WTM/AB/EFD-1/DRA-4/24/2019-20

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: ANANTA BARUA, WHOLE TIME MEMBER

ORDER

Under Sections 11(1), and 11B of Securities and Exchange Board of India Act, 1992 and Regulation 44 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 read with Regulations 35 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 - In the matter of Vas Infrastructure Limited

Noticee No.	Name of the Noticee	PAN
1.	Vasparr Shelter Limited	AABCV2888D
2.	Vas Educomp Pvt. Limited (formerly known as Vasparr Trading Pvt. Limited)	AABCV2889C
3.	Pushpanjali Drums Pvt Limited	AAECP1908D
4.	Yashraj Containeurs Limited	AAACV4846L
5.	Precision Containeurs Limited	AAACV4766F
6.	Raj J. Valia	AENPV8400N
7.	Madhav J. Valia	AENPV8401P
8.	Jayesh V. Valia	AAFPV5698G
9.	Jayest V. Valia (HUF)	AACHJ8696M

The aforesaid entities are hereinafter referred to individually by their respective names/Noticee numbers and collectively as "the Noticees".

1. Present proceedings have been initiated against the Noticees, vide a show cause notice dated September 30, 2015 (hereinafter referred to as "**the SCN**") issued by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), to the Noticees, under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") and Regulation 44 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "**SAST Regulations, 1997**") read with Regulation 35 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "**SAST Regulations, 2011**") for violation of Regulation 11(1) of the SAST Regulations, 1997.

2. Facts stated in the SCN and the allegations made therein are narrated hereunder:

   a) Vas Infrastructure Limited (hereinafter referred to as "**VIL"/"the target company**") is a company having its registered office at 401, Court Chambers, 4th Floor, S. V. Road, Borivali (West), Mumbai - 400092. The shares of the target company are listed on BSE Ltd.(hereinafter referred to as "**BSE**");

   b) SEBI conducted an investigation into the trading by certain entities in the scrip of VIL to ascertain any violation of the provisions of SEBI Act, 1992 and SAST Regulations, 1997;

   c) It was observed from the shareholding pattern of VIL available on BSE website for quarters ended March, 2009 and June, 2009, that the share capital of VIL had increased from 1,00,00,400 shares as on March 31, 2009 to 1,25,00,400 shares as on June 30, 2009 i.e. an increase of 25,00,000 shares. VIL vide its letter dated March 28, 2012 informed SEBI that the increase in share capital was on account of conversion of 25,00,000 warrants into 25,00,000 shares of VIL, on April 11, 2009 and May 30, 2009 by the allottees/Noticees. Details of warrants like name of allotee of warrants, number of warrants allotted to each allottee, number of warrants converted into shares by each allottee and increase in the holding of each allottees pursuant to conversion of warrants into shares, are as under:

Table: 1

Name of allottee	**Category of Allottee**	**No. of warrants converted into equity shares**		**Holding (As on March 31, 2009)**	**Holding (As on April 11, 2009)**	**Holding (As on May 30, 2009 & June 30, 2009)**
		on April 11, 2009	**on May 30, 2009**			
Vasparr Shelter Limited	Public	6,00,000	-	4,99,516 (4.99%)	10,99,516 (9.16%)	10,99,516 (8.8%)
Vasparr Trading Pvt. Ltd. (now known as Vas Educomp Pvt Ltd)	Public	5,00,000	-	4,99,836 (5%)	9,99,836 (8.33%)	9,99,836 (8%)
Pushpanjali Drums Pvt. Ltd.	Public	4,00,000	-	9,17,880 (9.18%)	13,17,880 (10.98%)	13,17,880 (10.54%)
Yashraj Containeurs Ltd.	Promoter and Promoter group	83,400	-	9,88,111 (9.88%)	10,71,511 (8.93%)	10,71,511 (8.57%)
Precision Containeurs Ltd.	Promoter and Promoter group	83,400	5,00,000	6,14,160 (6.14%)	6,97,560 (5.81%)	11,97,560 (9.58%)
Raj J. Valia	Promoter and Promoter group	83,300	-	NIL	83,300 (0.69%)	83,300 (0.67%)
Madhav J. Valia	Promoter and	83,300	-	1,99,500 (1.99%)	2,82,800 (2.36%)	2,82,800 (2.26%)

	Promoter group					
Jayesh V. Valia	Promoter and Promoter group	83,300	-	2,00,500 (2.00%)	2,83,800 (2.36%)	2,83,800 (2.27%)
Jayesh V. Valia (HUF)	Promoter and Promoter group	83,300	-	2,62,525 (2.63%)	3,45,825 (2.88%)	3,45,825 (2.77%)
		20,00,000	**5,00,000**	**41,82,028 (41.82%)**	**61,82,028 (51.52%)**	**66,82,028 (53.45%)**

d) It was observed that for the aforesaid acquisitions of shares of VIL, pursuant to conversion of warrants, Noticees were the "person acting in concert" as defined under Regulation 2(1)(e) of the SAST Regulations, 1997;

e) The connection/relationship of the Noticees based on letters dated August 6, 2011 of Vasparr Shelter Ltd & Vasparr Trading Pvt Ltd., letter dated August 11, 2011 of VIL, letters dated March 2, 2013 of Vasparr Shelter Ltd., Vas Educomp Pvt. Ltd. (formerly Vasparr Trading Pvt. Ltd.), Pushpanjali Drums Pvt. Ltd., Yashraj Containeurs Ltd., Precision Containeurs Ltd., Raj J. Valia, Madhav J. Valia, Jayesh V. Valia and Jayesh V. Valia (HUF) and information from the MCA signatory details, are as under:

Table: 2

Name of entity	**Address/ Phone no./ Fax no. of entity**	**Name of directors (in case of company)**	**Relationship/ Connection**
Vasparr	401, Court	1.Jayesh V. Valia	Vasparr Shelter Ltd.,

