

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO.RKD/VSL-VSL/AO-4/2010]**

**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

VERTEX SPINNING LIMITED PAN: AABCV5617N

In the matter of
VERTEX SPINNING LIMITED

BRIEF FACTS OF THE CASE

1. The shares of Vertex Spinning Ltd (hereinafter referred to as 'VSL/ noticee') are listed at The Stock Exchange Mumbai (hereinafter referred to as 'BSE'). As per the information available on the website of BSE, the total paid-up equity share capital/voting rights of VSL for the quarter ended March 2006 was 19,90,56,000. Based on a report filed by BSE, an examination of the shareholding pattern in the scrip of VSL was undertaken by SEBI during the period from February 01, 2006 to April 30, 2006 (hereinafter referred to as 'Investigation Period'), wherein it was observed that as per the shareholding pattern for the quarter ending 31st December 2005 the Promoters held 4.42%, Private Corporate Bodies held 68.36% and Indian public 27.18% of the paid up capital of VSL. During the quarter ended 31st March 2006, the promoter holdings are shown as 73.26% and the entities who were shown under Non Promoter Category for the quarter ended 31st December 2005 were shown under Promoter category for the quarter ended 31st March 2006.
2. Allegedly there was large scale discrepancy in shareholding pattern of the promoter category between two quarters i.e, difference of 68.84%

as filed by the company with the exchange for the quarter ended December 2005 and March 2006. Further, the same does not appear to be in conformity with the requirements of Clause 35 of the Listing Agreement read with Section 21 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as 'SC(R) Act').

3. Further, from the shareholding pattern of VSL as available on the website of BSE, it is observed that the holdings of promoter entity Shri. Suresh Sharma had increased to 5.54% during quarter ended March 2006 as compared to his holding of 1.16% during quarter ended December 2005. Allegedly, disclosures were not filed with BSE as required under SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "PIT Regulations").
4. In this regard, it was alleged that the requisite disclosures as required under SC(R) Act 1956 and PIT Regulations was not made by the noticee to BSE. Thereby the noticee had allegedly violated section 21 of SC(R) Act read with clause 35 of the listing agreement & Regulation 13 (6) of SEBI PIT Regulations.
5. Accordingly, Securities and Exchange Board of India (hereinafter referred to as 'SEBI') has initiated adjudication proceedings under section 23H of SC(R) Act & section 15A (b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act') to inquire into the alleged violation of section 21 of SC(R) Act read with clause 35 of the listing agreement & Regulation 13 (6) of SEBI PIT Regulations against the noticee on account of their failure to make necessary disclosures as stipulated under the said SC(R) Act & PIT Regulations.

APPOINTMENT AS ADJUDICATING OFFICER

6. The undersigned has been appointed as Adjudicating Officer (hereinafter referred to as 'AO'), vide order of SEBI dated August 6, 2009 under section 23-I of SC (R) Act read with 15I of SEBI Act read with Rule 3 of SEBI (Procedure for holding Inquiry and Imposing

Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudicating Rules') to inquire into and adjudge under section 23H of SC(R) Act & section 15A(b) of SEBI Act the alleged violation of section 21 of SC(R) Act read with clause 35 of the listing agreement & Regulation 13 (6) of SEBI PIT Regulations for the alleged non disclosures, as observed during the examination of the shareholding pattern undertaken by SEBI in the scrip of VSL.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

7. A Show Cause Notice (hereinafter referred to as 'notice') dated November 24, 2009 under Rule 4 of the Adjudication Rules was issued to the Noticee through Registered Post Acknowledgement due, advising it to show cause as to why an inquiry should not be held against it and the prescribed penalty for the alleged violation of section 21 of SC(R) Act read with clause 35 of the listing agreement & Regulation 13 (6) of SEBI PIT Regulations not be imposed under section 23H of SC(R) Act & section 15A (b) of SEBI Act. A time period of fifteen days was also given to the noticee to submit the reply along with documents / records to substantiate the reply.
8. Noticee vide its letter dated December 17, 2009 requested for extension of time to reply to the aforesaid notice, for a period of 15 days as Mr. Suresh Sharma, Director of VSL was out of station. Again the noticee vide its letter dated January 06, 2010 requested for extension of time to reply to the aforesaid notice, for a period of 15 days as Mr. Suresh Sharma, Director of VSL was still out of station. Further the noticee vide its letter dated February 03, 2010 again requested for extension of time to reply to the aforesaid notice, for a period of 15 – 20 days in order to arrange all the supporting documents and properly reply to the aforesaid notice.
9. Since no reply was received another opportunity was given to the noticee by way of a reminder notice dated February 9, 2010. As per the acknowledgement card of the Department of Posts, India, and Hand Delivery acknowledgement card both the Show cause notice

and the reminder notice has been received by the noticee.

10. Noticee replied to the notice vide its letter dated June 21, 2010 and June 24, 2010 stating that there was no *mala-fide* intention on the part of VSL, the non-disclosure, if any was inadvertent and requesting for a lenient view in the matter. The submissions of the noticee *inter-alia* are as under:-

- a) There was a change in the Registrar and Transfer agent from Adroit Corporate Service Pvt. Ltd. to Purva Sharegistry India Pvt. Ltd on January 02, 2006.
- b) The company had been appraised by the new Registrar and erstwhile Company Secretary that the grouping of the share holding pattern was not proper. Hence forth, the Company informed the Registrar to do the needful and make the share holding pattern by considering the guidelines and adhering to the Rules and Regulations of the SEBI and Stock Exchange.
- c) The new Registrar and Transfer agent of the company re-checked and undertook a comprehensive exercise and initiated concerted efforts to recheck all the registered folios, category of the subscriber of the capital of the company and in order to adhere and comply with the Rules and Regulations of SEBI and Stock Exchanges and to meticulously follow the share holding pattern, the Transfer Agent suggested the Company to reorganize the share holding pattern.
- d) It is stated that there was a miscoding and misclassification in the share holding pattern due to technical mistake and the erstwhile Registrar was unable to present the correct Shareholding pattern to the company. The share holding of promoter especially in the folio of Private Corporate Bodies in which the majority of share holders were owned and controlled by the promoter of the company were wrongly shown in the Non Promoter

Category.

- e) It has been pointed out vide para no. 6 of the letter that the holding of the promoter Mr. Suresh Sharma had increased from 1.16% to 5.54% during the quarter ended on 31.12.2005 as compared to quarter ended on 31.03.2006 and no disclosure was filed by the company to BSE which violated the Regulation 13(6) of SEBI. In the connection we would like to submit before your good self that there was no fresh acquisition of shares by Mr. Suresh Sharma from the market.
 - f) The Shares were purchased by Mr. Suresh Sharma at the instance of SEBI order 23.01.2001 during the year 2002. The entire payments were made to the respective person in that year only (2002) and there were mere transfer of shares in this quarter (quarter ending March 31, 2006) in the name of Mr. Suresh Sharma. The said shares were transferred on 15.02.2006 and 28.02.2006. It was gathered that this is a compliance of SEBI order only.
11. Further, in the reply of Shri Suresh Sharma dated June 21, 2010 to the show cause notice in the matter of VSL, it was stated therein that *"it is stated that shares were acquired at the instance of SEBI order and no other acquisitions were made by us.....The requirement of furnishing the information to the company and further transmission to the could not be adhered"*.
12. Considering the facts and circumstances of the case, the reply given by the noticee and in the interest of principles of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, an opportunity of personal hearing was granted to the noticee on June 24, 2010 vide notice email dated June 24, 2010.. The personal hearing was held on June 24, 2010 in the office of SEBI and the same was attended by Shri K.K Maloo the authorized representative of the noticee. The Authorized Representative reiterated the reply submitted by the noticee vide its letter dated June 21, 2010 and June 24, 2010.

CONSIDERATION OF THE ISSUES

13. In the instant matter the following issues arise for consideration:
- a) Whether VSL had violated section 21 of SC(R) Act read with clause 35 of the listing agreement?
 - b) Whether VSL had violated Regulation 13(6) of the PIT Regulations?
 - c) Whether VSL is liable for imposition of monetary penalty under section 23H of SC(R) Act & section 15A (b) of the SEBI Act?
14. Before dealing with the above matters, the following are the provisions of the SC(R) Act, clause 35 of the listing agreement and PIT Regulation:

Clause 35 of the Listing Agreement provides the details to be furnished by the company on a quarterly basis, within 21 days from the end of each quarter, in the specified format to the stock exchange.

(I)(a) Statement showing Shareholding Pattern

.....

(I)(b) Statement showing Shareholding of persons belonging to the category "Promoter and Promoter Group"

.....

Section 21 of the SC(R) Act, 1956 which deals with conditions for listing, is as under:-

Conditions for listing.

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

Regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulations, 1992 reads:-

Disclosure by company to stock exchanges.

Every listed company, within five days of receipt, shall disclose to all stock exchanges on which the company is listed, the information

received under sub-regulations (1), (2), (3) and (4) in the respective formats specified in Schedule III.

FINDINGS

15. I have carefully gone through the charges set out in the show cause notice and the documents on record.
16. Based on a report filed by BSE, SEBI undertook an examination of the shareholding pattern in the scrip of VSL. From the shareholding pattern of VSL as available on the website of BSE, it is observed that the shareholding pattern for the quarter ending 31st December 2005 the Promoters held 4.42%, Private Corporate Bodies held 68.36% and Indian public held 27.18% of the paid up capital of VSL. Whereas for the quarter ending 31st March 2006, the promoter holdings are shown as 73.26% and the entities which were shown under Non Promoter Category for the quarter ended 31st December 2005 were shown under Promoter category for the quarter ended 31st March 2006.
17. Thus as observed there is a large scale discrepancy in shareholding pattern of promoter category i.e, difference of 68.84% as filed by the company with the exchange for the quarter ended December 2005 and March 2006. The same does not appear to be in conformity with the requirements of Clause 35 of the Listing Agreement read with Section 21 of the SC(R) Act, 1956.
18. The noticee in its reply dated June 21, 2010 defended the above allegation by stating that “there was a miscoding and misclassification in the share holding pattern due to technical mistake and the erstwhile Registrar was unable to present the correct Shareholding pattern to the company. The share holding of promoters was classified as Non Promoter Category and was shown under Private Corporate Bodies.”
19. Even if one were to accept that there was an error in coding the shareholders under the correct category, by the erstwhile

registrar, the fact remains that the company is responsible for ensuring due-diligence and correctness of the disclosures, before making such required disclosures /submissions to the stock exchange. The registrar is an agent of the company and is merely assisting the company in preparation of the requisite disclosures. Also on a plain reading of clause 35 of the listing agreement, it is seen that the responsibility is on the company to submit the requisite disclosures in the specified format to the stock exchange.

20. In view of the above, there was an error on the part of VSL in making correct submissions to the stock exchange and the liability cannot be transferred to the registrar. However, looking at the shareholding of the promoter category which had mostly remained unchanged though shown under non-promoter category, the violation can be considered to be technical, however penalty has to follow. In this regard I would like to quote judgment of the Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that :

“once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow”.

21. Considering the above referred judgment of Hon'ble Supreme Court of India, the SEBI Investigation and reply of the noticee it stands established that the noticee violated section 21 of SC(R) Act read with clause 35 of the listing agreement. Thus, I conclude that the Noticee is liable for monetary penalty under Section 23H of the SC(R) Act. The text of section 23H is stated below:-

Section 23H of the SC(R) Act, 1956 reads:-

Penalty for contravention where no separate penalty has been provided.

23H. Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognized stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

22. Further from the documents available on record I find that the Shri Suresh Sharma was a Director on the Board of VSL at the relevant time. From the observations made by BSE , it is noted that the holding of promoter entity Shri Suresh Sharma had increased to 5.54% during quarter ended March 2006 as compared to his holding of 1.16% during quarter ended December 2005. Disclosures in this regard were not filed by VSL to BSE, as required under Regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulations, 1992. BSE in their report to SEBI has confirmed that no disclosures have been filed with them regarding the said change in shareholding of Shri Suresh Sharma.

23. In this regard the noticee in its reply dated June 21, 2010 submitted that “The Shares were purchased by Mr. Suresh Sharma at the instance of SEBI order dated 23.01.2001 in the matter of Vertex Machineries Ltd, during the year 2002 (From the BSE website, I find that Vertex Spinning Ltd was earlier known as Vertex Machineries Ltd.). The entire payments were made to the respective person in that year only and there were mere transfer of shares in this quarter in the name of Mr. Suresh Sharma. It was gathered that this is a compliance of SEBI order only.” The above submission given by the noticee fails to convince me. SEBI vide order dated 23.01.2001 directed Shri Suresh Sharma to purchase shares from the applicants and existing shareholder, but the said order did not grant any exemption to Shri Suresh Sharma, Director of VSL from complying with the requisite disclosure requirements etc,. In absence of the same the submission of the noticee does not hold good.

24. I would like to quote the Judgment of Hon'ble SAT, in Appeal No. 66 of 2003 - *Milan Mahendra Securities Pvt. Ltd. Vs SEBI*, in which the Tribunal has observed, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. We cannot therefore subscribe to the view that the violation was technical in nature"*. The above observation of Hon'ble SAT was for SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 but the same holds good for PIT Regulations also.

25. Further in the reply of Shri Suresh Sharma it is submitted that *"it is stated that shares were acquired at the instance of SEBI order and no other acquisitions were made by us.....The requirement of furnishing the information to the company and further transmission to the company could not be adhered"*. Shri Suresh Sharma had not filed any information regarding the purchase of shares to the noticee and in the absence of the disclosure, how can the noticee be in a position to make the requisite disclosures to the stock exchange. Taking the same into consideration, I am inclined to take a lenient view with regard to the penalty attracted in respect of the violation. However, Shri Suresh Sharma was Director of the company and was involved in the day to day affairs of the company as stated by the company in their response dated to the Show cause notice.

26. In terms of Section 15A (b) of the SEBI Act which states 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,—

(a).....

(b) to file any return or furnish any information, books or other documents within the time specified there for 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;”

27. Further, on the determination of the quantum of penalty under section 15A (b), I have considered the factors to be taken into consideration under section 15J of the SEBI Act, which reads as under:-

“Factors to be taken into account by the adjudicating officer.

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

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

28. In the instant case there is nothing on record to quantify the disproportionate gain or unfair advantage made or the amount of loss caused to an investor or group of investors as a result of the aforesaid violation. The aforementioned regulations have been framed in order to prevent information asymmetry, to ensure timely disclosures which are an essential part for the proper functioning of the securities market and absence of such information may prevent investors from taking a well-informed decision.

ORDER:

29. In view of the above and after taking into consideration all the facts and circumstances of the case and exercising the powers conferred upon me u/s 15-I(2) of the SEBI Act, I hereby impose a penalty of Rs. 50,000 (Rupees fifty thousand only) on **Vertex Spinning Ltd** u/s 23H SC(R) Act and 15A (b) of the SEBI Act. I am of the view that the said penalty is commensurate with the violations committed by **Vertex**

Spinning Ltd.

30. The above penalty amount shall be paid by way of a duly crossed demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Shri A S Mithwani DGM, Investigation Department - ID4, Securities and Exchange Board of India, SEBI Bhavan, Plot No, C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai- 400 051.
31. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee **Vertex Spinning Ltd** and also to Securities and Exchange Board of India.

Date: July 9, 2010
Mumbai

D Rajesh Kumar
Adjudicating Officer