

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/KS/AA/2019-20/7327-7329]

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) RULES, 1995 AND RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of

1. **Kore Foods Limited (erstwhile Phil Corporation Ltd.) [PAN: AABCP1666P]**
2. **A Y Fazalbhoy [PAN: AACPF3671J]**
3. **New Vision Group Holding Pvt. Ltd. (erstwhile Philcorp Holding Ltd.) [PAN: AABCP1669C]**

In the matter of Phil Corporation Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had conducted an investigation with respect to possible violations of Listing Agreement in respect of Phil Corporation Limited. The period of investigation was from January 2006 to July 2010. Based on the findings of investigation, SEBI initiated Adjudication Proceedings against the following entities (hereinafter collectively referred to as '**Noticees**')

- (i) Phil Corporation Limited (now known as Kore Foods Limited and hereinafter referred to as '**Noticee No. 1**') under the provisions of Section 23E of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as '**SCRA**') for the alleged violations of Section 21 of the SCRA and Clauses 41(I)(c), 47(a), 49(II)(B), 49(II)(E) and 49(VI)(ii) of the Listing Agreement;
- (ii) A Y Fazalbhoj (hereinafter referred to as '**Noticee No. 2**') under the provisions of Section 15A(b) and Section 15H(ii) of the SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**') for the alleged violations of Regulation 13(4) read with Regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**') and Regulation 7(1) read with Regulation 7(2) and Regulation 11(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as '**SAST Regulations**'); and
- (iii) New Vision Group Holding Private Limited (earlier known as Philcorp Holdings Limited and hereinafter referred to as '**Noticee No. 3**') under the provisions of Section 15A(b) of the SEBI Act for the alleged violation of Regulation 13(3) read with Regulation 13(5) of the PIT Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

2. Shri D Ravi Kumar was appointed as the Adjudicating Officer vide an order dated June 09, 2014 to inquire into and adjudge, under Section 23E of the SCRA and under Section 15A(b) and Section 15H(ii) of the SEBI Act, the aforesaid

violations alleged to have been committed by the Noticees. Subsequently, Ms. Rachna Anand was appointed as the Adjudicating Officer in the matter. Thereafter, Shri Sudeep Mishra was appointed as the Adjudicating Officer in the matter. Pursuant to the transfer of Shri Sudeep Mishra, Shri Anindya Kumar Das was appointed as the Adjudicating Officer. Subsequently, the Competent Authority, vide communique dated June 20, 2019, has communicated the order appointing the undersigned as the Adjudicating Officer in the instant matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice (hereinafter referred to as '**SCN**') dated January 07, 2015 was issued to the Noticees by the erstwhile Adjudicating Officer under Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**SEBI Adjudication Rules**') and Rule 4(1) of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as '**SCRA Adjudication Rules**') communicating the alleged violations. The Noticees were also called upon to show cause as to why an inquiry should not be initiated against it in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under the provisions of Section 23E of the SCRA and under Section 15A(b) and Section 15H(ii) of the SEBI Act for the aforesaid alleged violations.
4. The details in respect of alleged violations by the Noticees are as given below:

Allegations against Noticee 1

A. Delay in submitting quarterly unaudited financial results to stock exchanges within one month from the end of the quarter

As per Clause - 41(1) (c) of Listing Agreement the Noticee No. 1 has an option either to submit audited or unaudited quarterly and yearly financial results to the stock exchange within forty-five days end of each quarter (other than the last quarter), subject to the following:

- (i) In case the company opts to submit unaudited financial they shall be subjected to limited review by the statutory auditors of the issuer (or in case of public sector undertakings, by any practicing Chartered Accountant) and such limited reviewed results (financial results accompanied by the limited review report) shall be submitted within forty-five days from the end of the quarter.
- (ii) In case the company opts to submit audited financial results; they shall be accompanied by the audit report.

It was revealed that out of total 19 instances, the Noticee No. 1 had not submitted the required financial results on two instances and submitted with delay on ten instances. Hence, it is alleged that the Noticee No. 1 had not complied with Clause 41(1) (c) of listing agreement with respect to non-submission/ delay in of unaudited quarterly financial results. The details of such non-compliance are provided in the table below:

S.No	Quarter	To be submitted by	Date of Submission as per			Comments
			PCL	BSE	NSE	
1	Dec-05	14/02/2006	31/01/2006	01/02/2006	22/01/2006	NIL
2	Mar-06	30/05/2006	12/07/2006	25/08/2006	13/07/2006	Delay at BSE and NSE
3	Jun-06	14/08/2006	13/09/2006	14/09/2006	14/09/2006	Delay at BSE and NSE
4	Sep-06	14/11/2006	31/10/2006	07/11/2006	31/10/2006	NIL
5	Dec-06	14/02/2007	31/01/2007	31/01/2007	31/01/2007	NIL
6	Mar-07	Exemption	No information	12/01/2009	No information	Non Submission at NSE and Delay at BSE
7	Jun-07	28/08/2007	10/10/2007	15/10/2007	10/10/2007	Delay at BSE and NSE
8	Sep-07	14/11/2007	10/10/2007	10/10/2007	10/10/2007	NIL

9	Dec-07	14/02/2008	30/01/2008	30/01/2008	30/01/2008	NIL
10	Mar-08	30/05/2008	27/08/2008	28/08/2008	27/08/2008	Delay at BSE and NSE
11	Jun-08	14/08/2008	27/08/2008	28/08/2008	no information	Non submission at NSE and delay at BSE
12	Sep-08	14/11/2008	08/12/2008	24/03/2009	08/12/2008	Delay at BSE and NSE
13	Dec-08	14/02/2009	19/01/2009	19/01/2009	29/01/2009	NIL
14	Mar-09	30/05/2009	23/06/2009	23/06/2009	23/06/2009	Delay at BSE and NSE
15	Jun-09	14/08/2009	30/07/2009	03/08/2009	03/08/2009	NIL
16	Sep-09	14/11/2009	31/10/2009	31/10/2009	31/10/2009	NIL
17	Dec-09	14/02/2010	30/01/2010	30/01/2010	30/01/2010	NIL
18	Mar-10	30/05/2010	12/06/2010	14/06/2010	*	Delay at BSE
19	Jun-10	14/08/2010	31/08/2010	31/08/2010	*	Delay at BSE
* Delisted from NSE						

B. Not having Company Secretary / Compliance Officer

The Noticee No. 1 was supposed to appoint its Company Secretary as Compliance Officer who will be responsible for monitoring the share transfer process and report to the Company's Board in each meeting etc. which it had failed to do so. Therefore, it is alleged that the Noticee No. 1 had failed to appoint the company secretary / compliance officer during November 02, 2009-July 31, 2010 and hence thereby allegedly not complied with clause 47(a) of the Listing Agreement. Details of Company Secretary cum compliance officer of the Noticee No. 1 is as under:

Period		Name
From	To	
Jan 2005	Oct 2009	Shri AV Gaikwad
Nov 2009	July 2010	Nil
Aug 2010	Onwards	Shri BS Sridhara

C. Non Compliance of Minimum Number of Members in Audit Committee Meetings

As per Clause 49(II) (B) of the Listing Agreement, following is required -

"The audit committee should meet at least four times in a year and not more than four months shall elapse between two meetings. The quorum shall be either two members or one third of the members of the audit committee whichever is greater, but there should be a minimum of two independent members present".

It is revealed during investigation that the Noticee No.1 had constituted the Audit committee consisting of three members and the Managing Director and Whole Time Director had attended the meetings as invitees and non-voting directors. The details of members of Audit Committee are as follows:

S. No.	Name	Associate/Independent	Level of Financial literacy
1	Kavas D Patel	Independent	Expert
2	SV Majumdar	Independent	Adequate
3	A Y Fazalbhoy	Associate	Expert
4	KD Bhatt	Associate-Managing Director	Adequate
5	AV Gaikwad	Associate-Whole Time Director	Expert

The Attendance details of Audit Committee meetings are as under:

Date	Kavas D Patel	SV Majumdar	AY Fazalbhoy	KD Bhatt	AV Gaikwad	JF Alapatt (IDBI Nominee)
31/01/2006	Yes	Yes	Yes	Yes	Yes	Yes
12/07/2006	No	Yes	Yes	Yes	Yes	Yes
13/09/2006	Yes	Yes	Yes	Yes	Yes	
31/10/2006	Yes	Yes	No	Yes	Yes	
31/01/2007	Yes	Yes	Yes	Yes	Yes	
21/06/2007	Yes	Yes	Yes	Yes	Yes	
10/10/2007	Yes	No	Yes	Yes	Yes	
07/12/2007	Yes	No	Yes	Yes	Yes	
30/01/2008	Yes	No	No	Yes	yes	
27/08/2008	Yes	Yes	Yes	Yes	Yes	
08/12/2008	Yes	Yes	Yes	Yes	Yes	
19/01/2009	Yes	No	Yes	Yes	Yes	
23/06/2009	Yes	No	Yes	Yes	Yes	
30/07/2009	Yes	Yes	Yes	Yes	Yes	
31/10/2009	Yes	Yes	Yes	No	Yes	
30/01/2010	Yes	Yes	Yes	Yes	Yes	
12/06/2010	Yes	Yes	Yes	Yes	Yes	

The Audit Committee constituted by the Noticee No. 1 was in compliance of Listing Agreement in terms of minimum number of directors, minimum number of independent directors, chairman and qualification of directors. However, the quorum (having two independent directors) as per Clause 49 of listing agreement was not complied with, in the meetings held on 12/07/2006, 10/10/2007, 07/12/2007, 30/01/2008, 19/01/2009

and 23/06/2009. Further, Noticee No. 1 has also not complied with minimum four meetings in the year 2008 - 09. Hence, allegedly, the Noticee No. 1 had not complied with Clause 49(II) (B) of Listing Agreement.

D. No Review of Internal Control Systems by Audit committee

Clause 49(H) (E) of listing agreement states as under:

The Audit Committee shall mandatorily review the following information:

- (i) Management discussion and analysis of financial condition and results of operations;
- (ii) Statement of significant related party transactions (as defined by the audit committee), submitted by management;
- (iii) Management letters / letters of internal control weaknesses issued by the statutory auditors;
- (iv) Internal audit reports relating to internal control weaknesses; and
- (v) The appointment, removal and terms of remuneration of the Chief internal auditor shall be subject to review by the Audit Committee

The Audit Committee of the Noticee No.1 was required to have discussions with the auditors about internal control systems and its compliance. However, despite remark of statutory auditors of the Noticee No.1 about strengthening / absence of internal audit system and strengthening of internal controls, the audit committee has failed in its duty of ensuring compliance of internal control systems. During the course of inspection by Ministry of Corporate Affairs (MCA), the Noticee No. 1 was not able to produce any internal audit reports. Bombay Stock Exchange Ltd. (BSE) vide email dated February 26, 2014 has forwarded the Corporate Governance Report submitted by the Noticee No. 1 wherein Noticee No.1 has reported compliance of 49(II) (E) continuously.

National Stock Exchange Ltd. (NSE) vide e-mail dated February 26, 2014 has confirmed that the Noticee No. 1 had submitted intimation of compliance of clause 49(II) (E) of the Listing Agreement. The Noticee No. 1 had accepted that it had discontinued internal audit system due to its weak financial condition, resultantly audit Committee had failed in its duty of ensuing compliance of internal control systems. However, the Noticee No. 1 continued to report compliance of Clause 49 (II) (E) to BSE / NSE. Therefore, allegedly the Noticee No. 1 had not complied with clause 49 (II) (E) of the Listing Agreement with respect to review of internal control systems by audit committee and reported false compliance as well.

E. Non filing and delay in submitting quarterly compliance report on Corporate Governance to the Stock Exchange within 15 days from the close of Quarter

Clause 49(VI) (ii) states as under -

“The companies shall submit a quarterly compliance report to the stock exchanges within 15 days from the close of quarter in the prescribed form duly signed by Compliance officer and Chief Executive officer.”

It was revealed that out of total 19 instances, the Noticee No. 1 had not submitted the required results on one instance and submitted with delay on nine instances. Hence, allegedly, the Noticee No. 1 had not complied with Clause 49(VI) (ii) of Listing Agreement. Such instances are shown in table below:

S.No	Quarter	Date of Submission as per			To be submitted on	Comments on submissions to exchanges
		PCL	BSE	NSE		
1	Dec-05	23/01/2006	No Submission	01/02/2006	15/01/2006	Non Submission/ Delay at NSE
2	Mar-06	27/04/2006	03/05/2006	27/04/2006	15/04/2006	Delay at BSE and NSE
3	Jun-06	27/07/2006	28/07/2006	27/07/2006	15/07/2006	Delay at BSE and NSE
4	Sep-06	27/10/2006	25/10/2006	27/10/2006	15/10/2006	Delay at BSE and NSE

5	Dec-06	19/01/2007	19/01/2007	19/01/2007	15/01/2007	Delay at BSE and NSE
6	Mar-07	13/04/2007	11/04/2007	13/04/2007	15/04/2007	
7	Jun-07	24/07/2007	23/07/2007	17/07/2007	15/07/2007	Delay at BSE and NSE
8	Sep-07	18/10/2007	15/10/2007	16/10/2007	15/10/2007	Delay at BSE and NSE
9	Dec-07	15/01/2008	11/01/2008	15/01/2008	15/01/2008	NIL
10	Mar-08	17/04/2008	17/04/2008	15/04/2008	15/04/2008	Delay at BSE
11	Jun-08	15/07/2008	15/07/2008	15/07/2008	15/07/2008	NIL
12	Sep-08	17/10/2008	15/10/2008	17/10/2008	15/10/2008	Delay at NSE
13	Dec-08	12/01/2009	09/01/2009	12/01/2009	15/01/2009	NIL
14	Mar-09	13/04/2009	13/04/2009	13/04/2009	15/04/2009	NIL
15	Jun-09	15/07/2009	15/07/2009	15/07/2009	15/07/2009	NIL
16	Sep-09	12/10/2009	12/10/2009	12/10/2009	15/10/2009	NIL
17	Dec-09	12/01/2010	12/01/2010	12/01/2010	15/01/2010	NIL
18	Mar-10	08/04/2010	08/04/2010	*	15/04/2010	NIL
19	Jun-10	15/07/2010	15/07/2010	*	15/07/2010	NIL
* Delisted at NSE						

Allegations against Noticee No. 2 & 3

F. It was revealed that Noticee No. 2, 3 and Sino Paragon Trading Ltd. (Sino) were promoters of the Noticee No. 1 who were involved in the internal transfer of shares within promoters quota. Sino had 3.24% shares as on March 2008. In September 2008, 6.62% shares were transferred to Sino from Noticee No. 3. Thus, Sino held 9.86% shares as on September 2008. The aforesaid transfer of shares on behalf of Noticee No. 3 to Sino was communicated to the PCL / Noticee No. 1 by Noticee No. 2 vide his letter dated January 20, 2014. The Noticee No. 2 is the director and signatory of Noticee No. 3.

G. The Noticee No. 2 was holding 1.93% shares of the Company as on June 2010. Further, 9.86% shares held by Sino were transferred to the Noticee No. 2 on September 20, 2010. Therefore, the Noticee No. 2 had 11.79% shares of the PCL / Noticee No. 1 as on September 2010. The Noticee No. 2 vide his letter dated January 16, 2014 informed the PCL that he was the major shareholder of Sino. Sino was wound up and its shareholding of 9.86% was transferred to Noticee No. 2 on September 20,

2010. As on September 2010 quarter, the Noticee No. 3 was holding 14.19% shares of the PCL. Thus, Noticee No. 2 along with Noticee No. 3 was holding a total of 25.98% shares of the PCL as on September 2010. The Noticee No 2 & 3 have also sent letters dated January 20, 2014 to Noticee No. 1 / PCL and BSE informing about the above mentioned change in shareholding. The details of change in Promoter Group / PAC is also mentioned below in a table:

Name of the Shareholder entity	Shareholding (in %)		
	Qtr A	Qtr B	Change %
<i>Sino Paragon Trading Limited(Foreign Promoter)</i>	3.24 (June, 08)	9.86 (Sep,08)	6.62
<i>PhilCorp Holdings Private Limited (Indian Promoter) (Currently known as New Vision Group Holding Private Limited w.e.f. 28/02/2007)</i>	20.87 (June, 08)	10.36 (Sep,08)	-10.51
<i>AY Fazalbhoy(Chairman)</i>	1.93 (Jun,10)	11.79 (Sep, 10)	9.86
<i>Sino Paragon Trading Limited(Foreign Promoter)</i>	9.86 (Jun,10)	0 (Sep, 10)	-9.86

- H. The Noticee No. 1 / PCL vide e- mail dated January 04, 2014 inter-alia informed that no disclosures were received by it in respect of above changes.
- I. In view of the above acquisition of shares by the Noticee No. 2 without making disclosures and also without making public announcement as required, after acquiring shareholding as PACs (domestic promoters) increasing from 24.26% to 34.12% on September 20, 2010, it was alleged that the Noticee No. 2 had violated Regulation 13 (4) read with 13 (5) of the PIT Regulations and Regulation 7 (1) read with Regulation 7(2) and Regulation 11 (1) of the SAST Regulations.

J. *In view of the above acquisition of shares by the Noticee No. 3 without making disclosures as required, it was alleged that the Noticee No. 3 violated Regulation 13 (3) read with Regulation 13 (5) of the PIT Regulations.*

5. Thereafter, an addendum to the SCN was issued on January 09, 2018, wherein the Noticees were informed that the word 'acquisition' mentioned in para 6 and 9 of the SCN was substituted with word 'disposal/ transfer'. Subsequently, Noticee No. 1, vide its letter dated February 24, 2015, *inter alia* made the following submissions:

.....

2) *At the outset we would like to mention that during the relevant period, the Company was a 'Sick Industrial Company' and had submitted its reference to BIFR for the purpose of preparing and approving the Rehabilitation Scheme. The application for reference under SICA 1985 was submitted in 2005-06 and we came out of BIFR in the year 2008-09. Copies of the acknowledgement by BIFR dated 12 July 2005 and copy of the final order dated 1st August 2008 are submitted herewith as Annexure -1. Further, during the financial year 2005-06 the trading in securities of the Company was suspended by BSE because of delay in payment of Listing Fees due to financial difficulties. Subsequently NSE also had suspended trading in the Company's securities. However, in the year 2009-10 Noticee No. 1 voluntarily got delisted from NSE. Being a 'Sick Industrial Company', the BSE could not entertain our application for Revocation of Suspension until 2008-09. The reference to BIFR was made in June 2005. The Company was discharged from the provisions of SICA in August 2008. It was only after the Company came out of BIFR that the Revocation of Suspension was considered by BSE and finally the Revocation of Suspension was granted to the Company for trading in Securities on*

BSE in September 2013. In fact the Company tried its best to get the suspension revoked by BSE at the earliest and diligently pursued its application in this behalf. This background is necessary' to be taken into consideration because as a 'Sick Industrial Company', the Company had to undergo a series of difficulties to overcome and revive its business for survival. The minor procedural lapses as alleged have taken place for genuine reasons during this period and therefore the facts and circumstances of the case require a lenient view to be taken for condoning the minor lapses / delays.

3) *In respect of the allegations against the Company we have to state and submit the reply as follows:-*

A. Delay in submitting Quarterly Unaudited Financial Results to Stock Exchanges within one month from the end of the Quarter,

4) *In the Show Cause Notice, alleging violation of Clause 41(I) (c) of the Listing Agreement, it has been mentioned that the Noticee had an option either to submit Audited or Unaudited Quarterly and Yearly Financial Results to the Stock Exchange within forty-five days at the end of each quarter (other than the last quarter) , subject to the following*

“ i) In case the company opts to submit unaudited financial results, they shall be subjected to limited review by the statutory auditors of the issuer (or in case of public sector undertakings, by any practicing Chartered Accountant) and such limited reviewed results (financial results accompanied by the limited review report) shall be submitted within forty- five days from the end of the quarter.

ii) In case the company opts to submit audited financial results; they shall be accompanied by the audit report. ”

5) *It is most respectfully submitted that the provisions of clause 41 (I) (c) as were applicable during the relevant period will have to be taken into consideration. In respect of the financial results for the last quarter of the financial years, the provisions of clause*

41 (I) (c) of the listing Agreement as applicable during the relevant period was as follows:

“In respect of results for the last quarter of the financial year, if the company intimates in advance to the Stock Exchange/s that it will publish audited results within a period of three months from the end of the last quarter of the financial year, in such a case unaudited results for the last quarter need not be published / given to the Stock Exchange”.

- 6) *In considering the delay if any, the provisions as applicable and quoted above, will have to be taken into consideration. In respect of the last quarter of the financial year, the Company had sent to BSE / NSE the intimation letters as required, under the provisions of the said clause for submitting the audited results. The Company had changed its financial year 2006-07 and also the financial year 2007-08 with the approval of BIFR. A copy of the BIFR Order Ref. 136/ 2005 dated 21st June 2007 is enclosed herewith as Annexure - 2.*
- 7) *The Show Cause Notice lists nineteen instances and it has been alleged that the company had not complied with clause 41 (I) (c) of the Listing Agreement as it had not submitted financial results on two instances and submitted the results with delay on ten instances.*
- 8) *Out of 19 quarters listed in the table given in para 3A of the Show cause notice, violation is alleged in respect of 10 quarters. Out of these 4 pertain to year-end submissions of the audited financial results. The submission in that behalf is as under.*

In view of the provisions of the Listing Agreement the optional requirement was to submit audited accounts within three months of the year-end and to give prior intimation in that behalf to the stock exchanges.

Year-end 31st March, 2006.

- 9) *Audited Accounts for the year ended 31st March, 2006 were submitted on 12th July, 2006 whilst the last date was 30th June, 2006 (and not 30th May, 2006 as alleged in the SCN.) Therefore, delay was only of 12 days. This was due to lock out of operations at that time by the Company. This was intimated to BSE and to NSE vide letters dated 28th June, 2006. Copies of the said two letters dated 28th June, 2006 are annexed hereto as Annexures 3A and 3B.*

Year-end 30th June, 2007

- 10) *The next Financial Year of the Noticee no.1 was for the period of 15 months i.e. from 1st April, 2006 to 30th June, 2007. Therefore the audited accounts for the last quarter could be submitted by 30th September, 2007 without publishing unaudited financial results for the last quarter ended 30th June, 2007. The Company had opted to publish Audited accounts within three months of financial year-end and had given intimation to the stock exchanges by letters copies of which are annexed hereto as Annexures 4A and 4B. The Audited Accounts were submitted on 10th October, 2007. Therefore there was only 10 days delay.*

Year-End 31st March, 2008

- 11) *In this case also the audited results were required to be submitted within three months from 31st March, 2008 and therefore by 30th June, 2008 and not by 30th May, 2008 as stated in the show cause notice. Option to publish audited accounts within three months of the financial year end was intimated to the Bombay Stock Exchange and to the National Stock Exchange vide letters dated 22nd April, 2008 copies of which are annexed hereto as at Annexures 5A and 5B. There was therefore delay of only 58 days. However the reason for this was that there was a hearing fixed before BIFR on 23rd*

July, 2008 for consideration of Draft Rehabilitation Scheme (DRS) which would have implications on the Company's financial accounts. In view of this it was decided to hold Board meeting to consider the accounts only after the said date of hearing. This was intimated to Bombay Stock exchange and National Stock Exchange vide letters dated 26th June, 2008 copies of which are hereto annexed as Annexure 6A and 6B respectively. Accordingly, the meeting of the Board of Directors was held on 27th August, 2008, i.e., after the order dated 1st August, 2008 passed by BIFR was received on 6th August, 2008. There was therefore justifiable reason for this delay.

Year ended 31st March, 2009

- 12) In respect of this financial year the audited accounts were submitted within three months of the year-end (as was permissible under the then provisions of the Listing Agreement). Intimation that audited accounts will be published within three months was given to Bombay Stock Exchange vide letter dated 12th June, 2009 copy of which is annexed hereto as Annexure 7. In view of this there was no delay so far as this year-end is concerned.*

Quarter ended 30th June, 2006.

- 13) Due to labour agitation and lock out, the Company could not hold board meeting on or before 31st July, 2006 and therefore there was justifiable reason for the delay. This was intimated to both Bombay Stock Exchange and National Stock Exchange vide the Company's letters dated 2nd August, 2006, copies of which are annexed hereto as Annexures 8A and 8B. The Board meeting was held on 13th September, 2006 to consider the quarterly financial results and on the same day submitted to Bombay Stock Exchange and National Stock Exchange. The delay of about 30 days was due to this justifiable reason.*

Quarter ended 30th June, 2008.

- 14) *In this case the board meeting to consider the financial results for this quarter was postponed and was held on 27th August, 2008 for the same reason as given above for the year ended 31st March, 2008. After receiving the order of the BIFR as mentioned above, at the meeting of the board held on 27th August, 2008, the audited accounts for the year ended 31st March 2008 as also the financial results for the quarter ended 30th June, 2008 were considered. The delay of 13 days was therefore due to justifiable reason.*

Quarter ended 30th September, 2008.

- 15) *As the Company continued to face the problem of attrition at all levels due to financial difficulties of the Company, there was a delay of 23 days in adopting and submitting the financial results for the quarter ended 30th September, 2008.*

Quarter ended 31st March, 2010 and Quarter ended 30th June, 2010.

- 16) *As the Company suffered huge financial losses and many staff members had left, there were delays of 12 days and 17 days respectively in adopting and submitting the financial results for the quarter ended 31st March, 2010 and quarter ended 30th June, 2010.*

Not having Company Secretary / Compliance Officer

Quarter ended 30th June, 2006.

- 17) *It has been alleged that during the period November 2009 to July 31, 2010, the Company had no Company Secretary as the Compliance Officer who should be responsible for monitoring the share transfer process and report to the Company Board in each meeting etc. it is respectfully submitted that the Company had given*

advertisement in "Chartered Secretary", the Magazine published by the Institute of Company Secretaries of India as well as in the local newspapers for appointment of a suitable person as a Company Secretary. The Company did not get proper candidate for filling the position during the period as due to the financial condition of the Company and due to the fact that the main business of the traditional photography had to be discontinued due to change in technology and onslaught of digital photography; the Company's future prospects were not attractive. Further, the Company had its proposal of amalgamation of its 100% subsidiary company GoKhatak Enterprises Limited (GEL) with the Company (Noticee No. 1) and Shri B. S. Sridhara was the qualified Secretary holding the position as Company Secretary of GEL. Shri B.S. Sridhara became the Company Secretary and the Compliance Officer in August 2010 as soon as the amalgamation of GEL with the Company was approved by the High Court. The proposal for amalgamation of GEL with PCL was also approved by BSE. In fact this point was raised during the inspection by the Inspecting Authority of MCA and after seeing the advertisements released by the Company for appointing a Company Secretary and the ongoing amalgamation proceedings and after the explanation was submitted/ the Registrar of Companies issued a letter dated 14th August, 2012 giving warning to the Company, immediately thereafter vide letter dated 17th August, 2012 addressed to the Registrar of Companies, the Company informed the Registrar of Companies that the Company Secretary was appointed. Copies of the advertisements released, approval of BSE to the amalgamation and copy of ROC's letter and the Company's reply letter dated 17th August, 2012 are enclosed herewith as Annexure 9 (collectively). The Company therefore took adequate steps to comply with this provision. Even a healthy company would take 3 to 6 months to find substitute for Company Secretary's post. Here the Company Secretary's post remained vacant only for 8 months. It is also to be noted that Shri A V. Gaikwad who was a Company Sec. also continued during that

transitory period as a Director of the Company and was overseeing the compliances required as per the Listing Agreement. Further, after approval of the Amalgamation which was sanctioned by the High Court during August 2010, the Amalgamation Scheme was effective from the operative date which was 1st April, 2008. Therefore, on Amalgamation Shri B.S. Sridhara who became the Company Secretary and Compliance Officer would be deemed to have taken the position as a Company Secretary as soon as Shri A.V. Gaikwad ceased to be the Company Secretary and Compliance Officer on 31st October, 2009. In view of this a very lenient view should be taken.

(C) Non-compliance of Minimum Number of Members in Audit Committee Meetings.

18) It has been alleged that the Company has not complied with Clause 49 (II) (B) of the Listing Agreement and Clause 49 (II) (3) has been quoted as follows:

" The audit committee should meet at least four times in a year and not more than four months shall elapse between two meetings. The quorum shall be either two members or one third of the members of the audit committee whichever is greater, but there should be a minimum of two independent members present."

19) It is most respectfully submitted that during the relevant period the provision of that clause was different and there was a requirement of audit committee meetings only three times in a year. Further, the Nominee Director of any Bank or financial institution was also considered as an Independent Director. The relevant provisions are quoted below:

ANNEXURE - I to SEES Circular SEBI/MRD/SE/31/2003/26/08 DATED 26.08.2003

Explanation (ii): Institutional directors on the boards of companies shall be considered as independent directors whether the institution is an investing institution or a lending

institution". (Page No. 11720 - Appendix Part 4 Guide to Companies Act by - Ramaiya 17th Edition).

"II. Audit Committee

(B) Meeting of Audit Committee

The audit committee shall meet at least thrice a year. One meeting shall be held before finalization of annual accounts and one every six months. The quorum shall be either two members or one third of the members of the audit committee, whichever is higher and minimum of two independent directors⁵. (Page No. 11722 - Appendix Part 4 Ramaiya - 17th Edition).

- 20) *The alleged non-compliance with the provisions of Clause 49 (II) (B) has to be seen in light of the provisions of the said clause as applicable during the relevant period. Shri. J.F. Alapatt was a Nominee Director of IDBI and his presence at the Audit Committee meeting held on 31st January, 2006 has to be considered as an Independent Director. The number of meetings of the Audit Committee to be held during the financial year has to be considered as three times during the year. Even during the Financial Year 2008-09 three meetings of the Audit Committee were held as mentioned in the Show Cause Notice. Shri. S.V. Muzumdar, (a senior citizen) an Independent Director and a member of the Audit Committee could not attend some meetings because of his illness. Shri. S.V. Muzumdar subsequently resigned from the Board because of his indifferent health. In view of the facts and circumstances it is humbly submitted that the non-compliance of minor nature may kindly be viewed leniently.*

(D) No Review of internal Control Systems by Audit Committee

- 21) *It has been alleged that the Company had not complied with Clause 49 (II) (E) of the Listing Agreement which is as under*

The Audit Committee shall mandatorily review the following information:

- (i) *Management discussion and analysis of financial condition and results of operations;*
- (ii) *Statement of significant related party transactions (as defined by the audit committee), submitted by management;*
- (iii) *Management letters / letters of internal control weaknesses issued by the statutory auditors;*
- (iv) *Internal audit reports relating to internal control weaknesses; and*
- (v) *The appointment, removal and terms of remuneration of the Chief internal auditor shall be subject to review by the Audit Committee.*

22) *Nowhere in the Show Cause Notice it is indicated as to in respect of which financial years the remark of the Statutory Auditors of the Noticee No. 1 Is relied upon. The only remark in this respect by the Statutory Auditors is in their Report dated 31st August, 2010 pertaining to the financial year ended 31st March, 2010 wherein in the Annexure to the Auditors' Report they made following remarks:*

“(iv) In our opinion and according to the information and explanations given to us, there are adequate Internal control procedures commensurate with the size of the Company and the nature of its business with regard to the purchases of inventory, fixed assets and with regard to the sale of goods. During the course of our audit, we have not observed any continuing failure to correct weakness in internal controls”

“(vii) We are informed that in view of closure of substantial business of the Company the management has not considered it appropriate to have any formal internal audit system.”

The said Audit Report clearly states that there were adequate internal control procedures commensurate with the size of the Company and the nature of its business. The only comment made by the Statutory Auditors was the said sub-paragraph (vii) of the said Report that - they have been informed that in view of the closure of substantial

business of the Company the management has not considered appropriate to have any formal internal audit systems. It is respectfully submitted that even without formal internal auditors there can be adequate internal control procedures having regard to the size and operations of the Company. This exactly can be seen from the said two observations made by the Statutory Auditors. It may be mentioned that during the financial year 2009-10, the turnover of the Company was only about Rs. 77 lacs and other income was Rs. 145.90 lacs. The said other income included profit on sale of fixed assets, write back of debit/credit balances and a small component of sale of scrap. As observed by the Statutory Auditors there were internal control procedures commensurate with the size of the Company and the nature of its business with regards to the purchases of inventory, fixed assets and with regard to the sale of goods. It is respectfully submitted that the requirement under clause 48(II)(E) of the Listing Agreement, at the relevant time was regarding internal control weaknesses. Since internal control were adequate, the compliance report given by the Audit Committee was in line with this requirement of the then said clause of the Listing Agreement. There -was no requirement at the relevant time that the Company should mandatorily have a formal internal auditor. Having regard to the size of operations of the Company and adequacy of the control, the Company or its Audit Committee had not committed any impropriety or made any false or misleading statement.

- 23) *The members of the Board as well as Audit Committee were professionals from the respective fields including the Chairman of the Company and the Chairman of the Audit Committee. It is most respectfully submitted that the Board in its wisdom considered the internal control procedures being adequate during the relevant period.*

(E) *Non-filing and delay in submitting Quarterly Compliance Report on Corporate Governance to the Stock Exchange within 15 days from the close of Quarter*

24) *It has been alleged that the Noticee No. 1 Company had not submitted the Quarterly Compliance Report under Clause 49 of the Listing Agreement on one occasion and delayed submission on 9 instances and quoted the provisions of Clause 49 as follows:*

“Clause 49 (VI) (ii) states as under;

The Companies shall submit a quarterly compliance report to the Stock Exchanges within 15 days from the close of quarter in the prescribed form duly signed by Compliance Officer and Chief Executive Officer,

It was revealed that out of total 19 instances, the Noticee No. 1 had not submitted the required results on one instance and submitted with delay in nine instances. Hence, allegedly, the Noticee No. 1 had not complied with Clause 49 (VI) (ii) of the Listing Agreement.”

25) *The grounds mentioned under the allegation for violation of Clause 41(I)(c) are reiterated here again. Further, at the time of Revocation of Suspension the Company had submitted its compliances to BSE as per their list and after compliance, the Company believed that there were no further compliances required after the Revocation of Suspension. The Revocation of Suspension was granted by BSE in September 2013 only after considering the fact that the Company had complied with the provisions of the listing Agreement and there were no pending defaults, lapses or non-compliances to be rectified. It may be observed that the delay in most of these cases is only of about 2 to 4 days. Moreover this insignificant delay does not impact flow of information to the investors.*

GENERAL SUBMISSIONS

26) *In view of what has been stated above and after taking into consideration the facts and circumstances, it is submitted that the above mentioned minor lapses and delays be*

condoned since the Company had suffered and undergone the severest punishment of suspension of trading in Securities on the Stock Exchanges for a period of almost five to six years. The Company paid the Listing Fees every year and also complied in spirit the law during the most critical period as a 'Industrial Sick Company'. During the same period the Company had to comply with requirements of BIFR, for its revival and rehabilitation and for Revocation of Suspension to BSE. The Company had also to face Inspection from MCA during the period and had to comply with their queries on more or less the same or similar points. After suffering the severest penalty of suspension for a period of almost five years, the Company should not be penalised once again for the minor delays and lapses. The Company craves leave to, add to or amend any of the grounds stated in the reply which are without prejudice to one another.

27) Without prejudice to the contentions and submissions mentioned above, the Noticee No. 1 respectfully submits that even if there was a default due to delayed submissions of any quarterly financial results or an / other breach of the Listing Agreement as alleged in the show cause notice, the following grounds merit the case of the Noticee Company being considered sympathetically:

- (i) none of the alleged violation has resulted into any disproportionate gain or unfair advantage to the Company, to the Promoters of the Company or to any other party as a result of such default.*
- (ii) none of the alleged default has resulted into any loss to any investor.*
- (iii) having regard to the explanations submitted above, the defaults are not frequent or repetitive.*
- (iv) the trading in the Company's shares were suspended by the Stock Exchanges during the entire period referred to in the show cause notice.*
- (v) throughout the said period the Company's financial condition was precarious and continues to be so.*

- (vi) *even if there is any technical default on the part of the Noticee Company, the same is unintentional and without any mens rea or malafide intentions.*
- (vii) *the Noticee Company is not guilty and has not acted in conscious disregard of their obligations.*
- (viii) *default, if any, is merely a technical breach and has not in any manner affected investors or given any undue advantage to the Noticee Company or its promoters.*

28) *We humbly request you to take a lenient view and adjudicate the matter accordingly....”*

6. Thereafter, a letter dated February 27, 2015 from Noticee No. 2 and Noticee No. 3 was received, wherein they have *inter alia* made the following submissions:

- 1) *We are submitting this reply of Noticee No 2 and Noticee 3, as a joint reply being the Promoter Group Shareholders.*
- 2) *It has been alleged that Noticee No. 2 had violated Regulation 13(4) read with 13(5) of the PIT Regulations and Regulation 7 (1) read with Regulation 7 (2) and Regulation 11 (1) of SAST Regulations, 1997. It has also been alleged that Noticee No. 3 violated Regulation 13 (3) read with Regulation 13 (5) of PIT Regulations, 1992.*

In respect of these allegations, we state and submit as follows.

- 3) *The transfer of 6.62% equity shares by New Vision Group Holding Pvt. Ltd. (Noticee No. 3) to Sino Paragon Trading Ltd. (“Sino”) in September, 2008 was exempt under Regulation 3(1)(e)(iii)(b) as it was a transfer from one promoter to another promoter.*

In the list of the promoters’ shareholding as filed with BSE for the quarter ending 31st March, 2008 the said Sino is shown as holding 3,77,520 equity shares representing 3.24% of the total equity share holding (please refer Annexure 9 to SCN). Sino was holding shares in Phil Corporation Limited (“PCL”) being Noticee

No. 1 for more than three years prior to acquiring the shares in question. Similarly, the transferor New Vision Group Holding Pvt. Ltd. (formerly known as Philcorp Holding Ltd.) was holding shares in PCL for more than three years. Hereto annexed and marked Annexure 1 is a copy of the shareholding pattern as on 31st March, 2005 filed by PCL with Bombay Stock Exchange under clause 35(C) of the Listing Agreement. As disclosed in the said statement, both New Vision (i.e. Philcorp Holding Ltd.) and Sino along with others were promoters of PCL.

- 6) As required by clause 35(c) of the Listing Agreement when the shareholding pattern as on 30th September, 2008 was filed by PCL with Bombay Stock Exchange, it clearly revealed that Sino was holding 9.86%. The said shareholding pattern also revealed that the total holding of the promoter group had remained unchanged at 50.33%. Hereto annexed and marked Annexure 2 is a copy of the said shareholding pattern as on 30th September, 2008.
- 7) Similarly, the transfer of shares on 20th September, 2010 from Sino to Mr. A. Y. Fazalbhoy was also exempt under Regulation 3(1)(e)(iii) (b) of the SEBI (SAST) Regulations, 1997. Mr. A. Y. Fazalbhoy was holding shares in the Company (i.e. PCL) for more than three years prior to acquiring the shares in question. Similarly, the transferor Sino was holding shares in PCL for more than three years. As disclosed in the Shareholding Pattern, Mr. A. Y. Fazalbhoy was a promoter. Sino was also shown as a promoter in the shareholding pattern as on 31st March, 2010 filed with Bombay
- 8) Stock Exchange. Hereto annexed and marked Annexure 3 and Annexure 4 respectively are the said shareholding pattern statements as on 31st March, 2010 and
- 9) 30th September, 2010 filed with Bombay Stock Exchange.

- 10) *When the shareholding pattern as on 30th September, 2010 was filed with Bombay Stock Exchange it clearly showed Mr. A Y. Fazalbhoy holding 11.79% equity shares.*
- 11) *The said statement also revealed that the total holding of the promoter group had remained unchanged at 50.33%.*
- 12) *The said shares were purchased by Sino from Noticee No. 3 in September 2008. The transfer was within the Promoter Group Shareholders who were holding shares for more than 3 (three) years therefore the said transfer was eligible for exemption under Regulation 3 (1) (e) (iii) (b) of the SEBI (SAST) Regulations, 1997. The shares were suspended for trading. The transfer was within all the parameters prescribed for the said exemption.*
- 13) *Without prejudice to the above, it is submitted that acquisition of 9.86% equity shares by Mr. A.Y. Fazalbhoy from Sino on 20th September, 2010 was as a result of Sino being wound up. This is also mentioned in the Show Cause Notice. The said shares were given by way of distribution on winding up. Therefore, these shares were acquired by way of succession as envisaged in Regulation 3(1)(g) of SEBI (SAST) Regulations 1997. Hence, conditions prescribed in Explanation 2 to Regulation 3(1) (e) did not apply to this case of 9.86% shares which were vested in Mr. A. Y Fazalbhoy. The shares were transferred within the Promoter Group as mentioned in the Show Cause Notice. There were no instances of any acquisition or transfer of shares from the Public Holding.*
- 14) *The Company i.e. Noticee No. 1 had submitted regularly the Shareholding Pattern under Clause 35 (C) of the Listing Agreement as mentioned above. The Company had also submitted statements under Regulation 8 (3) of SEBI (SAST) Regulations, 1997. Hereto annexed and marked Annexure 5 (collectively) are the copies of the statements filed under the said Regulation for the year-ended as on 31st March 2005, 31st March 2008, 31st March 2010 and 31st March 2011.*

- 15) *It has been stated that Noticee No. 2 made acquisition of shares without making disclosures and without making public announcements as required and increased the shareholding from 24.26% to 34.12% on September 20, 2010. The calculation of 34.12% is incorrect. It is to be noted that the total holding of Noticee No. 2 and 3 remained at 25.98%. In view of this, no public announcement was required.*
- 16) *The disclosures in the form of Shareholding Pattern were submitted regularly by the issuer Company Noticee No. 1 to Bombay Stock Exchange under clause 35 of the Listing Agreement and they were in the public domain for the entire relevant period. Thus the Stock Exchange and the general public were in the know of the changes in the shareholding within the Promoter Group. The Promoter Group Shareholding remained constant throughout the entire period of five years and also was subject to lock-in pursuant to the condition imposed by BSE for revocation of suspension up to 30th September 2014. A copy of the Notice issued by BSE is annexed as Annexure 6. In view of this the requirements of Regulations 13(4) and 13(5) of PIT Regulations by Noticee No.2 and the requirement of Regulations 13(3) and 13(5) of PIT Regulations were substantially and in spirit complied with as there was full disclosure regularly made under clause 35 of the Listing Agreement and under Regulation 8 (3) of the SEBI (SAST) Regulations, 1997.*
- 17) *Since the shares were not being traded on the Stock Exchange and there being no price sensitive information utilized, there were no malafides in the transfer/ transmission of the shares within the Promoter Group. There was no disproportionate gain or any unfair advantage gained by Noticee No. 2 or Noticee No. 3 on account of these inter se transfers within the Promoter Group.*
- 18) *Without prejudice to the aforesaid the Noticees Nos. 2 and 3 respectfully submit that even if there was any technical breach of the said Regulations as alleged in the*

Show Cause Notice, the following grounds need to be considered in adjudicating the matter:

- (i) none of the alleged violation has resulted into any disproportionate gain or unfair advantage to the Company, to the Promoters of the Company or to any other party as a result of such default;*
- (ii) none of the alleged defaults has resulted into any loss to any investor;*
- (iii) having regard to the explanations submitted above, the defaults are not frequent or repetitive.*
- (iv) the trading in the Company's shares was suspended by the Stock Exchanges during the entire period referred to in the show cause notice.*
- (v) even if there is any technical default on the part of the Noticee No. 2 and/or 3, the same is unintentional and without any mens rea or malafide intentions.*
- (vi) the Noticee No. 2 and 3 are not guilty and have not acted in conscious disregard of their obligations.*
- (vii) default, if any, is merely a technical breach and has not in any manner affected investors or given any undue advantage to the Noticee No. 2 and/or Noticee No. 3.*

19) We humbly request you to take a lenient view and adjudicate the matter accordingly...."

7. Subsequently, the proceedings were transferred to the undersigned vide communique dated June 20, 2019. In the interest of natural justice, the Noticees were intimated about the same and granted an opportunity of hearing in the matter on August 21, 2019, vide hearing notice dated August 06, 2019. M/s Vigil Juris, the Authorized representatives ('ARs') of the Noticees, requested to

postpone the above scheduled hearing, vide their letter dated August 14, 2019. Thereafter, the Noticees were granted a final opportunity of hearing in the matter on September 24, 2019, vide hearing notice dated September 16, 2019. On the scheduled date of hearing, i.e., on September 24, 2019, Shri Pradip Kapadia and Ms. Dipika Panchmatia, Advocates, appeared as the ARs of the Noticees. During the hearing, the ARs reiterated the contents of the letters dated February 24, 2015 and February 27, 2015 submitted by the Noticees. The ARs undertook to make post hearing submissions in the matter latest by October 15, 2019.

8. Thereafter, Noticee No. 1 vide its letter dated October 10, 2019 made post hearing submissions in the matter and *inter alia* submitted information about the compliances done by the Company in the last few years as below:

- *We hereby inform you that for Last three Financial Years, i.e., from 2016-17 to 2018-19, the Company has regularly complied with required filing obligation with the Stock Exchange regularly. The details of the same are given below:*
- *Details of Filing of Financial Results with Stock Exchange:*

<i>Quarter</i>	<i>Board Meeting</i>	<i>Filing Date</i>	<i>Due Date</i>
<i>April 2016 to June 2016</i>	<i>05/05/2016</i>		
<i>Unaudited Financial Results for the quarter and year ended 31/03/2019</i>		<i>05/05/2016</i>	<i>05/05/2016</i>
<i>July 2016 to September, 2016</i>	<i>02/08/2016</i>		
<i>Unaudited Financial Results for the quarter ended 30/06/2019</i>		<i>02/08/2016</i>	<i>02/08/2016</i>
<i>October 2016 to December, 2016</i>	<i>14/11/2016</i>		
<i>Unaudited Financial Results for the quarter ended 30/09/2016</i>		<i>14/11/2016</i>	<i>14/11/2016</i>
<i>January 2017 to March 2017</i>			
<i>Unaudited Financial Results for the quarter ended 31/12/2016</i>	<i>24/01/2017</i>	<i>24/01/2017</i>	<i>24/01/2017</i>
<i>April 2017 to June 2017</i>			

<i>Audited Financial Results for the year and quarter ended 31.03.2017</i>			
<i>XBRL Filing</i>	<i>29/05/2017</i>	<i>29/05/2017</i>	<i>30/05/2017</i>
<i>PDF Filing</i>		<i>29/05/2017</i>	<i>29/05/2017</i>
<i>July 2017 to September, 2017</i>			
<i>Unaudited Financial Results for the quarter ended 30.06.2017</i>	<i>05/07/2017</i>		
<i>XBRL Filing</i>		<i>05/07/2017</i>	<i>06/07/2017</i>
<i>PDF Filing</i>		<i>05/07/2017</i>	<i>05/07/2017</i>
<i>October, 2017 to December, 2017</i>			
<i>Unaudited Financial Results for the quarter ended 30.09.2017</i>	<i>31/10/2017</i>		
<i>XBRL Filing</i>		<i>31/10/2017</i>	<i>01/11/2017</i>
<i>PDF Filing</i>		<i>31/10/2017</i>	
<i>January, 2018 to March, 2018</i>			
<i>Unaudited Financial Results for the quarter ended 31.12.2017</i>	<i>29/01/2018</i>		
<i>XBRL Filing</i>		<i>30/01/2018</i>	<i>30/01/2018</i>
<i>PDF Filing</i>		<i>29/01/2018</i>	<i>29/01/2018</i>
<i>April, 2018 to June, 2018</i>			
<i>Audited Financial Results for the quarter and year ended 31.03.2018</i>	<i>05/05/2018</i>		
<i>XBRL Filing</i>		<i>05/05/2018</i>	<i>06/05/2018</i>
<i>PDF Filing</i>		<i>05/05/2018</i>	<i>05/05/2018</i>
<i>July, 2018 to September, 2018</i>			
<i>Unaudited Financial Results for the quarter ended 30.06.2018</i>	<i>10/07/2018</i>		
<i>XBRL Filing</i>		<i>11/07/2018</i>	<i>11/07/2018</i>
<i>PDF Filing</i>		<i>10/07/2018</i>	<i>10/07/2018</i>
<i>October, 2018 to December, 2018</i>			
<i>Unaudited Financial Results for the quarter ended 30.09.2018</i>	<i>11/10/2018</i>		
<i>XBRL Filing</i>		<i>12/10/2018</i>	<i>12/10/2018</i>
<i>PDF Filing</i>		<i>11/10/2018</i>	<i>11/10/2018</i>
<i>January, 2019 to March, 2019</i>			
<i>Unaudited Financial Results for the quarter ended 31.12.2018</i>	<i>05/02/2019</i>		
<i>XBRL Filing</i>		<i>06/02/2019</i>	<i>06/02/2019</i>
<i>PDF Filing</i>		<i>05/02/2019</i>	<i>05/02/2019</i>

- *Appointment of Company Secretary Compliance during the period from April 2016 to March, 2019.*

During the Last three Years Appointment of Company Secretary took place as under:

Sr. No.	Name of the Company Secretary	Period of Service	Due date for filling up the vacancy	Remark
1	Mrs. Anisia D'Souza	Appointed on 15/10/2015 and resigned on 31/10/2017	--	--
2	Mr. Pouras Rane	Appointed on 25/01/2018 and resigned on 28/04/2018	Within Six months from 31/10/2017	Appointed within Due Date under section 203(4) of the Companies Act 2013.
3	Jayashree Mishra	Appointed on 15/06/2018 and resigned on 01/06/2019	Within six months from 28/04/2018	Appointed within due date under section 203(4) of the Companies Act 2013.

We would like to mention here that any Company with financial problems and low scale of business operations would find it difficult to retain certain executives like Company secretaries and hence there is high Attrition.

- Filing of quarterly Corporate Governance Report during last three financial years 2016-17 to 2018-19

<i>Quarter</i>	<i>Filing date</i>	<i>Due Date</i>
April 2016 to June, 2016	11/07/2016	15/07/2016
July, 2016 to September, 2016	12/10/2016	15/10/2016
October, 2016 to December, 2016	12/01/2017	15/01/2017
January 2017 to March, 2017	13/04/2017	15/04/2017
April, 2017 to June, 2017	04/07/2017	15/07/2017
July, 2017 to September, 2017	12/10/2017	15/10/2017
October, 2017 to December, 2017	15/01/2018	15/01/2018
January, 2018 to March, 2018	12/04/2018	15/04/2018
April, 2018 to June, 2018	12/07/2018	15/07/2018
July, 2018 to September, 2018	10/10/2018	15/10/2018
October, 2018 to December, 2018	10/01/2019	15/01/2019
January, 2019 to March, 2019	08/04/2019	15/04/2019

- **Audit Committee:**

For last three years the Company has constituted the Audit Committee as per the requirement of SEBI Regulations. In the last three years the Company has conducted the Audit Committee Meetings from time to time. However in the Audit Committee held on 05/07/2017 the quorum requirement for conducting Audit Committee i.e. presence of two independent Directors in the meeting was not met as late Mr. J. C. Almeida, who was Independent Director that time could not attend the said Audit Committee Meeting as he was not well and was admitted in the Hospital. And for the same reason the Company could not conduct Audit Committee Meeting for the quarter ended 30.09.2017. And subsequently Mr. J. C. Almeida passed away on 28/11/2017.

After that the Company appointed Mr. Sayed Abbas as an Independent Director and the Company is conducting Audit Committee Meetings regularly as per the requirement of SEBI Regulations.

- **Change in Promoters Shareholding during the period from 2016-17 to 2018-19:**

There is no significant change in total promoter holding of the Company and only following shares have been transferred by one of the Promoter during period from 2016-17 to 2018-2019 which has been disclosed by the Company in their annual accounts .

Name of the Promoter	Change in shareholding during 2016-17	Change in shareholding during 2017-18	Change in shareholding during 2018-19
Mr. Anand V. Gaikwad	Transferred 100 Equity Shares. So his total Holding after transfer was 1100 Equity Shares	Transferred 468 Equity Shares. So his total Holding after transfer was 632 Equity Shares	No Change

- *We therefore request you to take into consideration our above submissions and to take lenient view and adjudicate the matter accordingly.*

9. As Noticee No. 2 had claimed that he had received shares held by Sino Paragon Limited due to succession upon its winding up, Noticee No. 2 was advised, vide email dated January 10, 2020, to submit relevant documentary evidence for the said transfer. Thereafter, the AR of Noticee No. 2, vide letter dated February 5, 2020, has submitted a certificate dated January 27, 2020 from the Registrar of Corporate Affairs, BVI Financial Services Commission, wherein it is stated that Sino Paragon Trading Limited had defaulted in payment of its 2007 annual fee and was struck off the register on May 01, 2008 pursuant to Section 213 of the Business Companies Act. The company remained continually struck for 7 years and was dissolved on April 30, 2015 in accordance with Section 216 of the Business Companies Act, 2004.

CONSIDERATION OF ISSUES AND FINDINGS

10. I have carefully perused the written submissions of the Noticees and the documents available on record. The issues that arise for consideration in the present case are :
- (i) Whether Noticee No. 1 has violated the provisions of Section 21 of the SCRA and the clauses 41(I)(c), 47(a), 49(II)(E) and 49(VI)(ii) of the Listing Agreement?
 - (ii) Whether Noticee No. 2 has violated the provisions of Regulation 13(4) read with Regulations 13(5) of PIT Regulations, 1992 and Regulation 7(1) read with Regulation 7(2) and Regulation 11(1) of SAST Regulations, 1997?

- (iii) Whether Noticee No. 3 has violated the provisions of Regulation 13(3) read with Regulation 13(5) of PIT Regulations, 1992?
- (iv) Does the violations, if any, attract the provisions of Sections 23E of the SCRA, Section 15A(b) of the SEBI Act and Section 15H(ii) of the SEBI Act?
- (v) If yes, what should be the quantum of penalty?

11. Before proceeding further, I would like to refer to the relevant provisions of SCRA, Listing Agreement, PIT Regulations and SAST Regulations:

SCRA

Conditions for listing.

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

Listing Agreement

Submission and Disclosure of Interim and Annual Financial Results

41. The company agrees to comply with the following:

l) Preparation and Submission of Financial Results

....

c) The company has an option either to submit audited or unaudited quarterly and year to date financial results to the stock exchange within one month of end of each quarter (other than the last quarter), subject to the following:

(i) In case the company opts to submit unaudited financial results, they shall be subjected to limited review by the statutory auditors of the company (or in case of public sector undertakings, by any practicing Chartered Accountant) and a copy of the limited

review report shall be furnished to the stock exchange within two months from end of the quarter.

(ii) In case the company opts to submit audited financial results, they shall be accompanied by the audit report.

.....

47. The Company agrees-

(a) to appoint the Company Secretary to act as Compliance Officer who will be responsible for monitoring the share transfer process and report to the Company's Board in each meeting. The compliance officer will directly liaise with the authorities such as SEBI, Stock Exchanges, Registrar of Companies, etc., and investors with respect to implementation of various clauses, rules, regulations and other directives of such authorities and investor service and complaints of related matter;

.....

49. CORPORATE GOVERNANCE

.....

II Audit Committee

.....

(B) Meeting of Audit Committee

The audit committee should meet at least four times in a year and not more than four months shall elapse between two meetings. The quorum shall be either two members or one third of the members of the audit committee whichever is greater, but there should be a minimum of two independent members present.

.....

(E) Review of information by Audit Committee

The Audit Committee shall mandatorily review the following information:

1. *Management discussion and analysis of financial condition and results of operations;*
2. *Statement of significant related party transactions (as defined by the audit committee), submitted by management;*
3. *Management letters / letters of internal control weaknesses issued by the statutory auditors;*
4. *Internal audit reports relating to internal control weaknesses; and*
5. *The appointment, removal and terms of remuneration of the Chief internal auditor shall be subject to review by the Audit Committee*

.....

VI. Report on Corporate Governance

....

(ii) The companies shall submit a quarterly compliance report to the stock exchanges within 15 days from the close of quarter as per the format given in Annexure I B. The report shall be signed either by the Compliance Officer or the Chief Executive Officer of the company.

PIT Regulations

Continual disclosure.

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

¹[(4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.]

(5) The disclosure mentioned in sub-regulations (3), and (4) shall be made within ²[two] working days of:

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

SAST Regulations

Acquisition of 5 per cent and more shares or voting rights of a company.

7. (1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

¹ Substituted by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2008 w.e.f. 19-11-2008. Prior to its substitution sub-regulation (4) read as under:-

“(4) Any person who is a director or officer of a listed company, shall disclose to the company in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.”

² Substituted for the number “4” by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2008 w.e.f. 19-11-2008.

(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of,— (a) the receipt of intimation of allotment of shares; or (b) the acquisition of shares or voting rights, as the case may be.

Consolidation of holdings.

11. (1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights,³[with post acquisition shareholding or voting rights not exceeding fifty five per cent.,] in any financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.

12. Before moving forward, I note that the Noticees have not raised any objection on the documentary evidences relied upon and supplied to them. I also note from the submissions of Noticee No. 1 that it was a 'Sick Industrial Company' and had submitted its reference to the Board of Industrial and Financial Reconstruction ('BIFR') in the year 2005-06 for the purpose of preparing and approving the Rehabilitation Scheme. Noticee No. 1 has stated that it came out of BIFR proceedings during the financial year 2008-09. Noticee No. 1 has further submitted that, during financial year 2005-06, the trading in its securities was suspended by BSE because of delay in payment of listing fees due to

³ Inserted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2009, w.e.f. 6-11-2009.

financial difficulties. Subsequently, NSE also had suspended trading in its securities.

13. The first allegation against Noticee No. 1 is that it had not complied with Clause 41(l) (c) of the Listing Agreement in respect of non-submission/ delay in submission of unaudited quarterly financial results to the stock exchanges. In this respect, I note that non-submission/ delay in submission of unaudited quarterly financial results has been alleged for 10 quarters in the SCN during the period December 2005 – June 2010. Noticee No. 1 has stated that out of these 10 quarters, 4 quarters pertain to year end submissions of audited financial results (i.e., year ending March 31, 2006; year ending March 31, 2007; year ending March 31, 2008 and year ending March 31, 2009). Noticee No. 1 has stated that, at the relevant time, there was an optional requirement under the Listing Agreement to either submit audited accounts within three months of the year-end and to give prior intimation in that behalf to the stock exchanges or to submit un-audited results for the last quarter within 30 days. Noticee No. 1 has stated that it had opted to submit the audited financial results within three months of the year end. I note that Noticee No. 1 has produced letters of intimations sent to the stock exchanges for the submission of audited financial results. I also note from the reply of Noticee No. 1 that it has admitted that there were delays in submitting the audited financial results for the year ending March 31, 2006; year ending March 31, 2007; and year ending March 31, 2008 to the stock exchanges. I further note that the submission of audited financial result

for year ending March 31, 2009 was done on June 23, 2009, which is within the three month period for submission of audited financial results.

14. Noticee No. 1 has also accepted in its reply that there were delays in submitting financial results to the stock exchanges for the quarters ending June 30, 2006; June 30, 2008; September 30, 2008; March 31, 2010 and June 30, 2010. Further, Noticee No. 1 has not given any submissions about delay in submission of financial results alleged in the SCN for the quarter ending June 30, 2007. I am inclined to consider this an acceptance of the said allegation in the SCN by Noticee No. 1. In view of the above, I note that Noticee No. 1 has admittedly not complied with the provisions of Clause 41(I)(c) of the Listing Agreement for nine quarters. However, I note that Noticee No. 1 was under BIFR proceedings for approval of Rehabilitation Scheme during the years 2005-08. I further note from the submissions made by Noticee No. 1 in its letter dated October 10, 2019 that Noticee No. 1 has been regular in submitting its financial results to the Stock Exchange during the last 3 financial years. Therefore, I observe that Noticee No. 1 has taken remedial measures for timely submission of financial results to the Stock Exchange. In view of the same, I am inclined to take a lenient view and not impose any penalty for the non-compliance shown by Noticee No. 1 in submission of financial results to Stock Exchange.
15. The next allegation against Noticee No. 1 is that it had failed to appoint the company secretary / compliance officer during November 02, 2009 - July 31, 2010 and hence thereby allegedly not complied with clause 47(a) of the Listing

Agreement. In this respect, I note that Noticee No. 1 has submitted that it had given advertisement in magazines and local newspapers for appointment of a suitable person as a company secretary. However, it did not get a suitable person for filling the position due to the financial condition of the company and change of technology in its main business. Noticee No. 1 has also submitted that Shri A. V. Gaikwad, who was a company secretary and director of the company, was overseeing the compliances required as per the Listing Agreement. I note that the Registrar of Companies for Goa, Daman and Diu had given a warning, vide letter dated August 12, 2012, to Noticee No. 1 for keeping the position of company secretary vacant for the above period. I also note that Clause 47(a) of the Listing Agreement mandates that a company has to appoint a company secretary to act as compliance officer, who will be responsible for monitoring the share transfer process and report to the Company's Board in each meeting. I further note that the said post remained vacant for 8 months. However, I also note that Noticee No. 1 had given advertisements for filling the said post and Shri A. V. Gaikwad, a company secretary, was overseeing the compliances required as per the Listing Agreement in the intervening period. I also note that Noticee No. 1 in its letter dated October 10, 2019 has further stated that, during the last three years, the Company Secretaries were appointed within due date. In view of the said submissions of Noticee No. 1 and considering the fact that Noticee No. 1 has already been given a warning by the Registrar of Companies for Goa, Daman and Diu, I am inclined to take a lenient view in this respect.

16. The next allegation against Noticee No. 1 is that the quorum (having two independent directors) as per Clause 49(II)(B) of Listing Agreement was not complied with, in the meetings of Audit Committee held on 12/07/2006, 10/10/2007, 07/12/2007, 30/01/2008, 19/01/2009 and 23/06/2009. In this respect, Noticee No. 1 has submitted that Shri JF Alapatt was a nominee of IDBI on the board of the company and that, at the relevant time, the nominee director of any bank or financial institution was also considered as an independent director. I note that there were six instances alleged in the SCN wherein the quorum (having two independent directors) for meeting of Audit Committee as per Clause 49 of listing agreement was not complied. Even after considering Shri JF Alapatt as an independent director in the audit committee meeting, I note that there are still five instances (viz. on 10/10/2007, 07/12/2007, 30/01/2008, 19/01/2009 and 23/06/2009) where the quorum (having two independent directors) for meeting of Audit Committee was not available. I note that Noticee No. 1 has not given submissions in respect of the said five instances and therefore, I am inclined to consider it as an admission that the quorum was not available in these meetings. However, I note that Noticee No. 1 was under BIFR proceedings for approval of Rehabilitation Scheme during the years 2005-08. I further note that Noticee no. 1 in its letter dated October 10, 2019 has submitted that it was conducting Audit Committee Meetings regularly and on only one instance it could not meet the quorum requirement due to ill-health and subsequent demise of one of the independent directors. I further note that no investor complaints have been brought on record in respect of the said observation. In view of the same, I am inclined to take a

lenient view and not impose any penalty on Noticee No. 1 for the aforesaid instances of non-availability of quorum in audit committee meetings.

17. It was also alleged that Noticee No. 1 has also not complied with minimum four meetings of audit committee in the year 2008 – 09 and therefore, Noticee No. 1 had not complied with Clause 49(II)(B) of Listing Agreement. Noticee No. 1 has stated that during the relevant period the provision of that clause was different and there was a requirement of audit committee meetings only three times in a year. In this respect, I note that the requirement of having minimum four meetings audit committee in a year was mandated vide SEBI circular no. SEBI/CFD/DIL/CG/1/2004/12/10 dated October 29, 2004. Therefore, Noticee No. 1 was required to have minimum four meetings of audit committee in the year 2008 – 09, which Noticee No. 1 failed to comply with. In view of the above, I find that Noticee No. 1 has failed to comply with the provisions of Clause 49(II)(B) of Listing Agreement. However, I note that Noticee No. 1 had conducted three audit committee meetings during 2008-09. I also note that Noticee No. 1 was under BIFR proceedings for approval of Rehabilitation Scheme during the years 2005-08. Therefore, I am inclined to consider this a technical breach committed by Noticee No. 1. Further, I would like to rely on the observations of Hon'ble Bombay High Court in the matter of SEBI v. Cabot International Capital Corporation wherein it was held that - *"... though looking to the provisions of the statute, the delinquency of the defaulter may itself expose him to the penalty provision yet despite, that in the statute minimum penalty is prescribed, the authority may refuse to impose penalty for justifiable reasons like the default occurred*

due to bona fide belief that he was not liable to act in the manner prescribed by the statute or there was too technical or venial breach, etc.”. In view of the same, I am inclined to take a lenient view and not impose any penalty in respect of the said observation.

18. It was also alleged in the SCN that there was no review of internal control systems by the Audit Committee of Noticee No. 1 in terms of Clause 49(II) (E) of the Listing Agreement. It was noted in the SCN that Noticee No. 1 had discontinued internal audit system due to its weak financial condition. Further, Noticee No. 1 was not able to produce any internal audit report during the course of inspection by the Ministry of Corporate Affairs. It was further noted that BSE and NSE had stated that Noticee No. 1 had reported compliance of Clause 49(II) (E). In this respect, Noticee No. 1 has submitted that the Statutory Auditors in their report dated 31st August, 2010 pertaining to the financial year ending 31st March, 2010 has *inter alia* stated there were adequate internal control procedures commensurate with the size of the Company and the nature of its business. Noticee No. 1 has further stated that, even without formal internal auditors, there can be adequate internal control procedures having regard to the size and the operations of the company. Noticee No. 1 has also stated that there was no requirement at the relevant time that the company should mandatorily have a formal internal auditor and that, since the internal controls of Noticee No. 1 were adequate, the compliance report given by its Audit Committee were in line with the requirement of Clause 49(II) (E) of the Listing Agreement.

19. In this respect, I note that Clause 49 II (E) lays down the procedure for review of information by Audit Committee and review of internal audit reports relating to internal control weaknesses is one of the points for review by the Audit Committee. In the instant case, the management of Noticee No. 1 had decided not to have any formal internal audit system. As a result of that decision, no internal audit report relating to internal control weaknesses was available, which could be reviewed by the Audit Committee. Therefore, I note that the Audit Committee could not review the internal audit reports relating to internal control weaknesses, which resulted in violation of Clause 49 II (E) of Listing Agreement by Noticee No. 1. I note that the Statutory Auditors of Noticee No. 1 in the Annexure to the Auditor's Report in Annual Report for FY 2009-10 have stated that Noticee No. 1 has informed them that in view of closure of substantial business of the Company, the management has not considered it appropriate to have any formal internal audit system. The Statutory Auditors of Noticee no. 1 have also observed that there were adequate internal control procedures commensurate with the size of the Company and the nature of its business with regard to purchases of inventory, fixed assets and with regard to the sale of goods. The Statutory Auditors have also noted that during the course of their audit, they did not observe any continuing failure to correct major weakness in internal controls. I also note that Noticee No. 1 was under BIFR proceedings for approval of Rehabilitation Scheme during the years 2005-08. I further note that the Statutory Auditors, in the Annexure to the Independent Auditor's Report in the Annual Reports for the last three financial years, i.e., FY

2016-17, FY 2017-18 and FY 2018-19, have observed that Noticee No. 1 has, in all material respects, an adequate internal financial controls system over financial reporting and such internal financial controls were operating effectively as on the last day of the respective financial years. In view of the above, I am inclined to take a lenient view and not impose any penalty for the aforesaid non-compliance shown by Noticee No. 1.

20. The final allegation against Noticee No. 1 in the SCN was with respect to non-filing and delay in submitting quarterly compliance report on Corporate Governance to the stock exchanges within 15 days from the close of quarter during the years 2005-2010. I note that it is alleged in the SCN that Noticee No. 1 had not submitted the required report on one instance and submitted the same with delay on nine instances. In view of the same, it was alleged that Noticee No. 1 had violated Clause 49(VI) (ii) of Listing Agreement. In this respect, I note from the reply of Noticee No. 1 that it has not denied the said allegation and has stated that the delay in most of these cases was only on about two to four days. In view of the same, I find that Noticee No. 1 has admitted that it not complied with the provisions of Clause 49(VI) (ii) of Listing Agreement. However, I note that Noticee No. 1 was under BIFR proceedings for approval of Rehabilitation Scheme during the years 2005-08. I further note from the submissions made by Noticee No. 1 in its letter dated October 10, 2019 that Noticee No. 1 has been regular in submitting quarterly Corporate Governance report to the Stock Exchange during the last 3 financial years. Therefore, I observe that Noticee No. 1 has taken remedial measures for timely

submission of the said reports to the Stock Exchange. In view of the same, I am inclined to take a lenient view and not impose any penalty for the non-compliance shown by Noticee No. 1 in submission of quarterly Corporate Governance reports to Stock Exchange.

21. I now proceed further with respect to allegations against Noticee No. 2 and Noticee No. 3. It was noted in the SCN that the following changes in the shareholding of the promoter group/ PACs in the shares of Noticee No. 1 had taken place:

Name of the Shareholder entity	Shareholding (in %)		
	Qtr A	Qtr B	Change %
Sino Paragon Trading Limited (Foreign Promoter)	3.24 (June, 08)	9.86 (Sep,08)	6.62
PhilCorp Holdings Private Limited (Indian Promoter) (Currently known as New Vision Group Holding Private Limited w.e.f. 28/02/2007) ,i.e., Noticee No. 3	20.87 (June, 08)	10.36 (Sep,08)	-10.51
AY Fazalbhoj (Chairman), i.e., Noticee No. 2	1.93 (Jun,10)	11.79 (Sep, 10)	9.86
Sino Paragon Trading Limited(Foreign Promoter)	9.86 (Jun,10)	0 (Sep, 10)	-9.86

22. It was alleged in the SCN that Noticee No. 2 had acquired shares of Noticee No. 1 without making disclosures and without making public announcement as required, when the shareholding of the PACs (domestic promoters) increased from 24.26% to 34.12% on September 20, 2010. In view of the same, it was alleged that Noticee No. 2 had violated the provisions of Regulation 13(4) read with Regulation 13(5) of PIT Regulations and Regulation 7(1) read with

Regulation 7(2) and Regulation 11(1) of SAST Regulations. It was also alleged that Noticee No. 3 had violated the provisions of Regulation 13(3) read with Regulation 13(5) of PIT Regulations, when it failed to make relevant disclosures.

23. I note that Noticee No. 2 had acquired 9.86% of share capital of Noticee No. 1 during September 2010. It is noted from available records that Noticee No. 2 was the major shareholder in Sino Paragon Trading Limited (foreign promoter of Noticee No. 1). Subsequently, Sino Paragon Trading Limited was wound up and its shareholding of 9.86% in Noticee No. 1 was observed to be transferred to Noticee No. 2 on September 20, 2010. In this respect, I note from the shareholding pattern available on BSE website for quarter ending March 2010 and quarter ending September 2010 that the promoter and promoter group shareholding in the shares of Noticee No. 1 has remained constant at 50.33%. Further, I note that Sino Paragon Trading Limited was removed from the promoter and promoter group in the shareholding pattern for quarter ending September 2010 and its shareholding of 9.86% was now shown to be held by Noticee No. 2.
24. In this respect, Noticee No. 2 has submitted that the said transfer was within the promoter group shareholders, who were holding the said shares for more than three years, and therefore, the said transfer was eligible for exemption under Regulation 3(1)(e)(iii)(b) of SAST Regulations. Noticee No. 2 has further

argued that the impugned 9.86% shares were acquired by way of succession as envisaged in Regulation 3(1)(g) of SAST Regulations.

25. In this respect, I note that, for availing exemption under Regulation 3(1)(e)(iii)(b) of SAST Regulations, the transferor(s) and transferee(s) have to comply with Regulation 6, Regulation 7 and Regulation 8 of the SAST Regulations. Moreover, for acquisitions under Regulation 3(1)(e)(iii)(b) of SAST Regulations, the acquirer has to notify the Stock Exchange about the details of the proposed transactions at least 4 working days in advance under Regulation 3(3) of SAST Regulations and also submit a report under Regulation 3(4) of SAST Regulations along with supporting documents to SEBI giving all details in respect of acquisition within 21 days of the date of acquisition. I note from the available records that no such disclosure / compliance has been made by Noticee No. 2 in this regard. In view of the above procedural lapses shown by Noticee No. 2, I note that the aforesaid inter se promoter transfer of shares between Noticee No. 2 and Sino Paragon Limited is not exempted under Regulation 3(1)(e)(iii)(b) of SAST Regulations.

26. Noticee No. 2 has also claimed that the impugned 9.86% shares were acquired by way of succession as envisaged in Regulation 3(1)(g) of SAST Regulations. In this regard, Noticee No. 2 has submitted a certificate dated January 27, 2020 from the Registrar of Corporate Affairs, BVI Financial Services Commission, wherein it is stated that Sino Paragon Trading Limited had defaulted in payment of its 2007 annual fee and was struck off the register on May 01, 2008 pursuant

to Section 213 of the Business Companies Act. The company remained continually struck for 7 years and was dissolved on April 30, 2015 in accordance with Section 216 of the Business Companies Act, 2004. I note from the investigation report that Noticee No. 2 was a major shareholder in Sino Paragon Trading Limited (foreign promoter of Noticee No. 1). The said company was wound up and its shareholding of 9.86% in Noticee No. 1 was transferred to Noticee No. 2 on September 20, 2010. Therefore, I am inclined to accept the submission of Noticee No. 2 that the said shares of Noticee No. 1 were acquired by him by way of transmission, i.e., by operation of law. In terms of Regulation 3(1)(g) of SAST Regulations, acquisition of shares by way of transmission on succession or inheritance is exempted from applicability of Regulations 10, 11 and 12 of SAST Regulations. In view of the same, I am inclined to accept the contention of Noticee No. 2 that Regulation 11(1) of SAST Regulations was not applicable for the impugned acquisition of 9.86% shares of Noticee No. 1 by Noticee No. 2. Therefore, the allegation of violation of Regulation 11(1) of SAST Regulations is not established against Noticee No. 2.

27. For the said acquisition of 9.86% shares in September 2010, it was also alleged in the SCN that Noticee No. 2 had violated Regulation 13(4) read with Regulation 13(5) of PIT Regulations and Regulation 7(1) read with Regulation 7(2) of SAST Regulations by failing to make requisite disclosures. Similarly, it was alleged in the SCN that Noticee No. 3 had violated the provisions of Regulation 13(3) read with Regulation 13(5) of PIT Regulations, when it transferred / disposed 10.51% of its shareholding in Noticee No. 1 in September

2008. I note from available records that Noticee No. 2 and Noticee No. 3 have not made the said disclosures, though there is an obligation to make the relevant disclosures. Noticee No. 2 and Noticee No. 3 have stated in their reply that the Company, i.e., Noticee No. 1 was regularly submitting the shareholding pattern under Clause 35(C) of the Listing Agreement and statements under Regulation 8(3) of SAST Regulations. Noticee No. 2 and Noticee No. 3 have stated that the Stock Exchange and the general public were in the know of the changes in the shareholding within the promoter group. Noticee No. 2 and Noticee No. 3 have further stated that no gain or advantage has occurred to them and no loss or harm has been caused to any investor. In this regard, I note that there is a statutory obligation on the acquirer/ seller of the shares to submit disclosure to the Company and Stock Exchanges under PIT Regulations and SAST Regulations. The information being in public domain through various disclosures made by the Company does not absolve the acquirer from making the relevant disclosure under the afore-mentioned regulations because it is an independent obligation arising out of the said regulations. In this context, I would like to rely on observation of Hon'ble Securities Appellate Tribunal ('SAT') in *Ambaji Papers Pvt. Ltd. vs. the Adjudicating Officer, SEBI* dated January 15, 2014, wherein similar contention of information being in the public domain was raised by the appellant. Hon'ble SAT observed: *".... that a reading of Regulation 7 of the SAST Regulations, 1997 read with Regulation 35(2) of the SAST Regulations, 2011 clearly points out that not only the company, but an acquirer is also required to inform the stock exchanges at every stage of aggregate of the shareholding or voting rights in the company. The object underlying these regulations is, therefore,*

unequivocally to bring more transparency by dissemination of complete information to the public as well as shareholders at large not only by the concerned company but by the individual acquirer as well."

28. I would further like to refer to the observations of Hon'ble SAT in the matter of Virendrakumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014 vide order dated October 14, 2014), wherein it was held that - *".. obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures."*
29. In view of the above, the contentions of Noticee No. 2 and Noticee No. 3 that the information related to change in their shareholding in Noticee No. 1 was available in public domain and that due to non-filing of relevant disclosures no gain or advantage has occurred to them and no loss or harm has been caused to any investor is not acceptable. In view of the same, I find that the violation of Regulation 13(4) read with Regulation 13(5) of PIT Regulations and Regulation 7(1) read with Regulation 7(2) of SAST Regulations by Noticee No. 2 and the violation of Regulation 13(3) read with Regulation 13(5) of PIT Regulations by Noticee No. 3 stands established.

30. In view of the foregoing, I note that that Noticee No. 2 has violated the provisions of Regulation 13(4) read with Regulation 13(5) of PIT Regulations and Regulation 7(1) read with Regulation 7(2) of SAST Regulations and Noticee no. 3 has violated the provisions of Regulation 13(3) read with Regulation 13(5) of PIT Regulations. The Hon'ble Supreme Court of India in the matter of *SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC)* has 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..."*. In view of the same, I am convinced that it is a fit case to impose monetary penalty.

31. The aforesaid violations make Noticee No. 2 and Noticee No. 3 liable for monetary penalty under Section 15A(b) of the SEBI Act. The text of the said provisions is as below:

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*

...

(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 ⁴[which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees];

⁴ Substituted for the words —"of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.

32. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act, which read as under:

Factors to be taken into account by the adjudicating officer.

15J. 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.

Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.”

33. No quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticees. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss, if any, on account of default by the Noticees. I note that trading in the shares of Noticee No. 1 was suspended by the Stock Exchanges during the period referred to in the SCN. I further note that no investor complaints in respect of the defaults committed by the said Noticees have been brought on record.

ORDER

34. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticees and also the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose the a penalty of Rs. 3,00,000 (Rupees Three Lakh only) on Noticee No. 2 viz. A Y Fazalbhoy and a penalty of Rs. 3,00,000 (Rupees Three Lakh only) on Noticee No. 3 viz. New Vision Group Holding Pvt. Ltd. under Section 15A(b) of the SEBI Act.
35. I am of the view that the said penalty is commensurate with the lapse/ omission on the part of the said Noticees. They shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, they may contact the support at portalhelp@sebi.gov.in.
36. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

37. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees viz. Kore Foods Limited, A Y Fazalbhoj & New Vision Group Holding Pvt. Ltd. and also to the Securities and Exchange Board of India.

Date: March 23, 2020

Place: Mumbai

K SARAVANAN
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER