BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-5/BS/AO/144/2017-18]

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:

M/s Vasparr Shelter Ltd. *(Presently known as RV Lifestyle Limited)*
(PAN AABCV2888D)

In the matter of Vas Infrastructure Ltd.

BACKGROUND

1. Securities and Exchange Board of India (*hereinafter referred to as "**SEBI**"*) conducted investigation in the trading in the scrip of Vas Infrastructure Ltd. ("VIL") and into the possible violation of the provisions of Regulation 3(i) and 4 of SEBI (Prohibition of Insider Trading) Regulations, 1992 (*hereinafter referred to as "**PIT Regulations, 1992**"*), Regulation 7(1A) of 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)**, and Regulation 13(3) of PIT Regulations, 1992 by M/s Vasparr Shelter Ltd. *(presently known as RV Lifestyle Limited)* (hereinafter referred to as "**Noticee"**) in the scrip of VIL.

2. It was observed that the unaudited financial results of VIL for the quarter ended December, 2009 were taken on record in its Board Meeting held on January 30, 2010 and the same were informed by VIL to BSE vide its letter dated February 04, 2010, which published the same on its website on February 06, 2010 at 02:42 PM. As per the financial results for the quarter ending December, 2009, the profit of the company

was Rs 0.10 crore as compared to loss of Rs 0.17 crore for the quarter ending September, 2009. It was observed that the Noticee had sold off 3,10,000 shares (2.48%) of VIL on February 01, 2010 i.e. prior to the aforementioned financial results being made public. It is alleged that the Noticee was an 'insider' under the PIT Regulations, 1992, and by selling 3,10,000 shares on February 01, 2010 while in possession of unpublished price sensitive information (UPSI) had violated Regulation 3(i) and 4 of PIT Regulations, 1992.

3. The Noticee was holding 10,99,516 shares (8.80%) in VIL as on quarter ended December 2009 and it sold 3,10,000 (2.48%) shares of VIL on February 01, 2010. As the sale of shares was more than 2% of the share capital of VIL, it required a disclosure from the Noticee within 2 days of transaction to the company as well as to the stock exchange where the share of VIL are listed as stipulated by regulation 7(1A) of SAST Regulations, 1997. However, as per information from BSE, the Noticee made the disclosure to BSE on February 04, 2010 with a delay of one day, and therefore, it is alleged that Noticee violated the provisions of regulation 7(1A) of the SAST Regulations, 1997.

4. Further, as the sale of 3,10,000 (2.48%) shares of VIL on February 01, 2010 by the Noticee resulted in its shareholding change by more than 2%, the Noticee was required to disclose the change to the company in Form C as stipulated under Regulation 13(3) read with Regulation 13(5) of PIT Regulations 1992. It is alleged that the Noticee by not making the requisite disclosure has violated Regulation 13(3) read with Regulation 13(5) of PIT Regulations 1992.

APPOINTMENT OF ADJUDICATING OFFICER

5. Shri S.V. Krishnamohan, Chief General Manager was appointed as Adjudicating Officer **(AO)** vide SEBI's order dated September 24, 2015 to inquire into and adjudge under Sections 15G and 15A(b) of the SEBI Act, 1992, the aforesaid violations alleged to have been committed by the Noticee. 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

6. A Show Cause Notice dated March 16, 2016 (*hereinafter referred to as '**SCN**'*) was issued to the Noticee 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.

7. Vide letter dated April 4, 2016, the Noticee 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 Noticee requested for a time period of 4 weeks to file its reply to the SCN.

8. Vide letter dated July 23, 2016, the Noticee filed reply to the SCN and following are the main submissions therein –

No violation of the PIT Regulations:

i. *Regulation 3(i) and 4 of the 1992 PIT Regulations read as follows:*

> *"3.No insider shall-*
> *(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; ..*
>
> *4. Any insider who deals in securities in contravention of the provisions of regulation 3 or 3A shall be guilty of insider trading. "*

ii. *In this regard, the Hon'ble Securities Appellate Tribunal ("SAT") has, in the matter of Dilip S. Pendsev. SEBI (Appeal No. 80 of 2009) ruled that: "... the charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing higher must be the preponderance of probabilities in establishing the same ..."*

iii. *The SAT, in the context of the prohibition contained in Regulation 3 of the 1992 PIT Regulations, ruled in Mrs. Chandrakala v. SEBI (Appeal No. 209 of 2011) that:*

> *"[t]he prohibition contained in regulation 3 of the regulations apply only when an insider trades or deals in securities on the basis of any unpublished price sensitive information and not otherwise. It means that the trades executed should be motivated by the information in the possession of the insider ". If an insider trades or deals in securities of a listed company, **it may be presumed that he / she traded on the basis of unpublished price sensitive information in his / her possession unless contrary to the same is established. The burden of proving a situation contrary to the presumption mentioned above lies on the insider. If an insider shows that he /***

she did not trade on the basis of unpublished price sensitive information and that he / she traded on some other basis, he / she cannot be said to have violated the provisions of regulation 3 of the regulations".

iv. *Therefore, clearly, if Vasparr Shelter Ltd. (RVL Ltd.) can establish that its trades were not on the basis of UPSI, but on some other basis, it cannot be held to have violated Regulation 3 of the 1992 PIT Regulations. This was also reaffirmed by the Hon'ble SAT in Manoj Gaur v. SEBI (Appeal No. 64 of 2012).*

v. *In the present case, it is submitted that the Sale Transactions were not motivated by the UPSI. In this connection it is submitted that one of Vasparr's group company i.e. Yashraj Containeurs Ltd. ("YCL"), was required to pay a letter of credit ("LC") for repayment of charges of raw materials urgently to the Bank of India, Kandivali Branch. From the proceeds of the Sale Transaction an amount of Rs. 54.00 lacs was paid to YCL by RTGS on February 4, 2010, to repay the overdue LC charges of supplier. Accordingly YCL discharged and liquidated the LC payment. Further the balance amount of the sale proceeds were used to purchase shares of YCL.*

vi. *It is submitted that any insider who seeks to take advantage of UPSI, would choose to either buy or sell shares, depending on the nature of the UPSI in possession. If the information is 'positive' in character or 'beneficial' to the company, an insider would purchase shares with a view to sell the same when the information is made public, and thereby seek to make a profit. Similarly, if the information is 'adverse' to the company, the insider would sell shares of the company and seek to avoid the loss arising from the adverse information being made public. Section 114 of the Indian Evidence Act, 1872, permits Courts to presume the existence of any fact likely to have occurred having regard to the common course of human conduct and private business.*

vii. *In the present case, the fact that shares were sold by the Vasparr Shelter Ltd. (RVL Ltd.) at a time when it is alleged to be in possession of 'positive' UPSI is contrary to the very fundamental concept of insider trading. It is submitted therefore that it cannot be alleged that there was any violation on part of Vasparr Shelter Ltd. (RVL Ltd.) in relation to the Sale Transaction.*

viii. *The Hon'ble SAT in the decision of Mrs. Chandrakala v. SEBI (Appeal No. 209 of 2011 decided on January 31, 2012) has recognized that*

> *"...The prohibition contained in regulation 3 of the regulations apply only when an insider trades or deals in securities on the basis of any unpublished price sensitive information and not otherwise. It means that the trades executed should be motivated by the information in the possession of the insider. If an insider trades or deals in securities of a listed company, it may be presumed that he / she traded on the basis of unpublished price sensitive information in his / her possession unless contrary to the same is established.*
>
> *..where an entity is privy to unpublished price sensitive information it will tend to purchase shares and not sell the shares prior to the unpublished price sensitive information becoming public if the information is positive ...A person who is in possession of unpublished price sensitive information which, on becoming public is likely to cause a positive impact on the price of the scrip, would only buy shares and would not sell the shares before the unpublished price sensitive information becomes public and would immediately offload the shares post the information becoming public.*

We are also inclined to accept the argument of the learned counsel for the appellant that where an entity is privy to unpublished price sensitive information it will tend to purchase shares and not sell the shares prior to the unpublished price sensitive information becoming public if the information is positive. In this case declaration of financial results, dividend and bonus were positive information but the appellant not only bought but also sold the shares not only during the period when the price sensitive information was unpublished but also prior to and after the information becoming public. A person who is in possession of unpublished price sensitive information which, on becoming public is likely to cause a positive impact on the price of the scrip, would only buy shares and would not sell the shares before the unpublished price sensitive information becomes public and would immediately offload the shares post the information becoming public. This is not so in the case under consideration. The trading pattern of the appellant, as shown in the chart above, does not lead to the conclusion that the appellant's trades were induced by the unpublished price sensitive information. We are not inclined to agree with the learned counsel for the respondent that appellant's case is covered by the earlier decision of this Tribunal in the case of Ranjana R Kothari, referred to above. In that case, the learned authorized representative of the appellant admitted that charge of insider trading stood established against the appellant. Further, appellants in that appeal only purchased the shares while in possession of unpublished price sensitive information and there was no trading by them prior to or after the information becoming public. In the case in hand the charge of trading on the basis of unpublished price sensitive information has not only been denied by the appellant, it has also been able to demonstrate through her trading pattern that the trading was not based on the unpublished price sensitive information. We, therefore, cannot uphold the impugned order ..."

ix. *The UPSI in question pertains to the unaudited quarterly results of VIL for the quarter ended December 2009. VIL had, for the quarter in question, recorded a profit of Rs. 0.10 crores. This is in contrast to the preceding quarter, where it had recorded a loss of Rs. 0.17 crores. Clearly therefore the information in question was positive in nature. This is also borne out by the movement of the price of the scrip. While the weighted average price of the scrip on the BSE on February 1, 2010 (the date of the Sale Transaction) was Rs. 26.25, the same had increased by more than 53% to Rs. 40.25 on February 8, 2010, after the quarterly results were announced to the market on February 6, 2010. Clearly therefore, the information was positive in nature, and any insider seeking to profit from the same would buy, and not sell, in advance of such positive information being made public.*

x. *The Sale Transaction was absolutely contrary to the positive nature of the information, which establishes that the charge that the Sale Transaction was motivated by possession of UPSI is untenable. Vasparr's conduct clearly shows that the Sale Transaction was not in fact connected in any way to the alleged UPSI but was inter alia for the purpose of meeting the payment of liabilities of YCL.*

xi. *It is therefore submitted that Vasparr Shelter Ltd. (RVL Ltd.) cannot be held to have violated Regulations 3(i) and 4 of the 1992 PIT Regulations.*

No violation of Regulation 7(1A) of the 1997 SAST Regulations:

xii. *The SCN alleges that Vasparr Shelter Ltd. (RVL Ltd.) is in violation of Regulation 7(1A) of the 1997 SAST Regulations , as the requisite disclosure of the Sale Transaction was made on February 4, 2010, thereby occasioning a delay of one day.*

xiii. *The SAT has in Ravi Mohan & Others v. SEBI (Appeal No.97 of 2014, Order dated December 16, 20 15), categorically ruled that Regulation 7(1A) of the 1997 Takeover Regulations does not require disclosure of such transactions, in view of Regulation 7(2) of the 1997 Takeover Regulations. The Hon'ble Tribunal observed that:*

> *"Therefore, when the Takeover Regulations, 1997 provides that the disclosure obligation specified under regulation 7(1A) has to be discharged in the manner specified under regulation 7(1A) read with regulation 7(2) and regulation 7(2) does not provide for disclosure in relation to sale of shares in excess of the limits prescribed under regulation 7(1A), SEBI is not justified in holding that the appellants by failing to make disclosure of sales covered under regulation 7(1A) within the stipulated time, have violated regulation 7(1A) read with regulation 7(2) of the Takeover Regulations, 1997. Consequently, SEBI is not justified in imposing penalty on the appellants. It is apparent that after having specified two days time for complying with the obligation specified under regulation 7(1A), there was no need for SEBI to amend regulation 7(2) in relation to the disclosure obligation under regulation 7(1A). In any event, having deemed it fit to amend regulation 7(2), SEBI ought to have ensured that regulation 7(2) as amended contains a clause relating to disclosure of sale of shares or voting rights specified under regulation 7(1A). However, SEBI has failed to do so ...It is not even the case of SEBI, that regulation 7(1A) is self operative and that the obligation there under has to be discharged independent of regulation 7(2). In fact, in the impugned order, it is held by the AO that by failing to make disclosure to the stock exchanges regarding aggregate sale of shares or voting rights in excess of 2% of the share capital of the target company, the appellants are guilty of violating regulation 7(1A) read with regulation 7(2) of the Takeover Regulations, 1997. Therefore, when the Takeover Regulations, 1997 provides that the disclosure obligation specified under regulation 7(1A) has to be discharged in the manner specified under regulation 7(1A) read with regulation 7(2) and regulation 7(2) does not provide for disclosure in relation to sale of shares in excess of the limits prescribed under regulation 7(1A), SEBI is not justified in holding that the appellants by failing to make disclosure of sales covered under regulation 7(1A) within the stipulated time, have violated regulation 7(1A) read with regulation(2) of the Takeover Regulations, 1997. Consequently, SEBI is no/justified in imposing penalty on the appellants."*

xiv. *It is submitted that the ratio of this Hon'ble Tribunal's ruling above applies to the facts of the present case as a result of which no penalty can be imposed on Vasparr Shelter Ltd. (RVL Ltd.).*

xv. *No benefit has accrued to Vasparr Shelter Ltd. (RVL Ltd.). In fact, by selling the shares prior to the positive UPSI being made public, Vasparr Shelter Ltd. (RVL Ltd.) has demonstrated conduct that flies in the face of seeking to make a profit.*

xvi. *There was no gain, unfair advantage or benefit has accrued to Vasparr as a result of the delayed disclosure. No loss has been occasioned to investors as a result of the same, and it is not even SEBI's case that interests of investors have been adversely affected. Therefore, it is submitted that no penalty in respect of any alleged violation of Regulation 7(1A) of the 1997 SAST Regulations is warranted.*

Alleged violations of Regulations 13(3) and 13(5) of the 1992 PIT Regulations:

xvii. *It is alleged that Vasparr Shelter Ltd. (RVL Ltd.) failed to disclose to VIL its Sale Transaction in violation of Regulations 13(3) and 13(5) of the PIT Regulations.*

xviii. *It is submitted that in the present case, the factum of the Sale Transaction and the change in shareholding of Vasparr Shelter Ltd. (RVL Ltd.) was intimated to VIL and its shareholders. It is an admitted fact that the Sale Transaction was notified to the exchanged and thereby the public on February 6, 2010.*

xix. *Therefore, it can in no way be said that the factum of the change in shareholding was not intimated by Vasparr Shelter Ltd. (RVL Ltd.) to VIL. Though the intimation did not take place in the exact form and manner prescribed by Regulation 13(3) of the 1992 PIT Regulations, it did indeed take place, albeit in another manner. It is submitted that such an omission was unintentional, and not with any intent to unlawfully profit from the same.*

xx. *The Supreme Court in Vasudev Ramchandra Shelat v. Pranlal Jayanand Thakar AIR 1974 SC 1728 has observed that:*

> *"There is nothing in Regulation 18 to indicate that without strict compliance with some rigidly prescribed form, **the transaction must fail to achieve its purpose. The subservience of substance of a transaction to some rigidly prescribed form required to be meticulously observed, savors of archaic and outmoded jurisprudence.**"*

xxi. *Admittedly, in the present case, Vasparr Shelter Ltd. (RVL Ltd.) did disclose that it had sold 2.48% of its holding in VIL. Therefore, the form in which the disclosure is made ought to be irrelevant, where the substantive information has indeed been disclosed to the concerned parties.*

xxii. *Any default in the present case was unintentional, technical and no benefits have accrued to Vasparr Shelter Ltd. (RVL Ltd.) as a result of the same. It is respectfully submitted that no penalty ought to be imposed on Vasparr Shelter Ltd. (RVL Ltd.).*

9. An opportunity for personal hearing was provided to the Noticee on September 27, 2016, however an adjournment of the hearing was requested by the Noticee. 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 Noticee, and reiterated the submissions filed earlier in the Noticee's reply. The Noticees were granted time till November 15, 2016 to file additional written submissions. Vide letter dated November 15, 2016, the Noticee made the following submissions –

i. *It is reiterated that given that the allegations in the Show Cause Notice are squarely covered inter alia by the rulings of the Hon'ble securities Apellate Tribunal in the case of Mrs. Chandrakala v. SEBI (Appeal No. 209 of 2011) and Ravi Mohan & Others v. SEBI (Appeal No.97 of 2014, order dated December 16, 2015), judicial discipline would require that the same ratios be followed in the present case. The Hon'ble Supreme Court has in the case of Union of India and others v. Kamalakshi Finance Corporation Ltd. AIR 1992 SC 711 ruled that:*

> *"It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of*

the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of the judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not ''acceptable'' to the department- in itself an objectionable phrase- and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court…"

ii. *There were certain details sought from the Noticees in course of the personal hearing which are being furnished herewith. Accordingly, enclosed are the following –*
   a. *Copy of the contract note from the broker for VSL showing sale of shares of VIL on February 2, 2010.*
   b. *Copies of the bank statements of YCL and VSL showing payment of funds to YSL and by YSL to the Bank of India. It is to be noted that on February 3, 2010, the debit balance of YCL was Rs. 2.53 lakhs. The Bank of India debited various outstanding bills between February 3, 2010 and February 4, 2010 and dbit balance as on February 4, 2010 went up to Rs. 62.61 lakhs. Thereafter the proceeds of Rs. 54.00 lakhs was transferred by YCL to Bank of India pursuant to which debit balance decreased.*
   c. *Copy of the letter from the Bank of India requiring payment of one time settlement (OTS) by YCL pursuant to which payment was made by YCL to the Bank of India.*
   d. *Copy of the Hon'ble Supreme Court's ruling Kamalakshi's case (supra).*

10. Subsequent to the appointment of the undersigned as AO, the Noticee was granted one more opportunity of personal hearing on November 09, 2017. The authorized representatives (**ARs**) viz. 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 Noticee and reiterated their submissions made in 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 Noticee was granted time till November 20, 2017 to file additional replies, if any. Vide letter dated November 20, 2017, the ARs filed reply in the matter on behalf of the Noticee and primarily reiterated the submissions made vide their earlier replies.

CONSIDERATION OF ISSUES AND FINDINGS

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

I) Whether the Noticee has violated Regulation 3(i) and 4 of PIT Regulations, 1992, Regulation 7(1A) of SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011, and Regulation 13(3) of PIT Regulations, 1992?

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

III) Quantum of penalty.

FINDINGS

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

PIT Regulations, 1992

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

3. No insider shall—

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information;

Violation of provisions relating to insider trading.

4. Any insider who deals in securities in contravention of the provisions of regulation 3 or 3A shall be guilty of insider trading.

Continual disclosure.

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

13.(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;

SAST Regulations, 1997

7(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.

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;

Issue I) Whether the Noticee has violated Regulation 3(i) and 4 of PIT Regulations, 1992, Regulation 7(1A) of SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011, and Regulation 13(3) of PIT Regulations, 1992?

Violation of Regulation 3(i) and 4 of PIT Regulations, 1992

13. From the facts available on record, it is observed that the Noticee was holding 10,99,516 shares (8.80%) in VIL as at quarter ended December 2009 and it had sold 4,99,000 shares (3.99%) during the quarter ended March 2010. The details of sale of shares of VIL by the Noticee is as under:

Date	No. of shares sold	Shareholding
December 31, 2009		10,99,516 (8.80%)
February 01, 2010	3,10,000 (2.48%)	7,89,516 (6.32%)
February 22, 2010	1,89,000 (1.51%)	6,00,516 (4.80%)

14. The unaudited financial results of VIL for the quarter ended December, 2009 was taken on record in its Board Meeting held on January 30, 2010 and the same was informed by VIL to BSE vide its letter dated February 04, 2010, which published the same on its website on February 06, 2010 at 02:42 PM. As per the information provided by VIL to SEBI vide letter dated August 11, 2011, it is seen that the unaudited financial results of VIL for the quarter ended December 2009 were finalized on January 29, 2010. As

per VIL's letter dated April 27, 2012 to SEBI, it is seen that the following persons viz. Mr. Jayesh V. Valia, Chairman, Late Mr. S.K. Kittur, Director (expired on August 11, 2010), Ms. Avitree Kambli, Accountant and Auditor Mr. Jayprakash Sethiya (Kakaria & Associates, Vapi) were involved in finalization of the said quarterly results. Accordingly the period of UPSI has been taken to be from January 29, 2010 to February 06, 2010. It is also observed that the agenda for the meeting was circulated on January 30, 2010, and that two directors viz. Mr. Jayesh V. Valia - Chairman and Mr. S.K. Kittur - Director were present in the meeting. The above 2 directors in VIL are also directors in the Noticee.

15. It is alleged that since VIL was one of the promoters of the Noticee, Jayesh V Valia was common promoter director of VIL & Noticee, and Late Mr S.K. Kittur was common director of VIL & Noticee as on December 31, 2009 and March 31, 2010, Noticee is 'deemed to be connected person' as per Regulation 2 (h) (i) of PIT Regulations, 1992. It is further observed that, as per Noticee's letter dated July 18, 2014 to SEBI, the decision to sell the shares of VIL on February 01, 2010 on behalf of the Noticee was taken by Late Mr. S.K. Kittur, Director. Hence, the person who took the decision to sell shares of VIL on February 01, 2010 on behalf of the Noticee was in possession of UPSI and accordingly, Noticee is alleged to be an 'insider' under the definition of PIT Regulations, 1992. Accordingly, it has been alleged that Noticee, being an insider, had sold 3,10,000 shares of VIL on February 01, 2010 while in possession of UPSI and thereby violated Regulation 3(i) and 4 of PIT Regulations, 1992.

16. I note that the Noticee has not disputed the facts related to the selling of the shares on February 01, 2010. The Noticee has however contended that the reason for selling the shares was that one of its group companies namely Yashraj Containeurs Ltd (YCL) was required to pay a letter of credit for repayment of charges of raw materials urgently to Bank of India (Kandivali branch). By the selling of shares, and subsequently from the proceeds of the sale transaction, an amount of Rs. 54 lacs was paid to YCL on February 04, 2010, to repay the overdue LC charges of supplier, and accordingly, YCL was able to discharge and liquidate the LC payment. In support of its above

submissions, the Noticee has submitted certain documents. It has submitted the bank statement of YCL with Bank of India, showing that it had incurred debit balance in its account which had gone upto Rs. 62.61 lacs on February 04, 2010. The Noticee has also submitted its own bank statement showing transfer of Rs. 54 lacs to YCL's account on February 04, 2010 pursuant to which the debit balance in YCL's account has decreased. Based on the above, the Noticee has submitted that the sale transactions in the present case was not motivated by the UPSI. In this regard, I note that the Noticee has not disputed the presence of the UPSI, however it has contended that the purpose of the sale of shares was not to take advantage of UPSI but to effect immediate repayment of the letter for credit of YCL (its group companies) and has furnished documents viz. bank statements in its support. I find no evidence to the contrary based on the documents / material before me.

17. In support of its contentions, the Noticee has quoted the observations from the Hon'ble SAT in the decision of *Mrs. Chandrakala v. SEBI* (*Appeal No. 209 of 2011 decided on January 31, 2012)* as follows -

> *"...The prohibition contained in regulation 3 of the regulations apply only when an insider trades or deals in securities on the basis of any unpublished price sensitive information and not otherwise. It means that the trades executed should be motivated by the information in the possession of the insider. If an insider trades or deals in securities of a listed company, it may be presumed that he / she traded on the basis of unpublished price sensitive information in his / her possession unless contrary to the same is established.*
>
> *..where an entity is privy to unpublished price sensitive information it will tend to purchase shares and not sell the shares prior to the unpublished price sensitive information becoming public if the information is positive ...A person who is in possession of unpublished price sensitive information which, on becoming public is likely to cause a positive impact on the price of the scrip, would only buy shares and would not sell the shares before the unpublished price sensitive information becomes public and would immediately offload the shares post the information becoming public.*

18. Proceeding further, I note that the Hon'ble Securities Apellate Tribunal (SAT) in the case of Dilip S. Pendse vs. Securities and Exchange Board of India [Appeal no. 80 of 2009 decided on November 19, 2009], has observed that –

"The charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing, higher must be the preponderance of probabilities in establishing the same. In Mousam Singha Roy v. State of West Bengal (2003) 12 SCC 377, the learned judges of the Supreme Court in the context of the administration of criminal justice observed that, "It is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused." This principle applies to civil cases as well where the charge is to be established not beyond reasonable doubt but on the preponderance of probabilities. The measure of proof in civil or criminal cases is not an absolute standard and within each standard there are degrees of probability. .."

19. I note that the Noticee has further contended that the unaudited quarterly results of VIL for the December 2009 quarter was positive in nature and the same is evidenced from the movement of the price of the scrip. The Noticee has submitted that that the weighted average price of VIL was Rs. 26.25 on the day it sold the shares i.e. February 01, 2010, and subsequent to the publication of the results, the scrip had increased by more than 53% to Rs. 40.25 on February 08, 2010. The Noticee has argued that since the UPSI was positive in nature, any insider seeking to profit from the same would buy and not sell prior to such information being made public. In this regard, I note that as per the said quarterly results that was published on February 06, 2010, as compared to a loss of Rs. 0.17 crore in the preceding quarter i.e. September 2009, VIL had recorded a profit of Rs. 0.10 crore in the quarter ended December 2009. From the price movement of VIL, I also note that there was positive price movement in the scrip subsequent to the selling by the Noticee and the publication of the quarterly results of December 2009 quarter. In view of the above, I find merit in the contention of the Noticee that the sale transaction was contrary to the positive nature of the information. Accordingly, I find that the trading pattern of the Noticee does not indicate that its

trading was on the basis of UPSI. Hence, considering the facts and circumstances of the case, I am inclined to give benefit of doubt to the Noticee, especially considering the fact that the Noticee had sold prior to the positive announcement, and there was positive price movement subsequent to the publication of the quarterly results and also the Noticee's submission that the sale transaction was inter alia for the purpose of meeting the payment liabilities of YCL. Accordingly, I conclude that the alleged violation of Regulations 3(i) and 4 of PIT Regulations, 1992 by the Noticee des not stand established.

Disclosure Violations under Regulations 7(1A) of the SAST Regulations, 1997 and Regulation 13(3) read with 13(5) of PIT Regulations, 1992

20. From the facts and materials on record, I observe that Noticee sold 3,10,000 shares of VIL on February 01, 2010 i.e. 2.48% of the total shares of VIL. As the sale of the aforesaid quantity of shares of VIL by the Noticee was in excess of 2% of the share capital of VIL, it required a disclosure from the Noticee within 2 days of transaction to the company as well as to the stock exchange as stipulated under regulation 7(1A) of SAST Regulations, 1997, and to the company in Form C as stipulated under Regulation 13(3) read with Regulation 13(5) of PIT Regulations 1992. As per the documents on record, it is observed that BSE has informed SEBI vide email dated December 11, 2014 that the Noticee has made disclosure under Regulation 7(1A) of SAST Regulations, 1997 to BSE on February 04, 2010, with a delay of one day. With regards, to the disclosure under PIT Regulations, 1992, it is observed that vide letter dated August 06, 2011, Noticee had submitted to SEBI, the copies of all the disclosures made under PIT Regulations, 1992 and SAST Regulations, 1997 made by it. The same however did not contain the disclosure under Regulation 13(3) of PIT Regulations, 1992. It was therefore alleged that the Noticee violated the provisions of regulation 7(1A) of the SAST Regulations, 1997, and Regulation 13(3) read with Regulation 13(5) of PIT Regulations 1992.

21. I note that the Noticee vide reply dated July 23, 2016 to the SCN, has contended that the sale transactions were not required to be disclosed under Regulation 7(1A) read with 7(2) of SAST Regulations, 1997. It has submitted that the Hon'ble SAT has in Ravi Mohan & Others v. SEBI (Appeal No.97 of 2014, Order dated December 16, 20 15), categorically ruled that Regulation 7(1A) of the 1997 Takeover Regulations does not require disclosure of such transactions, in view of Regulation 7(2) of the 1997 Takeover Regulations. In this regard, I note from the SCN that the allegation against the Noticee in the present matter is the violation of Regulation 7(1A) of SAST Regulations, 1997 which states that - "*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".* From the above, I note that the aforesaid regulations specifies that both purchase and sale has to be disclosed to the company and stock exchange with two days of such purchase or sale. Accordingly, I find that the Noticee was required to make disclosure as stipulated under the provisions of Regulation 7(1A) of SAST Regulations, 1997. From the facts and material available on record, I note that BSE has vide email dated December 11, 2014 to SEBI has informed that the Noticee has made the disclosure under Regulation 7(1A) of SAST Regulations, 1997 to BSE on February 04, 2010 i.e. with a delay of 1 day. Taking into factor the minor delay viz. 1 day by the Noticee, I am inclined to take a lenient view in respect of the Noticee with regards to the alleged violation of Regulation 7(1A) of SAST Regulations, 1997.

22. With regards to the disclosure under Regulation 13(3) read with 13(5) of PIT Regulations, 1992, the Noticee has submitted that "*Though the intimation did not take place in the exact form and manner prescribed by Regulation 13(3) of the 1992 PIT Regulations, it did indeed take place, albeit in another manner. It is submitted that such an omission was unintentional, and not with any intent to unlawfully profit from the same".* The Noticee has further quoted the observations from Hon'ble Supreme

Court's order in the matter of *Vasudev Ramchandra Shelat v. Pranlal Jayanand Thakar AIR 1974 SC 1728,* in support of its contention that the substantive information regarding its change in the Noticee's shareholding as regards the sale had indeed been disclosed by it.

23. In this connection reference may also be made to the Order of the Hon'ble Securities Appellate Tribunal (SAT) in Appeal no 118 of 2013 dated 04.09.2013 in the matter of Vitro Commodities Private Limited V/s SEBI wherein the Hon'ble SAT held 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, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other*."

24. In view of the above, I note that the Noticee has filed disclosure to both the Company and the stock exchanges under Regulation 7(1A) of SAST Regulations, 1997. But it has failed to file disclosure to the Company in terms of Regulation 13(3) of PIT Regulations, 1992, with regard to the sale of 3,10,000 shares on February 01, 2010. The Company in turn has to inform the aforesaid disclosure under Regulation 13(6) of PIT Regulations, 1992 to the stock exchange. Both the disclosures under Regulation 7(1A) of SAST Regulations, 1997 and Regulation 13(3) of PIT Regulations, 1992 are quite similar in nature. It is also pertinent to note that the intention of both the Regulations is dissemination of information. On filing of said disclosures under Regulation 7(1A) of SEBI (SAST) Regulations, 1997, the essential information about the said sale of shares had already been disseminated to the general public. Under the above circumstances, the Noticee having made the disclosure under Regulation 7(1A) of SEBI (SAST) Regulations, 1997, the non-compliance of Regulation 13(3) read with 13(5) of SEBI PIT Regulations, 1992, may not be viewed seriously and be visited

with any penalty following the decision of Hon'ble SAT in the matter of *Vitro Commodities Private Limited cited supra*.

ORDER

25. Accordingly, taking into account the aforesaid facts and circumstances of the case, the submissions made by the Noticee and the mitigating factors, I, in exercise of power conferred upon me under section 15 I of the SEBI Act read with rule 5 of the SEBI Adjudication Rules, am of the considered view that it is not a fit case to impose a penalty on the Noticee, Vasparr Shelter Ltd under Section 15G and 15A (b) of the SEBI Act, 1992, for the reasons more specifically set out in the preceding paragraphs. Accordingly, the matter is disposed of without any penalty.

26. In terms of Rule 6 of the SEBI Adjudication Rules, 1995, and Rule 6 of the SCR Adjudication Rules, 2005, copy of this order is sent to the Noticees and also to Securities and Exchange Board of India.

Place: Mumbai **BIJU S**

DATE: March 28, 2018 **ADJUDICATING OFFICER**