. 4,963.72 Lakhs. This is clear from the table produced below which is as per the table provided by SEBI:*

Sr. No.	Period	FUND FLOW FROM ZYLOG	TRADES IN SHARES OF ZYLOG	
		Amount (in Rs.)	NBFC /Broker Name	Amount (in Rs.)
1.	April 2012	4,58,609	a. IFIN Securities Finance Ltd., and b. JM Financial Products Ltd.	6,43,70,000
2.	May 2012	5,20,00,000	IFIN Securities Finance Ltd.	6,71,55,000
3.	July 2012	4,00,000	a. IFIN Securities Finance Ltd b. JM Financial Products Ltd. c. MotilalOswal Financial Services Ltd	17,23,25,000

			d. Fortune Credit Capital Ltd.	
4.	August 2012	50,00,000	Fortune Credit Capital Ltd.	1,51,83,000
	Total	5,78,58,609		31,90,33,000

32. *The payments made by Zylog were made under the Sale Agreement and duly re-paid by me in full and had nothing to do with my trading in the scrip of Zylog. It is also clear that the purchase of shares of Zylog were made with the funds raised from NBFCs / lenders. From the tables above it is clear that even is the funds received by me as advance payment for the purchase of my land by Zylog, such funds does not constitute even 19% of my total purchase. The purchase value is substantially more than the amounts transferred by Zylog to my account for the Sale Agreement. Therefore, there cannot be any finding that Zylog funded the purchase of shares made by me. And it is also pertinent to note that the shares which were held as a security for the loan availed by me were sold and there was a distress sale effected by the lenders on account of my non-payment of the dues owed to such lenders.*
33. *It is also clear that after the pledge of share as per the loan agreements, I have had no control over my shareholding in Zylog nor even had the voting rights with me. Thus, the two transactions were completely unrelated. Accordingly, the allegation that Mr. Ramanujam, Mr. Sundarshan and Mr. Srikanth, being part of board of directors of concerned companies had active role in such funding for acquisition of shares is wholly baseless and irrelevant?.*

(s) **Rationale for investing in Zylog:**

Zylog was financially sound and was a super achiever at the time when she purchased the shares. The financial results showed growth in turnover and profits. Max New York Life Insurance invested in Zylog in February and March 2012 and held 2.6% shares as on March 31, 2012. There were good market reviews and positive reports from market analysts. One of the analysts in February 2012 had observed that Zylog shares could reach upto Rs.1100/- within a period of 12 months.

She believed that shares of Zylog could move up further and thereafter borrowed huge funds by pledging all her existing holdings in Zylog including the voting rights with financial institutions to acquire shares of Zylog. It was learnt that Karvy and IFCI which had lent funds to the promoters of Zylog sold their shareholding which was a distress sale. Such sale of promoters' shareholding holdings by the financial institutions resulted in the price fall and all her lifetime holdings were depleted. This also resulted in defaults as the financial institutions who had lent funds to her started selling the shares which were pledged by her.

The impact was such that the transfer of funds from Zylog towards the proposed sale of land was only a co-incidence and there is no correlation with her purchase of shares.

- (t) SEBI has not even furnished relevant details and obtained her clarification and statements which would have enabled SEBI to take an informed decision in the matter. Though she and her husband had signed the submissions the same were done at a time when she was attending to her ailing father in law and who died around the time when the confirmatory order was passed.
- (u) The noticee desires to inspect the records and documents in the matter if SEBI is desirous of proceeding further in the matter without waiting for the investigation report in the matter. She also requested for personal hearing if SEBI decides to proceed with the present proceedings without completion of investigation by SEBI and without providing all the details as required in the matter. Only after providing her with all the relevant details which are required to be present in the notice (like date of acquisition, date of triggering an obligation to make an open offer) and after granting an opportunity of personal hearing in the matter, the present proceedings can be further progressed. Without the relevant details and personal hearing, the present proceedings would be a mere formality.
- (v) It would therefore be practical and logical for SEBI to complete the investigation and thereafter issue a fresh show cause notice in the matter, if required, based on the complete investigation report. She also undertook to provide all the relevant details and extend her full co-operation in the ongoing investigation.

14. Mr. Srikanth, vide his reply dated April 19, 2016 while majorly reiterating the submissions of his wife Sripriya had also stated the following:

- (a) He does not hold any shares in Zylog and merely because his wife acquired shares cannot be a basis to allege that he was a person deemed to be acting in concert with his wife and all other noticees. He had no role in the alleged acquisition of shares by his wife or Sthithi as the said purchases have been made out of their own funds with no involvement from his side.

(b) He does not fall within any category of deeming relationship under regulation 2(1)(q)(2) with the promoters of Zylog or Sripriya and accordingly not a person deemed to be acting in concert with any of the noticees. While it was correct that he is a person deemed to be acting in concert with other noticees under regulation 2(1)(q)(2)(iv), it was noteworthy to mention that he does not hold any equity shares of Zylog. Therefore, aggregating the holding of 8.43% of paid up capital of Zylog with the shareholding of promoters of Zylog did not arise and consequently there cannot be any obligation to make an open offer under regulation 3(2).

