

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AK/AO- 101-104 /2015]

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

Ms. Vidya Srinivasan (PAN: AAGPS0203B); **Shri V Srinivasan** (PAN: AAGPS0200C); **Ms. Suchitra Murali Balakrishnan** (PAN: AANPM0944L); **Shri Narayan Sethuraman** (PAN: AABPS8733R); **Shri Murali Srinivasan Venkataraman** (PAN: AAAHM0331E)

In the matter of
M/s. Hydro S & S Industries Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received a letter of offer by M/s Kingfa Sci. & Tech. Co. as the acquirer to acquire 16,65,874 fully paid-up equity share at Rs. 42.70 per share (representing 26% of the total equity and voting rights) of M/s. Hydro S & S Industries Ltd. (hereinafter referred to as '**Target Company**'/ '**the Company**'). The shares of the company were listed at Bombay Stock Exchange Limited (hereinafter referred to as '**BSE**'), Madras Stock Exchange Ltd. (hereinafter referred to as '**MSE**') and traded at National Stock Exchange of India Limited (hereinafter referred to as '**NSE**') under arrangement with MSE. The public announcement of the same was made on 20.05.2013. On perusal of the letter of offer, SEBI *inter alia* observed that Ms. Vidya Srinivasan, Mr. V Srinivasan, Mr. Murali Srinivasan Venkataraman, Mr. Narayan Sethuraman and Ms. Suchitra Murali Balakrishnan,

promoters of the company (hereinafter referred to as the '**Noticees**'/ '**Noticee promoters**'), in the past had not complied with the relevant provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as '**Takeover Regulations, 1997**') and/ or SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**Takeover Regulations, 2011**') within the due dates, as applicable.

2. It was therefore alleged that Noticees had violated the provisions of Takeover Regulations, 1997 and/ or Takeover Regulations, 2011, as applicable.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer vide Order dated 04.09.2013 under Section 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the '**SEBI Act**') read with Regulations 44 and 45 of Takeover Regulations, 1997 and Regulations 35 of Takeover Regulations, 2011 and Section 15I and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules**') to inquire into and adjudge under Section 15A(b) of the SEBI Act, the alleged violations of Takeover Regulations, 1997 and/ or Takeover Regulations, 2011, as applicable.

SHOW CAUSE NOTICE, HEARING AND REPLY

4. Show Cause Notices No. EAD-6/AK/VS/27298/2013, EAD-6/AK/VS/27299/2013, EAD-6/AK/VS/27332/2013, EAD-6/AK/VS/27303/2013 and EAD-6/AK/VS/27331/2013 dated 24.10.2013 (hereinafter referred to as the '**SCNs**') were issued to the Noticees under rule 4 of the Rules to show cause as to why an inquiry should not be held and penalty be not imposed under Section 15A(b) of SEBI Act for the alleged violation specified in the said SCN. The said SCNs were delivered and acknowledged by the Noticees. The Noticees vide their individual letters each dated 07.11.2013 sought more time to reply to the SCN, which was acceded to. Vide individual replies each dated 22.11.2013, Noticees filed reply to the SCN.

5. In the interest of natural justice and in terms of Rule 4(3) of the SEBI Rules, the Noticees were granted an opportunity of hearing on 11.12.2013 vide hearing notice dated 26.11.2013. Mr. Vinay Chauhan and Mr. K C Jacob, Authorized Representatives (ARs) appeared on behalf of the Noticees and reiterated the submissions made by the Noticee vide replies dated 22.11.2013. During the hearing, the ARs were advised to provide the details of the transfers/ acquisitions such as whether the same was off-market, physical/ demat, details of any deed of settlement/ agreement entered into between the promoters etc.
6. Vide individual letters dated 16.12.2013, Noticees informed that they have applied for consent proceedings and requested to keep the matter in abeyance. Subsequently the Noticees vide their letters dated 18.03.2014 requested for withdrawal of their consent applications and SEBI vide letters dated 24.03.2014 informed the Noticees that their consent applications were treated as withdrawn.
7. Vide individual letters dated 20.12.2013, Noticees *inter alia* submitted as follows:
 - 7.1 *That the transactions involved in the matter were off-market transfer of shares and that all shares involved in the said off-market transfers were in the demat form;*
 - 7.2 *That no consideration was involved since the acquisitions/ transfers were in the nature of inter-se transfers between the Promoters, pursuant to Deed of Settlement/ Gift made by the Transferor in favor of the Transferees, who are also close relatives;*
 - 7.3 *That in the matter of SEBI vs. Cabot International Capital Corporation Limited {2004 52 SCL 307 (BOM)}, despite of the fact that Cabot had not filed any report under Regulation 3(4) of Takeover Regulations, which was mandatory, the Hon'ble High Court concurred with the view of Hon'ble SAT that non filing of the report in question was technical and minor defect or breach based on bonafide belief that Cabot was not liable or required to submit the report in view of the admitted exemption available under the SEBI Act and the Regulations;*
 - 7.4 *That it has been pointed out that in the matter of M/s ERP Soft Systems Limited, the Adjudicating Officer took a lenient view and exonerated the Noticees therein from the charges leveled as per the SCN, despite returning a finding of violation of provisions of Regulation 29(2) of Takeover Regulations & Regulation 13 of PIT Regulations, inter alia on the ground that transfer was by way of transmission and not a voluntary act, though neither*

the Takeover Regulations nor PIT Regulations carve out an exemption for not making disclosure when the acquisition is by way of transmission of shares.

8. Details with respect to the alleged non-disclosure were independently also sought from BSE vide email dated 26.11.2013. BSE vide email dated 26.11.2013 sent the details of the disclosures made by the promoters. Further it was observed that the Noticee promoters had also defaulted in timely disclosure of their shareholding under the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**').
9. Vide Proceedings of the Whole Time Member appointing the Adjudicating Officer dated 28.10.2014, the undersigned was also appointed as the Adjudicating Officer to inquire into and adjudge for the alleged violations of PIT Regulations.
10. In view of the above, a supplementary SCN Ref. No. EAD6/AK/VRP/35136/2014/1-5 was issued to the Noticees on 09.12.2014 (hereinafter referred to as the '**Supplementary SCN**') for the alleged violations by the Noticee Promoters of PIT Regulations and/ or Takeover Regulations, 1997 and/ or Takeover Regulations, 2011, as applicable, by taking into consideration the disclosure details forwarded by BSE.
11. The Noticees vide individual letters dated 26.12.2014 sought time to submit their reply to the Supplementary SCN. The request was acceded to. Subsequently, the Noticees filed individual replies dated 09.01.2015 to the Supplementary SCN. In the interest of natural justice and in terms of Rule 4(3) of the SEBI Rules, Noticees were granted an opportunity of hearing on 15.01.2015 vide hearing notice dated 26.12.2014. On the scheduled date, Authorized Representative (AR) of the Noticees, Mr. Vinay Chauhan and Mr. K C Jacob, appeared on their behalf and reiterated the submissions made by the Noticee in the replies dated 09.01.2015. Thereafter, vide email dated 23.09.2015 the Noticees were given an opportunity to file further submissions, if any, apart from the replies/ submissions already placed on record in the matter. The Noticees replied on 28.09.2015 stating that they had no further submissions to make.

12. The Noticees have *inter alia* made the following submissions vide their individual replies dated 22.11.2013 and 09.01.2015:

12.1 *That they were the promoters of the target company for over two decades till 03.07.2013 (when M/s Kingfa Sci & Tech Co Ltd acquired the control over the target company by buying the shareholding of the then promoter group entities). At the relevant time as a part of the promoter group, they along with others were in control over the target company and that the factum of their being one of the promoters and being part of the promoter group and details of their shareholding etc. were already in public domain, inter alia by virtue of continuous quarterly disclosures made by the target company to the stock exchanges under clause 35 of the listing agreement;*

12.2 *That they have had an impeccable track record and no action has been taken against them by any regulatory body including SEBI, save and except the matter under reference;*

12.3 *That all the acquisitions as referred to in the SCNs were bonafide and were made transparently with full disclosures in the ordinary course of business;*

12.4 *With respect to acquisitions/ transfers made on 21.3.2011, 31.10.2012 and 31.12.2012:*

12.4.1 Acquisition/ Transfer Date 21.3.2011: Acquisition by Ms. Vidya Srinivasan and transfer by Mr. V Srinivasan

12.4.1.1 *That the acquisition by Ms. Vidya Srinivasan and transfer by Mr. V Srinivasan on 21.3.2011 was in the nature of inter se transfer of shares amongst promoters, whereby they had acquired/ transferred 12.09% shares to each other;*

12.4.1.2 *That consequent to the aforesaid acquisition/ transfer there was no change in the total shareholding of the promoter group and no change in the management or control of the target company;*

12.4.1.3 *With regard to the alleged delay in making the disclosure regarding acquisition/ transfer made on 21.3.2011 under PIT Regulations and Takeover Regulations, it was submitted that by oversight the necessary disclosures to the company and stock exchanges were intimated by ordinary post, which might have been belatedly received by them;*

12.4.1.4 *That disclosures under both PIT Regulations and Takeover Regulations were sent vide different letters all dated 23.03.2011, however, strangely disclosures under PIT Regulations was published by the stock exchange on 04.04.2011 and disclosure under Takeover Regulations was published on 11.04.2011. It has been denied that there was a delay of 19/ 16 days in making disclosures under the Takeover Regulations as alleged and that at the highest there could be 12 days delay as in the case of PIT Regulations as alleged in the first SCN issued;*

12.4.1.5 *That admittedly, the disclosures might have been belatedly received by the stock exchanges.*

12.4.2 Acquisition/ Transfer Date 31.10.2012: Acquisition by Ms. Vidya Srinivasan and transfers made by Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon

12.4.2.1 *That the acquisition made by Ms. Vidya Srinivasan on 31.10.2012 was in the nature of inter-se transfer of shares amongst promoters, wherein Ms. Vidya Srinivasan had acquired 27.02% shares from Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuraman, who had transferred 14.54% and 12.48% shares respectively to her;*

12.4.2.2 *Since the total acquisition of 27.02% was covered by exemption provided under Regulation 10 of Takeover Regulations, 2011, Ms. Vidya Srinivasan had also made a disclosure on 22.10.2012 to the stock exchanges and the target company regarding the (then) proposed acquisition in consonance with Regulation 10(5). Thereafter, post the acquisition on 31.10.2012, she had filed the requisite disclosures dated 1.11.2012 under Regulation 29(2) and Regulation 10(6) of the Takeover Regulations, 2011;*

12.4.2.3 *With regard to alleged delay of 3 days in making the disclosure regarding acquisitions/ transfers made on 31.10.2012 under PIT and Takeover Regulations to the stock exchanges and alleged delay of 1 day in making disclosures to the target company, it is submitted that the requisite letter containing the disclosure as required under Regulation 29(2) read with 29(3) of the Takeover Regulations, 2011 and under PIT Regulations, was sent by courier dated 1.11.2012 to the stock*

exchanges (BSE & MSE). The said courier was to be delivered on the next day i.e. 02.11.2012, but, it appears that either the courier got delivered on 3.11.2012 or the stock exchange after receiving the same on 02.11.2012 (i.e. Friday), might have published the disclosure on 5.11.2012, since 3.11.2012 and 4.11.2012 being Saturday and Sunday respectively;

12.4.2.4 In the circumstances, wherein the acquirer Ms. Vidya Srinivasan and transferors Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuraman had filed the disclosures in time, there is no violation of provision of Regulation 29(2) read with Regulation 29(3) of Takeover Regulations, 2011 and Regulation 13 of PIT Regulations as alleged. It was also pointed out while replying to the supplementary SCN that as per the earlier SCN, the delay for making disclosure under the Takeover Regulations was only 1 day;

12.4.3 Acquisition/ Transfer Date 31.12.2012: Acquisition by Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman, Mr. V Srinivasan and Mr. Narayan Sethuramon and transfer by Ms. Suchitra Murali Balakrishnan

12.4.3.1 That the acquisition made by Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman, Mr. V Srinivasan and Mr. Narayan Sethuramon was in the nature of inter-se transfer of shares amongst promoters, wherein they had each acquired 0.72% shares from Ms. Suchitra Murali Balakrishnan;

12.4.3.2 That further the transfer made by Ms. Suchitra Murali Balakrishnan on 31.12.2012 was in the nature of inter se transfer of shares amongst promoters, wherein she had transferred 2.88% shares to Ms. Vidya Srinivasan (0.72%), Mr. Murali Srinivasan Venkatraman (0.72%), Mr. V Srinivasan (0.72%) and Mr. Narayan Sethuramon (0.72%);

12.4.3.3 That since the total acquisition of 2.88% was covered by exemption provided under Regulation 10 of Takeover Regulations, 2011, each of the acquirers had also made a disclosure on 24.12.2012 to the stock exchange and the target company regarding the (then) proposed acquisition in consonance with Regulation 10(5);

- 12.4.3.4 *That thereafter, post the acquisition on 31.12.2012, each of the acquirers had filed the requisite disclosures dated 02.01.2013 (all couriered under one cover) under both Takeover Regulations and PIT Regulations to the stock exchanges, since 01.01.2013 happened to be a holiday on account of New year;*
- 12.4.3.5 *With regard to alleged delay of 2 days in making the disclosure to the stock exchange regarding acquisitions made on 31.12.2012 by Ms. Vidya Srinivasan and Mr. V. Srinivasan, alleged delay of 1 day in making disclosure to the stock exchange regarding acquisitions made on 31.12.2012 by Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon, and alleged delay of 2 days in making the disclosure to the stock exchange regarding transfer of shares by Ms. Suchitra Murali Balakrishnan, it has been submitted by each of the acquirers/ transferors, as applicable, that post the acquisition/ transfer vide letter dated 02.01.2013 (all couriered under one cover), the requisite disclosure under both Takeover Regulations and PIT Regulations were sent to the stock exchanges, since 01.01.2013 happened to be a holiday on account of New Year. Further, as regards the alleged delay of 1 day in making disclosure to the target company under the Takeover Regulations, 2011 and PIT Regulations pursuant to the acquisition/ transfer, it has been submitted that the same was sent by courier dated 02.01.2013 to the target company;*
- 12.4.3.6 *That the inadvertent delay occurred due to new year holidays going on at the relevant time, as the concerned staff handling documentation/ compliances etc. were on leave and not available. Further that as per the earlier SCN, the delay alleged under Takeover Regulations was only 1 day;*
- 12.4.3.7 *That admittedly the disclosures have been made, albeit belatedly, to the stock exchanges, which have been received by them and disclosures published on their website;*
- 12.5 *That the alleged violations (pertaining to filing of belated disclosures) are at the highest a technical, procedural and venial breach;*
- 12.6 *That the alleged violations are not deliberate and intentional;*

- 12.7 *That the alleged violations have not caused any loss to any investor and also not adversely affected the shareholders of the target company or the securities market in any manner since the shareholding of the promoter group remained same and individual promoters shareholding details were all along in public domain;*
- 12.8 *That there were no shareholder/ investor complaints;*
- 12.9 *That the Noticees have not made any gain or gained any unfair advantage;*
- 12.10 *That the alleged violation of Takeover Regulations and PIT Regulations are arising out of the same transaction and that Regulation 7(1) and Regulation 7(1A) of the Takeover Regulations, Regulation 29(2) of Takeover Regulations, 2011 and Regulation 13 of PIT Regulations are not stand alone regulations, but, one is corollary of the other;*
- 12.11 *In the matter, reference has been made to the Order dated September 04, 2014 passed by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of M/s. Vitro Commodities Pvt. Ltd. Vs. SEBI:*
- "It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations are not substantially different, since violation of first automatically trigger 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, 1997 and Regulation 13(1) of PIT Regulations are not stand alone Regulations and one is corollary of other."*

CONSIDERATION OF ISSUES AND FINDINGS

13. I have examined the SCNs and the supplementary SCNs issued to the Noticees, the submissions made by the Noticees in their replies and during the personal hearing and the documents available on record. The allegation against the Noticees is regarding violation of the Takeover Regulations, 1997 and/ or Takeover Regulations, 2011 and/or PIT Regulations, as applicable.

14. The issues that, therefore, arise for consideration in the present case are:

- 14.1 Whether the Noticee Ms. Vidya Srinivasan violated the provisions of Regulation 7(1) read with 7(2) of the Takeover Regulations, 1997 during the year 2011?
- 14.2 Whether the Noticees Ms. Vidya Srinivasan, Mr. V. Srinivasan violated the provisions of Regulation 7(1A) read with 7(2) of the Takeover Regulations, 1997 during the year 2011?
- 14.3 Whether the Noticees Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon violated the provisions of Regulation 29(2) read with 29(3) of the Takeover Regulations, 2011 during the year 2012, as applicable?
- 14.4 Whether the Noticees Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman, Mr. V. Srinivasan, Mr. Narayan Sethuramon and Ms. Suchitra Murali Balakrishnan violated the provisions of Regulation 29(2) read with 29(3) of the Takeover Regulations, 2011 during the year 2012/2013, as applicable?
- 14.5 Whether the Noticees Ms. Vidya Srinivasan, Mr. V. Srinivasan violated the provisions of Regulation 13(3) read with 13(5) of the PIT Regulations during the year 2011?
- 14.6 Whether the Noticees Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon violated the provisions of Regulation 13(3) and 13(4A) read with Regulation 13(5) of PIT Regulations during the year 2012?
- 14.7 Whether the Noticees Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman, Mr. V. Srinivasan, Mr. Narayan Sethuramon and Ms. Suchitra Murali Balakrishnan violated the provisions of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations during the year 2012/2013, as applicable?
- 14.8 Do the violations, if any, attract monetary penalty under Section 15 A(b) of SEBI Act?
- 14.9 If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

15. Before moving forward, it will be appropriate to refer to the relevant provisions of the Takeover Regulations, 1997, Takeover Regulations, 2011 and PIT Regulations which reads as under:

Regulation 7(1), (1A) & (2) of Takeover Regulation, 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.

7.(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) 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.

Explanation.—For the purposes of sub-regulations (1) and (1A), the term 'acquirer' shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.

7. (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.

Regulation 29(2) read with 29(3) of Takeover Regulations, 2011:

Disclosure of acquisition and disposal.

29.(2) Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.

29.(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—

- (a) every stock exchange where the shares of the target company are listed; and
- (b) the target company at its registered office.

PIT Regulations

¹[Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure]

13. (1)....

(2).....

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

¹ Substituted for the words “Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure.” by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011 w.e.f. 16-08-2011.

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)....

²*[(4A) Any person who is a promoter or part of promoter group 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 from the last disclosure made under Listing Agreement or under sub-regulation (2A) 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[(3), (4) and (4A)] 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.

FINDINGS

16. I now proceed with the alleged violations of the Takeover Regulations, 1997 and/ or Takeover Regulations, 2011 and/ or PIT Regulations, as applicable. The details of non-compliance by the Noticees are as given below:

² Inserted by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011 w.e.f. 16-08-2011.

³ Substituted for the symbols, numbers and word “(3) and (4)” by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011 w.e.f. 16-08-2011.

Name of the Acquirer/ Seller	Date of the transaction	Sale (-ve)/ purchase	Shareholding of the acquirers/sellers (in %)		Shareholding of the promoter group		Due date of compliance	Actual date of compliance	Delay (in days)	Alleged Violations
			Before acq/sale	After acq/sale	Before acq/sale	After acq/sale				
Mrs. Vidya Srinivasan	21.03.2011	774,370 (12.09%) (Inter-se transfer)	9.99	22.08	65.38	65.38	23.03.2011	*11.04.11 # 04.04.11	*19 #12	Reg 7(1) & 7(1A) r/w 7(2) of Takeover, 1997 and Reg 13(3) r/w 13(5) of PIT Reg
Mr. V. Srinivasan			12.09	0.00				*08.04.11 #04.04.11	*16 #12	Reg 7(1A) r/w 7(2) of Takeover, 1997 and Reg 13(3) r/w 13(5) of PIT Reg
Mrs. Vidya Srinivasan	31.10.2012	1,731,700 (27.02%) (Inter-se transfer)	22.14	49.16	66.50	66.50	02.11.2012	*05.11.12 # To SE 05.11.12 # To Co.03.11.12	*3 # 3 to SE # 1 to Co.	Reg 29(2) r/w 29(3) of Takeover regulations, 2011 and Reg 13(3) and 13(4A) r/w 13(5) of PIT Reg
Mr. Murali Srinivasan Venkatraman			14.54	0.00						
Mr. Narayan Sethuramon			12.48	0.00						
Mrs. Vidya Srinivasan	31.12.2012	46,000 (2.88%) (Inter-se transfer)	49.16	49.88	66.50	66.50	02.01.2013	*04.01.2013 # To SE 4.01.2013 #To Co. 03.01.2013	*2 # 2 to SE #1 to Co.	Reg 29(2) r/w 29(3) of Takeover Regulations, 2011 and Reg 13(4A) r/w 13(5) of PIT Reg.
Mr. Murali Srinivasan Venkatraman			0.00	0.72				*03.01.2013 # To SE 3.01.2013 #To Co. 3.01.2013	*1 # 1 to SE #1 to Co.	
Mr. V. Srinivasan			0.00	0.72				* 04.01.2013 # To SE 4.01.2013 # To Co. 3.01.2013	*2 # 2 to SE # 1 to Co.	
Mr. Narayan Sethuramon			0.00	0.72				*03.01.2013 # To SE 3.01.2013 # To Co. 3.01.2013	*1 # 1 to SE # 1 to Co.	
Mrs. Suchitra Murali Balakrishnan			4.55	1.67				*04.01.2013 # To SE 4.01.2013 # To Co. 3.01.2013	*2 # 2 to SE # 1 to Co.	

Note: * means compliance under Takeover Regulation with Co. & Exchg.

means compliance under PIT Regulation, 1992

SE means Stock Exchange & Co. means to company/ target company

17. The issue for consideration is whether the Noticees failed to make the relevant disclosures under the provisions of Takeover Regulations, 1997 and/or Takeover Regulations, 2011 and/ or PIT Regulations, as applicable, within the stipulated time.

18. It was observed that Noticees were the promoters of the Target Company and executed certain *inter-se* transfer amongst themselves on three occasions i.e. on 21.03.2011, 31.10.2012 and 31.12.2012. I note that the said transactions executed by the Noticees on the aforesaid dates obligated the Noticee promoters to make necessary disclosures under the Takeover Regulations, 1997 and/ or Takeover Regulations, 2011 and/ or PIT Regulations, as applicable, to the Target Company and the stock Exchanges where the shares of the company were listed.
19. A detailed examination of these transactions and the disclosures required to be made under the requisite provisions of Takeover Regulations, 1997 and/ or Takeover Regulations, 2011 and/ or PIT Regulations, if any, and the status of compliance by the Noticees to the same have been brought out below:

A. Transaction date 21.03.2011:

- I note that on 21.03.2011, Mr. V Srinivasan transferred 7,74,370 shares amounting to 12.09% of shares and voting rights of the company to Ms. Vidya Srinivasan as a result of which the shareholding of Mr. V Srinivasan in the company fell down to nil and shareholding of Ms. Vidya Srinivasan increased from 9.99% to 22.08%;
- Thus, since Ms. Vidya Srinivasan had acquired shares entitling her more than ten per cent shares in the company, under Regulation 7(1) of Takeover Regulations, 1997, she was required to disclose the aggregate of her shareholding or voting rights in the company to the company and to the stock exchanges. However, I note that the same was done with a delay of 19 days on 11.04.2011;
- Further, I find that the total promoter shareholding at the relevant point of time was 65.38%, thus, covered within the scope of Regulation 11(2) of Takeover Regulations, 1997. I further find that Regulation 7(1A) at the relevant point of time, required that 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) of regulation 11 (which was inserted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2009 w.e.f. November 06, 2009) 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. As per sub-regulation (2) of Regulation 11, no acquirer, who together with persons acting in concert with him, holds fifty-five per cent (55%) or more but less than seventy-five per cent (75%) of the shares or voting rights in a target company, shall acquire either by himself or through or with persons acting in concert with him any additional shares entitling him to exercise voting rights or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations. The second proviso to sub-regulation (2) of Regulation 11 states that such acquirer may, notwithstanding the acquisition made under regulation 10 or sub-regulation (1) of regulation 11, without making a public announcement, acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him upto 5% voting rights in the target company subject to the acquisition being made through open market purchase in normal segment on the stock exchange and the post acquisition shareholding of the acquirer together with persons acting in concert does not increase beyond 75%. The said proviso to Regulation 11(2) was incorporated with effect from October 30, 2008. In the case at hand, I note that the Noticees have submitted that the *inter-se* transfer between Ms. Vidya Srinivasan and Mr. V Srinivasan was an off-market transaction. The extant case will get covered by Regulation 7(1A) provided it falls under second proviso of Regulation 11(2). However, the present acquisition, being off market, is not covered under the ambit of the second proviso to Regulation 11(2). I further note from the submissions made by Noticee Mr. V. Srinivasan that he was the promoter in the company for over two decades till 03.07.2013, when M/s. Kingfa Sci & Tech. Co. Ltd. acquired control over the company. Hence, I note that though Mr. V. Srinivasan had transferred his entire holding through this transaction dated 21.03.2011, however, he continued to be a promoter of the company and had also subsequently in 2012 acquired shares of the company from another promoter Ms. Suchitra Murali Balakrishanan. This being the case, I find that he continued to remain as a person acting in concert with the promoters. Being an *inter-se* transfer between promoters, the transaction was, thus, covered under the exemption available in Regulation 3(3) read with 3(4) of the Takeover Regulations, 1997 and I understand that

such filings were made with the stock Exchange and SEBI respectively. Hence I find that the transfer of shares between Ms. Vidya Srinivasan and Mr. V Srinivasan is not covered under Regulation 7(1A) read with 7(2) of the Takeover Regulations, 1997 as alleged in the SCN;

- We will now consider whether Ms. Vidya Srinivasan and Mr. V Srinivasan were required to make the relevant disclosure under the provisions of Regulation 13 (3) read with 13 (5) of PIT Regulations. I find that each of the Noticees viz. Ms. Vidya Srinivasan and Mr. V Srinivasan held more than 5% shares and their acquisition/ transfer, as applicable, exceeded the 2% threshold as per Regulation 13(3). Hence, I find that each of the Noticees viz. Ms. Vidya Srinivasan and Mr. V Srinivasan were required to make the relevant disclosure to the company within two working days of the said acquisition/ sale of shares, as applicable, under Regulation 13(3) read with 13 (5) of PIT Regulations. I note that such disclosure under PIT Regulations was done by each of Ms. Vidya Srinivasan and Mr. V Srinivasan with a delay of 12 days on 04.04.2011;
- I find that Ms. Vidya Srinivasan and Mr. V Srinivasan in their replies have admitted the delayed compliances and submitted that the disclosures were belatedly received by the exchanges and the company. However, they have denied that there was a delay of 19 days in making disclosures under the Takeover Regulations, 1997 as alleged and stated that at the highest there could have been 12 days delay as in the case of PIT Regulations. However, I find that they have not provided any documentary proof in support thereof. It has been merely stated that the disclosures were sent by them vide letters dated 23.03.2011, which was the due date for compliance;
- In the matter, I note that it is pertinent to mention here that ***Securities Appellate Tribunal (SAT) in Appeal no. 49/2001, Mega Resources Ltd. Vs SEBI dated 19.03.2002*** has made the following observation:
“....the regulation is not simply on sending the information, it requires disclosure. Mere dispatch of the information is short of the said requirement.....Regulation 7(1) requires the acquirer to disclose the aggregate of this holding...Thus the requirement is that the information should reach the person to whom it is meant. The obligation does not end by simply posting the information in a letterbox...I am not inclined to view that by posting a letter under certificate of posting, stating the shareholding by itself is sufficient compliance

of regulation 7(1). In my view the Appellant has failed to comply with the requirement of regulation 7(1), for the reason that it has failed to make the disclosure of the requisite information to Bombay Dyeing.”

- Thus, I conclude that Ms. Vidya Srinivasan has admitted violation of Regulation 7(1) read with 7(2) of the Takeover Regulations, 1997 and Regulation 13(3) read with 13(5) of the PIT Regulations. Further, Mr. V Srinivasan has also admitted violation of Regulation 13(3) read with 13(5) of the PIT Regulations for transaction date 21.03.2011. The number of days of delay is as given in table at Para 14 of the Order.

B. Transaction date 31.10.2012:

- I note that on 31.10.2012, Mr. Murali Srinivasan and Mr. Narayan Sethuramon transferred 17,31,700 shares amounting to 27.02% of shares and voting rights of the company to Ms. Vidya Srinivasan, as a result of which the shareholding of Mr. Murali Srinivasan and Mr. Narayan Sethuramon in the company fell down to Nil from 14.54% and 12.48% respectively and the shareholding of Ms. Vidya Srinivasan increased from 22.14% to 49.16%;
- Ms. Vidya Srinivasan, Mr. Narayan Sethuramon and Mr. Murali Srinivasan have submitted that the said transaction was covered by exemption provided under Regulation 10 of Takeover Regulations, 2011 and disclosure of the said proposed acquisition was made on 22.10.2012 to the stock exchanges and company under Regulation 10(5). They further submitted that post acquisition on 31.10.2012, Ms. Vidya Srinivasan, Mr. Narayan Sethuramon and Mr. Murali Srinivasan had filed the requisite disclosure on 01.11.2012 under Regulation 29(2) and Regulation 10(6) of Takeover Regulations, 2011 and Regulation 13(3) and Regulation 13(4A) of the PIT Regulations;
- I note that Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon, together with persons acting in concert with them, were holding more than 5% shares in the company. Hence, they were required under Regulation 29(2) to disclose every acquisition or disposal of two percent or more shares of the company as an acquirer. I note further that Regulation 3(3) of Takeover Regulations, 2011 provides that acquisition of shares by any person, such that individual shareholding of such person acquiring shares exceeds the stipulated thresholds, shall also be attracting the obligation to make an open

offer for acquiring shares of the target company, irrespective of whether there is a change in the aggregate shareholding with persons acting in concert. I, thus, note that Takeover Regulations, 2011 makes it categorically clear that even an individual acquirer is liable to make a public offer, in case of *inter se* transfer of shares, if the individual shareholding increases above the threshold. By the same logic, it follows that an acquirer/ seller is also liable to make disclosures for his own acquisitions/ sale, as applicable, under Regulation 29(2) of Takeover Regulations, 2011, if such acquisition or disposal represents two per cent or more of the shares or voting rights of the company;

- I note that Ms. Vidya Srinivasan who acquired more than 2% shares by virtue of transaction dated 31.10.2012, was thus, required under Regulation 29(2) read with 29(3) to make disclosure of acquisition to the company and the stock exchange where the shares were listed by 02.11.2012. However, same was made on 05.11.2012. I, thus, note that there was a delay of 3 days in filing disclosure to the exchanges and the company under Regulation 29(2) read with 29(3) of Takeover Regulations, 2011 by Noticee Ms. Vidya Srinivasan;
- Further, I note that Noticee promoters viz. Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon had each disposed of more than two percent shares of the company vide transaction dated 31.10.2012. I note that under Regulation 29(2) of the Takeover Regulations, 2011, disclosure of disposal of such shares representing two per cent or more of the shares or voting rights in the company was also required to be made. I note further that Regulation 29(3) refers to disclosure within two working days of the receipt of intimation of allotment of shares or the acquisition of shares or voting rights in the company. Regulation 29(3) does not specifically refer to disclosure within two working days of disposal of shares. In the matter, I find that the ***Hon'ble Supreme Court of India in K. P. Verghese Vs. Income Tax Officer, Ernakulam & another (1981) 3 SCC 173*** observed as under while dealing with interpretation on statutory provisions:

"The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical symbols. It is an attempt to discover the intent of the legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and as pointed by Lord Denning, it would be idle to expect every statutory provision to be drafted with divine

prescience and perfect clarity. We can do no better than to repeat the famous words of Judge Learned Hand when he said:

... "it is true that the words used, in another literal sense, are the primary and ordinarily less reliable source of interpreting and meaning of any writing; be it a statute, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning"

- It, thus, follows that merely because Regulation 29(3) does not specifically refer to disclosure within two working days of “*disposal of shares*”, it does not imply that there is no time limit for disclosure of disposal representing two per cent or more of the shares or voting rights in the target company, although there is a requirement of making such disclosure under Regulation 29(2). I note here that both under Takeover Regulations, 1997/2011 and under PIT Regulations, wherever disclosure is required, time limit within which such disclosure is required to be made has been prescribed therein. Thus, disposal of shares representing two per cent or more of the shares or voting rights in the target company under Regulation 29(2) of Takeover Regulations, 2011 cannot be an exception. I, thus, conclude that the intent of the legislature was that even disposal of shares representing two per cent or more of the shares or voting rights in the target company, was also required to be made to the target company and the stock exchange where the shares are listed, within two working days of disposal of such shares. The intent becomes clear from the language of Regulation 29(3) which reads as follows: “*The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days*”. Hence, Noticee promoters viz. Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon were also required to make disclosure of the disposal of the shares held by them, individually as well as in aggregate being PACs, to the company and the stock exchange where the shares were listed by 02.11.2012. However, same was made on 05.11.2012. I, thus, note that there was a delay of 3 days in filing disclosure to the exchanges and the company under Regulation 29(2) read with 29(3) of Takeover

Regulations, 2011 by Noticee promoters viz. Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon as well;

- The Noticee promoters viz. Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon were also required to make disclosures under Regulation 13(3) read with Regulation 13(5) of the PIT Regulations by 02.11.2012 as each one of them was individually also holding more than 5% shares in the company and change in each of their shareholding by virtue of the transaction dated 31.10.2012 exceeded 2% of the total shareholding, however the same was made on 05.11.2012 to the stock exchange and on 03.11.2012 to the company;
- Further, being promoters of the company, Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon were also required to disclose any change in their shareholding in excess of Rs 5 lakh in value or 25,000 shares or 1% of the paid up capital, under Regulation 13(4A) (inserted by SEBI (PIT) Amendment Regulations, 2011 w.e.f. 16.08.2011) read with Regulation 13(5) of the PIT Regulations. Since the change in their shareholding after the transaction on 31.10.2012 exceeded 1%, Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon ought to have disclosed the same under Regulation 13(4A) read with Regulation 13(5) of PIT Regulations by 02.11.2012. However, the same was made on 05.11.2012 to the stock exchange and on 03.11.2012 to the company;
- Thus, I note that there was a delay of 1 day in filing the disclosure with the company and delay of 3 days in filing the disclosure with the stock exchange under Regulation 13(3) and Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations;
- Though the concerned Noticees have *inter alia* stated that disclosure of the said proposed acquisition was made on 22.10.2012 to the stock exchanges and company under Regulation 10(5) of the Takeover Regulations, 2011, I note that the ***Hon'ble Securities Appellate Tribunal (SAT) in Premchand Shah and Others V. SEBI (Appeal no. 108 of 2010 decided on 21.02.2011)***, has held as follows:

"..... When law prescribes a manner in which a thing is to be done, it must be done only in that manner or not at all. Both sets of regulations prescribe formats in which the disclosures are to be made and those are then put out for the information of the general public through

special window(s) of the stock exchange which did not happen in this case. The fact that non disclosure has been made penal makes it clear that the provisions of regulation 7(1A) of the takeover code and regulations 13(3) and 13(4) of the insider regulations are mandatory in nature. Non disclosure of the information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take an informed decision while making investments."

- The Noticees Ms. Vidya Srinivasan, Mr. Narayan Sethuramon and Mr. Murali Srinivasan have *inter alia* also submitted that the letter containing the disclosure as required under Regulation 29(2) read with 29(3) of the Takeover Regulations, 2011 and under PIT Regulations were sent by courier dated 01.11.2012 to the stock exchanges (BSE & MSE). The said courier was to be delivered on the next day i.e. 02.11.2012, but, it has been submitted that it appears that either the courier got delivered on 3.11.2012 or the stock exchange after receiving the same on 02.11.2012 (i.e. Friday), might have published the disclosure on 5.11.2012, since 3.11.2012 and 4.11.2012 being Saturday and Sunday respectively;
- I, thus, note that Noticees Ms. Vidya Srinivasan, Mr. Narayan Sethuramon and Mr. Murali Srinivasan have admitted the delayed compliance. Though it has been also submitted that the acquirer Ms. Vidya Srinivasan and transferors Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuraman had filed the disclosures in time, as such, there is no violation of provision of Regulation 29(2) read with Regulation 29(3) of Takeover Regulations, 2011 and Regulation 13 of PIT Regulations as alleged, as has been brought out in the preceding para of the Order, the Hon'ble SAT has held that requirement is that the information should reach the person to whom it is meant and the obligation does not end by simply posting the information in a letterbox;
- The Noticees Ms. Vidya Srinivasan, Mr. Narayan Sethuramon and Mr. Murali Srinivasan have not provided any documentary proof that the disclosure was received by the stock exchanges/ company, as applicable on or before 02.11.2012. In view of the above and in light of the judgment of the **Hon'ble SAT in Appeal no. 49/2001, Mega Resources Ltd. Vs SEBI dated March 19, 2002** cited in the preceding para, I conclude that Noticees Ms. Vidya Srinivasan, Mr. Narayan Sethuramon and Mr. Murali Srinivasan have admitted violation of

Regulation 29(2) read with Regulation 29(3) of Takeover Regulations, 2011 and Regulation 13(3) and Regulation 13(4A) read with Regulation 13(5) of PIT Regulations for transaction date 31.10.2012. The number of days of delay is as given in table at Para 14 of the Order.

C. Transaction date 31.12.2012:

- I note that on 31.12.2012, Ms. Suchitra Balakrishnan transferred 46,000 shares amounting to 2.88% of the paid-up capital of the company to Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman, Mr. V Srinivasan and Mr. Narayan Sethuramon as a result of which the shareholding of Mrs. Suchitra Balakrishnan fell from 4.55% to 1.67%, and shareholding of Ms. Vidya Srinivasan increased from 49.16% to 49.88% & shareholding of each of Mr. Murali Srinivasan Venkatraman, Mr. V Srinivasan and Mr. Narayan Sethuramon increased from nil to 0.72% respectively;
- The Noticee acquirers Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman, Mr. V Srinivasan and Mr. Narayan Sethuramon submitted that since the total acquisition of 2.88% was covered by exemption provided under Regulation 10, each of the acquirers had also made a disclosure on 24.12.2012 to the stock exchange and the target company regarding the (then) proposed acquisition in consonance with Regulation 10(5);
- I note that Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman, Mr. V Srinivasan, Mr. Narayan Sethuramon and Ms. Suchitra Balakrishnan, together with persons acting in concert with them, were holding more than 5% shares in the company. Hence, they were required under Regulation 29(2) read with 29(3) of Takeover Regulations, 2011 disclose to the company and the stock exchange where the shares were listed, acquisition/ disposal of shares by them representing two per cent or more of the shares or voting rights in the company. Further as brought out in the preceding paras of this Order, under Regulation 29(2) of Takeover Regulations, 2011, it was necessary that acquisition or disposal representing two per cent or more of the shares or voting rights of the individual acquirers, even in case of *inter se* transfer of shares, was required to be disclosed;
- I note that Ms. Suchitra Murali Balakrishnan had disposed of 2.88% shares of the company by virtue of transaction dated 31.12.2012. In view of detailed discussion brought out in the

preceding paras for the earlier transaction that even disclosure of disposal of shares under Regulation 29(2) read with 29(3) was required to be made within two working days of disposal of shares, Noticee promoter viz. Ms. Suchitra Balakrishnan was required to make disclosure of disposal of shares by 02.01.2013. However, I note that the same was made by her on 04.01.2013. I, thus, note that there was a delay of 2 days in filing disclosure to the exchanges and the company under Regulation 29(2) read with 29(3) of Takeover Regulations, 2011 by Noticee promoter viz. Ms. Suchitra Murali Balakrishnan;

- I further note that acquisition by Noticee promoters viz. Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman, Mr. V Srinivasan and Mr. Narayan Sethuramon, by virtue of transaction dated 31.12.2012, as persons acting in concert with each other, represented two per cent or more of the shares or voting rights in the company. Hence, they too, as persons acting in concert, were required to make disclosure of acquisition of shares under Regulation 29(2) read with 29(3). I, thus, note that Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman, Mr. V Srinivasan and Mr. Narayan Sethuramon, as persons acting in concert, were required to make disclosure of acquisition by 02.01.2013. However, I note that the same was made on 04.01.2013 by each of Ms. Vidya Srinivasan and Mr. V Srinivasan, and on 03.01.2013 by each of Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon. I, thus, note that there was a delay of 2 days in filing disclosure to the exchanges and the company under Regulation 29(2) read with 29(3) of Takeover Regulations, 2011 by Noticees viz. Ms. Vidya Srinivasan and Mr. V Srinivasan and a delay of 1 day in filing disclosure to the exchanges and the company under Regulation 29(2) read with 29(3) of Takeover Regulations, 2011 by Noticees viz. Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon in respect of acquisitions made by them by acting in concert;
- Further being a promoter, and since the change in shareholding after the transaction on 31.12.2012 exceeded 1%, Ms. Suchitra Balakrishnan also ought to have made disclosure by 02.01.2013 under Regulation 13(4A) read with Regulation 13(5) of PIT Regulations. However same was disclosed by her to the company on 03.01.2013 with a delay of one (1) day and to the stock exchanges on 04.01.2013 with a delay of two (2) days;

- With respect to the transaction on 31.12.2012, I note that the change in shareholding of each of the Noticee promoters viz. Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman, Mr. V Srinivasan and Mr. Narayan Sethuramon did not exceed Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights. In view of the same, I am of the view that for the transaction dated 31.12.2012, Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman, Mr. V Srinivasan and Mr. Narayan Sethuramon were not liable to file disclosures under Regulation 13(4A) read with Regulation 13(5) of PIT Regulations;
- I note that the Noticee promoters concerned have submitted that the requisite disclosure under Takeover Regulations, 2011 and/ or PIT Regulations for transfer/ acquisitions, as applicable, made by them on 31.12.2012 was sent by courier dated 02.01.2013 to the stock exchanges (BSE & MSE) and the target company, since 01.01.2013 happened to be a holiday on account of New Year. I find that the Noticee promoters has *inter alia* submitted that the inadvertent delay occurred due to new year holidays going on at the relevant time as the concerned staff were on leave and not available. The Noticee promoters concerned have further admitted that the disclosures have been made, albeit belatedly to the stock exchange;
- I, thus, conclude that the Noticee promoters viz. Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman, Mr. V Srinivasan, Mr. Narayan Sethuramon and Ms. Suchitra Balakrishnan have violated Regulation 29(2) read with 29(3) of Takeover Regulations, 2011 for transaction date 31.12.2012. Further that Ms. Suchitra Balakrishnan has violated Regulation 13(4A) read with Regulation 13(5) of PIT Regulations for transaction date 31.12.2012. The number of days of delay is as given in table at Para 14 of the Order;
- Further Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman, Mr. V Srinivasan and Mr. Narayan Sethuramon were not required to make disclosures under the PIT Regulations as alleged for the transaction dated 31.12.2012. I, thus, absolve them of the charge of violation of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations for the transaction dated 31.12.2012.

20. I note further from the submissions made by the Noticees that since the buyers and sellers were both part of the promoter group, the transactions did not lead to a change in the overall

shareholding of the company. Similar facts were examined by the learned Adjudicating Officer in the Order against Bindal Synthetics Private Limited (hereinafter referred to as '**Bindal**') dated January 31, 2014, wherein the Noticee viz. Bindal was a promoter group company that had sold 2.92% of share capital of the target company M/s. Blue Blends (India) Limited (hereinafter referred to as '**BBIL**') to one Mr. Anand Arya, who was also a part of the promoter group. The said transaction was, thus, *inter se* transfer between the promoters. Further, as a result of this transaction there was no change in the overall promoter shareholding of BBIL. Bindal, the Noticee therein had contended that since the acquirer of the shares Mr. Anand Arya had made the requisite disclosure under the Takeover Regulations, 1997, the disclosure on part of the Noticee Bindal under Takeover Regulations, 1997 was not required, as it would not materially make any difference to the price of the scrip, as the information was already in public domain. The Learned Adjudicating Officer had held that under regulation 7(1A) of the Takeover Regulations, 1997, there is an independent and separate statutory obligation of making disclosure both on the purchaser as well as seller of the shares, and disclosure by purchaser of shares does not absolve the seller of shares or vice versa from making the relevant disclosure under the afore-mentioned regulation. Vide its Order dated 09.06.2014, the Hon'ble SAT has upheld the Order of the Adjudicating Officer. It was also held therein that disclosures made under PIT Regulations does not absolve from an acquirer or seller of shares from obligation to make disclosure under regulation 7(1A) of Takeover Regulations, 1997. Hence, I note that the buyers and sellers are separately liable to make disclosures of the purchase / sale under Takeover Regulations, 2011, even if they form part of the same PAC group. Also disclosure made under PIT Regulations does not absolve the Noticees from making disclosures under Takeover Regulations, 2011 and vice versa.

21. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..."*. 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."*

22. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty on the five Noticee promoters viz. Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman, Mr. V Srinivasan, Mr. Narayan Sethuramon and Ms. Suchitra Murali Balakrishnan under Section 15A(b) of the SEBI Act, which reads as under:

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 therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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.

23. While determining the quantum of monetary penalty under Section 15 A(b), I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

"15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under Section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.*

24. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made

as a result of such default by the Noticee. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticee. However, the disclosures under Regulation 13 of the PIT Regulations aims to make insider trading transparent by facilitating exposure of any illegal trade, and, thereby, serving as a deterrent. Further, the main objective of the Takeover Regulations, 1997 and Takeover Regulations, 2011 is to afford fair treatment for shareholders who are affected by the change in control. The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decision. Thus, the cornerstone of both Takeover Regulations and PIT Regulations is investor protection.

25. Besides, I note that the ***Hon'ble Securities Appellate Tribunal (SAT) in the matter of Komal Nahata Vs. SEBI (Date of judgment- 27.01.2014)*** has observed that:

“Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure.”

In view of the same, the argument put forth by the Noticee promoters that the alleged violations have not caused any loss to any investor, nor, has it adversely affected the shareholders of the target company or the securities market in any manner, since the shareholding of the promoter group remained same & individual promoters shareholding details were all along in public domain, also that there were no shareholder/ investor complaints - is not relevant for the given case.

26. I also note that in ***Appeal No. 78 of 2014 of Akriti Global Traders Ltd. Vs. SEBI, the Hon'ble Securities Appellate Tribunal (SAT) vide Order dated September 30, 2014*** had observed that:

“... Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay.”

In view of the same, the argument put forth by the Noticees that the alleged violations were not deliberate and intentional and that the Noticees have not made any gain or gained any unfair advantage is also not relevant for the given case.

27. In addition to the aforesaid, I am also inclined to consider the following mitigating factors while adjudging the quantum of penalty: a) the paid-up capital/ market capitalization of the company at the relevant point of time; b) the trading volumes of the company's shares on the exchange, where the shares were listed, during the relevant period; and c) the number of occasions in the instant proceeding that the Noticees have violated the relevant provisions of the Takeover Regulations, 1997/2011 and/ or PIT Regulations, as applicable.

28. The paid up capital of the company was 64,07,204 shares of Rs. 10/- each aggregating to Rs. 6,40,72,040/- during the entire period of non-disclosure. I further note that during the relevant period, approx. 66.5% of the total paid-up capital of the company was held by the Promoter Group and there were about 4,500 shareholders in public shareholding category holding approx. 33.50% of total paid-up capital of the company. The market capitalization of the company was approx. Rs. 11 crore. Further, the average daily traded volume during the relevant period on BSE, where the equity shares of the company were listed, was approx. 3,000 shares.

29. I note that:

- **Ms. Vidya Srinivasan** has violated Regulations 7(1) read with 7(2) of the Takeover Regulations, 1997 on 1 occasion, Regulations 29(2) read with 29(3) of the Takeover Regulations, 2011 on 2 occasions, Regulation 13(3) read with 13(5) of PIT Regulations on 2 occasions and Regulation 13 (4A) read with 13(5) of PIT Regulations on 1 occasions;

- **Mr. V Srinivasan** has violated Regulations 29(2) read with 29(3) of the Takeover Regulations, 2011 on 1 occasion and Regulation 13(3) read with 13(5) of PIT Regulations on 1 occasion;
- **Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon** have each violated Regulations 29(2) read with 29(3) of the Takeover Regulations, 2011 on 2 occasions, Regulation 13(3) read with 13(5) of PIT Regulations on 1 occasion and Regulation 13 (4A) read with 13(5) of PIT Regulations on 1 occasions;
- **Ms. Suchitra Murali Balakrishanan** has violated Regulations 29(2) read with 29(3) of the Takeover Regulations, 2011 on 1 occasion and Regulation 13 (4A) read with 13(5) of PIT Regulations on 1 occasion.

30. I note that under Section 15A(b) of the SEBI Act, for violation of the aforesaid Regulations, the prescribed penalty is one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

31. I note that the Noticees have submitted that the details of their shareholding were already in public domain, *inter alia* by virtue of continuous quarterly disclosures made by the company to the stock Exchanges under clause 35 of the Listing Agreement. In the matter, I would like to refer to the ***Order of the Hon'ble Securities Appellate Tribunal (SAT) dated June 13, 2014 in the matter of M/s. Mafatlal Finance Company Limited (hereinafter referred to as 'MFCL')***, wherein the Hon'ble SAT has held that obligation to make disclosure under Regulation 8(1) and 8(2) of the Takeover Regulations, is independent of the obligation to make disclosure under clause 35 of the Listing Agreement, which is on the company. Here too, I find that the obligation to make disclosures under the relevant provisions of the Takeover Regulations/ PIT Regulations, as applicable, was on the Noticee promoters. Besides I find that in the extant case, the disclosures under the relevant provisions of the Takeover Regulations, 1997/ 2011 and/ or PIT Regulations were required to be disclosed within two days/ two working days of the receipts of intimation of allotment of shares, or, the acquisition or sale of shares or voting rights, as the case may be, whereas disclosure under clause 35 of the listing agreement is done on a quarterly basis, within 21 days from the end of each quarter.

32. I also note that the Noticees have argued that the alleged violation of Takeover Regulations and PIT Regulations are arising out of the same transaction and that Regulation 7(1) and Regulation 7(1A) of the Takeover Regulations, Regulation 29(2) of Takeover Regulations, 2011 and Regulation 13 of PIT Regulations are not stand alone regulations, but, one is corollary of the other. In the matter, reference has been made to the Order dated September 04, 2014 passed by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of M/s. Vitro Commodities Pvt. Ltd. Vs. SEBI. However, I am unable to accept this contention of the Noticees. The disclosures under the Takeover Regulations and those under the PIT Regulations are substantially different, and have to be filed under different forms, which vary from each other and those are then put out for the information of the general public through special window(s) of the stock exchange. In the matter, the Order of the ***Hon'ble Securities Appellate Tribunal (SAT) in Premchand Shah and Others V. SEBI (Appeal no. 108 of 2010 decided on 21.02.2011)***, has been relied upon in the preceding paras of the Order.

33. I would also like to rely on the judgment of ***Hon'ble SAT in Bindal Synthetics Private Limited Vs. SEBI (Appeal no. 75 of 2014 decided on 09.06.2014)***, wherein it was observed that "..... fact that the appellant had made disclosures under PIT Regulations, 1992 does not absolve appellants obligation to make disclosure under regulation 7(1A) of SAST Regulations, 1997." Hence, the disclosure made under PIT Regulations is not a substitute for the disclosure to be made under Takeover Regulations and vice versa.

34. I note that reference has been made by the Noticees to the decision of ***Hon'ble High Court of Bombay in the matter of SEBI Vs. Cobot International Capital Corporation Limited (Cobot) {2004 52 SCL 307 (BOM)}***, to highlight the Court's opinion to the effect that despite of the fact that Cobot had not filed any report under Regulation 3(4) of Takeover Regulations, 1997 which was mandatory, the Hon'ble High Court concurred with the view of Hon'ble SAT that non filing of the report in question was technical and minor defect or breach based on bonafide belief that Cabot was not liable or required to submit the report in view of the admitted exemption available under the SEBI Act and the Regulations. However, I note that the extant case is about delayed disclosures in respect of compliances required to be made under the Takeover

Regulations/ PIT Regulations. And any transaction which requires compliance to disclosure obligation under the Takeover Regulations/ PIT Regulations, if not complied, is always a serious matter, and cannot be considered a mere 'technical' violation, even if the transaction is otherwise in compliance, since the shareholders/ investors were deprived of the information. Besides, I note that it has since been clarified by the **Hon'ble Supreme Court in its Order dated May 23, 2006 in the case of Chairman SEBI vs. Shriram Mutual Fund and Anr.**, wherein the Hon'ble Supreme Court also held that *"In our opinion, mens rea is not an essential ingredient for contravention of the provisions of a civil act. In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."*

35. I note further that the Noticees have also pointed out that in the matter of M/s ERP Soft Systems Limited, the Adjudicating Officer took a lenient view and exonerated the Noticees therein from the charges leveled as per the SCN, despite returning a finding of violation of provisions of Regulation 29(2) of Takeover Regulations, 2011 & Regulation 13 of PIT Regulations, *inter alia* on the ground that transfer was by way of transmission and not a voluntary act, though neither the Takeover Regulations nor PIT Regulations carve out an exemption for not making disclosure when the acquisition is by way of transmission of shares. I note that vide the said Order while taking a lenient view by concluding that transmission of shares is not a fit case for imposition of monetary penalty, it was clearly brought out therein that unlike transfer of shares which relates to a voluntary act on the part of the shareholders, transmission is brought about by the operation of law and sans any voluntary act on their part. The extant case involves *interse* transfer of shares between the Noticee promoters and involved voluntary act on the part of the Noticees. Hence, I find that this contention of the Noticees too does not deserve any merit.

36. Also, even for the sake of argument, assuming that lower penalty has been imposed based on the facts and circumstances of those cases, it does not automatically imply that same lower

penalty need to be imposed in the extant case. The determination of penalty in the extant case would depend upon the facts and circumstances of the extant case. In the matter, I would like to refer to the ***Order of the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Hybrid Financial Services Limited Vs. SEBI (Appeal No.119 of 2014 and Order dated 12.06.2014)***, wherein SAT had observed as follows:

"..... argument that penalty imposed on appellant is excessive compared to penalty imposed in the case of M/s. Kamalakshi Finance Corporation Ltd. (supra) and Gupta Carpet International Ltd. is also without any merit, because, firstly, nothing is brought on record to show that facts in that case are similar to the facts in the present case. Secondly, assuming that excessive relief is granted by SEBI in some cases, it does not mean that in all other cases similar reliefs should be granted especially when the Regulations prescribe stringent action for non compliance of disclosure provisions which are mandatory....."

37. In view of the same, I conclude that the aforesaid Orders referred to by the Noticees cannot become the yardstick for imposing penalty in the extant case and the penalty in the extant case would depend on the facts and circumstances of the extant case.

38. Also, the Noticees being the promoters had a greater responsibility to ensure compliance with the applicable regulations, and, should have put in place appropriate levels of accountability and checks and balances, to make certain that the documents dispatched by the Noticee were received by the addressee(s) within the timeframe for compliance provided by the underlying regulations. I find that due to the Noticees not ensuring the receipt of documents at the recipients end within the timeframe provided under the relevant provisions of the Takeover Regulations, 1997/ 2011/ PIT Regulations, as applicable, there was delay in dissemination of information to the general investors.

ORDER

39. After taking into consideration all the facts and circumstances of the case, I impose the following penalty under Section 15 A(b) on the Noticees, which will be commensurate with the violations committed by them.

Date of transaction	Name of Noticee	Violation of Regulation	Penalty (Rs.)
21.03.2011	Ms. Vidya Srinivasan	7(1) of Takeover Regulations, 1997	3.5 lacs (Three lacs fifty thousand only)
	Ms. Vidya Srinivasan	13(3) r/w. 13(5) of	3.5 lacs (Three lacs fifty thousand only)
	Mr. V. Srinivasan	PIT Regulations	3.5 lacs (Three lacs fifty thousand only)
31.10.2012	Ms. Vidya Srinivasan	29(2) r/w. 29(3) of	4 lacs (Four lacs only)
	Mr. Murali Srinivasan Venkatraman	Takeover Regulations, 2011	3 lacs (Three lacs only)
	Mr. Narayan Sethuramon		3 lacs (Three lacs only)
	Ms. Vidya Srinivasan	13(3) r/w. 13(5) of	4 lacs (Four lacs only)
	Mr. Murali Srinivasan Venkatraman	PIT Regulations	3 lacs (Three lacs only)
	Mr. Narayan Sethuramon		3 lacs (Three lacs only)
	Ms. Vidya Srinivasan	13(4A) r/w. 13(5) of	4 lacs (Four lacs only)
	Mr. Murali Srinivasan Venkatraman	PIT Regulations	3 lacs (Three lacs only)
	Mr. Narayan Sethuramon		3 lacs (Three lacs only)
31.12.2012	Ms. Suchitra Murali Balakrishnan	13(4A) r/w. 13(5) of	2 lacs (Two lacs only)
	Ms. Suchitra Murali Balakrishnan	29(2) r/w. 29(3) of	2 lacs (Two lacs only)
	Mr. Murali Srinivasan Venkatraman	Takeover Regulations, 2011	2 lacs (Two lacs only) (payable jointly and severally)
	Mr. V. Srinivasan		
	Mr. Narayan Sethuramon		
	Ms. Vidya Srinivasan		

40. Further, considering the facts and circumstances of the case, I, however, find that the charge of violation of Regulation 7(1A) against Ms. Vidya Srinivasan and Mr. V Srinivasan for the transaction dated 21.03.2011 and the charge of violation of Regulation 13(4A) of the PIT Regulations against Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman, Mr. V. Srinivasan and Mr. Narayan Sethuramon for transaction dated 31.12.2012 does not stand established for reasons as discussed above. Hence, I do not find the instant matter fit for imposition of penalty on the Noticees for the same in terms of Section 15A(b) of SEBI Act and dispose of the proceeding accordingly.

41. The Noticee shall pay the said amount of penalty by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, within 45 days of receipt of

this order. The said demand draft should be forwarded to Shri Jayanta Jash, Chief General Manager, Corporation Finance Department, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

42. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: October 29, 2015

Place: Mumbai

Anita Kenkare
Adjudicating Officer