

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11 AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND SECTION 12A OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956.

In respect of:

Sl. no.	Name	PAN	Order No.
1.	Yashraj Containeurs Limited	AAACV4846L	14
2.	Mr. Jayesh Valia	AAFPV5698G	15
3.	Ms. Sangeeta J. Valia	ACDPV4956F	16
4.	Vasparr Shelter Limited	AABCV2888D	

- Yashraj Containeurs Limited (hereinafter referred to as “YCL/Company”) is a company having its shares listed on Bombay Stock Exchange (hereinafter referred to as “BSE”). Securities and Exchange Board of India (hereinafter referred to as “SEBI”) conducted investigation in the trading in the scrip of YCL for the period from December 1, 2005 to January 13, 2006 (hereinafter referred to as “investigation period”).
- On the basis of investigation, adjudication proceedings were initiated against YCL, Mr. Jayesh Valia, Ms. Sangeeta J. Valia and Vasparr Shelter Limited ("VSL") for violation of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ("PFUTP Regulations"), the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 ("PIT Regulations") and the Securities Contracts (Regulation) Act, 1956 ("SCRA"). The said adjudication proceedings were concluded by two separate orders dated November 13, 2009 passed against VSL, Mr. Jayesh Valia, Ms. Sangeeta Valia and YCL, respectively, imposing monetary penalties on them. These entities filed two separate appeals against the said adjudication orders before the Hon'ble Securities Appellate Tribunal (Hon'ble SAT). The Hon'ble SAT while allowing these entities to withdraw the said appeals, *inter alia*, stated in its order dated December 2, 2010 that:

"While granting this prayer, we cannot resist observing that in view of the serious allegations made against the appellants which stand established during the course of the adjudication proceedings, the Securities and Exchange Board of India (for short the Board) should not have been content with initiating only adjudication proceedings against the appellants in which only a monetary penalty could be levied. This is a fit case where

the Board should have considered initiating proceedings under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 for issuing appropriate directions against the appellants to protect the integrity of the market and the interests of the investors....."

3. In the light of these observations of the Hon'ble SAT, SEBI re-examined the matter for other possible courses action against these entities and decided to initiate proceedings under sections 11 and 11B of the SEBI Act and section 12A of the SCRA. Accordingly, three separate Show Cause Notices ("SCNs") were issued to YCL, Mr. Jayesh Valia, Ms. Sangeeta Valia and VSL (hereinafter collectively referred to as the "noticees" or individually by the respective names) on February 27, 2013. The SCNs called upon the noticees to file their replies and advised them to avail opportunity of personal hearing if they so desire. These SCNs were issued in view of the following facts revealed during investigations—
 - (a) Mr. Jayesh Valia was a director in YCL as well as VSL (a group company of YCL) during the investigation period. Mrs. Sangeeta Valia is his wife.
 - (b) VSL held 16.93%, 8.38%, 10.38%, 10.38%, 10.38% and 10.38% of the shareholding of YCL for the quarters ended September 30, 2005 to December 31, 2006. During the year 2005-06, the Board of VSL consisted of 3 directors, viz., Mr. Jayesh Valia, Chairman, Mr. Paresh Valia (brother of Mr. Jayesh Valia) and Mrs. Sangeeta Jayesh Valia.
 - (c) Mrs. Sangeeta Valia held 49,300 shares which constituted 98.60% of the share capital of VSL, Jayesh Valia and Paresh Valia held 100 shares each in the share capital of VSL. All the three directors had common address at C-22, Pushpa Park, S.V. Road, Borivali (W), Mumbai 400092. Thus, VSL was part of the promoter group of YCL. However, shareholding of VSL was not disclosed by YCL in promoter shareholding as required under clause 35 of the Listing Agreement till the quarter ending June 30, 2006. YCL did not make the correct disclosure before June 30, 2006.
 - (d) YCL further made a misleading announcement regarding the discrepancy in the unaudited quarterly results and the audited quarterly results declared by YCL to the BSE. The unaudited quarterly results of YCL as disclosed to BSE showed an increase in its net profit continuously from ₹0.53 crore as on quarter ending June 30, 2005 to ₹1.60 crore as on quarter ending September 30, 2005 to ₹1.79 crore as on quarter ending December 31, 2005 and ₹1.84 crore as on quarter ending March 31, 2006. Thus, YCL for the year 2005-06 ought to have a net profit of ₹ 5.76 Crore. However, in the audited results for the year 2005-06 YCL had shown that it incurred a loss of ₹61 lakh for the year ending March 31, 2006.
 - (e) In terms of clause 41 of the Listing Agreement, YCL was required to provide reasons for such significant difference in the quarterly (unaudited) and annual results (audited). YCL failed to submit the reasons as required under clause 41 of the Equity Listing Agreement

read with section 21 of the SCRA.

- (f) The half yearly results for September 2005 were disclosed to BSE on November 30, 2005 and decision taken at board meeting held on October 31, 2005 was intimated to BSE on December 14, 2005. There was delay in informing these results to BSE. Further, YCL also clubbed all the positive corporate announcements and intimated them at the same time to the stock exchange. The promoters of YCL sold shares of the company in the market (around 35% of the market volume) routing through off market transfers starting from December 16, 2005 to January 04, 2006 when the price of the scrip had gone up after the investigation period the price of the scrip had come down.
- (g) It was because of these incorrect/misleading disclosures/announcements the price of the scrip of YCL had increased from ₹37.25 on December 1, 2005 to a high of ₹98.60 on January 13, 2006 and closed at ₹96.85 on January 13, 2006.
- (h) The act of making incorrect/misleading announcements in the above said manner was allegedly done to allure the investors for investing in the shares of YCL by increasing its price and thus was with a manipulative intention. Thus, YCL and Mr. Jayesh Valia have allegedly violated regulation 3(a), (b), (c) and (d) of the PFUTP Regulations.
- (i) The information relating to the financial statements was a *price sensitive information*. Since, the correct financial position of YCL was not disclosed to BSE it remained '*unpublished*' till the audited results were disclosed bring out correct financial position of YCL as stated above.
- (j) Mr. Jayesh Valia being the executive director of YCL at the relevant time was an "*insider*" in terms of regulation 2(e) of the PIT Regulations. Mrs. Sangeeta J. Valia (promoter of YCL and wife of Mr. Jayesh Valia), Mr. Madhav J. Valia and Mr. Raj J. Valia (promoters of YCL and sons of Mr. Jayesh Valia) and VSL a promoter group company of YCL are also '*insiders*' in terms of regulation 2(e) of the PIT Regulations.
- (k) Mr. Jayesh Valia was aware of the substantial difference in the audited and unaudited financial results of YCL as stated above. This '*unpublished price sensitive information*' (UPSI) was allegedly communicated by him to his sons Mr. Madhav J Valia and Mr. Raj J Valia, his wife Mrs. Sangeeta J Valia, and to VSL, who dealt in the shares of YCL while in possession of the UPSI.
- (l) During the investigation period, the promoters of YCL and '*insiders*', Mr. Madhav J. Valia, Mrs. Sangeeta J. Valia and Mr. Raj J. Valia off-loaded 160000 shares, 580000 shares and 180000 shares, respectively in off-market transaction to VSL and Mr. Samir Mukundlal Shah. These shares constituting around 35% of the market volume were sold on BSE between December 16, 2005 to January 04, 2006 when the price of the scrip of YCL had gone up. Thus, the shareholding of Mrs. Sangeeta J. Valia in YCL has constantly reduced from 13,44,400 shares (28.01%) as on September 30, 2005 to 10,94,400 shares (22.80%) on December 31, 2005 and further to less than 1% as on March 31, 2006. Further, VSL had also

reduced its shareholding from 8,12,300 shares (16.93%) as on September 30, 2005 to 4,02,300 shares (8.38%) as on December 31, 2005.

- (m) Mrs. Sangeeta J. Valia and VSL failed to make the requisite disclosures under regulation 13(3) of the PIT Regulations as per the prescribed format. YCL has not made any disclosures required to be filed under regulation 13(6) of the PIT Regulations. Thus, the promoters/'insiders' sold their shareholding during the period when the price was artificially inflated due to incorrect/misleading announcements by YCL and the same was not even reported to the stock exchange.