15. It is noted that Mr. Sudarshan, Mr. Ramanujam and Sthithi, were represented by Mr. N Rajaraman, advocate in the hearing held on February 11, 2016. Subsequently, the advocate vide email dated April 19, 2016 has informed SEBI that he has not received any further instructions in this matter, and in view of the same he has withdrawn his vakalatnama and that he would no longer be in a position to assist in the matter. Accordingly, the three entities Mr. Ramanujam, Mr. Sudarshan and Sthithi were advised to file their submissions, if any, latest by April 29, 2016.

16. **Mr. Sudarshan** vide his email dated April 29, 2016 made the following key submissions on behalf of Sthithi and himself -

- a) The transactions made by Ms. Sripriya was not brought to the attention of Mr. Srikanth Parthasarathy, [her husband and Director of Zylog] or to the Board of Zylog. Consequently, Mr. Srikanth, as a Director of the said company, was completely unaware of these transactions. The oral defence of Ms. Sripriya was also that her husband (Mr. Srikanth) was also not aware of her transactions and the same were made in her individual capacity.
- b) The onus of bringing these transactions to the attention of the Board of Zylog lay solely with Mr. Srikanth who admittedly did not bring it to the attention of the Board. In view of the same, the charge against him and Sthithi was no longer legally tenable and needs to be dropped forthwith.
- c) Moreover the show cause notice fails to link him or Sthithi to the share transactions of Ms. Sripriya other than through a leap in logic rather than through any direct evidence.

d) In view of the fact that –

- i. it was admitted by Mrs.Sripriya that she has not even informed Mr.Srikanth, her husband of these transactions relating to the shares of Zylog;
- ii. it was admitted by Mr. Srikanth that in the absence of information from his wife he did not inform the Board of Zylog,
- iii. the show cause notice does not link him to these transactions otherwise than through a presumption which has been rebutted by the admission of Mr.Srikanth and Mrs.Sripriya, it was requested that the charges made out under the Takeover Code be dropped forthwith.

e) It is pertinent to note that unless Mr. Srikanth had brought these transactions to the attention of the Board of Zylog, it was impossible for the other Board Members to know of these transactions.

f) If SEBI is compelled to take any adverse inference of his role or that of Sthithi, he has requested for a personal hearing to defend Sthithi in his capacity as Director and in his individual capacity. He also requested SEBI to direct the Counsel of Mrs.Sripriya and Mr.Srikanth to provide him a copy of the written submissions made by them so that he is at-least aware of the fact and circumstances surrounding this issue.

17. Mr. Sudarshan vide email dated April 29, 2016 for himself and Sthithi requested SEBI to direct the counsel for Sripriya and Srikanth to provide him a copy of their written submissions made by them as undertaken in the personal hearing. The counsel for Mr. Srikanth and Ms. Sripriya mentioned that the submissions of their clients may be shared with other noticees if the submissions of other noticees are shared with them. Accordingly, the replies of Mr. Srikanth and Ms. Sripriya was shared with Mr. Sudarshan and the reply of Mr. Sudarshan was shared with the counsel for Mr. Srikanth and Ms. Sripriya. Subsequently, no further comments have been received from the aforesaid noticees.

18. Mr. Ramanujam vide his email dated May 09, 2016 *inter alia* made the following submissions-

- a) Sthithi is a holding company of the promoters of Zylog namely Mr. Sudarshan and Mr. Ramanujam.
- b) He and Mr. Sudarshan were both ousted from the company by the shareholders in the AGM held in November 2014 and November 2015 respectively. Well before that, since 2011, Mr. Sudarshan has not been in communication and in talking terms with this noticee for various internal situations.
- c) Mr. Sudarshan and his brother, Mr. Viswanathan (authorized signatory of Sthithi) have been fully handling the transactional activities of Sthithi. He had not traded in a single share of Zylog. Whatever shares he held were allotted in the initial stages of the Company and is not aware of the transactions performed in Sthithi.
- d) When he was in service, Mr. Srikanth and Mr. S.P. Srihari (Executive Director and CFO respectively of the Company) were taking care of all the transactions and communications pertaining to the stock market declarations of Zylog. He was all along stationed in USA and has lived in New Jersey for the past 25 years. He used to come to India only during board meetings and leave back to take care of the overseas operations of the company. Hence, he is unaware of stock exchange declarations. At times, his signatures were taken for filing with stock exchanges.
- e) As far as Sthithi was concerned, this noticee requested SEBI to get the required information from Mr. Sudarshan as he is the right person. The noticee also submitted that if SEBI requires the bank transactions or books of accounts of transactions, he would try his best to submit the same.

19. I have perused the submissions of the Sripriya and Srikanth and the material available on record. As per the shareholding pattern of the Company (filed in BSE as on December 31, 2015), Sthithi, Sudarshan and Ramanujam are the promoters of the Company holding 2.81% of the equity capital of the Company.

20. I note that **Sripriya** and **Srikanth**, in their submissions, have contended that Srikanth is not a promoter and never held shares of the Company. Sripriya is the wife of Srikanth. Srikanth was a director in Zylog. According to these noticees, the Company and its directors are deemed to be PAC under regulation 2(1)(q)(2)(ii) of the Takeover Regulations. However, a director is not a deemed PAC with the promoters as the promoters are covered under a different category under regulation 2(1)(q)(2)(iv). They have contended that it is settled law that deeming relationship applies and is limited only to persons falling within the same category and does not extend to entities across different categories. In this regard, they have referred to judgments of Hon'ble SAT rendered in the matters of K.K. Modi and Alliance Capital Mutual Fund. In the Alliance Capital Mutual Fund case, the Hon'ble SAT has held that the words "*in the same category*" make it clear that the deeming provision in sub-regulation (2) would apply only in respect of persons who are referred to in the same category and that the deeming fiction shall not extend to entities across different categories. Sripriya has contended that though she is a PAC with her husband, she cannot be said to be a PAC with the promoters.

These persons have also contended that to say that a person is a PAC with another, there should be a shared common objective between them. These noticees referred to the interim order and stated that as per the interim order, it was SEBI's case that the promoters were facilitating their exit in the Company. However, as Ms. Sripriya was purchasing shares of the Company, the said conduct defied logic to state that she was a PAC with the promoters.

These noticees have also requested that it would be practical that the investigation in the matter be concluded and thereafter for SEBI to issue a fresh show cause notice along with the findings of the investigation. These noticees have also requested for inspection of documents and another opportunity of hearing.

The above noticees have also submitted that SEBI has not considered the sale agreement entered with Zylog, the cancellation deed and the return of Rs.5.78 crore to Zylog.

21. Mr. Sudarshan has contended that the purchase transactions by Ms. Sripriya was not reported to the Board of Zylog by her husband and director, Mr. Srikanth. There was no direct evidence for linking him or Sthithi to the impugned transactions of Ms. Sripriya. Mr. Ramanujam

has stated that he was handling the overseas operations of Zylog and that Mr. Srikanth and Mr. S.P. Srihari used to take care of all transactions and communications pertaining to the stock exchanges.

22. I have considered the above submissions. To prove that a person is a 'PAC' with another, it needs to be seen whether the said person had a common objective or purpose of acquisition of shares/voting rights in or exercising control over the target company. Ms. Sripriya has contended that she did not have any common objective with the promoters to acquire shares as the interim order had alleged that promoters allegedly indulged in manipulation to off-load their shares in Zylog. Further, the documents pertaining to the 'land deal' (including the sale agreement, cancellation deed and return of Rs.5.78 crore) between Sripriya and Zylog has not been examined by SEBI as per the noticees. They have also contended that Srikanth had not informed the purchase transactions of his wife Sripriya to the board of Zylog for them to review the same. It is also a legal contention put forth by Sripriya that they she cannot be PAC with promoters as the deeming fiction in shall not extend to entities across different entities. Sripriya has also stated that she had borrowed money from financial institutions for trading in Zylog shares and that she did not have any right to exercise voting rights on such shares in view of the various covenants/clauses in the agreements entered with the financial institutions. I also note that the acquisition of 0.63% by Sthithi alone would not lead to triggering regulation 3(2) of the Takeover Regulations. Therefore, to prove the allegations, it needs to be seen whether Sripriya (who acquired 8.43%) was a PAC with the promoters in respect of the impugned acquisition.

23. The noticees have also requested for inspection of records stating that relevant details have not been provided and requested that it would be logical for SEBI to complete the investigation and issue an SCN if required based on the complete investigation report. Considering the various contentions put forth by the noticees, I am of the view that the same needs to be examined by SEBI in the light of observations made in the confirmatory order. I note that the investigation in the matter of Zylog with respect to the other charges/allegations (as mentioned in the interim order and confirmatory order) is ongoing in SEBI. The same is also evident from SEBI's letter dated December 23, 2015 sent to the noticees. It would therefore be appropriate that the investigation looks into the submissions and material submitted by noticees with respect to the alleged violation

of regulation 3(2) of the Takeover Regulations and come out with findings and thereafter take appropriate action in accordance with law.

24. In view of the foregoing, I hereby direct SEBI to investigate the allegations pertaining to the Takeover Regulations levelled against **Mr. Ramanujam Sesharathnam, Mr. Sudarshan Venkataraman, Mr. Parthasarathy Srikanth, Ms. Sripriya Srikanth and Sthithi Insurance Services Private Limited** and also examine the submissions and material submitted by the concerned noticees. SEBI is advised to expeditiously complete the investigation. The noticees are also directed to co-operate with SEBI in the on-going investigation and provide all information and documents that may be sought by SEBI in this regard.

**PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**

Date: June 07, 2016

Place: Mumbai