

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. VSS/AO- 185/2009]

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

In respect of

Yashraj Containeurs Limited

(PAN. AAACV4846L)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation in the trading in the scrip of Yashraj Containeurs Limited (hereinafter referred to as “**YCL/Noticee**”) for the period from December 1, 2005 to January 13, 2006 (hereinafter referred to as “**investigation period**”). The shares of YCL are listed on Bombay Stock Exchange (hereinafter referred to as “**BSE**”). From the examination of data, it was found that the price of the scrip of YCL increased from Rs.37.25 on December 1, 2005 to a high of Rs.98.60 on January 13, 2006 and closed at Rs.96.85 on January 13, 2006.
2. It was alleged that YCL had violated the provisions of clause 35 and 41 of Listing Agreement, regulations 3 (a), (b), (c) and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating

to Securities Markets) Regulations, 2003 (hereinafter referred to as “**PFUTP**”) and regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT**”).

3. The aforesaid alleged violations, if established, make the Noticee liable for monetary penalty under section 23E of Securities Contract Regulation Act, 1956 (hereinafter referred to as “**SCRA**”) and sections 15HA and 15A (b) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”).

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as Adjudicating Officer vide order dated May 20, 2008 under section 15 I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as ‘**Rules**’) to inquire into and adjudge the alleged violations of provisions of Listing Agreement, PFUTP and PIT.

SHOW CAUSE NOTICE, HEARING AND REPLY

5. Show Cause Notice No.EAD-5/VSS/JR/137407/2008 dated September 10, 2008 (hereinafter referred to as “**SCN**”) was issued to the Noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be held against it and penalty be not imposed under section 23E of SCRA and sections 15HA and 15A(b) of SEBI Act for the alleged violations specified in the said SCN.
6. The Noticee vide letter dated September 19, 2008 replied to the SCN.

7. In the interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of the Rules, the Noticee was granted an opportunity of personal hearing on September 30, 2009 at SEBI, Head Office, Mumbai vide notice dated September 7, 2009. The Noticee vide letter dated September 9, 2009 sought extension. The second opportunity of hearing was granted to the Noticee on October 7, 2009 vide letter dated September 14, 2009. Mr. S. K. Kittur, Authorised Representative of the Noticee (hereinafter referred to as “AR”) appeared on behalf of the Noticee. During the hearing, the AR reiterated the submissions made vide letter dated September 19, 2008. Further to the queries raised during the personal hearing, the AR also submitted certain additional documents.

CONSIDERATION OF ISSUES AND FINDINGS

8. The issues that arise for consideration in the present case are :
- a) Whether the Noticee had violated provisions of clauses 35 and 41 of Listing Agreement?
 - b) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 23E of SCRA?
 - c) Whether the Noticee had violated regulations 3 (a), (b), (c) and (d) of PFUTP?
 - d) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15 HA of SEBI Act?
 - e) Whether the Noticee had violated regulation 13 (6) of PIT?
 - f) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15A (b) of SEBI Act?
 - g) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

9. Before moving forward, it will be appropriate to refer to the relevant provisions of Listing Agreement, PFUTP and PIT which reads as under:

Listing Agreement

Clause 35: Disclosure of shareholding pattern of the company on a quarterly basis.

Clause 41: Disclosure of unaudited financial results of the company on a quarterly basis.

“The unaudited results should not substantially differ from the audited results of the company. If the sum total of the First, Second, Third and Fourth quarterly unaudited results in respect of any item given in the same pro-forma varies by 20 per cent when compared with the audited results for the full year the company shall explain the reasons to the Stock Exchanges”.

PFTUP

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 propose 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 thereunder;*
- (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.*

PIT

13. Disclosure by company to stock exchanges

(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.

VIOLATION OF PROVISIONS OF LISTING AGREEMENT AND PFUTP

10. **Misleading Disclosure/Corporate Announcements** – It was alleged that the disclosure regarding shareholding pattern of YCL and certain other corporate announcements/financial results were incorrect, premature, misleading and were made with an intent to allure the investors and create artificial liquidity in the scrip and with the result, the entities belonging to the promoter group of YCL offloaded shares in the market. The allegations, submissions of the Noticee and my findings thereon, are as under:

Allegation 1: Discrepancy in the shareholding pattern of YCL – Vasparr Shelter Limited (hereinafter referred to as “VSL”) was a shareholder of YCL in the following quarters although its name did not appear as part of the promoter group in the shareholding pattern disclosed to BSE.

Quarter ended on	Shareholding as per RTA	Shareholding as per BSE website
September 30, 2005	16.93%	Not appeared
December 31, 2005	8.38%	Not appeared
March 31, 2006	10.38%	Not appeared
June 30, 2006	10.38%	Appeared
September 30, 2006	10.38%	Appeared
December 31, 2006	10.38%	Appeared

The name of VSL appeared as part of the promoter group for the first time in the shareholding pattern disclosed on the website of BSE for the quarter ended June 30, 2006. Earlier to this disclosure, there was no such categorization in the shareholding pattern

submitted by the company to BSE. Such discrepancy in the filing of shareholding pattern was in violation of clause 35 of Listing Agreement.

Reply: The Noticee submitted that 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 the company. YCL was incorporated on July 27, 1993 whereas VSL was incorporated on January 29, 1996 and hence, VSL could not be a promoter of the already existing company. Moreover, the promoters are supposed to hold shares atleast for 3 years to get qualified as promoters in terms of 3(e)III(b) of 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.

Findings: I find 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, as indicated in the aforesaid table. I also find from the submissions of VSL vide letter dated October 21, 2009 that during the year 2005-06, the Board of VSL consisted of 3 directors, viz., Jayesh Valia, Chairman, Paresh Valia (brother of Jayesh Valia) and Mrs. Sangita Jayesh Valia (wife of Jayesh Valia). Mrs. Sangita Jayesh 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, it can be said that VSL was a company belonging to the 'Jayesh Valia Family'/'Jayesh Valia Group'.

The Executive Chairman of YCL during the said period was Jayesh Valia. In the share capital of YCL, as of September 30, 2005, Sangita Jayesh Valia held 28.008%, Raj Jayesh Valia (son of Mrs. And Mr. Jayesh Valia) held 3.944%, Madhav Jayesh Valia (son of Mrs. And Mr. Jayesh Valia) held 3.942%, Jayesh Valia held 0.040% and Vinodrai V Valia (father of Jayesh Valia) held 0.036%. The total shareholding of 'Jayesh Valia Family'/'Jayesh Valia Group' in YCL at that point of time was 35.97%. This shareholding was disclosed as part of the promoter group of YCL. The Valia family had common address at C-22, Pushpa Park, S.V. Road, Borivali (W), Mumbai 400092.

In view of the above, VSL was part of the 'Jayesh Valia Family'/'Jayesh Valia Group' and consequently, would form part of the promoter group of YCL and accordingly, the shareholding of VSL ought to have been shown as part of the promoter group.

I have noted the submissions of the Noticee in this regard. The Noticee had contended that since VSL was born after YCL, VSL cannot become a promoter of YCL. This argument, to say the least, is not only illogical but also foolish. If a company (second born) acquires shareholding/voting rights in another company (first born) beyond certain limits and/or has some relationship with the promoters of the first born company, the second born company can become part of the promoter group of the first born company. In the instant case, in view of the commonalities between VSL and the promoter-group YCL as brought out above, VSL will have to be considered as part of 'Jayesh Valia Family'/'Jayesh Valia Group' and consequently, part of the promoter group of YCL as well. The contention of the Noticee, thus, is not acceptable.

As regards the provisions of the SEBI Takeover Regulations with regard to 'promoter' cited as one of the reasons in support of its contention, I am of the view that the purpose and objective of the said provisions are different and are only an enabling provision for a particular entity to claim as a promoter. The submission made by the Noticee that since VSL did not fall within the definition of the term 'promoter' as defined in the SEBI Takeover Regulations, VSL would not form part of the 'promoter group' of YCL is devoid of merit and not acceptable. On the other hand, in view of the commonalities between VSL and the promoter-group of YCL as brought out above, VSL will have to be considered as part of 'Jayesh Valia Family'/'Jayesh Valia Group' and consequently, part of the promoter group of YCL.

Accordingly, the disclosure made by the RTI/STA was indeed right but the said right was made into a wrong by the Noticee/company subsequently.

The shareholding pattern of a company that is disclosed through the website acts as a window of the company to the outside world, i.e. to the investors, based on which the investors take an informed decision with regard to their investment in the securities of that company. The disclosure so made gives the information regarding the ownership and management control of/over the company. If such information is ambiguous or inadequate or erroneous, the same would adversely affect the smooth functioning of the securities market in general, and the price discovery of the share of that company, in particular. Thus, the allegation of violation of clause 35 of the Listing Agreement stands established.

11. **Allegation 2: Difference between unaudited quarterly results and audited annual results** - The unaudited quarterly results of the company (financial year 2005 – 06) showed a continuous increase in net profit, as under:

Quarter ended on	Net Profit (Rs. In crores)	% increase
June 30, 2005	0.53	-
September 30, 2005	1.60	301.89%
December 31, 2005	1.79	111.88%
March 31, 2006	1.84	102.79%
TOTAL	5.76	

On the contrary, the audited results for the financial year 2005-06 showed that the company had incurred a loss of Rs. 0.61 crore (loss incurred for the preceding year ended March 31, 2005 was Rs. 6.49 crore). It was alleged that although there was a significant difference between the unaudited quarterly results and audited annual results for the financial year 2005 - 06, the Noticee did not furnish the reasons for the discrepancy to BSE, which is in violation of clause 41 of the Listing Agreement.

Reply: The discrepancy 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. Copies of the filings made to BSE vide letter dated October 21, 2009 were submitted in support of this.

Findings: : The allegation pertains to two issues viz., (a) The reason for difference in the audited and un-audited results published by the Company for the financial year 2005 - 06 and (b) Whether the same was adequately explained to BSE.

- The reason for variance between the un-audited and audited results was due to adoption of different methods while valuing the stock. I have noted the submission of the Noticee that the company had adopted Standard Costing method for unaudited results and FIFO for audited results. I have perused the contents of the Accounting Standards as specified in www.icai.org (the official website of Institute of Chartered Accountants in India) and find that an enterprise should apply the same accounting policies in its interim financial statements as are applied in its annual financial statements, except for accounting policy changes made after the date of the most recent annual financial statements that are to be reflected in the next annual financial statements. In the instant case, I find that this basic principle was not followed and the company had deviated from the specified accounting standards. By virtue of adopting a different standard of valuation which was more favourable to it, the Noticee had shown higher profits which would not have been possible had the Noticee adopted the correct standard of valuation as specified under the Accounting Standards. With the result, there was a huge variance in the net profit/loss of YCL for the financial year 2005-06, i.e., Rs. 5.76 crore of profit as per the unaudited quarterly results as against the actual loss of Rs.0.61 crore as per the audited results. The reason cited by the Noticee for the variance does not appear to be justified but an intended one to inflate the profits of the

company and project a rosy picture about the performance of the company, which, in reality, was otherwise.

- As regards the second issue of informing BSE about the reasons for the variance, I have perused the copies of communication reportedly sent by the company to BSE, submitted to me vide letter dated October 21, 2009. I find therefrom that such letters do not bear the acknowledgment of BSE. Such letters include No.YCL/ /2006 dated June 9, 2006 (quarter ended 31/3/2006), No.YCL/BOMSTOCK/1717 dated March 7, 2006 (quarter ended 31/12/2005), No.YCL/BOMSTOCK/1689 dated December 14, 2005 (quarter ended 30/9/2005), No.YCL/1700/2005 dated September 14, 2005 (quarter ended 30/6/2005). On the other hand, perusal of the copies of communication sent by the company to BSE forwarding the audited financial results bears the acknowledgment of BSE. Moreover, the copy of communication ref No.YCL/ /2006 dated June 9, 2006 neither bears the acknowledgment of BSE nor has 'reference number'. Whereas all other communication bears a reference number. In view of this, the authenticity of the copies of the communication sent by YCL to BSE specifying the reasons for variance is doubtful. The same cannot be taken on face value as documentary evidence for having furnished the reasons for the variance.
- Assuming, but not accepting, that the aforesaid copies of communication sent by YCL to BSE citing the reasons for variance can be relied upon, the issue for examination is to see whether the reasons cited therein adequately explained the variance. For this purpose, the reasons cited by YCL in those communications are tabulated as under.

Date of communication	Reasons cited for variance
09/06/06	Miscellaneous income is accounted for as and when received on cash basis.
07/03/06	Income is accounted for on actual receipt basis and normally misc. income is made out of sale of scrap. Accumulated scrap is sold out during this quarter naturally other income goes up.
14/12/05	The company's fixed assets were revalued by a government approved valuer. There was upward revision in valuation, hence the depreciation is in the ascending manner and it has shot up.
15/06/05	This figure reflects the changes carried out in income and expenditure related items and hence the variation.

- The reason/s cited to BSE in the aforesaid communication are totally in variance with the reasons submitted before the Investigating Authority (hereinafter referred to as “IA”) as well as during the adjudication proceedings. The reason for variance cited before the IA and the undersigned was due to adoption of different methods while valuing the stock at the time of preparation of unaudited results and audited results. However, the reasons cited to BSE, as summarized above, do not have any reference whatsoever to the method adopted while valuing the stock. I am of the view that the reasons cited to BSE were vague, ambiguous and did not make any sense at all. Hence the violation of non-compliance with provisions of clause 41 of the Listing Agreement stands established.

Allegation 3: Delay in disclosure of corporate action/s - The half yearly results for September 2005 was intimated to 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. There was delay in disclosing the corporate actions by YCL to BSE.

Further, the company clubbed many of the positive corporate announcements and disclosed the same at one go, i.e. during November and December 2005.

Reply: 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.

Findings: The Noticee has admitted that the positive corporate announcements were clubbed together and disclosed at one time, i.e., during the period November – December 2005. I have noted its submission that it was due to human error and the same is justified.

I find that YCL had disclosed audited/unaudited financial results to BSE at regular intervals. However, when it came to other corporate announcements, the Noticee had claimed that due to human error the same were not disclosed at regular intervals but at one go. Under these circumstances, I find that the submission of the Noticee is amusing, to say the least.

Further, I find that clubbing the positive corporate announcements and disclosing the same at one go had impacted the price, as may be seen from the following:

Date /Time	Announcement	Price Impact
November 30, 2005	The company has announced the half yearly results ended September 30, 2005 on November 30, 2005 which show a significant increase in the net profit of Rs. 2.11 crore as compared to Rs. 0.47 crore for the previous corresponding period.	On 1st December, 2005 (i.e. next trading day), the scrip opened at Rs.37.25 (3.50 % lower than the last day's closing price) and remained the same throughout the day).

Date /Time	Announcement	Price Impact
December 14, 2005 / 11:28:54 AM	<p>Yashraj Containeurs Ltd has informed BSE that the Board of Directors of the Company at its meeting held on October 31, 2005, had decided to have revaluation of Company's Fixed Assets carried out by a Government approved valuer. The Company has received revaluation report from a Government Approved Valuer of its fixed Assets and the Board of Directors while re-adopting the accounts as on March 31, 2005 incorporated the impact of such revaluation in the accounts. Further the Company has informed that- a) There is no change in the Directors composition b) No dividend has been recommended c) The Annual General Meeting has been fixed on December 31, 2005.</p> <p>Implementation: After revaluation of Company's fixed asset the cost of the land increased from Rs. 5687383 as on 01-04-2004 to Rs. 12600000 as on 31-03-2005</p>	On this day the scrip opened at Rs. 42.45 (near circuit rate) (4.94% higher as compared to the last days's closing price) and remained the same throughout the day).
December 14, 2005 / 04:46:33 PM	<p>Yashraj Containeurs Ltd. has informed BSE that the Board of Directors of the Company at its meeting held on November 23, 2005, has discussed the possibility of raising fresh finance through the vehicle of Preferential Allotment Basis. Further the Board has decided to hold Extra Ordinary General Meeting (EGM) on December 30, 2005 to raise finance of Rs. 150 million by way of issuance of 30 lacs of Equity Shares on Preferential Allotment basis to promoters at Rs 10/- each per share plus Rs 40/- premium on each share.</p> <p>Implementation: Pursuant to the company's application dated May 20, 2006 to BIFR for the issuance of preferential allotment, BIFR vide its letter dated June 12, 2006 and December 22, 2006 had exempted the company from the provisions of companies Act, SEBI and SCRA guidelines and granted its permission for the preferential allotment. The company had also succeeded in getting in-principle approval from BSE for the above scheme vide letter dated June 6, 2007.</p>	On the next day the scrip opened at Rs. 44.45 (near circuit rate) (4.95% higher as compared to the last day's closing price) and remained the same throughout the day).
January 10, 2006 / 11:40:51 AM	<p>Yashraj Containeurs Ltd has informed BSE that the members at the Annual General Meeting (AGM) of the Company held on December 31, 2005, inter alia, have transacted the following (a) Adoption of the Annual accounts as at March 31, 2005 with unison (b) No Dividend has been declared (c) During the year under review there was change in Directorships, Mr. S K Kittur joined the Board on January 24, 2005 & Mr. Maruti S Patil joined the Board on August 31, 2005.</p>	On 10 th January, 2006 (i.e. same trading day), the scrip opened at Rs.94.15 (1.99 % higher than the last day's closing price) went to a high of Rs. 94.85/- (0.74%) and closed at Rs. 94.85/- .

In view of the above, the motive behind indulging in such action does not appear to be bonafide.

12. In a nutshell, I find that (a) the misleading disclosure of not including VSL as part of the shareholding of promoter group of YCL

('Jayesh Valia Family'/'Jayesh Valia Group') upto quarter ended March 2006, inclusion of VSL as part of the shareholding of promoter group subsequently since quarter ended June 2006 and subsequent exclusion of VSL from the shareholding of promoter group of YCL, (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 malafide intention to allure the investors to trade in the scrip of YCL. This impacted the price of the shares of YCL. The entities belonging to the promoter group took advantage of this impact and sold part of their shareholding as detailed below.

Trading of entities belonging to promoter group of YCL – A perusal of the demat account statements of entities belonging to promoter-group ('Jayesh Valia Family'/'Jayesh Valia Group') viz. Madhav J. Valia, Sangita J. Valia and Raj J. Valia revealed that they had off-loaded 1,60,000 shares, 5,80,000 shares and 1,80,000 shares respectively (a total of 9,20,000 shares) through off-market to VSL and Samir Mukundlal Shah during the period of investigation. These two buyers had, in turn, offloaded a part of these shares in the market. The details of off-market transfer and subsequent on market sale, are as under :

Table A: (Details of transfer of shares in the offmarket to Vasparr Shelter Ltd. Client Code: M015 trading through the broker Indus Portfolio Pvt. Ltd. and selling in the market)									
Date of Purchase	Mode	Counterparty	Purchase Qty. (Rate of Purchase)	Date of transfer to broker Pool account	Date of sale	Name of the broker / off market	Qty. sold / transferred	Rate of sale	Balance shares
Balance as on October 1, 2005									410300
16/12/2005	offmarket	Madhav J. Valia	90000 (Rs.25.94/-)						500300

				16/12/2005	23/12/2005	Indus portfolio	500000	59.55	300
23/12/2005	offmarket	Sangita J. Valia	250000 (prevailing market price)						250300
				23/12/2005	23/12/2005	Indus portfolio	250000	54.05	300
3/1/2006	offmarket	Sangita J. Valia	200000 (prevailing market price)						200300
				3/1/2006		Indus portfolio	200000		300
4/1/2006	offmarket	Sangita J. Valia	100000 (prevailing market price)						100300
				4/1/2006		Indus portfolio	100000		300
4/1/2006	offmarket	Sangita J. Valia	30000 (prevailing market price)		4/1/2006	Indus portfolio	230000	82.35	30300
				5/1/2006		Indus portfolio	30000		300
By dematerialization 402000 shares on January 10, 2006									402300

Table B: (Details of transfer of shares in offmarket to Samir Mukund Lal Shah Client Code: S223 trading through Systematrix Shares (182) and selling in the market)

Date of Purchase	Mode (Broker/offmarket)	Counterparty	Purchase Qty.	Date of transfer to broker Pool account	Date of sale	Name of the broker / off market	Qty. sold / transfer	Rate of sale	Balance shares
Balance as on October 1, 2005									0
21/12/2005	offmarket	Madhav J. Valia	70000 (prevailing market price)						70000
21/12/2005	offmarket	Raj J. Valia	180000 (prevailing market price)						250000
				21/12/2005	21/12/2005	Systematrix Shares	250000	54.05	0

Reply: 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 Rs.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. In support of this, copies of the bank statements have been submitted.

Findings: The Noticee had admitted the off-market transfer of shares by the entities belonging to the promoter group to VSL and its subsequent sale in the market. I have noted the rationale submitted by the Noticee for sale of these shares. I have also perused the copies of the bank statements submitted by the Noticee and find that VSL had transferred funds to Mrs. Sangita J Valia who in turn had transferred the funds to YCL. The sale of shares by the entities of promoter group, per se, does not amount to any manipulation. However, the timing of sale, methodology adopted to effect the sale, the events before the sale, etc., have to be examined together to arrive at whether there was any manipulation or not. This is examined in detail in the subsequent paragraphs.

As already held by me in the preceeding paragraphs,

- VSL ought to have been categorized as part of the promoter group of YCL and its shareholding in YCL ought to have been included in the shareholding pattern of the promoter group of YCL, i.e., 'Jayesh Valia Family'/'Jayesh Valia Group', during the quarters ended September 30, 2005 to March 31, 2006.

- There was huge unjustified variance in the net profit/loss between the unaudited and audited results for the financial year 2005-06.
- The discrepancy in the net profit/loss as per the (quarterly) unaudited and audited results for the financial year 2005-06 have not been adequately explained to BSE.
- Many important positive corporate announcements were clubbed together and disclosed to BSE at one go during November-December 2005.
- The above impacted the price of the shares of YCL. The price moved from Rs.37.25 per share on December 1, 2005 and reached a high of Rs.94.85 on January 10, 2006.
- The entities belonging to the promoter group of YCL ('Jayesh Valia Family'/'Jayesh Valia Group') had transferred 9.20 lakh shares during December 2005 and January 2006 to VSL and Samir Mukundlal Shah through off-market.
- On December 16, 2005, Madhav J Valia had transferred 90,000 shares @ Rs.25.94 through off-market to VSL and on the same day, VSL had sold the said shares in the market @ Rs.59.55.
- On December 21, 2005, Madhav J Valia and Raj J Valia had collectively transferred 2,50,000 shares through off-market to Samir Mukundlal Shah and on the same day, Samir Mukundlal Shah had sold the said shares in the market @ Rs.54.05.
- On December 23, 2005, Sangita J Valia had transferred 2,50,000 shares through off-market to VSL and on the same day, VSL had sold the said shares in the market @ Rs.54.05.
- On January 3, 2006, Sangita J Valia had transferred 2,00,000 shares through off-market to VSL and on the same day, VSL had sold the said shares in the market.

- On January 4, 2006, Sangita J Valia had transferred 1,30,000 shares through off-market to VSL and on the same day, VSL had sold the said shares in the market @ Rs.82.35.
13. Regulations 3(a) of PFUTP prohibits a person from buying, selling or otherwise dealing in securities in a fraudulent manner. Regulations 3(b), 3(c) and 3(d) of PFUTP prohibits a person to use manipulative or deceptive device or contrivance, employ any device, scheme or artifice to defraud and engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, respectively, with regard to 'issue', 'purchase' or 'sale' of any security listed or proposed to be listed at a recognized stock exchange.
14. If the facts of the case as narrated in the earlier paragraphs of this order are tested with the touchstone of the aforesaid provisions of PFUTP, it would follow that (a) misleading disclosure of not including VSL as part of the shareholding of promoter group of YCL ('Jayesh Valia Family'/'Jayesh Valia Group') upto quarter ended March 2006, inclusion of VSL as part of the shareholding of promoter group subsequently since quarter ended June 2006 and subsequent exclusion of VSL from the shareholding of promoter group of YCL, (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 made with a malafide intention to allure the investors to trade in the scrip of YCL. This impacted the price of the shares of YCL. The entities belonging to the promoter group, took advantage of this impact and sold part of their shareholding in the

market through VSL and Samir Mukundlal Shah. Thus, the acts of the Noticee clearly created false and misleading appearance of trading in the shares of YCL and they did not act in a bonafide manner. The facts of the case highlight the Noticee's involvement, by using the aforesaid artifice to influence the price of the shares of YCL, employing the same device to allure the investors to trade in the scrip of YCL and enabled the entities belonging to the promoter group of YCL to offload 9.20 lakh shares of YCL in the market using VSL and Samir Mukundlal Shah as conduits.

15. In view of the foregoing, I am of the view that the facts of the present case clearly bring out the ominous role played by the Noticee in indulging in an element of fraud, unfair trade practices and manipulation which enabled all the other entities to connive with one another and actively participate in the heinous game plan of manipulation.
16. In the case of *Gaurav Shah v Whole Time Member, SEBI*, Appeal No 78 of 2008 dated December 17, 2008, the Hon'ble SAT has observed that *"When the promoters of a company through their own front entities start manipulating their own scrip, the charge is more serious and **those who act in concert with them are equally responsible.**" (emphasis supplied).*
17. In the light of the above, I hold that the allegation of violation of the provisions of Regulation 3 (a), (b), (c) and (d) of PFUTP by the Noticee also stands established.

VIOLATION OF PIT

18. Sangita J Valia reduced her shareholding from 13,44,400 shares (28.01%) as on quarter ended September 30, 2005 to 10,94,400

shares (22.80%) as on quarter ended December 31, 2005 to less than 1% as on quarter ended March 31, 2006 and VSL reduced its shareholding from 8,12,300 shares (16.93%) as on quarter ended September 30, 2005 to 4,02,300 shares (8.38%) as on quarter ended December 31, 2005. These entities have reportedly made disclosures although the said disclosures were not in the prescribed format as required under Schedule III of SEBI (Prohibition of Insider Trading) Regulations, 1992. It is alleged that the Noticee had not made the required disclosures under regulation 13 (6) of PIT to BSE.

Reply: The Noticee vide letter dated September 12, 2008 stated that it had complied with regulation 13 (6) of PIT and also submitted necessary documents in this regard to the Investigating Department of SEBI, vide letter dated February 11, 2008. On perusal of the said letter, I found that the said letter merely states, inter alia, that YCL had filed Form C with BSE and the same was sent under certificate of posting. As YCL did not furnish either the copy of the Form C or the proof of delivery, YCL was advised to confirm the status of compliance with the said regulation during the personal hearing held on October 7, 2009. The AR undertook to verify the records in its end and submit the factual position on or before October 30, 2009. YCL vide letter dated October 21, 2009 submitted that a reference was made to SICA in the year April 2002 and YCL was declared sick in January 2006. Accordingly, YCL had Rehabilitation Schemes prepared, worked out and monitored by the Hon'ble BIFR and a finance raising device as well as a scheme for Preferential Allotment was submitted, after getting prior written approval for those schemes from the Hon'ble BIFR. BSE was kept posted about the actual finance raising scheme, after receiving approval of BIFR, and the names of the allottees and quantum of shares allotted were

identified. Moreover, any scheme approved by BIFR for raising finance through Preferential Allotment had inherent protection as BIFR had exempted the company from applicability and operations of certain provisions of the Companies Act 1956, SEBI Guidelines and also exemption from lock in period of BSE Regulations under SCRA.

Findings: I find that the reply of the Noticee vide letter dated October 21, 2009 did not adequately clarify or confirm the status of compliance with provisions of PIT. YCL did not furnish any documentary evidence in support of compliance with the said provisions. Therefore, I am of the opinion that the allegation of violation of regulation 13(6) of PIT stands established.

LEVY OF PENALTY

19. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that “*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...*”.
20. Thus, the violation of regulations of the Listing Agreement, PFUTP and PIT by the Noticee, makes it liable for penalty under section 23E of SCRA and sections 15HA and 15A(b) of SEBI Act which read as follows:

23E. Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions

or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.

15HA. Penalty for fraudulent and unfair trade practices.

If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher. Penalty for fraudulent and unfair trade practices. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

15A. “Penalty for failure to furnish information, return, etc.

If any person, who is required under this Act or any rules or regulations made thereunder,-

(a)

(b) To file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

21. While determining the quantum of penalty under section 23E of SCRA and sections 15HA and 15A(b), it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

“15J Factors to be taken into account by the adjudicating officer
While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*

- (b) *the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) *the repetitive nature of the default.”*

22. I am of the view that the interest of the securities market and of the investors requires that the persons who involve or engage in manipulative, unfair, fraudulent and insider trading are not allowed to unjustly enrich themselves at the cost of genuine investors. Such heinous acts threaten the market integrity and orderly development of the securities market and call for regulatory intervention to protect the interest of the investors. Due to the manipulation that took place in the scrip of YCL, genuine investors were attracted to trade in the shares of YCL. The liquidity/volume in particular scrip raise the issue of ‘demand’ in the securities market. Greater the liquidity, higher the investors’ attraction towards investing in that scrip. Hence, anyone could have been carried away by the unusual fluctuations in the volume and been induced into investing in the said scrip. Besides, this kind of activity seriously affects the normal price discovery mechanism of the securities market. The value of the shares of YCL which are left in the hands of the gullible investors who got trapped in the aforesaid sinister game plan, had reduced substantially. These genuine investors had to suffer considerable amount of loss on account of the manipulation. Though it may not be possible to ascertain the exact quantum of monetary loss to the investors, the interest of investors has been jeopardized on account of the grievous act of the Noticee. The entities that indulge in manipulative, fraudulent and deceptive transactions and/or abet carrying out such transactions should be suitably penalized for the said acts of omissions and commissions.

ORDER

23. After taking into consideration all the facts and circumstances of the case, I hereby impose a penalty of Rs.1,00,000/- (Rupees One Lakh only) under section 23E of SCRA, a penalty of Rs.3,00,000/- (Rupees Three Lakh only) under section 15HA of SEBI Act and a penalty of Rs.1,00,000/- (Rupees One Lakh only) under section 15A(b) {i.e. a total penalty of Rs.5,00,000/- (Rupees Five Lakh only) on the Noticee which will be commensurate with the violation committed by it.
24. The Noticee shall pay the said amount of penalty by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Ms. Barnali Mukherjee, General Manager, Investigations Department - 8, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
25. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: **November 13, 2009**
Place: **Mumbai**

V.S.SUNDARESAN
ADJUDICATING OFFICER