

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. VSS/AO- 183/2009]

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

Jayesh Valia

(PAN. AAFPV5698G)

Sangita Jayesh Valia

(PAN. ACDPV4956F)

Vasparr Shelter Limited

(PAN. AABCV2888D)

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/Company**”) for the period from December 1, 2005 to January 13, 2006 (hereinafter referred to as “**investigation period**”). The shares of the Company 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. The allegation of violation by the various entities was as under:

| Name of the Entity | Violations |
|----------------------|--|
| Jayesh Valia | 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 ”), 3 (ii) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “ PIT ”) and section 12A (e) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “ SEBI Act ”). |
| Sangita Valia J | Regulations 3 (a), (b), (c) and (d) of PFUTP, 3 (i) of PIT and section 12A (d) of SEBI Act. |
| Madhav Valia J | Regulations 3 (a), (b), (c) and (d) of PFUTP, 3 (i) of PIT and section 12A (d) of SEBI Act. |
| Raj J Valia | Regulations 3 (a), (b), (c) and (d) of PFUTP, 3 (i) of PIT and section 12A (d) of SEBI Act. |
| Vasparr Shelter Ltd. | Regulations 3 (a), (b), (c) and (d) of PFUTP, 3 (i) of PIT and section 12A (d) of SEBI Act. |

3. The aforesaid alleged violations, if established, make them liable for monetary penalty under sections 15HA and 15G 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 PFUTP, PIT and SEBI Act.

SHOW CAUSE NOTICE, HEARING AND REPLY

5. Show Cause Notice dated September 10, 2008 (hereinafter referred to as “**SCN**”) was issued to them under rule 4(1) of the Rules to show cause as to why an inquiry should not be held against them and penalty be not imposed under sections 15HA and 15G of SEBI Act for the alleged violations specified in the said SCN.
6. Madhav J Valia and Raj J Valia were minors at the time of commission of the alleged violation. Hence, the proceedings against them were disposed of vide order/s dated October 28, 2009. This order, therefore, deals only with Jayesh Valia, Sangita J Valia and Vasparr Shelter Ltd. (hereinafter referred to as “**VSL**”) {collectively referred to as “**Noticees**”}.
7. The Noticees vide letter dated September 19, 2008 replied to the SCN.
8. In the interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of the Rules, the Noticees were granted an opportunity of personal hearing on September 30, 2009 at SEBI, Head Office, Mumbai vide notice dated September 7, 2009. The Noticees vide letter dated September 23, 2009 sought extension. The second opportunity of hearing was granted to the Noticees on October 28, 2009 vide letter dated October 1, 2009. At the oral request of the Noticees, the personal hearing was advanced to October 7, 2009. The Noticees appeared on the said date. During the hearing, the Noticees reiterated the submissions made vide letter dated September 19, 2008. Further to the queries raised

during the personal hearing, the Noticees also submitted certain additional documents.

CONSIDERATION OF ISSUES AND FINDINGS

9. The issues that arise for consideration in the present case are :
 - a) Whether the Noticees had violated regulations 3 (a), (b), (c) and (d) of PFUTP?
 - b) Does the violation, if any, on the part of the Noticees attract monetary penalty under section 15 HA of SEBI Act?
 - c) Whether the Noticees had violated regulation 3 (i) and (ii) of PIT and 12A (d) and (e) of SEBI Act?
 - d) Does the violation, if any, on the part of the Noticees attract monetary penalty under section 15G of SEBI Act?
 - e) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?
10. Before moving forward, it will be appropriate to refer to the relevant provisions of PFUTP, PIT and SEBI Act which reads as under:

PFUTP

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

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

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 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.*

SEBI Act

12A. Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

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;*

MANIPULATIVE TRADING

11. **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 Noticees and my findings thereon, are as under:

Allegation 1: Discrepancy in the shareholding pattern of YCL – 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.

Reply: The Noticees 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 Noticees in this regard. The Noticees 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 Noticees, 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 their 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.

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, YCL did not furnish the reasons for the discrepancy to BSE.

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 Noticees 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.icaai.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, YCL had shown higher profits which would not have been possible had YCL 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 Noticees 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.

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 Noticees have 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 their 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 Noticees 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 Noticees 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). |
| December 14, 2005 / 11:28:54 AM | 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. 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 | 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). |

| Date /Time | Announcement | Price Impact |
|---------------------------------|---|---|
| December 14, 2005 / 04:46:33 PM | 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. 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. | 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 | 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. | 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.

13. **Allegation 4: 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 | 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 Noticees have 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 Noticees for sale of these shares. I have also perused the copies of the bank statements submitted by the Noticees 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.

14. 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.
15. 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.

16. 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 Noticees, 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 Noticees 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 Noticees' 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.

17. 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 Noticees in indulging in an element of fraud, unfair trade practices and manipulation and all of them connived with one another and actively participated in the heinous game plan of manipulation.
18. 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).*
19. 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 Noticees stands established.

INSIDER TRADING

20. **Material and Unpublished Price Sensitive Information (UPSI)**
- (i) As explained in the earlier paragraphs, (a) non-disclosure of 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 was misleading, (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

(d) clubbing many positive corporate announcements and disclosed them at one go, would be 'material' information.

- (ii) The aforesaid information pertaining to the facts that (a) VSL was part of the promoter group of YCL, (b) the actual reasons for the variance in the unaudited and audited financial results and (c) the corporate announcements when actually took place (not disclosed at that point of time but clubbed together and disclosed later on) remained unpublished, in the sense that what was made known to the public was untrue and the actual/factual information was concealed.
- (iii) The aforesaid material and UPSI impacted the price of the shares of YCL inasmuch as it increased from Rs.37.25 on December 1, 2005 to Rs.94.85 on January 10, 2006.

21. **Insiders**

- (i) 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 per VSL's letter dated October 21, 2009, 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'.

- (ii) 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.
- (iii) 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.
- (iv) In support of the above view, I rely on the observations made by the Hon'ble Securities Appellate Tribunal (SAT) in the case of *Rajiv B Gandhi, Sandhya R. Gandhi, Amishi B. Gandhi v Securities and Exchange Board of India* (Apeel No. 50 of 2007):
- "...Insider is a person who is or was 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. A person who has received such information or has had access to such information is also an insider."*

I also rely on the observations of the Hon'ble SAT in the matter of Dr. Anjali Beke v SEBI (Appeal No. 148 of 2005):

"...when a person has received unpublished price sensitive information or who had access to such information, he becomes an insider. He need not be a person connected with the company."

- (v) This gets further credence from section 12A of the SEBI Act. This reads as under:

"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;"

This provision clearly prohibits trading by any person while in possession of **material or non-public information** even if he is not connected or deemed to be connected with the company.

- (vi) By virtue of the aforesaid position, it can be said that they were connected with YCL as well as with the aforesaid material and UPSI of YCL. Thus, they all, VSL, Jayesh Valia, Sangita J Valia, Madhav J Valia and Raj J Valia would be covered under the definition of 'insider' in terms of provisions of regulation 2(e) of PIT.

22. **Trading by the Insiders**

- (i) 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.

- (ii) 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.
- (iii) 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.
- (iv) 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.
- (v) 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.
- (vi) 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.

23. I have noted the submissions of the Noticees denying the allegation of violation of PIT, on the grounds, inter alia, that the aforesaid information was not covered within the ambit and scope of price sensitive information as listed under regulation 2(ha) of PIT and none of the events or circumstances has got any bearing on any

action of selling. I have also noted the submission of the Noticees during the hearing that this sale of shares of YCL by the promoter group entities was undertaken to meet the requirement of promoter's contribution, which was one of the conditions imposed by Bank of India.

24. The fact that the price of the shares of YCL went up during the period December 2005 – January 2006 has not been disputed. Upon analysis of the factors, such as, timing of sale, methodology adopted to effect the sale, the events before the sale, etc., (mentioned in detail in the preceding paragraphs) leads me to the conclusion that (a) there was material and UPSI pertaining to YCL, (b) such material and UPSI impacted the price of the shares of YCL and (c) the entities belonging to the promoter group of YCL ('Jayesh Valia Family'/'Jayesh Valia Group') sold their shares taking advantage of (a) and (b) referred to above.
25. If the aforesaid findings are tested with the touchstone of regulation 3 of PIT and section 12A (d) and (e) of SEBI Act, it would follow that the entities belonging to the promoter group of YCL dealt in the securities of YCL while in possession of material and UPSI and communicated such material and UPSI information to one another in contravention of the said provisions of law. Therefore, I am of the view that the allegation of violation of regulation 3 of PIT and sections 12A (d) and (e) of SEBI Act stands established.

LEVY OF PENALTY

26. 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...”.

27. Thus, the violation of regulations of PFUTP, PIT and SEBI Act by the Noticees, makes them liable for penalty under sections 15HA and 15G of SEBI Act, 1992 which read as follows:

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.

15G. Penalty for insider trading

If any insider who,-

- (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or*
- (ii) communicates an unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or*
- (iii)...*

shall be liable to a penalty of twenty five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

28. While determining the quantum of penalty under sections 15HA and 15G, 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.”*

29. From the material available on record, I find that the Noticees had admitted to have realized Rs.300.00 lakh from the sale proceeds of the shares of YCL held by them. 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 Noticees.

The entities that indulge in manipulative, fraudulent and deceptive transactions and/or abet carrying out of such transactions should be suitably penalized for the said acts of omissions and commissions.

30. I have also considered the submission of the Noticees that Rs.300 lakh had been ploughed back into the company as part of the promoters' contribution to meet one of the conditions imposed by Bank of India. The objective and the purpose of utilizing the said sum may be reasonable, but the *modus operandi* used for raising the sum was unlawful as detailed above. Therefore, the means adopted to achieve the end was dubious, manipulative, unfair and fraudulent, which need to be dealt with an iron hand.

ORDER

31. After taking into consideration all the facts and circumstances of the case, I hereby impose a penalty of Rs.20,00,000/- (Rupees Twenty Lakh only) under section 15HA and Rs.5,00,000/- (Rupees Five Lakh only) under section 15G of SEBI Act, {i.e. a total penalty of Rs.25,00,000/- (Rupees Twenty Five Lakh only) on the Noticees which will be commensurate with the violation committed by them. The Noticees shall be jointly and severally liable to pay the said monetary penalty.
32. The Noticees 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.

33. In terms of rule 6 of the Rules, copies of this order are sent to the Noticees and also to SEBI.

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

V.S.SUNDARESAN
ADJUDICATING OFFICER