4. The details of charges leveled against the noticees in the respective SCNs are as follows:

Table 1: Details of SCN

S. No.	SCN No.	Name of the noticee	Regulation /Section	Allegation
1	IVD/ID-8/YCL/SKS/SP/5014/2013 dated February 27, 2013	Jayesh Valia	<p>Clause 35 of the Listing Agreement read with Section 21 of the SCRA</p> <p>Clause 41 of the Listing Agreement read with Section 21 of the SCRA.</p> <p>Regulation 13(6) of the PIT Regulations.</p> <p>Regulation 3(a), (b), (c) and (d) of the PFUTP Regulations.</p> <p>Regulation 3(ii) of the PIT Regulations and section 12A(d) and (e) of the SEBI Act, 1992.</p>	<p>Incorrect disclosures of promoter group</p> <p>Failure to provide explanation to discrepancy in accounts</p> <p>Failure to make disclosures sent by promoters to stock exchanges</p> <p>Concealing material information, making misleading disclosures and clubbing positive announcements in a manner so as to influence the price of the scrip.</p> <p>Communicating <i>unpublished price sensitive information</i> (UPSI) to certain people leading to insider trading.</p>
2.	IVD/ID-8/YCL/SKS/SP/5017/2013 dated February 27, 2013	Yashraj Containeurs Ltd.	<p>Clause 35 of the Listing Agreement read with Section 21 of the SCRA.</p> <p>Clause 41 of the Listing Agreement read with Section 21 of the SCRA</p> <p>Regulation 13(6) of the PIT Regulations,</p> <p>Regulation 3(a), (b), (c) and (d) of the PFUTP Regulations.</p>	<p>Incorrect disclosures of promoter group.</p> <p>Failure to provide explanation to discrepancy in accounts.</p> <p>Failure to make disclosures sent by promoters to stock exchanges.</p> <p>Concealing material information, making misleading disclosures and clubbing positive announcements in a manner so as to influence the</p>

				price of the scrip.
3.	IVD/ID-8/YCL/SKS/SP/5015/2013 dated February 27, 2013	Mrs. Sangeeta Valia and VSL	Regulation 13(3) of the PIT Regulations. Regulation 3(a), (b), (c) and (d) of the PFUTP Regulations. Regulation 3(ii) of the PIT Regulations and section 12A(d) and (e) of the SEBI Act.	Failure to make disclosures in prescribed format Trading on the basis of UPSI

5. The relevant provisions of law (as applicable on relevant dates in this case) alleged to have been violated by the noticees are as follows:

Clause 35 of the Listing Agreement:

"The company agrees to file with the exchange the following details, separately for each class of equity shares/security in the formats specified in this clause, in compliance with the following timelines, namely :-

- a. One day prior to listing of its securities on the stock exchanges.*
- b. On a quarterly basis, within 21 days from the end of each quarter.*
- c. Within 10 days of any capital restructuring of the company resulting in a change exceeding +/-2% of the total paid-up share capital"*

Section 21 of the SCRA, 1956:

Conditions for listing

21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.

Regulation 3 of the PFUTP Regulations:

"3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder."*

Regulation 3 of the PIT Regulations:

"Prohibition on dealing, communicating or counseling on matters relating to insider trading.

3. No insider shall—

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange
19[when in possession of] any unpublished price sensitive information;

or

(ii) communicate, counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities:"

Section 12A of the SEBI Act:

"Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

...

(d) engage in insider trading;

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;"

Regulation 13(3) and 13(6) of PIT Regulations:

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

...

(6) Every listed company, within five days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (3) and (4) in the respective formats specified in Schedule III."

6. The noticees applied to SEBI for the settlement of the instant proceedings under the consent mechanism, but the same was rejected by SEBI. The noticees did not file replies to the SCNs despite reminders sent to them. After seeking adjournments the noticees availed the opportunity of personal hearing on August 4, 2015 and filed their written submission on September 15, 2015. The replies/submissions of the noticees in brief are as under:
- (a) The present proceedings ought not be initiated against the noticees as the observations made by the Hon'ble SAT vide its order dated December 2, 2010 did not direct SEBI to initiate the current proceedings.
 - (b) SEBI ought to have informed the Hon'ble SAT that it had considered all the available options and took an informed decision to adopt adjudication proceedings. SEBI is now proceeding on the footing that it has no choice but to initiate the present proceedings.
 - (c) The SCNs do not indicate the actions proposed against the noticees and no specific measures or specific directions have been mentioned which SEBI desires to take. It is not possible for the noticees to decipher the nature of direction to be addressed and provide a suitable defense. It is the law laid by the Hon'ble Supreme Court of India in the matter of

Gorkha Security Services v. Government of NCT of Delhi & Ors. that such a SCN ought to specify the nature of directions proposed to be taken against a noticee.