Shelter Ltd	Chambers, 4th Floor, S.V. Road, Borivli (West), Mumbai - 400092 Tel.: 28067594/ 28067595/ 28647506 Fax: 91-22-28063548	2. Sangita J Valia (wife of Jayesh V Valia) 3. Shashikant K Kittur (expired on Aug 11, 2010) 4. Narayanan V. Pillai (wef Aug 21, 2010)	Vasparr Trading Pvt Ltd., Yashraj Containeurs Ltd., Precision Containeurs Ltd., Raj J Valia and Madhav J Valia have the same address. These entities have common address with VIL. Pushpanjali Drums Pvt. Ltd. has similar address to the aforesaid entities. Vasparr Shelter Ltd., Vasparr Trading Pvt. Ltd., Pushpanjali Drums Pvt. Ltd., Yashraj Containeurs Ltd. and Precision Containeurs Ltd. have the same telephone and fax numbers. These entities have common telephone and fax numbers with VIL. Jayesh V Valia is director of all the
Vasparr Trading Pvt Ltd (now known as Vas Educomp Pvt Ltd)	401, Court Chambers, 4th Floor, S.V. Road, Borivli (West), Mumbai - 400092 Tel.: 28067594/ 28067595/ 28647506 Fax: 91-22-28063548	1. Jayesh V. Valia 2. Sangita J. Valia 3. Venkatachalam D. Iyer (wef Aug 21, 2010)	
Pushpanjali Drums Pvt. Ltd	402, Court Chamber, 4th Floor, S.V. Road, Borivali (West), Mumbai - 400092 Tel.: 28067594/ 95 / 28647506 Fax: 91-22-28063548	1. Sangita J. Valia 2. Sandeep Amrutlal Lad	
Yashraj	401, Court	1. Jayesh V. Valia	

Containeurs Ltd	Chambers, S.V. Road, Borivli (West), Mumbai - 400092 *(As per VIL's letter dated Aug 11, 2011)* Tel.: 28067594/ 95 / 28647506 Fax: 91-22-28063548	2. Maruti Patil 3. Babulal Jain 4. S.K. Kittur (expired on Aug 11, 2010) 5. Ganesan Venkatraman (wef Aug 21, 2010)	aforesaid companies except Pushpanjali Drums Pvt. Ltd. Further, he was director of Pushpanjali Drums Pvt. Ltd. during the period 16/11/2006 to 24/02/2009. Sangita J Valia (wife of Jayesh V Valia) is one of the directors of Pushpanjali Drums Pvt. Ltd. Further, she is also promoter director of Vasparr Shelter Ltd. and Vasparr Trading Pvt. Ltd. Jayesh V Valia and Sangita J Valia are parents of Raj J. Valia and Madhav J. Valia.
Precision Containeurs Ltd	401, Court Chambers, 4th Floor, S.V. Road, Borivli (West), Mumbai - 400092 Tel.: 28067594/ 28067595/ 28647506 Fax: 91-22-28063548	1. Jayesh V. Valia 2. Ajaykumar N Jani 3. Babulal Jain 4. S.K. Kittur (expired on Aug 11, 2010) 5. Ganesan Venkatraman (wef Aug 21, 2010)	
Raj J Valia	401, Court Chambers, S.V. Road, Borivli (West), Mumbai – 400092	-	
Madhav J Valia	401, Court Chambers, S.V. Road, Borivli	-	

	(West), Mumbai – 400092		
Jayesh V. Valia	C/22, Pushpa Park, S.V. Road, Borivli (West), Mumbai – 400092	-	
Jayesh V. Valia (HUF)	(same address as that of Jayesh V. Valia)	Karta - Jayesh V Valia	

f) It was observed that the companies, Yashraj Containeurs Ltd. and Precision Containeurs Ltd. are under the same management (since Jayesh V Valia, Babulal Jain and S.K. Kittur are the common directors) and are therefore deemed to be PAC as per Regulation 2(1)(e)(2)(i) of SAST Regulations, 1997. The companies, Vasparr Shelter Ltd., Yashraj Containeurs Ltd and Precision Containeurs Ltd. are under the same management (since Jayesh V Valia and S.K. Kittur are the common directors) and are also therefore PAC. Further, the companies Vasparr Shelter Ltd., Vasparr Trading Pvt. Ltd. and Pushpanjali Drums Pvt. Ltd. are under the same management (since Sangita Valia is the common director; Jayesh V Valia is common director in Vasparr Shelter Ltd. and Vasparr Trading Pvt. Ltd., and Jayesh V Valia was director of Pushpanjali Drums Pvt. Ltd. up to February 24, 2009) and therefore, they are also PAC as per the said Regulations. Furthermore, as per the Regulation 2(1)(e)(2)(iii), the directors and their associates (which includes relatives and HUF) of the aforesaid companies are deemed to be PACs and therefore, it is alleged that Jayesh V Valia, Raj J. Valia, Madhav J. Valia and Jayesh V. Valia HUF are also PAC.

g) The Noticees Vasparr Shelter Ltd., Vasparr Trading Pvt. Ltd., Pushpanjali Drums Pvt. Ltd., Yashraj Containeurs Ltd., Precision Containeurs Ltd., Raj J. Valia, Madhav J. Valia, Jayesh V. Valia and Jayesh V. Valia HUF are thus connected/related to each other and have acquired the

shares during the same period and through the same mode (conversion of warrants into equity shares). Therefore, it is alleged that the said Noticees have acquired shares with the common objective and are persons acting in concert as per Regulation 2 (1) (e) (1) of the SAST Regulations, 1997.

h) The Noticees are PACs and have acquired 20,00,000 shares pursuant to conversion of warrants on April 11, 2009, and as a result their shareholding increased from 41.82% as on March 31, 2009 to 51.52% as on April 11, 2009, i.e., an increase of 9.7%. As per regulation 11(1) of the SAST Regulations, 1997, an acquirer holding more than 15% but less than 55% of shares in the target company can acquire upto 5% of shares in a financial year without attracting the obligation to make an open offer. In the instant case, since the above stated acquisitions by the Noticees was more than the limit prescribed under regulation 11(1) of SAST Regulations, 1997, it was alleged that they are under obligation to make an open offer.

i) The Noticees vide their letters dated March 02, 2013 and April 01, 2013 have informed that there was no public announcement in relation to the said acquisition by conversion of warrants into equity shares. In view of the same, it was alleged that the aforesaid Noticees viz. Vasparr Shelter Ltd, Vasparr Trading Pvt Ltd (now known as Vas Educomp Pvt Ltd), Pushpanjali Drums Pvt Ltd, Yashraj Containeurs Ltd, Precision Containeurs Ltd, Raj. J. Valia, Madhav. J. Valia, Jayesh. V. Valia and Jayesh. V. Valia HUF have violated the provisions of Regulation 11 (1) of SAST Regulations.

j) It was observed that pursuant to conversion of warrants on April 11, 2009, the shareholding of the Noticees, as persons acting in concert, increased by 9.7%, i.e. from 41.82% as on March 31, 2009 to 51.52% as on April 11, 2009. Further, pursuant to conversion of 5,00,000 warrants on May 30, 2009, shareholding of Precision Containeurs Ltd. (Noticee no. 5) increased by 3.77% i.e. from 5.81% as on April 11, 2009 to 9.58% as on May 30, 2009. Therefore, during the quarter ended on June 30, 2009, shareholding of the Noticees, as persons acting in concert, increased by 11.63% i.e. from 41.82% as on March 31, 2009 to 53.45% as on June 30, 2009;

3. The SCN issued to the Noticees, contained relevant extract of investigation report qua the Noticees alongwith certain annexures, list of which is as under:

Table: 3

S. No.	Particulars of Document	Number of Annexure
1.	Shareholding pattern of VIL available on BSE Website for quarters ended on March, 2009 and June, 2009	1
2.	VIL's letter dated March 28, 2012 to SEBI	2
3.	VIL's letter dated February 13, 2013 to SEBI	3
4.	Vasparr Shelter Ltd.'s letter dated August 06, 2011 to SEBI	4
5.	Vasparr Trading Pvt. Ltd.'s letter dated August 06, 2011 to SEBI	5
6.	VIL's letter dated August 11, 2011 to SEBI	6
7.	Letters dated March 2, 2013 of Vasparr Shelter Ltd, Vas Educomp Pvt Ltd (formerly Vasparr Trading Pvt Ltd), Pushpanjali Drums Pvt Ltd, Yashraj Containeurs Ltd, Precision Containeurs Ltd, Raj. J. Valia, Madhav. J. Valia, Jayesh. V. Valia and Jayesh. V. Valia (HUF) to SEBI	7
8.	Details of Directors of Companies obtained from MCA21 website.	8
9.	Letters dated March 02, 2013 and April 01, 2013 of the Noticees to SEBI	9 (referred to as 8)

Replies, Inspection, Hearing and Written submissions:

4. Noticees were provided with the inspection of the documents, on May 16, 2016. Noticees filed reply to the SCN vide their respective letters dated June 30, 2016. Opportunities of personal hearing were provided to the Noticees on October 06, 2016 and July 15, 2019. On the said date of hearing, Advocates appeared on behalf of all the Noticees. Thereafter, written submissions dated August 01, 2019 were also filed by the Advocates of the Noticees.

Submissions of the Noticees:

5. The brief of various submissions made by the Noticees in the replies/written submissions and during the hearing, is as under:

a) The Noticees are promoters of VIL, a listed company. The Noticees were, at the relevant time, collectively the largest shareholding group, with the next largest shareholder holding 3% of the shares of VIL. Clearly therefore, the Noticees were collectively in control of VIL, holding almost 14 times as many shares as the next largest shareholder. Additionally, one the Noticees, Mr. Jayesh V. Valia, was the chairman of VIL. Therefore, it can be said that the Noticees were always, including the relevant time, in control of VIL.

b) The Noticees decided to infuse funds into VIL by way of issuance of warrants on preferential basis to them, as compliance of one of the terms of the credit facility of Rs. 42 Crore, granted by Union Bank of India to VIL, which required promoters of VIL to bring in a margin of Rs. 20 Crore.

c) Because of misunderstanding about the status of three companies belonging to the promoter group of VIL, these companies were kept out of the promoter group of the VIL. The warrants issued to the Noticees were structured considering these three companies out of the promoter group. The warrants would have been structured differently had a correct view been taken in the matter.

d) Since Noticees were already in control of the VIL therefore the Noticees could not have any objective, common or otherwise, to gain control over VIL. Given that there has been no change in control of the VIL the alleged violation cannot necessarily require the direction of making an open offer.

e) Regulation 11(1) read with proviso to Regulation 11(2) of SAST Regulations, 1997 permits an acquirer holding shares between 15% and 55% to acquire 10% shares of a target company without making a open offer.

SCN silent on the measure proposed:

f) Regulation 44 of the Takeover Regulations envisages nine illustrative types of measures SEBI may adopt in case of a contravention of the Takeover Regulations, some of which have multiple sub-options within them. The provision is worded in a broad and inclusive manner and even the nine types of directions are merely illustrative and not exhaustive. Further, Sections 11 and 11B of the SEBI Act have been used by SEBI variously to issue an extremely wide range of directions, purporting to act in the interest of the investors and the securities market. Additionally, there is now power available to SEBI to levy monetary penalties even under Section 11 of the SEBI Act. Hence it incumbent for SEBI to provide notice of what specific measure SEBI is contemplating, so that the Noticees can present their case on the suitability/appropriateness or otherwise of the specific measure proposed. The following case laws have been cited:

a) *Gorkha Security Services v. Govt. of NCT of Delhi & Ors* (decided on August 04, 2014)
b) *Royal Twinkle Star Club Private Limited v. SEBI* (decided on February 03, 2016)
c) *Joseph Varghese & Ors v. SEBI* (decided on September 23, 2016).

Delayed proceedings prejudicial

g) There has been substantial passage of time since the Acquisition. There is an inordinate delay of more than 10 years. The information regarding the conversion of warrants was always in public

domain. On March 31, 2009, the BSE gave an in-principle approval under clause 24(a) of the Listing Agreement to VIL for issue of 75,00,000 warrants convertible into equity shares to promoters and other on preferential basis. During April 2009, VIL informed BSE about the increase of shareholding on account of conversion of warrants into equity shares and thereafter on July 2009, BSE granted approval for listing of 25,00,000 shares on the exchange. In August 2009, the BSE issued a public notice informing members about the conversion of warrants and issuance of 25,00,000 equity shares of VIL.

h) Despite this fact being in the public domain, SEBI had, after a delay of about two years, for the first time, sought (publicly available) information from the Noticees in the year 2011. The Noticees responded to the same almost immediately. Thereafter, it was after more than six years, in the year 2015, that the SCN was issued. The Noticees, after following the due process, responded to the same and appeared before the Learned Whole Time Member. The Noticees had filed written submissions pursuant to the personal hearing on October 27, 2016. There was no response from SEBI thereafter and in July 2019, after 2.5 years from the last hearing, hearing was granted.

i) It is a trite law, laid down by various *fora*, that a statutory authority ought to conduct proceedings within a reasonable time. This even in situations where no period of limitation is prescribed.

j) There is substantial cost and effort associated with the making of an open offer. Further, the law requires payment of interest to shareholders in case of delay in making an open offer. In the present case, the Noticees cannot be expected to pay interest for delay attributed to SEBI. Such an approach will be unfair. There are various disclosures required to be made in relation to the offer document. The Noticees will not be able to make positive statements and complete disclosures as records pertaining to the relevant time will not be available with the Noticees.

Open offer not mandatory

k) There is no requirement to direct an open offer as the SCN does not specify the making of an

open offer. However, it is submitted that the same is not the ideal direction in the facts of the present case given inter alia that:

a) Conceptually, at the relevant time, the Noticees were entitled to acquire 5% under Regulation 11(1) and another 5% under Regulation 11(2) of the Takeover Regulations. The acquisition is of a quantity close to what is allowed.

b) The purpose of an open offer is to provide public shareholders an exit opportunity when there is substantial change in ownership or control of a listed company. Under the scheme of the Takeover Regulations, the requirement of a public offer where there was a change in control, could have in fact even been waived by shareholders by passing a special resolution. There, the principle that there is no inflexible rule than an open offer is an absolute must.

c) The instant case is a situation involving an inadvertent breach by the promoters without any change in control. There has been no change in circumstances that warrants an open offer. Instead, a direction to divest shareholding would potentially be appropriate. More importantly, without any issuance of any direction under Sections 11 and 11B of the SEBI Act, the matter could be referred to adjudication instead. Therefore, there are such alternatives to a direction to make an open offer that would be more appropriate.

d) There has been no change in the composition of the Board of Directors of VIL after the acquisition in question.

l) SEBI has in several other cases including cases where there has been a preferential allotment in excess of the thresholds for a creeping acquisition, adopted measures other than a direction to make an open offer. In such cases, SEBI has explicitly refrained from directing an open offer, considering inter alia that there was no change in control and the fact that the shareholders had approved the preferential allotment by way of a special resolution. The Noticee has cited the following cases that it submits has similar facts where there was no direction issued to make an open offer.

a) Kaycee Industrues (SEBI's Order dated July 19, 2011)

b) Bheema Cements Limited (SEBI Order dated July 19, 2011)

c) Sunil Krishna Khaitan (SAT Order dated June 19, 2013)
d) Therm Flow Engineers Pvt. Ltd. v. SEBI (SAT Order dated May 01, 2019)
e) Jay Yushin Limited (SEBI Order dated July 28, 2004)
f) Vas Infrastructure Limited (SEBI Order dated October 28, 2015)

Consideration of Submissions and Findings:

6. I have perused the SCN dated September 30, 2015, along with its annexures, the replies filed by the Noticees, submissions made during the course of personal hearing, and written submissions filed after availing the opportunity of hearing, as detailed in para 3 and 4 above. Before dealing with the various contentions raised by the Noticees, it would be appropriate to refer to the various provisions of law involved in the matter which are reproduced hereunder:

Extract of relevant provisions of SEBI Act, 1992 (as existed in the year 2009):

"Functions of the Board

11. *(1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit."*

"Power to issue directions

11B. *(1) Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary,—*

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person, it may issue such directions,—

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market."

Extract of relevant provisions of SAST Regulations, 1997:

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

11(2) No acquirer, who together with persons acting in concert with him holds, fifty-five per cent (55%) or more but less than seventy five per cent (75%) of the shares or voting rights in a target company, shall acquire either by himself or through persons acting in concert with him any additional shares or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations:

Provided that in a case where the target company had obtained listing of its shares by making an offer of at least ten per cent (10%) of issue size to the public in terms of clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted from strict enforcement of the said rule, this sub-regulation shall apply as if for the words and figures 'seventy-five per cent (75%), the words and figures 'ninety per cent (90%)' were substituted:

Provided further that such acquirer may, without making a public announcement under these Regulations, *acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him upto five per cent.(5%) voting rights in the target company subject to the following:-*

(i) the acquisition is made through open market purchase in normal segment on the stock exchange but not through bulk deal /block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buy-back of shares by the target company;

(ii) the post-acquisition shareholding of the acquirer together with persons acting in concert with him shall not increase beyond seventy five per cent.(75%).

……."

Directions by the Board.

44. *Without prejudice to its right to initiate action under Chapter VIA and section 24 of the Act, the Board may, in the interest of securities market or for protection of interest of investors, issue such directions as it deems fit including:*

-

(a) directing appointment of a merchant banker for the purpose of causing disinvestment of shares acquired in breach of regulations 10, 11 or12 either through public auction or market mechanism, in its entirety or in small lots or through offer for sale;

(b) directing transfer of any proceeds or securities to the investors protection Fund of a recognised stock exchange;

(c) directing the target company or depository to cancel the shares where an acquisition of shares pursuant to an allotment is in breach of regulations 10, 11 or 12;

(d) directing the target company or the depository not to give effect to transfer or further freeze the transfer of any such shares and not to permit the acquirer or any nominee or any proxy of the acquirer to exercise any voting or other rights attached to such shares acquired in violation of regulations 10, 11 or 12;

(e) debarring any person concerned from accessing the capital market or dealing in securities for such period as may be determined by the Board;

(f) directing the person concerned to make public offer to the shareholders of the target company to acquire such number of shares at such offer price as determined by the Board;

(g) directing disinvestment of such shares as are in excess of the percentage of the shareholding or voting rights specified for disclosure requirement under the regulations 6,7 or 8;

(h) directing the person concerned not to dispose of assets of the target company contrary to the undertaking given in the letter of offer;

(i) directing the person concerned, who has failed to make a public offer or delayed the making of a public offer in terms of these Regulations, to pay to the shareholders, whose shares have been accepted in the public offer made after the delay, the consideration amount along with interest at the rate not less than the applicable rate of interest payable by banks on fixed deposits."

Extract of relevant provisions of SAST Regulations, 2011:

"Repeal and Savings.

35. (1) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, stands repealed from the date on which these regulations come into force.

(2) Notwithstanding such repeal,—

(a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be

deemed to have been done or taken under the corresponding provisions of these regulations;

(b) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations has never been repealed;

(c) any open offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations.

(3) After the repeal of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations."

7. I note that the Noticees, in their reply/written submissions/oral arguments, have not disputed the acquisition of 9.7% shares of VIL on April 11, 2009 and 3.77% shares of VIL on May 30, 2009, pursuant to conversion of warrants, as alleged in the SCN. It is also a matter of record that prior to acquisition of said 9.7%, the Noticees were holding, as on March 31, 2009, 41.82% shares in the target company. The Noticees have not disputed the connection between them as alleged in the SCN nor have they denied that they are not the PACs, as alleged in the SCN i.e. they are deemed PACs as per Regulation 2(1)(e)(i) & 3 of SAST Regulations, 1997. The Noticees have submitted that they all are the part of the promoter group of the target company and are in control of the target company. The Noticees have also submitted that they have made the present acquisition in order to comply with the condition of the credit facility of Rs. 42 crore, granted by the Union Bank of India to VIL, requiring the promoters of the VIL to bring in a margin of Rs. 20 crore. Noticees have submitted that the acquisition by the Noticees was the result of their decision to infuse funds into VIL by way of issuance of warrants convertible into equity shares, on preferential basis, as a compliance with the condition of grant of credit facility of Rs. 42 crore by the Union Bank of India for the development of the *Pushp Vinod* project of VIL. In view of this, it is clear that Noticees were holding between 15% to 55% (i.e. 41.82%) shares of the target company as on March 31, 2009 and while acting as PAC, Noticees acquired more than five percent shares (i.e. 9.7%) of the target company during financial year 2009-10 (i.e. on April 11, 2009). In view of the above, I find that Noticees have acquired shares

on April 11, 2009 while acting in concert as defined under Regulation 2(1)(e)(i) of the SAST Regulations, 1997. Noticees were required to make a public announcement in terms of Regulation 11(1) within the time given under Regulation 14, of SAST Regulations, 1997, on acquisition of 9.7% shares. Admittedly, Noticees have not made any public announcement till date followed by a public offer to the shareholders of the target company, as required in terms of Regulation 11(1) of SAST Regulations, 1997. Therefore, Noticees are in violation of Regulation 11(1).

8. I find that Noticees have also not disputed violation of Regulation 11(1) of SAST Regulations, 1997. However, Noticees have contended that they should not be directed to make open offer as required in terms of Regulation 11(1) of SAST Regulations, 1997, because of the following reasons:

    a) The SCN does not set out exact direction proposed to be issued in the present matter;
    b) Delay in initiation, conducting and concluding the proceedings;
    c) Alternative recourse available to SEBI in case of trigger of regulations like divestment, imposition of monetary penalty, etc. which have been adopted by SEBI in other cases.

SCN silent on the direction proposed:

9. The Noticees have contended that the SCN does not disclose the precise action that is proposed to be taken against the Company and other Noticees and therefore, denies the Noticees an opportunity to make submissions regarding the appropriateness of such action. That Regulation 44 of the SAST Regulations, 1997 envisages nine measures by way of illustration which SEBI may take in case of a contravention of the SAST Regulations, 1997, some of which have multiple sub-options within them. Further, that Sections 11 and 11B of the SEBI Act, 1992 have been used by SEBI variously to issue an extremely wide range of directions, purporting to act in the interest of the investors and the securities market.

10. In this regard reliance has been placed upon the judgment of Hon'ble Supreme Court in *Gorkha Security Services Vs. Govt. of NCT of Delhi & Ors.(2014) 9 SCC 105*. On a perusal of the said judgment

of the Hon'ble Apex Court, I find that the same is factually distinguishable and not applicable to the present proceedings. In Gorkha Security case, the matter pertained to blacklisting of a contractor by a government agency, which resulted in depriving the contractor from entering into any public contracts with government, thereby violating the fundamental right of equality of opportunity in the matter of public contract of such person. Further, in Gorkha Security case, the contractor was blacklisted for breaching the terms of the contract. On the other hand, the present SCN has been issued for breach of provisions of law. In Gorkha Security Case, blacklisting of the contractor was provided in the governing contract itself as a penalty to be imposed in case of breach of terms of contract, whereas, in the present matter provisions of law under which directions are contemplated to be issued, confer discretion to SEBI to take such measure as it thinks fit in the interest of investors and securities market. In view the above points that clearly distinguishes the facts and circumstances of Gorkha Security case from the facts of the present proceedings, reliance placed by Noticees on Gorkha Security matter is untenable. Further, Noticees have placed reliance on Hon'ble SAT order in *Royal Twinkle Club Pvt. Ltd. Vs. SEBI - SAT Appeal No. 436 of 2015 decided on February 3, 2016,* which was in relation to the unregistered Collective Investment Scheme matter. On perusal of the said Order, it is noted that in the said matter, Hon'ble SAT has examined the Gorkha Security case extensively. However, it is observed that Hon'ble SAT specifically recorded in the order that *"However, applicability of the judgment of Hon'ble Supreme Court in the case of Gorkha to the facts of present case need not be gone into.....".*

11. The SCN issued to the Noticees mentioned the provisions under which the desired directions, if found necessary, would be issued. The SCN also clearly indicates the specific nature of violations that have been alleged against the respective Noticees in terms of provisions of the SAST Regulations, 1997 which if found to be breached, would require issuance of suitable directions under specific provisions as mentioned under the SCN. Further, I note that the Noticees have admitted to the breach of the alleged provisions of the SAST Regulations, 1997. Thus, it is manifest that the specific allegations were unambiguously conveyed to the Noticees and they were given opportunities for tendering their responses thereto which they have availed also. Noticees are well aware of the direction to be issued in the matter and they have also filed their reply to contend that why such direction should not be issued in the present case, as noted in the para 13 below. Which particular

direction in the facts and circumstances of the present case is warranted will have to be determined in the light of the explanation offered by the Noticees. The provision of Sections 11 and 11B of the SEBI Act, 1992 vest in the quasi-judicial authority plenary power to issue wide ranging directions as it may deem fit, in the interest of securities market which cannot be anticipated before-hand without considering the explanations of the Noticees and facts and circumstances of the case. Therefore, it is incorrect to contend that the SCN should specify the exact nature of direction that may be issued to the Noticees without taking into the consideration the explanation and evidence that may be produced by the Noticees, to support their case. As submitted by the Noticees also, Regulation 44 of the SAST Regulations, 1997 itself lists out by way of enumeration, the directions which can be issued by SEBI in case of violation of the provisions of SAST Regulations, 1997. Accordingly, the said contention raised by the Noticees is untenable both on facts and on law.

Delayed proceedings prejudicial:

12. The Noticees have contended that there has been substantial passage of time since the acquisition and there is inordinate delay of more than 10 years. The Noticees have submitted that such a delay is detrimental to them because (i) there is a substantial cost and effort associated with the making of an open offer; (ii) law requires them to pay interest in case of delay in making of open offer; and (iii) Noticees will not be able to make positive statements and complete disclosures as records pertaining to the relevant time will not be available with the Noticees. Regulation 11(1), which has been found to be violated by the Noticees, itself provides that if any acquirer along with persons acting in concert acquires more than 5% shares in a financial year, such acquirer is required to make public announcement to acquire shares from the public shareholders of the concerned target company. If a person contends that there should not be a public offer in a particular case, such person must show justifiable grounds for the same and once found acceptable, the regulator, in exercise of the discretion conferred by the regulations, may issue suitable directions. When the Noticees acquired 9.7% shares in the target company on April 11, 2009, it was the obligation of the acquirer to make open offer in terms of Regulation 10, 11 or 12 of SAST Regulations, 1997 as the case may be, in case the acquisition exceeds the thresholds specified in Regulation 10 and 11 or upon acquisition of control under Regulation 12. Therefore, it is not correct to say that cost and efforts involved in the open offer are the result of alleged delay by SEBI in directing the Noticees to make an open offer. Regarding the

liability to pay interest, it is noted that interest is payable to investors in case of delayed offer so to take care of the amount which such investor would have normally earned had the open offer been made on time. In the present case, if the open offer would have been made by the Noticees in the year 2009 itself, as mandated under the law, they would have paid consideration to the investors in the year 2009 which has not been paid by the Noticees as no open offer has been made by them. Thus, the Noticees continue to hold and enjoyed the use of the money which they were required to pay as consideration to the shareholders who would have tendered their shares in the open offer required to be made by the Noticees. Moreover, Regulation 44 of the SAST Regulations, 1997 itself contemplates payment of interest to the shareholders in case of delayed open offer. Thus, the interest payable to investors in the present case is not an additional burden on the Noticees, as asserted by them rather it is a legal obligation of the Noticees under the law. In this regard, it would be appropriate to refer to the judgment of the Hon'ble Supreme Court in *Clariant International Ltd. & Anr. Vs. SEBI (2004) 8 SCC 524* wherein Hon'ble Supreme Court held that only those shareholders who were holding shares as on the date of trigger of the regulation and continue to hold so till the date of closure of the open offer, are entitled to payment of interest, in case of delayed offer. Regarding the contention of the Noticees that due to alleged delay they will not be able to make required disclosures in the letter of offer, it is observed that in terms of Regulations 16 of the SAST Regulations, 1997, letter of offer is required to contain the disclosure as on the date of public announcement. In the present case, till date public announcement has not been made by the Noticees and they will be required to make public announcement in future, if they are so directed in the present order. Therefore, the difficulty portrayed by the Noticees in making disclosures, in view of the delay, is misplaced. In view of the aforesaid observations, I find that there has been no prejudice to the Noticees because of the delay. Moreover, open offer obligation of the Noticees is under Regulation 11(1) of the SAST Regulations, 1997 and the same cannot be defeated because of any delay in compliance thereof.

Availability of alternative recourses:

13. Noticees have contended that direction to make open offer is not an ideal direction in the present case because of the following reasons:

a) Conceptually, at the relevant time, the Noticees were entitled to acquire 5% under Regulation 11(1) and another 5% under Regulation 11(2) of the SAST Regulations and their acquisition is of a quantity close to what has been allowed;
b) Exit opportunity is required to be provided when there is a substantial change in ownership or control of listed company. Even in case of change in control, shareholders by passing special resolution can waive open offer;
c) Present acquisition is an inadvertent breach by the promoter without any change in control/Board of Directors of VIL;
d) The allotment of warrants to the Noticees was approved by a special resolution passed by the shareholders of VIL.

14. The contention of the Noticees that they were allowed to acquire upto 10% i.e. 5% under Regulation 11(1) and 5% under second proviso to Regulation 11(2) of SAST Regulations, 1997 is untenable as the acquisitions contemplated under Regulation 11(1) and 11(2) are separate and distinct. Regulation 11(1) applies when a person acquires shares when he holds 15% but less than 55% of the shares or voting rights in a company, whereas, Regulation 11(2) allows acquisition of upto 5% shares to any person holding 55% or more but less than 75% of the shares or voting rights in the target company. It is worth to observe here that second proviso was inserted in the Regulation 11(2) of SAST Regulations, 1997 by an amendment made to the regulations in the year 2008. Prior to insertion of second proviso Regulation 11(2) allowed acquisition of even single share by the acquirers holding between 55% and 75% shares in a target company only through a public offer and not otherwise. Insertion of second proviso to Regulation 11(2) allowed, acquisition of 5% shares by the acquirers holding shares between 55% and 75% which is made subject to conditions that such acquisition must be through open market purchases on the stock exchange and the resultant holding of acquirers must not exceed 75%. Therefore, these are two different provisions and are applicable in different circumstances envisaged under these two provisions, as mentioned above. Under Regulation 11(1) of SAST Regulations, 1997 acquisition of more than 5% shares without making open offer, is not permitted because said regulation allows acquisition of only 5% shares without making open offer. Regulation 11(2) of SAST Regulations, 1997 is also not attracted in the present case. Hence, the contention of the Noticees that they were allowed to acquire upto 10% and since their acquisition is

less than 10%, therefore, it must be ignored for direction of public offer, is not correct.

15. The Noticees have further contended that the exit opportunity is required to be provided when there is a substantial change in ownership or control of listed company. Regulations 10 and 11 mandates the making of public announcements in case there is acquisition of shares or voting rights beyond the threshold specified under these regulations. Similarly, Regulation 12 mandates making of public announcement in case there is acquisition of control irrespective of acquisition of shares or voting rights. The heading of the Regulation 11 of the SAST Regulations, 1997 is "Consolidation of holdings" which allows the persons holding substantial shares or voting rights in the Company to consolidate their share holding in the company through creeping acquisitions without requirement of making any open offer. However, if acquisition by these persons exceeds the creeping acquisition limits specified in the Regulation then such persons are required to make an open offer though such persons hold substantial shares and voting rights and consequential control in the company. Therefore, SAST Regulations 1997, are attracted in case of acquisition of shares or voting rights by persons holding substantial shares or voting rights even without change in ownership or control of the listed company. Therefore, contention of Noticees that they should not be directed to make public announcement since there is no change in control, is untenable. If the said contention of the Noticees is accepted then persons, acquiring substantial shares or voting rights without taking or getting control of a target company, will never be required to make an open offer.

16. The Noticees have also contended that the present acquisition is an inadvertent breach by the promoter without any change in control/Board of Directors of VIL. In this regard, it is noted that the Noticees are the promoters of the target company and they are also in control of the company. As per their own submission, the said acquisition was the conscious decision of the Noticees in order to comply with the condition of the credit facility of Rs. 42 crores provided by the Union Bank of India to the target company. Further, Noticees had intimated to the stock exchange about the acquisitions made by them pursuant to conversion of warrants. Therefore, Noticee cannot claim that this acquisition was inadvertent. Further, as observed above, since, the acquisition by the Noticees is more than the threshold specified under Regulation 11(1) of SAST Regulations, 1997, therefore,

contention of Noticees that there is no change in control of VIL or in the Board of Directors of VIL, pursuant to their acquisition, is untenable.

17. The Noticee has contended that the preferential allotment of warrant was approved by the special resolution passed by the shareholders and was in accordance with the applicable provisions of law for issue of such warrants on preferential basis viz. SEBI (DIP) Guidelines, 2000, and thus not required to be visited with direction of making open offer. In this regard, it is noted that passing of resolution by the shareholders of the target company approving the allotment of warrants to the Noticees cannot be construed as the shareholders have waived their right to get an exit opportunity in open offer required to be made by the Noticees. On the other hand, such approval may also be construed to have been accorded by the shareholders in anticipation of getting exit opportunity in the open offer by the allottees.

18. In view of the rejection of the grounds taken by the Noticees to contend that open offer is not a requirement in para 13 to 17 above, the said contention of the Noticees fails. In this regard reference may also be made to the observations made by the Hon'ble Supreme Court in the matter of *Nirma Industries Ltd. vs SEBI (2013) 8 SCC 20*

> *"42. A conspectus of the aforesaid Regulations would show that the scheme of the Takeover Code is (a) to ensure that the target company is aware of the substantial acquisition; (b) to ensure that in the process of the substantial acquisition or takeover, the security market is not distorted or manipulated and (c) to ensure that the small investors are given an option to exit, that is, they are offered a choice to either offload their shares at a price as determined in accordance with the takeover code or to continue as shareholders under the new dispensation. In other words, the takeover code is meant to ensure fair and equal treatment of all shareholders in relation to substantial acquisition of shares and takeovers and that the process does not take place in a clandestine manner without protecting the interest of the shareholders.....*
>
> *71. We are inclined to agree with the submission made by Mr. Venugopal that the appellants cannot be permitted to wriggle out of the obligation of a public offer under the Takeover Regulation. Permitting them to do so would*

deprive the ordinary shareholders of their valuable right to have an exit option under the aforesaid regulations. The SEBI Regulations are designed to ensure that public announcement is not made by way of speculation and to protect the interest of the other shareholders."

19. The Noticees have contended that in several other cases including cases where there has been a preferential allotment in excess of the thresholds for a creeping acquisition, adopted measures other than a direction to make an open offer. The details of such cases referred by the Noticees and my findings regarding viability of issuing similar directions in this case is as tabulated below:

Table: 4

Sr. No	**Party and forum**	**Reasons why open offer was not directed (as submitted by Noticee)**	**Directions issued**	**Identical facts in the case (as submitted by Noticee)**	**Distinguishable features**
1	Kaycee Industries (SEBI's order dated July 19, 2011)	a) Acquirer did not have any price advantage while acquiring the shares b) Consideration has been received by target company. The acquisition was not detrimental to non-promoter shareholders.	Divestment of shares beyond the limit	a) Noticees acquired at Rs. 25 per share with market price being Rs. 19.7 per share. No price advantage therefore to the Noticees. b) Capital was infused into VIL benefiting non-promoter shareholders.	The Acquirer in Kaycee Industries had collectively acquired 10,000 shares i.e. 5.23% of the equity shares of the target company. In the present matter, the Noticees have collectively acquired 25,00,000 shares i.e. 11.63% of the equity shares of the target company. The rationale given in the direction for divestment in Kaycee Industries is that only the acquisition of 0.23% (upto 5% is the permissible limit) was in breach of Regulation 3(2) of SAST

					Regulations, 2011. However in the present case, the Noticees have acquired more than 6.63% of the permissible limit of 5% under Regulation 11(1) of the SAST Regulations, 1997. Percentage of shares acquired is one of the major distinguishing feature of the present matter.
2	Bheema Cements Ltd (SEBI Order dated July 19, 2011)	a) Acquisition of 4.9% by promoters of the target company for funding the target company	Divestment of the 4.9% shareholding including initiation of adjudication proceeding.	a) Acquisition by promoters for the purpose of the company.	In Bheema Cements Ltd., the acquirers had violated Regulation 11(2) of the SAST Regulations, 1997, whereas, in the present matter, the Noticees have violated Regulation 11(1). Hence there is a difference in the provisions violated by the acquirers. Further, in Bheema Cements Ltd. the acquisition is 4.9% shares of the target company, whereas in the present matter, the acquisition is 11.63% of the target company. Percentage of shares acquired is one of the major distinguishing feature of the present matter.
3	Sunil Krishna Khaitan	a) Acquisition was of 8.38% shareholding. b) Objective of	Direction of open offer converted into	a) Acquisition of about 9% and 2% shareholding b) Preferential	It is noted that SEBI has preferred an appeal against the said order before Hon'ble Supreme

	(SAT Order dated June 19, 2013 in Appeal 23/2013)	preferential allotment was low cost funding for smooth functioning of target company. c) Delay of about 5 years in initiating proceedings means that open offer ought to not be directed.	monetary penalty	allotment to Noticees was for funding VIL's project. c) Delay of more than 6 years in initiating proceedings	Court. Further, in the Sunil Khaitan's matter, appellants therein had contended that when the individual acquirer is part of the group which holds shares between 15% to 55% then individual acquisition of more than 15% shares by such acquirer would not attract Regulation 10. The said interpretation of Regulation 10 of SAST Regulations, 1997 was agreed to by Hon'ble SAT. The present matter is factually distinguishable as in the present case the violation of Regulation 11(1) of SAST Regulations, 1997 is admitted.
4	Therm Flow Engineers Pvt. Ltd. vs. SEBI (SAT Order dated May 01, 2019)	Acquisition by a promoter group with no change in control	Divestment of the shares in question	Acquisition by a promoter group with no change in control	In the matter of Therm Flow Engineers Pvt. Ltd., the Hon'ble Tribunal had held that "*Considering all the aspects of the case that violation of the Takeover Regulation is only to the extent of 0.04% and that too due to transfer of shares between the promoters via open market, in our view the direction of the WTM to make public announcement would be disproportionate*". Further, it was observed that "*As regard the decision in Nirvana, relied in the impugned order, it is to be*

					noted that 1.17 percent of the shares in excess of prescribed limit of the target company were acquired by the promoters from other shareholder as against the Regulation 11(1) of the Takeover Regulations. In those circumstances, it was observed by this Tribunal that when substantive shares are acquired in violation of the Takeover Regulations normal rule would be to direct the acquirer to make public announcement." In the present matter, 6.63 percent of the shares of the target company in excess of prescribed limit were acquired by the Noticees. Percentage of shares acquired is one of the major distinguishing feature of the present matter.
5	Jay Yushin Ltd (Decided by WTM of SEBI on July 28, 2004)	Since there was no change in control and consequential change in Board, it is not fit case for directing an open offer.	Initiation of adjudication proceedings	Noticees have always been in control since inception of VIL and Board also remains the same.	In Jay Yushin Ltd. the acquisition was 6.17% shares of the target company, whereas in the present matter, the acquisition is 11.63% of the target company. As observed by the Hon'ble Tribunal in the matter of Therm Flow Engineers Pvt. Ltd. vs. SEBI, cited above, the deciding factor was the proportion of acquisition above the permitted limit. In the

					present case, the acquisition is 11.63%, which is one of the major distinguishing feature of the present matter.

20. Besides the major distinguishing features indicated in the aforesaid five cases, the another distinguishing feature of the present case is that none of the aforesaid cases involved repetitive violation of Regulation 11(1) of SAST Regulations, 2011 by the Noticees involved therein for which adjudication order was passed.

21. It is noted that Noticees had been found to be in violation of Regulation 11(1) of the SAST Regulations, 1997 on another occasion, for which adjudication proceedings were directed against them as the Noticees brought down their shareholding within the limit specified under the SAST Regulations, 1997. In those adjudication proceedings, a penalty of Rs. 1 Crore was imposed on the Noticees vide order dated December 29, 2017 passed by the adjudicating officer. The said order was challenged by the Noticees by filing Appeal No. 43 of 2018 before Hon'ble SAT which upheld the penalty imposed on the Noticees by modifying the penalty to Rs. 30 Lakh.

22. I note that the cases cited by the Noticees are factually distinguishable as noted above. In this regard, I note that the decision of the Hon'ble Securities Appellate Tribunal, in its order dated September 08, 2011 in the matter of *Nirvana Holdings Private Limited vs. SEBI* (hereinafter referred to as "Nirvana Holdings case") (Appeal no. 31/2011) would squarely apply in this case. In the said order, the Hon'ble Tribunal held that:

> *"The primary object of the takeover code is to provide an exit route to the public shareholders when there is substantial acquisition of shares or a takeover. This right to exit is an invaluable right and the shareholders cannot be deprived of this right lightly. It is only when larger interest of investor protection or that of the securities market demands that this right could be taken away. Therefore, as a normal rule, a direction to make a public announcement to acquire shares of the target company should issue to an acquirer who fails*

to do that. The Board need not give reasons as to why such a direction is being issued because that is the mandate of Regulations 10, 11 and 12. However, if the issuance of such a direction is not in the interest of the securities market or for the protection of interest of investors, the Board may deviate from the normal rule and issue any other direction as envisaged in Regulation 44 of the takeover code. In that event, the Board should record reasons for deviation."

23. In view of the facts and circumstances of the present case, I find that this is not a case of imposition of monetary penalty or divestment of shares, in lieu of open offer, as submitted by the Noticees.

24. I note that violation of Regulation 11(1) of the SAST Regulations 1997 took place on April 30, 2009. SAST Regulations, 1997 stands repealed by virtue of Regulation 35 (1) of the SAST Regulations, 2011, as quoted above. In terms of Regulation 35(2)(b) of the SAST Regulations, 2011, any open offer liability accrued under the repealed SAST Regulations, 1997 shall remain unaffected as if the repealed regulations has never been repealed.

DIRECTIONS :

25. In view of the above, I, in exercise of the powers conferred upon me under Sections 11 and 11B readwith Section 19 of the SEBI Act, 1992 and Regulation 44 of SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011, hereby direct that,-

a) The Noticees shall make a public announcement to acquire shares of the target company, within a period of 45 days from the date of this order;

b) The Noticees shall along with the offer price, pay interest at the rate of 10% per annum, for the period starting from the date when the Noticees incurred the liability to make the public announcement and till the date of payment of consideration, to the shareholders who were holding shares in the target company on the date of violation and whose shares are accepted in

the open offer, after adjustment of dividend paid, if any.

26. This Order shall come into force with immediate effect.

27. A copy of this Order shall be forwarded to the Noticees, recognized stock exchanges and depositories for necessary action.

Sd/

Place: Mumbai **ANANTA BARUA**

Date: September 30, 2019 **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA