BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BS/AO/77-85/2017-18]

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

In respect of:

Name	PAN
1. M/s Vasparr Shelter Ltd. *(Presently known as **RV Lifestyle Limited**)*	**AABCV2888D**
2. M/s Vasparr Trading Pvt. Ltd. *(Presently known as **Vas Educomp Pvt. Ltd**.)*	**AABCV2889C**
3. M/s Pushpanjali Drums Private Ltd.	**AAECP1906D**
4. M/s Yashraj Containeurs Ltd	**AAACV4846L**
5. M/s Precision Containeurs Ltd.	**AAACV4766F**
6. Mr. Raj J. Valia	**AENPV8400N**
7. Mr. Madhav J Valia	**AENPV8401P**
8. Mr. Jayesh V. Valia	**AAFPV5698G**
9. Jayesh V. Valia (HUF)	**AACHJ8696M**

In the matter of Vas Infrastructure Ltd.

BACKGROUND

1. Securities and Exchange Board of India (*hereinafter referred to as "**SEBI**"*) conducted investigation in the scrip of Vas Infrastructure Ltd. (*hereinafter referred to as "**VIL/Company**"*) and into the possible violation of various provisions, more particularly described in the following paragraphs, of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (*hereinafter referred to as "**PIT Regulations, 1992**"*) and SEBI (Substantial Acquisition of Shares and Takeovers)

Regulations, 1997 (*hereinafter referred to as "**SAST Regulations, 1997**"*) read with Regulation 35 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 **(*SAST Regulations, 2011*)** by i) Vasparr Shelter Ltd. (presently known as RV Lifestyle Limited) (***Noticee no. 1***) ii) Vasparr Trading Pvt Ltd (presently known as Vas Educomp Pvt Ltd) (***Noticee no. 2***), iii) Pushpanjali Drums Pvt Ltd. (***Noticee no. 3***), iv) Yashraj Containeurs Ltd. (***Noticee no. 4***), v) Precision Containeurs Ltd. (***Noticee no. 5***), vi) Shri Raj J. Valia (***Noticee no. 6***), vii) Shri Madhav J. Valia (***Noticee no. 7***), viii) Shri Jayesh V. Valia (***Noticee no. 8***) and ix) Jayesh V. Valia (HUF) (***Noticee no. 9***). Noticee No. 1 to 9 are hereinafter collectively referred to as "**Noticees**".

2. It was observed that there was an increase in the share capital of the company from 1,00,00,400 shares as on March 31, 2009 to 1,25,00,400 shares as on June 30, 2009 i.e. an increase of 25,00,000 shares, on account of conversion of warrants on April 11, 2009 and May 30, 2009. It is alleged that the Noticees are connected/related to each other and are persons acting in concert (PACs) and they have acquired shares of VIL with common objective during the same period by way of conversion of warrants into equity shares.

3. It is alleged that the Noticees collectively violated Regulation 7(1A) of SAST Regulations, 1997 when they failed to make requisite disclosure to the company and the stock exchanges about acquisition of more than 2% of the share capital of VIL pursuant to conversion of 20,00,000 warrants into 20,00,000 equity shares on April 11, 2009 which resulted into increase in their collective shareholding from 41.82% as on March 31, 2009 to 51.52% on April 11, 2009.

4. It was observed that Noticee no. 1, acquired 6,00,000 shares of VIL pursuant to conversion of 6,00,000 warrants into equity shares on April 11, 2009 resulting into increase in its shareholding in VIL from 4.99% to 9.16% i.e. its shareholding crossed 5% of the total shares of the company, and therefore it is alleged to have violated a) Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997 when it failed to make requisite disclosure to the company and to the stock exchanges about such

acquisition, and b) Regulation 13(1) of PIT Regulations, 1992 when it failed to make disclosure to the company in Form-A.

5. It was observed that Noticee no. 2 acquired 5,00,000 shares of VIL pursuant to conversion of 5,00,000 warrants into equity shares on April 11, 2009 resulting into increase in its shareholding in VIL from 4.9982% to 8.33% i.e. its shareholding crossed 5% of the total shares of the company, and therefore it is alleged to have violated a) Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997 when it failed to make requisite disclosure to the company and the stock exchanges about such acquisition, and b) Regulation 13(1) of PIT Regulations, 1992 when it failed to make disclosure to the company in Form-A.

6. It was observed that Noticee no. 3 acquired 4,00,000 shares of VIL pursuant to conversion of 4,00,000 warrants into equity shares on April 11, 2009 resulting into increase in its shareholding in VIL from 9.18% to 10.98% i.e. its shareholding crossed 10% of the total shares of the company, and therefore it alleged to have violated Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997 when it failed to make requisite disclosure to the company and the stock exchanges about such acquisition.

7. It was observed that Noticee no. 5 acquired 5,00,000 shares of VIL pursuant to conversion of 5,00,000 warrants into equity shares on May 30, 2009 resulting in an increase in its shareholding in VIL from 5.81% to 9.58%, and therefore it is alleged to have violated Regulation 13(3) of PIT Regulations, 1992 when it failed to make disclosure about the change exceeding 2% in its shareholding to the company.

8. It was observed that Noticee no. 8 was a director of VIL, and acquired 83,300 shares of VIL pursuant to conversion of warrants into equity shares on April 11, 2009 resulting in an increase in his shareholding in VIL from 2.00% to 2.36%, and therefore he is alleged to have violated Regulation 13(4) of PIT Regulations, 1992 when he failed to make disclosure about the change in its shareholding exceeding 25,000 shares to the company.

APPOINTMENT OF ADJUDICATING OFFICER

9. Shri S.V. Krishnamohan, Chief General Manager was appointed as the Adjudicating Officer **(AO)** vide order dated September 24, 2015 to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992, the aforesaid violations alleged to have been committed by the Noticees. Subsequently, the undersigned was appointed as the Adjudicating Officer vide order dated September 15, 2017 in the place of Shri S. V. Krishnamohan in the present matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

10. A common Show Cause Notice reference no. EAD-5/ADJ/SVKM/AA/OW/7968/1-9/2016 dated March 16, 2016 (*hereinafter referred to as '**SCN**'*) was issued to the Noticees in terms of Section 15I of SEBI Act, 1992 read with Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 ("***SEBI Adjudication Rules***") for the violations as specified in the SCN.

11. Vide letter dated April 4, 2016, the Noticees requested for inspection of documents in the matter and the same was carried out on May 16, 2016. Vide letter dated June 16, 2016, the Noticees requested for time of four weeks to file reply to the SCN.

12. An opportunity of personal hearing was provided to the Noticees on September 26, 2016, however the same was not attended by the Noticees. Subsequently, a personal hearing was held in the matter on October 27, 2016, wherein Mr. Paras Parekh (Advocate), Ms. Neerja Balkrishan (Advocate), Mr. Jayesh V Valia, Mr. H K Bijlani and Mr. Vidyadhar Saunkhe, appeared on behalf of the Noticees, and made oral submissions and requested time to file detailed written submissions. The Noticees were granted time till November 15, 2016 to file the written submissions.

13. Vide letter dated November 15, 2016, the Noticees provided written submissions to the SCN and following are their main submissions –

    i. The Noticees are promoters of VIL and have always been in control of VIL at all relevant times. The Noticees are admittedly part of the promoter group of VIL and are acting in concert with each other, as specified in the Show Cause Notice.

No violation of Regulation 7 of the SAST Regulations:

ii. *VSL, VEL and PDPL are alleged to have violated provisions of Regulation 7(1) of the SAST Regulations. As stated earlier, these noticees are admittedly part of the promoter group of VIL and are as such acting in concert with the other Noticees.*

iii. *The provisions of Regulation 7 of the SAST Regulations read as follows:*

> *"...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 percent or fourteen per cent 2[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..."*

iv. *It is submitted that the provisions of Regulation 7 of the SAST Regulations use the word 'acquirer' which has been defined in Regulation 2(1)(b) of the SAST Regulations to mean:*

(b) - acquirer means any person who, directly or indirectly, acquires or agrees to acquire shares or voting rights in the target company, or acquires or agrees to acquire control over the target company, <u>either by himself or with any person acting in concert with the acquirer;</u>

v. *It is apparent therefore that the term acquirer appearing in Regulation 7(1) of the SAST Regulations includes 'persons acting in concert' with the acquirer. In other words, for the purpose of determining the trigger under Regulation 7 of the SAST Regulations, the shareholding of the acquirer would include the shareholding of persons acting in concert with the acquirer. It is submitted therefore that there cannot be any penalty imposed on VSL, YEL and PDPL for alleged violation of Regulation 7(1) of the SAST Regulation as alleged by the Show Cause Notice or otherwise.*

vi. *It is submitted that the Show Cause Notice proceeds on the incorrect basis that penalty can be imposed upon individual members of a group when there is a collective group acting in concert. It is submitted that the provisions of Regulation 7(1) of the SAST Regulations cannot be read to mean that such penalty is imposable.*

vii. *The Hon'ble Securities Appellate Tribunal has from time to time interpreted the provisions of Regulation 7(1) of the SAST Regulations and has ruled as follows:*

a. *Mega Resources Ltd., v. Securities and Exchange Board of India (2002) 48 CLA 311 (SAT):*

"*...66. In this context it is to be noted that Shri Banerjee had submitted that duty to disclose under regulation 7(1) is cast on the acquirer on his holding exceeding 5% independent of the shareholding of persons acting in concert with him. In this context he had referred to the provisions of regulations 10 and 11 to show that where ever the holding of the persons acting in concert is to be taken into consideration the same has been so specifically mentioned, that in the absence of any such requirement in regulation 7(1) it has to be viewed that it is the absolute shareholding of the acquirer that alone be taken into consideration for deciding the bench mark percentage of 5 provided therein and that since the Appellant's holding was less than 5% it was not incumbent on it to make the disclosure..*

68. On a combined reading of the above cited definitions it is not possible to agree with Shri Banerjee's submission that in view of the use of the word "acquirer" in singular and the absence of the words "acting in concert" in the regulation excludes an acquirer whose individual holding does not exceed 5%, from complying with the requirement of the regulation. ***In the light of the definition of the expression 'acquirer' and the 'persons acting in concert' and also taking into consideration the purpose of regulation 7, I am of the view that the acquisition of shares by persons acting in league, is very relevant and the disclosure of such concerted acquisition to the target company and the company in tum to the concerned stock exchange is in tune with the objective of the said disclosure****. If one is to accept Shri Banerjee's contention, that would mean that each person acting in concert could acquire upto 5% shares without making the disclosure and continue to do so upto 15%, without attracting the requirements of public offer in terms of regulation 10. Such an interpretation would defeat the very purpose of the Regulations. As already stated one of the objects of the Regulations is to protect the interests of the investors through prompt disclosures.* ***In my view the shares acquired by all those persons acting in league has to be taken as a whole for the purpose of regulation 7..."***

viii. *The above ratio was also repeated by the Hon'ble Tri bunal for the decision in the case of Sandip Save and others v. SEBI [2003] 41 SCL 47 (SAT).*

ix. *The Hon'ble SAT has in the case of Radheshyam Tulsian & Ors. v. SEBI (decided on April 26, 2004) ruled that:*

"...A reading of the definition leaves no room for doubt that a person who directly or indirectly acquires shares in the company or acquires or agrees to acquire control over the company either by himself or with any person acting in concert with him is the acquirer. ***In other words the shares held by all the persons who act in concert with him are to be taken into account for determining whether Regulation 7 gets triggered****. The requirement of Regulation 7 is that any person who acquires shares in a company either by himself or through persons acting in concert with him which when taken together with the shares already held by him would exceed 5% or 10% or 14% or 54% or 74% of the shareholding in the company should disclose at every stage his shareholding in the company to the company. The object underlying this provision is that no one should acquire substantial number of shares in a company without disclosing them to the company. The shareholding of those who acquire with him for a common purpose of substantial acquisition to gain control over the company pursuant to an agreement or understanding shall be taken along with the shareholding of the acquirer.* ***This regulation when read in the context of the word 'acquirer ' as referred to above and also taking into account the underlying object of the Regulation 7 we are of the view that shares held by persons acting in concert with the acquirer have to be taken into account for the purpose of disclosing the shareholding in the company to the company****. It is, thus, clear that each of the two groups has to be taken as a whole and that each individual therein may be an 'acquirer' but the shares held by the other persons in the group would have to be taken into account for determining the applicability of Regulation 7.* ***Each individual in the group becomes an acquirer and all other members therein are the persons acting in concert with him and therefore the shareholding of all the members put together has to be considered for the purpose****... "*

x. *The SEBI has also followed the same ratio in the case of Re: Hitachi Group (decided on April 17, 2004) where in it has been ruled that: "...As the Hitachi group was holding more than 15% equity stake in the Target Company at the time of the incremental acquisition, provisions of regulation 10 ibid are not relevant here ... "*

xi. *Another adjudicating officer of the SEBI has also taken the same position in Re: Sanjay Sonwani (decided on July 31, 2008) wherein it has been ruled that:*
*"... Upon careful perusal of the definition of the word "acquirer ", **I am convinced that the term acquirer includes the acquirer and other persons acting in concert with the acquirer. Further, any acquisition either by the acquirer or with any person acting in concert with the acquirer should be considered** for the purpose of determining the triggering of the provisions of Regulation 11(1) of SAST in the instant case, the acquirer admittedly belongs to the promoter group and can be treated as persons acting in concert for the purpose of determining the triggering of the provisions of Regulation 11(1) of SAST. Therefore, acquirer 's claim of not having attracted the provisions of Regulation 11(1) of SAST is devoid of law..."*

xii. *The Hon'ble SAT has also recorded this position of the SEBI in the case of Hemani S. Sonawala (HUF) v. SEBI (decided in October 2002)*
*"...It is seen that in the first show cause notice and in the second notice, one of the charges was noncompliance of the requirement of Regulation 10. The Adjudicating Officer has absolved the Appellant of the charge of violating Regulation 10 by observing that "it is seen that Regulation 10 mandates public announcement to acquire shares, in case the acquirer proposes to acquire such number of shares or voting rights which taking together the shareholding / voting rights of persons acting in concert with him, shall entitle the acquirer to exercise 10% or more of the voting rights in the target company. Regulation 10, therefore, requires public announcement in cases where the acquirer is reaching / crossing the threshold limit of 10% of shares / voting rights in the company. It is observed from the record that the acquirer / transferee alongwith persons acting in concert (Ms Rekha S. Sonawala (wife), Paula S. Sonawala (daughter & others) was holding about 40% of the shares / voting rights of HIL on the date of impugned acquisition, **In view of the acquirer along with persons acting in concert already holding more than 10 % of the shares / voting rights of HIL, the impugned acquisition by the acquirer does not attract Regulation 10." So the Appellant was discharged on the count …**"*

xiii. *In light of the above ratios, it is apparent that it cannot be alleged that the VSL, VEL and PDPL, as part of the Noticees' group violated the provisions of Regulation 7(1) of the SAST Regulations.*

No violation of Regulation 7(1A) of the SAST Regulations:

xiv. *Regulation 7(1A) of the SAST Regulations reads as follows:*
(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (I) of regulation 11, 1[or under second proviso to sub-regulation (2) of regulation 11] shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.

xv. *It is submitted that the provisions of Regulation 7(1A) of the SAST Regulations require disclosures in relation to acquisitions under Regulation 11(1) of the SAST Regulations. It is pertinent to point out that the requirement to make disclosures under the second proviso in Regulation 11 of the SAST Regulations came into force only on November 6, 2009 i.e. much after the subject transactions. The acquisition of the shares by the Noticees on April 11, 2009, to the extent of 5% was covered by Regulation 11 of the SAST Regulations.*

xvi. *However it is submitted that there was no requirement for the Noticees to make disclosures in relation to the remaining 4.7% of the shares acquired by the Noticees. It is submitted that the requirement for the same was inserted in Regulation 7(1A) of the SAST Regulations much after the subject transactions were effected. In that view of the matter it is submitted that a lenient and purposive view may be taken in the matter.*

The quantum of penalty ought to be reasonable:

xvii. *Without prejudice to the above it is submitted that the quantum of penalty imposable on the Noticees ought to be a reasonable one for the following amongst other reasons:*

a. The acquisitions were pursuant to preferential allotment of warrants which issuance of warrants were indeed approved by the public shareholders of VIL. The public shareholders of VIL were therefore indeed aware of the fact that the Noticees would come to acquire further shares during a short period.

b. The information about the issuance of the warrants to the Noticees was also in the public domain pursuant to disclosures of the board and shareholders meeting approving the issuance of warrants to the Noticees.

c. The Noticees are the majority shareholders of VIL. Apart from the Noticees there is no major group or persons holding a majority shareholding in VIL. The increase in the shareholding of the Noticees by a few percentage cannot lead to any major consequence to the other shareholders of VIL.

d. It is submitted that the purpose of disclosures under the SAST Regulations is to enable the management of a listed company and the general public to be aware of substantial acquisitions. Similarly, in case of the PIT Regulations, the purpose is to ensure that the public at large is aware of any substantial acquisition for prevention and detection of any insider trading.

e. In the present case, on a purposive reading of the regulations, the alleged non-disclosure under the SAST did not result in any hardship or loss to the investors in VIL as the Noticees were indeed already in control of VIL and were holders of substantial shareholding therein.

f. The Noticees did not gain any benefit or undue advantage on account of the alleged non-disclosure. No such gain or undue benefit is alleged or attributed to the Noticees in the Show Cause Notice or otherwise.

14. Subsequent to the appointment of the undersigned as AO, the Noticees were granted one more opportunity of personal hearing on November 09, 2017. The following authorized representatives (**ARs**) - Mr. Paras Parekh (Advocate), Ms. Stuti Shah (Advocate), Mr. Jayesh V Valia, Mr. H K Bijlani and Mr. Vidyadhar Saunkhe, appeared on behalf of the Noticees, and reiterated their submissions made by their replies submitted earlier. The ARs submitted that the intention was not to violate any provision of law, however for any delay in disclosures, a lenient view may be taken based on submissions already placed on record. The Noticees were granted time till November 20, 2017 to file additional replies, if any.

15. Vide letter dated November 20, 2017, the Noticees filed submissions in the matter and following are their main submissions –

    i. *The Noticees are promoters of VIL and have always been in control of VIL at all relevant times. The Noticees are admittedly part of the promoter group of VIL and are acting in concert with each other, as specified in paragraph 2.4 of the Show Cause Notice. There has been no change in control pursuant to the transactions in question.*

    ii. *The Noticees submit that a reasonable view must be taken in relation to the alleged violations for the following amongst other reasons:*

    iii. *VSL, VLL and PDPL are alleged to have violated provisions of Regulation 7(1) of the Takeover Regulations. As staled earlier, these noticees are admittedly pan of the promoter group of VIL and are as such acting in concert with the other Noticees.*

    iv. *It is trite law that the term acquirer appearing in Regulation 7(1) of the Takeover Regulations includes 'persons acting in concert'. Therefore for the purpose of determining the trigger under Regulation 7 of the Takeover Regulations, the shareholding of the acquirer would include the shareholding of persons acting in concert. It is submitted therefore that there cannot be any penalty imposed on VSL, VEL and PDPL for alleged violation of Regulation 7(1) of the Takeover Regulation as alleged by the Show Cause Notice or otherwise. It is submitted that it is always the shareholding of the group that ought to be considered for the purpose of imposing any penalty and that an individual cannot be penalised for any increase in shareholding of more than 5%.*

    v. *It is submitted that the Show Cause Notice proceeds on the incorrect basis that penalty can be imposed upon individual members of a group when there is a collective group acting in concert.*

    vi. *Further, Regulation 7(1 A) of the Takeover Regulations reads as follows:*

        *(1A) Any acquirer who has acquired shares or voting rights of a company **under sub-regulation (1) of regulation 11, '[or under second proviso to sub-regulation (2)***

<u>of regulation 11]</u> *shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.*

vii. *It is submitted that the provisions of Regulation 7(1A) of the Takeover Regulations require disclosures in relation to acquisitions under Regulation 11(1) of the Takeover Regulations. It is pertinent to point out that the requirement to make disclosures under the second proviso in Regulation 11 of the Takeover Regulations came into force only on November 6, 2009 i.e. much after the subject transactions. The acquisition of the shares by the Noticees on April 11, 2009, to the extent of 5% was covered by Regulation 11 of the Takeover Regulations.*

No substantial difference between Regulations 7(1) of Takeover Regulations and Regulation 13(1) of PIT Regulations:

viii. *It is submitted that the Hon'ble Securities Appellate Tribunal, in the matter of Vitro Commodities Private Limited v SEBI (decided on September 4, 2013), has ruled that:*

"It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 9 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other."

ix. *The Hon'ble Securities Appellate Tribunal accordingly reduced the penalty of Rs. 10 lakhs to a token penalty of Rs. 1 lakh for the violation of disclosure requirements under PIT Regulations and Takeover Regulations.*

x. *This was further reiterated in an order passed on May 11. 2017, by the Adjudicating Officer, SEBI, in Re: AnandKarbhari in the matter of Jindal Cotex limited wherein it was ruled that:*

"I also note the Securities Appellate Tribunal in the matter of Vitro Commodities Private Limited.. Versus.... SEBI, inter-alia opined that the provisions oj Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations are not substantially different, since, violation of first automatically triggers the violation of second and hence, there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It reduced the penalty of Rs. 10 lakhs to a token penalty of Rs. 1 lakh for the disclosure violations under SEBI (PIT) Regulations and SEBI (SAST) Regulations, 1997. "

xi. *Accordingly, it can be concluded that Regulation 7(1) of the Takeover Regulations and Regulation 13(1) of the PIT Regulations are a corollary of one another and if a*

single penalty is imposed, it would not be justified to impose a second penalty for the same violation, on account of both the Regulations being a corollary of one-another.

The quantum of penalty ought to be reasonable:

xii. Without prejudice to the above it is submitted that the quantum of penalty imposable on the Noticees ought to be a reasonable one for the following amongst other reasons:

a. The acquisitions were pursuant to preferential allotment of warrants which issuance of warrants were indeed approved by the public shareholders of VIL. The public shareholders of VIL were therefore indeed aware of the fact that the Noticees would come to acquire further shares during a short period.

b. In the present case, on a purposive reading of the regulations, the alleged non-disclosure under the Takeover Regulations did not result in any hardship or loss to the investors in VIL as the Noticees were indeed already in control of VIL and were holders of substantial shareholding therein.

c. The Noticees did not gain any benefit or undue advantage on account of the alleged non-disclosure. No such gain or undue benefit is alleged or attributed to the Noticees in the Show Cause Notice or otherwise.

xiii. In view of the above, it is humbly prayed that a reasonable view may be taken in the matter and no or a reasonable penalty be imposed upon the Noticees.

CONSIDERATION OF ISSUES AND FINDINGS

16. I have carefully examined the material available on record. The issues that arise for consideration in the present case are :

I) Whether the Noticees have violated Regulations 7(1A), and 7(1) read with 7(2) of SAST Regulations, 1997, Regulations 13(3) and 13(4A) read with 13(5), and 13(1) of PIT Regulations, 1992?

II) Does the violations mentioned in I) above, if established, attract monetary penalty under Section 15A(b) of SEBI Act, 1992?

III) Quantum of penalty.

FINDINGS

17. Before I proceed with the matter, it is pertinent to mention the relevant provisions alleged to have been violated, which are reproduced below:

SAST Regulations, 1997

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.*

(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.

(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.

SEBI (SAST) Regulations, 2011

Repeal and Savings.

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

(2) Notwithstanding such repeal,—

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

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

PIT Regulations, 1992

Disclosure of interest or holding in listed companies by certain persons – Initial Disclosure

13.(1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working 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.

Continual disclosure.

(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

(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 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.

SEBI (Prohibition of Insider Trading) Regulations, 2015

Repeal and Savings.

12. (1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.

(2) Notwithstanding such repeal,—

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

(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

<u>Issue I)</u> Whether the Noticees have violated Regulations 7(1A), and 7(1) read with 7(2) of SAST Regulations, 1997, Regulations 13(3) and 13(4A) read with 13(5), and 13(1) of PIT Regulations, 1992?

<u>Violation of Regulation 7(1A) of SAST Regulations, 1997</u>

18. From the materials/facts on record, I observe that 25,00,000 warrants were converted by the Noticees into 25,00,000 shares on April 11, 2009 and May 30, 2009. Details of increase in the share capital of the Noticees pursuant to conversion of warrants into equity shares are as under:

Name of allottee	No. of warrants converted into equity shares		Holding (As on March 31, 2009)	Holding (As on April 11, 2009)	Holding (As on May 30, 2009 & June 30, 2009)
	on April 11, 2009	on May 30, 2009			
Vasparr Shelter Limited (presently known as RV Lifestyle Limited)	6,00,000	-	4,99,516 (4.99%)	10,99,516 (9.16%)	10,99,516 (8.8%)
Vasparr Trading Pvt. Ltd. (presently known as Vas Educomp Pvt Ltd)	5,00,000	-	4,99,836 (4.9982%)	9,99,836 (8.33%)	9,99,836 (8%)
Pushpanjali Drums Pvt. Ltd.	4,00,000	-	9,17,880 (9.18%)	13,17,880 (10.98%)	13,17,880 (10.54%)
Yashraj Containeurs Ltd.	83,400	-	9,88,111 (9.88%)	10,71,511 (8.93%)	10,71,511 (8.57%)
Precision Containeurs Ltd.	83,400	5,00,000	6,14,160 (6.14%)	6,97,560 (5.81%)	11,97,560 (9.58%)
Raj J. Valia	83,300	-	NIL	83,300 (0.69%)	83,300 (0.67%)
Madhav J. Valia	83,300	-	1,99,500 (1.99%)	2,82,800 (2.36%)	2,82,800 (2.26%)
Jayesh V. Valia	83,300	-	2,00,500 (2.00%)	2,83,800 (2.36%)	2,83,800 (2.27%)
Jayesh V. Valia (HUF)	83,300	-	2,62,525 (2.63%)	3,45,825 (2.88%)	3,45,825 (2.77%)
	20,00,000	**5,00,000**	**41,82,028 (41.82%)**	**61,82,028 (51.52%)**	**66,82,028 (53.45%)**

19. Pursuant to conversion of warrants on April 11, 2009, shareholding of the Noticees in VIL increased by a total of 20,00,000 shares resulting in the increase in their collective shareholding from 41.82% as on March 31, 2009 to 51.52% as on April 11, 2009, i.e., an increase of 9.7%. Further, pursuant to conversion of warrants on May 30, 2009, shareholding of the Noticees in VIL increased by 5,00,000 shares resulting in the increase in their collective shareholding from 51.52% to 53.45%.

20. I find that the shareholding of the Noticees has increased from 41.82% to 51.52% i.e. an increase of more than 2%, as a result of conversion of 20,00,000 warrants into shares on April 11, 2009. However, I note that vide their letters dated April 01, 2013

to SEBI, Noticees had submitted that apart from the intimation of conversion of warrants given by VIL to BSE after its Board of Directors approved the conversion of warrants in the Board meeting held on April 11, 2009, no other disclosures were made in this regard.

21. It is alleged in the SCN that the Noticees violated Regulation 7(1A) of SAST Regulations, 1997 when they failed to make requisite disclosure to the company and the stock exchanges about acquisition of more than 2% of the share capital of VIL pursuant to conversion of warrants into equity shares on April 11, 2009 which resulted into increase in their shareholding from 41.82% as on March 31, 2009 to 51.52% as on April 11, 2009.

22. I note that the Noticees in their replies to the SCN dated November 15, 2016 and November 20, 2017 have stated that they are admittedly part of the promoter group of VIL and are acting in concert with each other as was alleged in the SCN. The Noticees have further stated that there has been no change in control pursuant to the acquisitions. The Noticees in their replies have thereafter contended that "*the provisions of Regulation 7(1A) of the SAST Regulations require disclosures in relation to acquisitions under Regulation 11(1) of the SAST Regulations. It is pertinent to point out that the requirement to make disclosures under the second proviso in Regulation 11 of the SAST Regulations came into force only on November 6, 2009 i.e. much after the subject transactions. The acquisition of the shares by the Noticees on April 11, 2009, to the extent of 5% was covered by Regulation 11 of the SAST Regulations".* The Noticees have further contended that *"However it is submitted that there was no requirement for the Noticees to make disclosures in relation to the remaining 4.7% of the shares acquired by the Noticees. It is submitted that the requirement for the same was inserted in Regulation 7(1A) of the SAST Regulations much after the subject transactions were effected. In that view of the matter it is submitted that a lenient and purposive view may be taken in the matter".*

23. In this regard, I note that the second proviso of Regulation 11(2) of SAST Regulations, 1997 allows an acquirer to acquire additional shares or voting rights upto 5% without making public announcement subject to the condition that such acquisition could only be (i) via open market purchases in the normal segment or (ii) if it was the result of buy back by a company. These provisions are not applicable to the acquisition by the Noticees in the current matter as the acquisition was through conversion of warrants into shares. Further, it may be noted that the shareholding of the Noticees was between 15% and 55% of the paid-up capital of the company, hence it falls within the ambit of Regulation 11(1) of SAST Regulations, 1997. Therefore, the Noticees are under obligation to make disclosures under Regulation 7(1A) with respect to acquisitions aggregating to two per cent or more. Accordingly, I find no merit in the contentions of the Noticees. Based on the facts / material on record, I find that the shareholding of the Noticees increased from 41.82% as on March 31, 2009 to 51.52% on April 11, 2009 i.e. by more than 2% and the Noticees have not filed disclosure under Regulation 7(1A) of SAST Regulations, 1997. The fact that no disclosures under Regulation 7(1A) of SAST Regulations, 1997 was made to the company and the stock exchanges has not been refuted by the Noticees. Accordingly, I hold that the Noticees by their acquisition of shares through conversion of warrants without making any disclosures to the company and to the stock exchanges, have violated Regulation 7(1A) of SAST Regulations, 1997 and the violation warrants penalty to be imposed on the Noticees.

24. It may be noted that in another adjudication proceedings in the scrip of VIL, it was observed that the shareholding of the promoters and promoter group had increased from 53.85% to 56.04% on April 06, 2011, as certain promoters acquired 6,25,000 shares by way of conversion of warrants, and an adjudication order dated December 29, 2017 has been passed in the said matter against the present Noticees (9 nos.) and 2 other promoter group entities of VIL, imposing a penalty of Rupees one crore and two lakhs on the 11 Noticees.

Violation of Regulation 7(1) read with 7(2) of SAST Regulations, 1997

25. It was observed that Noticee no. 1 acquired 6,00,000 shares of VIL pursuant to conversion of warrants into equity shares on April 11, 2009 resulting into increase in

its shareholding in VIL from 4.99% to 9.16%. Noticee no. 2 was observed to have acquired 5,00,000 shares of VIL pursuant to conversion of warrants into equity shares on April 11, 2009 resulting into increase in its shareholding in VIL from 4.9982% to 8.33%. Noticee no. 3 was observed to have acquired 4,00,000 shares of VIL pursuant to conversion of warrants into equity shares on April 11, 2009 resulting into increase in its shareholding in VIL from 9.18% to 10.98%. Since, the shareholding of Noticee Nos. 1 and 2 crossed 5%, and the shareholding of Noticee no. 3 crossed 10%, the respective Noticees' were required to make disclosure regarding their acquisitions within 2 working days to the company and stock exchange under Regulation 7(1) read with 7(2) of SAST Regulations, 1997. As the Noticee nos. 1, 2 and 3 failed to make requisite disclosure to the company and the stock exchanges about such acquisition, it was alleged that Noticee nos. 1, 2 and 3 had violated Regulation 7(1) read with 7(2) of SAST Regulations, 1997.

26. The Noticees have contended that Noticee Nos. 1, 2, and 3 are admittedly part of promoter group of VIL and as such are acting in concert with other Noticees. They have submitted that the term 'acquirer' as per Regulation 2(1)(b) of SAST Regulations, 1997 includes the persons acting in concert with the acquirer. The Noticees have further submitted that "*for the purpose of determining the trigger under Regulation 7 of the SAST Regulations, the shareholding of the acquirer would include the shareholding of persons acting in concert with the acquirer. It is submitted therefore that there cannot be any penalty imposed on VSL, YEL and PDPL for alleged violation of Regulation 7(1) of the SAST Regulation as alleged by the Show Cause Notice or otherwise. It is submitted that it is always the shareholding of the group that ought to be considered for the purpose of imposing penalty and that an individual cannot be penalized for any increase in shareholding of more than 5%".* I note that the Noticees are part of promoter group and are persons acting in concert. The collective shareholding of the Noticees was 41.82% prior to the acquisition on April 11, 2009, which is more than the 5% and 10% threshold specified in Regulation 7(1) of SAST Regulations, 1997. Considering the fact that the violation as a result of the combined shareholding of the Noticees increasing from 41.82% to 51.52% was already

addressed in paragraphs 18 to 23 of this order, I am of the view that the same issue may not be adjudged again.

Violation of PIT Regulations, 1992

27. From the facts / material available on record, I note that the acquisitions and change in shareholding of Noticee nos. 1, 2, 5 and 8 on April 11, 2009 is as follows –

Acquirer	**Date of transaction, i.e., conversion of warrants**	**Shareholding increased from**	**Shareholding increased to**
Vasparr Shelter Ltd **(Noticee no. 1)**	April 11, 2009	4,99,516 (4.99%)	10,99,516 (9.16%)
Vasparr Trading Pvt Ltd (now known as Vas Educomp Pvt Ltd) **(Noticee no. 2)**	April 11, 2009	4,99,836 (4.9982%)	9,99,836 (8.33%)
Precision Containeurs Ltd **(Noticee no. 5)**	May 30, 2009	6,97,560 (5.81%)	11,97,560 (9.58%)
Jayesh V. Valia (Director of VIL) **(Noticee no. 8)**	April 11, 2009	2,00,500 (2.00%)	2,83,800 (2.36%)

28. From the above, it is observed that the shareholding of Noticee nos. 1 and 2 crossed 5% of the total paid-up capital of the company on April 11, 2009 and accordingly, they were required to make disclosure to the company, within 2 working days from the date of acquisition, under Regulation 13(1) of PIT Regulations, 1992. The shareholding of Noticee no. 5 has increased by more than 2% on May 30, 2009 as a result of its acquisition of 5,00,000 shares, and accordingly, it was required to make disclosure to the company within 2 working days from the date of acquisition under Regulation 13(3) read with 13(5) of PIT Regulations, 1992. It is further observed that the shareholding of Noticee no. 8, who is a director of the company, has increased by more than 25,000 shares and accordingly, he was required to make disclosure to the company within 2 working days from the date of acquisition, under Regulation 13(4) read with 13(5) of PIT Regulations, 1992.

29. From the facts / material available on record, it is observed that vide their letters dated April 01, 2013, the Noticees have submitted that apart from the intimation of conversion of warrants given by VIL to BSE after its Board of Directors approved the

conversion of warrants in the Board meeting held on April 11, 2009, no other disclosures were made in this regard. In view of the same, Noticee nos. 1 and 2 were alleged to have violated Regulation 13(1) of PIT Regulations, 1992; Noticee no. 5 was alleged to have violated Regulation 13(3) read with 13(5) of PIT Regulations, 1992; and Noticee no. 8 was alleged to have violated Regulation 13(4) read with 13(5) of PIT Regulations, 1992.

30. The Noticees in their reply vide letter dated November 20, 2018 have contended that *"Regulation 7(1) of the Takeover Regulations and Regulation 13(1) of the PIT Regulations are a corollary of one another and if a single penalty is imposed, it would not be justified to impose a second penalty for the same violation on account of both the Regulations being a corollary of one-another".* The Noticees have cited the order of Hon'ble Securities Appellate Tribunal (SAT) in the matter of Vitro Commodities Private Limited v SEBI, in support of their contentions. I note that the Noticees have not refuted the fact no disclosure under the PIT Regulations has been filed by the Noticee nos. 1, 2, 5 and 8. Accordingly, on account of their failure to make disclosures under PIT Regulations, 1992, I hold that Noticee nos. 1 and 2 have violated Regulation 13(1) of the PIT Regulations, 1992, Noticee no. 5 has violated Regulation 13(3) read 13(5) of the PIT Regulations, 1992 and Noticee no. 8 has violated Regulation 13(4) read with 13(5) of PIT Regulations, 1992. However, the Noticees have vehemently contended that the view of the above judgment of Hon'ble SAT ruling that Regulation 13 of PIT Regulations, 1992 are in *pari materia* with the provisions of Regulation 7 of SAST Regulations, 1997 have to be taken into account.

<u>Issue II)</u> Does the violations mentioned in I) above, if established, attract monetary penalty under Section 15A(b) of SEBI Act, 1992?

31. The Noticees have submitted that they neither gained any unfair gain or advantage nor caused any harm or loss to the investors. In this regard, I note that the Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram Mutual Fund held that "*once the violation of statutory regulations is established, imposition of penalty becomes sine*

qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow."

32. The Noticees had submitted that *"The acquisitions were pursuant to preferential allotment of warrants which issuance of warrants were indeed approved by the public shareholders of VIL. The public shareholders of VIL were therefore indeed aware of the fact that the Noticees would come to acquire further shares during a short period"*. In this regard, I note that the same does not absolve the Noticees from the requirements of making disclosures as stipulated in the SAST Regulations, 1997 and PIT Regulations, 1992. I would also like to rely on the observation of Hon'ble SAT in Premchand Shah and Others V. SEBI (Appeal no. 192 of 2010 dated February 21, 2011), wherein it was held that *".....When a law prescribes a manner in which a thing is to be done, it must be done only in that manner.....Non-disclosure of information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take informed decision while making investments..... ".*

33. I also note that in Appeal No. 66 of 2003 - Milan Mahendra Securities Pvt. Ltd. Vs. SEBI – the Hon'ble SAT has observed that, "*the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market*". Further, in the matter of Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed "*Once it is established that the mandatory provisions of Takeover Code was violated, the penalty must follow*".

34. Thus, the violation of Regulation 7(1A) of SAST Regulations, 1997 by the Noticees, makes them liable for penalty under Section 15A(b) of the SEBI Act,1992, which reads as under :

SEBI Act, 1992

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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

Issue III): Quantum of penalty.

35. In this regard, the provisions of Section 15J of the SEBI Act, 1992 and Rule 5 of SEBI Adjudication Rules, require that while adjudging the quantum of penalty, 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.

36. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that no quantifiable figures or data are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default of the Noticees. I note that securities market is based on free and open access to information and the integrity of market is predicated on the quality and the manner in which information regarding the company is made available to the market. An informed investor is always is in an advantageous position and can always make wise and balanced decisions while investing. The Noticees, by their default have deprived the investors of important information at the relevant point of time. I note that the Noticees acquired 25,00,000 equity shares by way of conversion of warrants on April 11, 2009 and May 30, 2009. Consequently, their shareholding had increased from 41.82% (as on March 30, 2009) to 51.52% (on April 11, 2009) and to 53.45% (on May 30, 2009). I note that the Noticees had not made any disclosure to the target company and to the stock exchange with respect to the above change in their shareholding, and have thus

violated Regulation 7(1A) of SAST Regulations, 1997. Further as noted in paragraph 24 of this order, SEBI had initiated adjudication proceedings against the present Noticees and two other promoter entities of VIL for violation of SEBI Takeover Regulations. The matter was disposed of vide order dated December 29, 2017 by imposing a penalty of Rupees one crore and two lakhs. However, the present adjudication proceedings for violation of Regulation 7(1A) of SAST Regulations, 1997 is pertaining to a different period. Further, it is pertinent to mention that adjudication proceedings had been initiated against VIL and its directors for violations of the provisions of PIT Regulations, 1992, and the Listing Agreement, and the matter was disposed of vide order dated January 09, 2018 by imposing monetary penalty. Considering the above, I am inclined to take a lenient view in the present adjudication proceedings.

ORDER

37. Accordingly, taking into account the aforesaid observations and in exercise of power conferred upon me under section 15 I of the SEBI Act read with rule 5 of the SEBI Adjudication Rules, I hereby impose the following penalties on the Noticees under Section 15A(b) of the SEBI Act, 1992 –

Violation	Penalty
Regulation 7(1A) of SAST Regulations, 1997	**Rs. 1,00,000/- (Rupees One Lakh only)** on the Noticees, to be paid jointly and severally

38. The amount of penalty shall be paid either by way of demand draft in favor of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or by e-payment in the account of “SEBI - Penalties Remittable to Government of India”, A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to “The Division Chief (Enforcement Department -

DRA-IV), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051."

1. Case Name :	
2. Name of Payee :	
3. Date of Payment:	
4. Amount Paid :	
5. Transaction No. :	
6. Bank Details in which payments is made :	
7. Payment is made for : (like penalties/disgorgement/recovery/settlement amount and legal charges along with order details)	

39. In terms of Rule 6 of the SEBI Adjudication Rules, 1995, copy of this order is sent to the Noticees and also to Securities and Exchange Board of India.

Place: Mumbai **BIJU S**

DATE: 24.01.2018 **ADJUDICATING OFFICER**