- (d) The adjudication proceedings were themselves initiated based on incorrect assessment of facts which is belied by the findings of the Adjudicating Officer.
 - (e) The adjudicating officer has given findings on all the allegations. Those findings have attained finality. The only question that remains to be decided in view of the order of the Hon'ble SAT is whether action under section 11B of the SEBI Act should also be taken.
 - (f) Their reply in the adjudication proceedings and memos of Appeals before the Hon'ble SAT challenging the orders of the Adjudicating Officer contains their response which are adopted for the present SCNs.
7. With respect to the merits of the case, the submissions of the noticees before the Adjudicating officer, in brief are as follows:
- (a) There was confusion in relation to the status of VSL between the Registrars and Share Transfer Agents, i.e., Sharex Dynamic India (P) Ltd. and YCL.
 - (b) YCL was incorporated on July 27, 1993 whereas VSL was incorporated on January 29, 1996 and hence, VSL could not be a promoter of an already existing company.
 - (c) The promoters are supposed to hold shares atleast for 3 years to qualify as promoters in terms of regulation 3(e)III(b) of the SEBI (Substantial Acquisition of Shares and Transfers) Regulations, 1997. Hence, the legal status of VSL was only a Business Associate Company or a company under the same management as popularly known as sister company. When the error was detected, it was rectified.
 - (d) The discrepancy in audited and unaudited results was due to the method adopted in valuing the closing stock. Stock valuation can be done using recognized methods, such as, FIFO, LIFO, Weighted Average and Standard Costing. YCL had followed the method of Standard Costing for quarterly unaudited results and the method of FIFO for audited results. The FIFO method was followed for the audited results as it is the recognized method under the Accounting Standards of the Institute of Chartered Accountants of India for annual accounts. YCL had diligently submitted statements explaining the reasons for the difference to BSE.
 - (e) There was delay in procedural matters of filing forms and returns. The delay was due to human error. Non-submission or total failure in submission is termed as manipulative intention but some delay in submission of information with justification shall not attract any penalty.
 - (f) As per the condition imposed by Bank of India to YCL, in their sanction letter bearing Ref. An/CBB/RKG/0-65/000436 dated May 9, 2008, the promoters were required to bring in atleast ₹3 crore in order to reduce banker's exposure. In order to augment the said sum, the entities belonging to the promoter group of YCL had to sell their shares. However, as these

entities did not have a trading account with a share broker, it was decided to use VSL as a common platform and common basket to effect the sale in the market. Accordingly, the shares were transferred to VSL, who in turn sold the shares in the market. VSL upon realizing the sale proceeds transferred the money to Mrs. Sangita J. Valia, who in turn transferred the money to YCL.

8. I have carefully considered the SCNs issued to the respective noticees, their replies/submissions and the relevant material available on record. I note that the respective SCNs have been issued to the noticees on the basis of same facts including same set of transactions in the same scrip during the same investigation period. Further, all the noticees are connected/related to each other and form a part of family/group and there are several overlapping of charges in the three SCNs issued to them. In view of the nature of alleged transactions, connections/relations, other attendant facts and circumstances of this case, I deem it appropriate to deal with the three SCNs issued to all the noticees herein by way of this common order.
9. Before dealing with the submissions on the merits of the case, I deem it necessary to deal with the preliminary objections on maintainability of the SCNs as contended by the noticees. The first such contention is with regard to initiation of these proceedings in facts and circumstances of this case. I have carefully perused the order of the Hon'ble SAT dated December 2, 2010 as reproduced hereinabove. It is clear that the appeal was allowed to be withdrawn and serious observations on the allegations and charges were made by the Hon'ble SAT. The Hon'ble SAT has given its findings on the merits of the case also and thus, the findings of the Adjudicating Officer have attained finality as admitted by the noticees as well during the proceedings before me. The Hon'ble SAT has felt that SEBI's action as lenient which according to the Hon'ble SAT was not deterrent for others and it would send a wrong signal. Apart from such findings/observations, the Hon'ble SAT was also inclined to impose costs on the noticees. However, it refrained from doing so since the noticees withdrew their appeals. In view of these observations/findings of the Hon'ble SAT in this case, as reproduced hereinabove, the matter was re-examined for appropriate directions against the noticees to protect the integrity of the market and the interest of the investors. From the material available on records, it is noted that the instant proceedings have been properly initiated considering the finding/observations of the Hon'ble SAT, to protect the integrity of the market and in the interest of the investors. Since the SCNs are within the statutory jurisdiction of SEBI under the SEBI Act and they have been issued pursuant to the order of the Hon'ble SAT, I do not find any infirmity therein as contended by the noticees.
10. The second preliminary contention raised by the noticees is that the SCNs do not spell out the possible course of action *qua* them. In this regard, I note that the SCNs have been issued under

sections 11 and 11B of the SEBI Act and section 12A of the SCRA. The Hon'ble SAT has also very clearly stated in the aforesaid order dated December 2, 2010 that the instant case is a "*fit case for initiating proceedings under sections 11 and 11B of the SEBI Act for issuing appropriate directions against the noticees to protect the integrity of the market and the interest of the investors.*" The provisions of section 12A are *pari materia* the provisions of section 11B of the SEBI Act as regards the purpose and nature of the directions that can be issued to the companies or persons associated with the securities market for violation of the SCRA read with the Listing Agreement. I further note that the basis of allegations have been clearly laid down in the SCNs. The provisions of law alleged to have been contravened in this case are also mentioned in the SCNs. The directions contemplated under sections 11 / 11B of the SEBI Act and section 12A of the SCRA are matters of common knowledge for any person associated with securities market. The possible directions under those sections, apart from being of wide amplitude as upheld by courts, include the directions that are specifically listed in section 11(4) of the SEBI Act. I, therefore, find that the SCN satisfies the requirements of law in this regard and no prejudice is caused to the noticees merely because the specific directions are not listed in the body of the SCN.

11. Coming to the merits of the case, it is noted that the noticees have admitted the transactions of the respective noticees mentioned in the SCNs. In this case, it is established that the noticees have not disclosed VSL as its promoters and its shareholding was not disclosed in the promoters shareholding till the quarter ending June 30, 2006. It is further noted that the Executive Chairman/director of YCL during the relevant period was Mr. Jayesh Valia. As per the disclosures made by YCL as of September 30, 2005 Mr. Jayesh Valia and his family members were holding substantial shares in YCL as described in the following Table-

Table 2:Shareholding of Valia family/group in YCL

Sr. no.	Name	Relationship with Mr. Jayesh Valia	% of shareholding
(a)	Mr. Jayesh Valia, Chairman	Self	0.040%
(b)	Mrs. Sangita Jayesh Valia, Promoter	Wife	28.008%
(c)	Mr. Raj Jayesh Valia, Promoter	Son	3.944%
(d)	Mr. Madhav Jayesh Valia, Promoter	Son	3.942%
(e)	Mr. Vinodrai V Valia	Father	0.036%
	Total shareholding		35.97%

12. The above shareholding was disclosed as part of the shareholding of the promoter group of YCL. It is further noted that VSL held 16.93%, 8.38%, 10.38%, 10.38%, 10.38% and 10.38% of the shareholding of YCL for the quarters ended September 30, 2005 to December 31, 2006. During the year 2005-06, the Board of VSL consisted of 3 directors, viz., Mr. Jayesh Valia,

Chairman, Mr. Paresh Valia (brother of Mr. Jayesh Valia) and Mrs. Sangeeta Jayesh Valia. Mrs. Sangeeta Valia held 49,300 shares which constituted 98.60% of the share capital of VSL, Mr. Jayesh Valia and Mr. Paresh Valia held 100 shares each in the share capital of VSL. All the three directors had common address at C-22, Pushpa Park, S.V. Road, Borivali (W), Mumbai 400092. Thus, VSL was a company belonging to Mr. Jayesh Valia Family and was under the same management as that of YCL. In view of these facts and circumstances it is established that the persons in control of YCL i.e. the Jayesh Valia Family were having control over VSL and thus the shareholding of VSL in YCL should have been disclosed as part of the promoter group shareholding. However, shareholding of VSL was not disclosed by YCL in promoter shareholding as required under clause 35 of the Listing Agreement till the quarter ending June 30, 2006.

13. With regard to not furnishing reasons for variance between the un-audited and audited results, the noticees have not been able to disprove the charge of discrepancy in the financial statements on the basis of any evidence. It is noted that in its unaudited quarterly results disclosed to BSE, YCL showed an increase in its net profit continuously from ₹0.53 crore as on quarter ending June 30, 2005 to ₹1.60 crore as on quarter ending September 30, 2005 to ₹1.79 crore as on quarter ending December 31, 2005 and ₹1.84 crore as on quarter ending March 31, 2006. However, in the audited results for the year 2005-06 YCL had shown that it incurred a loss of ₹61 lakh for the year ending March 31, 2006. It has been established in this case that YCL deliberately and actively fudged its accounts and concealed the material information about its actual financial results. It is further noted that YCL had filed the half yearly results for September 2005 with BSE on November 30, 2005 and decision taken at the board meeting held on October 31, 2005 was intimated to BSE on December 14, 2005. It had clubbed certain positive corporate announcements and intimated them at the same time to BSE. I note that the Adjudicating Officer has gone into their contentions in his order dated November 13, 2009 which have been upheld by the Hon'ble SAT and I adopt the same and do not wish to burden this order with the same findings again .

14. It has been established in this case that -

- (a) the misleading disclosure of not including VSL as part of the shareholding of promoter group of YCL upto quarter ended March 2006, inclusion of VSL as part of the shareholding of promoter group subsequently since quarter ended June 2006,
- (b) huge variance in the net profit/loss of YCL for the financial year 2005-06 – between the unaudited quarterly results and audited annual results,
- (c) failure to furnish adequate reasons/justifications for the said variance to BSE and
- (d) clubbing of many positive corporate announcements and disclosing them at one go,

were made with a *mala fide* intention to allure the investors to trade in the scrip of YCL. The aforesaid material and price sensitive information impacted the price of the shares of YCL inasmuch as it increased from ₹37.25 on December 1, 2005 to ₹94.85 on January 10, 2006.

15. From the above it is noted that YCL concealed the fact of VSL being its promoter and also its shareholding under the promoters shareholding as required under clause 35 of the Listing Agreement. Further, the reasons for discrepancy in the disclosures in the unaudited quarterly results and audited annual results were not provided by YCL to the stock exchange. I note that the claim of YCL that it had diligently explained the reasons for discrepancy to BSE has not been substantiated by any evidence. Further, the Company clubbed several positive announcements and disclosed the same at the same time. It is noted that the price of the scrip rose from ₹37.25 to ₹98.60 in a short period of 44 days. The entities belonging to the promoter group took advantage of this impact on price and sold part of their shareholding. Thus, the acts of the noticees clearly created false and misleading appearance of trading in the shares of YCL. Such acts and omissions apart from being non compliance of clause 35 and 41 of the Listing Agreement are clearly part of a fraudulent device or artifice under regulation 2(1)(c) of the PFUTP Regulations. In the facts and circumstances of this case, it is established that these acts and omissions were under a device or artifice to increase the price and induce sale and purchase of shares of YCL. Thus, these acts of YCL and its Executive Chairman/director, Mr. Jayesh Valia attract the prohibitions stipulated in regulations 3(a),(b),(c) and (d) of the PFUTP Regulations.
16. In terms of regulation 2(e) of the PIT Regulation an *'insider'* means any person who is or was connected with the company or is deemed to have been connected with the company and who is reasonably expected to have access, by virtue of such connection to unpublished price sensitive information in respect of securities of the company or who has received or has had access to such unpublished price sensitive information." A person to be considered as *'insider'* should be one who is or was actually connected with the company or deemed to have been connected with the company. The term "*connected person*" has been defined in regulation 2(c) and includes *inter alia* -
- (a) any person who is a 'director' of a company, as defined in clause (13) of section 2 of the Companies Act, 1956;
 - (b) '*relatives*' of '*connected persons*',- wife and son of connected persons are included in the definition of the term '*relative*';
 - (c) companies under same management.
17. In the instant case Mr. Jayesh Valia being the Executive Chairman/director of YCL at the relevant time was '*connected person*'. Mrs. Sangeeta J.Valia (promoter of YCL and wife of Mr.

Jayesh Valia), Mr. Madhav J. Valia and Mr. Raj J. Valia (promoters of YCL and sons of Mr. Jayesh Valia) are relative of Mr. Jayesh Valia. VSL a promoter group company of YCL owned and controlled by these *connected persons* (i.e., Valia family/group) is a company under same management. Thus, all these persons are '*insiders*' in terms of regulation 2(e) of the PIT Regulations.

18. The next question that arises is what was the '*unpublished price sensitive information*' in this case. The term '*unpublished price sensitive information*' has been defined in regulation 2(k) of the PIT regulations, as under: -

"2.(k)Unpublished Price Sensitive Information' means any information which relates to the following matters or is of concern, directly or indirectly, to a company, and is not generally known or published by such company for general information, but which if published or known, is likely to materially affect the price of securities of that company in the market –

- i) financial results (both half-yearly and annual) of the company;*
- ii) intended declaration of dividends (both interim/final);*
- iii) issue of shares by way of public rights, bonus, etc.;*
- iv) any major expansion plans or execution of new projects;*
- v) amalgamation, mergers and takeovers;*
- vi) disposal of the whole or substantially the whole of the undertaking;*
- vii) such other information as may affect the earnings of the company;*
- viii) any changes in policies, plans or operations of the company."*

19. In terms of the above definition an information would be '*unpublished price sensitive information*' if it is related to any of the aforesaid specified matters and is not generally known or published by the company for general information but which, if published, is likely to materially affect the price of its securities in the market. In this case, it has been established that when the aforesaid information , namely;-

- (a) non disclosure of shareholding of VSL as part of the shareholding of promoter group of YCL upto quarter ended March 2006, inclusion of VSL as part of the shareholding of promoter group subsequently since quarter ended June 2006,
- (b) huge unjustified variance in the net profit/loss of YCL for the financial year 2005-06 – between the unaudited quarterly results and audited annual results,
- (c) failure to furnish adequate reasons/justifications for the said variance to BSE and
- (d) clubbing of many positive corporate announcements and disclosing them at one go,

were material and *price sensitive information* since during the period when the aforesaid misleading

disclosures/concealments occurred the price of the scrip of YCL increased from ₹37.25 on December 1, 2005 to ₹94.85 on January 10, 2006.

20. Thus, the said information are covered within the definition under regulation 2(k) of the PIT Regulations. These *price sensitive information* remained unpublished and remained within the knowledge and possession of the '*insiders*' who counseled the same to other noticees and who traded on the basis thereof.
21. The noticees have also admitted the facts with regard to trading in shares of YCL on several dates as described in the SCNs. It is noted from the SCNs that the promoters of YCL viz. Mr. Madhav J. Valia, Mrs. Sangeeta J. Valia and Mr. Raj J. Valia off-loaded 160000 shares, 580000 shares and 180000 shares respectively in off-market transaction to VSL and Mr. Samir Mukundlal Shah during the period of investigation when the aforesaid *price sensitive information* were unpublished. During the said period, VSL had sold total 9,80,000 shares in the market. These shares constituting around 35% of the market volume were sold on exchange between December 16, 2005 to January 04, 2006 when the price of the scrip of YCL had gone up.
22. Mr. Jayesh Valia, being the Executive Director of YCL was in possession of the *unpublished price sensitive information* at all relevant times. His wife, Mrs. Sangeeta J. Valia and his sons Mr. Madhav J. Valia and Mr. Raj J. Valia were also *insiders* and the fact that they are family members of Mr. Jayesh Valia having common address of residence along with other relevant facts such as timing of sale, methodology adopted to effect sale, the facts circumstances such as active concealment, misleading disclosures and fraudulent activities prior to the sale indicate high degree of probability that Mr. Jayesh Valia had communicated the *unpublished price sensitive information* and had active role in the sale transactions of his wife and sons. Further, VSL is a company owned and controlled by Valia family wherein Mrs. Sangeeta J. Valia holds 98.6% shareholding and Mr. Jayesh Valia holds 100 shares apart from being its director along with his wife Mrs. Sangeeta J. Valia and his brother Mr. Paresh Valia. These facts strongly suggest that the transactions of VSL were on the basis of *unpublished price sensitive information* possessed by these noticees. In this regard, I note that in the matter of *Mrs. Chandrakala v. SEBI (Appeal No. 209 of 2011; Hon'ble Securities Appellate Tribunal vide order dated January 31, 2012)* held that:-

"It means that the trades executed should be motivated by the information in the possession of the insider. If an insider trades or deals in securities of a listed company, it may be presumed that he / she traded on the basis of unpublished price sensitive information in his / her possession unless contrary to the same is established. The burden of proving a situation contrary to the presumption mentioned above lies on the insider. If an insider shows that he / she did not trade on the basis of unpublished price

sensitive information and that he / she traded on some other basis, he / she cannot be said to have violated the provisions of regulation 3 of the regulations."

23. I further note that matters in issue in the instant proceedings are the same as were in the adjudication proceedings that have been concluded vide orders dated November 13, 2009 passed by the Adjudicating Officer and findings on merit of the case have attained finality in the order dated December 02, 2010 passed by Hon'ble SAT. This fact has also been admitted by the noticees in the instant proceedings. It is further noted that while giving findings on merits of charges and allegations the Hon'ble SAT has referred the matter to SEBI for taking appropriate actions under sections 11 and 11B of the SEBI Act and for filing prosecution. In this regard, the following observations of the Hon'ble SAT in the aforesaid order dated December 02, 2010 is very important to mention-

"This is a fit case where the board could have prosecuted the company and its promoters. We say so because, apart from the other serious charges established against the company and its promoters it has been found that the company fudged its accounts and showed profits when it was actually making losses. It projected a rosy picture and its performance before the securities market and the investors with a view to lure them to invest as a result whereof the price of the scrip of the company rose from ₹37.25 to ₹98.60 in a short span of 44 days and interestingly, when the price went up, the promoters and their front entities off-loaded more than 9 lac shares in the market. This is, indeed, a very serious market illegality/irregularity and, in our view, imposing a monetary penalty alone on the company and its promoters will not meet the ends of justice....."

24. I, therefore, find that the allegation of violation of regulation 3 of the PIT Regulations and sections 12A (d) and (e) of SEBI Act by the noticees as alleged in the SCNs are established.
25. With regard to allegation of violation of regulations 13(3) and 13(6) of the PIT Regulations, it is noted Mrs. Sangeeta J Valia had reduced her shareholding in YCL from 1344400 shares (28.01%) as on quarter ending September 30, 2005 to 1094400 shares (22.80%) as on quarter ending December 31, 2005 to less than 1% as on quarter ending March 31, 2006 and VSL had reduced its shareholding from 812300 shares (16.93%) as on quarter ending September 30, 2005 to 402300 shares (8.38%) as on quarter ending December 31, 2005. These entities have reportedly made disclosures although the said disclosures were not in the prescribed format as required under Schedule III read with regulation 13(3) of the PIT Regulations. Further, YCL has not made the required disclosures under regulation 13(6) of the PIT Regulations. The noticees have been unable to disprove the charge in this regard.
26. In my view, the prohibitions provided in the PIT Regulations are *inter alia* intended to ensure that the *insiders* do not breach their fiduciary duty towards the investors and other stakeholders. The prohibitions provided in the Act and the Regulations have specific purpose as mentioned

above and the penalty provisions for enforcing the regulations need to be given effect to safeguard the interest of investors and integrity of the securities market. It has to be kept in mind that in respect of contraventions relating to the *insider trading* the violator should face the consequences otherwise the objects of the regulations and also of the regulatory jurisdiction would get defeated. In my view, the enforcement actions for such violations, as found in this case, should have effective deterrence. In the facts and circumstances of this case I find that the violations in this case are serious and if handled leniently would send wrong signals as observed by the Hon'ble SAT in its order dated December 02, 2010 in this case that the lenient view "*will not be a deterrent for others and would send a wrong signal that the delinquents could continue with their nefarious activities by paying a monetary penalty.*"

27. Considering the above, I, in order to protect the interest of investors and the integrity of the securities market, in exercise of the powers conferred upon me under section 19 read with section 11 and 11B of the SEBI Act, section 12A of the SCRA and regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003, and regulation 11 of the SEBI (Prohibition of Insider Trading) Regulations, 1992 hereby restrain the following persons from accessing the securities market and further prohibit them from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 5 years:

Sl. no.	Name	PAN
1.	Yashraj Containeurs Limited	AAACV4846L
2.	Mr. Jayesh Valia	AAFPV5698G
3.	Ms. Sangeeta J. Valia	ACDPV4956F
4.	Vasparr Shelter Limited	AABCV2888D

28. This order shall come into force with immediate effect. A copy of this order shall also be served upon the depositories and stock exchanges for necessary action on their part.

Sd/-

DATE: JANUARY 13TH , 2016

PLACE: MUMBAI

RAJEEV KUMAR AGARWAL

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA