BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BM/AO- 145/2011]

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

Shri. Ashok Arjan Vaswani

(PAN: AFKPV1013P)

In the matter of Vidhi Dyestuffs Manufacturing Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted investigation in trading in the scrip of Vidhi Dyestuffs Manufacturing Ltd. (hereinafter referred to as **'the company'**) during the period between November 1, 2010 and December 13, 2010. The shares of the company are listed at Bombay Stock Exchange (hereinafter referred to as **'BSE'**).

2. During investigation it was observed that Mr. Ashok Vaswani (hereinafter referred to as the **Noticee**) that was holding 18,09,000 shares constituting 3.62% of the total share capital of the company for the quarter ending September 2010 and his wife Risha Vaswani was holding 18,14,000 shares i.e. 3.63% of the share capital of the company. The shareholding pattern for the quarter ending September 2010 were as follows:

S. No.	Name of the Shareholder	No. of Shares	Share % of the Total No. of Shares
1	Ashok Arjan Vaswani	1,809,000	3.62
2	Risha Ashok Vaswani	1,814,000	3.63

3. It was observed that the Noticee acquired 18,14,000 shares from Smt. Risha Ashok Vaswani in off-market trades on October 01, 2010 as a result of which his shareholding increased from 3.62% to 7.25% of the total issued capital of the company. Subsequent to that Noticee sold his entire shareholding of 36,23,000 shares in the company in the stock market during November 01, 2010 to December 13, 2010. It was observed that due to such transfers the Noticee' shareholding crossed 5% of the paid up capital of the company for which he was required to make disclosures to the company under Regulation 13(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **'PIT Regulations'**) and to the company & stock exchange where the shares of the company is listed under Regulation 7(1) read with Regulation 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as **'SAST Regulations'**). Investigation observed that no such disclosure was made by the Noticee.

4. In view of the above it was alleged that the Noticee failed to comply with the provisions of 7(1) & (2) of SAST Regulation and 13(1) of PIT Regulation. Consequently the Noticee was liable for penalty under Section 15A (b) of SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as Adjudicating Officer vide order dated May 6, 2011 under Section 15 I of SEBI Act read with 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 the alleged violations of SAST Regulations and PIT Regulations.

SHOW CAUSE NOTICE, HEARING AND REPLY

6. Show Cause Notice No. EAD-6/BM/VS/18888/2011 dated June 13, 2011 (hereinafter referred to as **'SCN'**) was issued to the Noticee 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 SCN was delivered and acknowledged by the Noticee. Noticee vide letter dated July 20, 2011 submitted as follows:

a. *That I and my wife have been non-resident Indians (NRI's) for a very long time (over 25 years) and have been staying in Hongkong.*
b. *That my and my wife's actual shareholding was 1,80,900 and 1,81,400 shares respectively. However, the original face value of the shares was Rs. 10 and later on during the year 2005 the shares were split into face value of Re. 1 each. As a result, due to split in the face value of the shares, the number of shares in the hands of all the shareholders increased tenfold.*
c. *That the shares in question held by me and my wife in the company were allotted to us vide the company letter bearing no. DDS/VIDHI/NRI/00017/96 dared April 22, 1996, in the IPO made by the company at that time. The details of the said allotments are as under:*
    i. *Ashok Arjan Vaswani jointly with his wife – 180900 equity shares.*
    ii. *Ashok's wife jointly with Ashok Arjan Vaswani – 181400 equity shaers.*
d. *That in both the cases all the said shares were always jointly owned by me with my wife; in the first case I was the first holder and in other I was the second holder.*
e. *That expect from the shares allotted to me and my wife directly by the company during the IPO in 1996, we have neither purchased nor sold any shares in the company except when I unloaded all the shares during Nov./Dec. 2010.*
f. *That since the original allotment by the company in 1996, my shareholding in the company jointly with my wife remained unchanged at 3.62% of the paid up share capital of the company. Similarly, my wife's shareholding jointly with me remained unchanged at 3.62% respectively.*
g. *That during the year 2010 I when I was intending to sell our shareholding, I was advised by a broker in Mumbai to open a demat account and to have the said shares dematerialized.*

h. *That I opened a demat account bearing no. 20136609 on August 10, 2010, with Indian Overseas Bank. Similarly, my wife also opened a demat account bearing no. 20136594 with Indian Overseas Bank. However, I was advised that as I intended to sell all the shares held by me and my wife, I should have all the shares credited in my demat account as that would facilitate the giving of instructions to the bank.*

i. *That as per the advise I converted all the 1809000 shares held by me jointly with my wife as also 1814000 shares held by me as second holder along with my wife as the first holder and deposited the said shares in the said newly opened demat account.*

j. *That none of the shares were "acquired" or "purchased" either in the market or in off-market deal. The shares in question were always held by me since the original allotment made by the company during the year 1996.*

k. *That in the circumstances, you would appreciate that there was nothing to disclose to the BSE as there was no fresh acquisition.*

l. *That I got the shares dematted and opened separate demat accounts and later put all the shares in a single account with a view to dispose of all the shares held by me and my wife.*

m. *That I did not acquire any further shares and my shareholding remain the same, in my humble view the provisions of regulations 7(1) & (2) of SAST Regulations, 1997 were not attracted. And there has been no violation of SEBI PIT Regulations as there has been no real change in my shareholding and I have not crossed the threshold limit as provided in the said regulation.*

7. In the interest of natural justice an opportunity of hearing was provided to the Noticee on September 20, 2011 vide hearing notice dated September 6, 2011. Noticee vide letter dated September 21, 2011 sought for an adjournment and the same was provided to him. Vide hearing notice dated October 3, 2011 another opportunity of personal hearing was provided on November 15, 2011. Dr. S.D. Israni, Authorized Representative (AR) appeared along with the Noticee

and reiterated the submissions given in the reply to the SCN. During the hearing Noticee sought time for filing further submission. Vide letter dated November 21, 2011 Noticee inter alia to the submission made in his earlier reply, he made the following additional submissions:

a. *That Noticee is neither a trader nor a regular investor and does not hold any portfolio of shares / debentures in Indian companies. Not being in active touch with the market or market participants, he is not familiar with the applicable laws.*
b. *That except for the said shares allotted to Noticee and his wife (as stated in para 3) directly by the company during the said IPO, Noticee has neither purchased nor sold any shares in the company except when he unloaded all the shares recently which became the subject matter of the said show cause notice.*
c. *That during all these years the said shares were held by Noticee in physical format and it was only during the year 2010 when he was intending to sell his shareholding that he was advised by the broker in Mumbai to open a demat account and to have all the said shares dematerialized and credited in one account for the sake of convenience.*
d. *Accordingly, taking into consideration the advice of the Broker, Noticee initiated action and opened a Demat account bearing No. 20136609 on 10th August 2010 with Indian Overseas Bank. Similarly, his wife also opened a Demat account bearing No. 20136594 with the Indian Overseas Bank. However, as he was advised that as he intended to sell all the shares held by him and his wife, he should have all the shares owned by him and his wife credited in one demat account as that would facilitate giving of instructions to the bank.*
e. *Accordingly, as per the broker's advice the said shares held by Noticee as also those jointly held by him with his wife were credited into one demat account.*
f. *That none of the shares in question were "acquired" or "purchased" either from the market or in any off market deal. The shares in question were*

always held by Noticee and his wife since the original allotment made by the Company during the year 1996.

g. *That Noticee had no intention whatsoever to violate any of the provisions of SAST Regulations, 1997 or of the SEBI PIT Regulations, 1992.*

h. *That the shortcoming or breach on the part of Noticee has been purely due to inadvertence and not due to any malafide intention or act on his part. Hence, Noticee requests to kindly take a lenient view of the same and kindly condone the said shortcoming on the part of him.*

i. *That there has been no disproportionate gain or unfair advantage as a result of the transaction in question nor has there been any loss caused to an investor or investor group and this is the first default, if any, committed by Noticee and that too purely due to inadvertence and without any mala fide intention or ulterior motive.*

Noticee further submitted the following case laws in support of his claim:

a. ***M/s. Cabot International Capital Corporation Vs. Adjudicating Officer SEBI*** *(Appeal No. 24/2000) where it was held by Securities Appellate Tribunal that "……the order-imposing penalty on the Appellant cannot be sustained and the same deserves to be set aside. I do so".*

b. ***Samrat Holdings Ltd Vs. Security Exchange Board of India & Ors.*** *(SEBI Appeal No. 23/2000)*

c. ***Shri. Subhash A. Gandhi Vs. Security Exchange Board of India*** *(2005 58 SCL 176 SAT), it was inter-alia, held by the Tribunal that, "Since the appellant had complied with part of the requirement and he has exceeded the limit of 5% only by .03% we feel there is a case for taking a lenient view"*

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully examined the documents available on record. The allegations against the Noticee are as follows:

i. Noticee did not disclose to the company when his shareholding in the company crossed five percent as required under Regulation 13(1) of PIT Regulations.

ii. Noticee did not disclose to the company and to the stock exchange when his shareholding in the company crossed five percent as required under Regulation 7(1) read with 7(2) of SAST Regulations.

9. In view of the above it was alleged that the Noticee violated the provisions of Regulation 7(1) read with 7(2) of SAST Regulations and Regulation 13(1) of PIT Regulations.

10. Before moving forward, it will be appropriate to refer to the relevant provisions of Regulation 7(1) read with 7(2) of SAST Regulations and Regulation 13(1) of PIT Regulations, which reads as under:

The continual disclosure requirement under Regulation 7 of SAST Regulations:

(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.

(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.

Initial disclosure requirement under Regulation 13 of PIT Regulations is as under:

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

(a) The receipt of intimation of allotment of shares; or

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

11. The issues that arise for consideration in the present case are:

i. Whether the Noticee's holding crossed 5% of the paid up capital of the company?
ii. Whether Noticee has violated Regulation 13(1) of PIT Regulations when his shareholding in the company crossed five percent of the paid capital of the company?
iii. Whether Noticee has violated Regulation 7(1) read with 7(2) of SAST Regulations when his shareholding in the company crossed five percent of the paid capital of the company?
iv. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15A (b) of SEBI Act?
v. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act?

FINDINGS:

12. I now proceed with the alleged violations of SAST and PIT Regulations.

i. I note that that for the quarter ending September 2010 Noticee was holding 18,09,000 shares constituting 3.62% of the total share capital of the company. I observe from the demat account that Noticee acquired 18,14,000 shares from Risha Ashok Vaswani in off-market trades on October 01, 2010 as a result of

which the shareholding of the Noticee increased from 3.62% to 7.25% of the total issued capital of the company.

Date	Transaction No.	Description	Credit	Debit	Balance	% holding to share capital of the company
Beneficiary				Opening Balance:	18,09,000	3.62
1-Oct-10	10226457	By INDIAN OVERSEAS BANK	18,14,000		36,23,000	7.25

ii. I note from above that the Noticee's holding crossed 5% of the paid up capital of the company when he acquired 18,14,000 shares from his wife on October 1, 2010.

iii. Subsequent to that Noticee sold his entire shareholding of 36,23,000 shares in the company in the stock market between November 01, 2010 and December 13, 2010.

iv. Noticee in its reply has claimed that shares were neither "acquired" nor "purchased" either from the market or in any off market deal and the shares in question were always held by Noticee and his wife since the original allotment made by the Company during the year 1996. I note that 18,14,000 shares were transferred from Risha Ashok Vaswani in off-market trades on October 01, 2010 to Noticee as a result of which his shareholding in the company increased from 3.62% to 7.25%. I note from the demat account of the Noticee that 18,14,000 shares were credited in his Beneficial Owner (BO) account on October 01, 2010 hence the Noticee acquired the shares from his wife in off-market. Hence the submission of the Noticee is not accepted.

v. In view of the above I find that Noticee was required to make disclosures under Regulation 13(1) of PIT and Regulation 7(1) read with (2) of the SAST Regulations. From the information given by BSE it is observed that the Noticee

did not make the required disclosures. Further Noticee in his submission has admitted to the default.

vi. Noticee submitted that the breach on part of the Noticee has been purely due to inadvertence and not due to any malafide intention or act on his part. Noticee further submitted that there has been no disproportionate gain or unfair advantage as a result of the transaction in question nor has there been any loss caused to an investor or investor group and this is the first default, if any, committed by Noticee. To support his claim Noticee has submitted judicial pronouncements of the year 2000, 2001 and 2005. I have perused the same and have noted that the ratios of all the case laws mentioned were overruled by the subsequent Supreme Court judgment. 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…".

13. In view of the above I hold that the Noticee violated the provisions of Regulation 13(1) of PIT and Regulation 7(1) read with (2) of the SAST Regulations.

14. The next issue for consideration as to whether the failure on the part of the Noticee to comply with the provisions of Regulation 13(1) of PIT and Regulation 7(1) read with (2) of the SAST Regulations attracts monetary penalty under section 15A(b) of SEBI Act, and if so what would be the monetary penalty that can be imposed on the Noticee.

15. The object of the SAST and PIT Regulation mandating disclosure of acquisitions beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions

and it is for this purpose that dissemination of such information is required. In this regard I would like to rely upon the findings of Hon'ble SAT in the matter of *Milan Mahendra Securities Pvt. Ltd Vs. SEBI* (Appeal No. 66 of 2003 and Order dated November 15, 2006) regarding the importance of disclosure in which SAT has observed that:

> *"the purpose of these disclosures is to bring about transparency in the transactions and assist Regulator to effectively monitor the transactions in the market".*

Failure to make disclosure within the stipulated time period provided in the regulation cannot be considered as trivial or of no consequence to be overlooked. After taking all the facts into consideration, it is established that the Noticee has violated the provisions of Regulation 13(1) of PIT and Regulation 7(1) read with (2) of the SAST Regulations.

16. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section 15A(b) of the SEBI Act, which reads as under:

15A(b). <u>Penalty for failure to furnish information, return, etc.-</u>

To file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

17. While determining the quantum of penalty under Section 15A (b) of SEBI Act, it is important to consider the factors stipulated in section 15J 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."

18. In view of the charges as established, and the facts and circumstances of the case, and the various judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the seriousness of the violation. The SAST and PIT Regulation have been framed in order to bring about the transparency in the market and timely disclosure to the investors. Correct and timely disclosures are an essential part of the proper functioning of the securities market and by failure to do so results in preventing investors from taking well-informed decisions. The Noticee, had responsibility in ensuring the compliance of disclosure norms. The timely disclosure was of importance from the point of view of outside shareholders/other investors as such disclosure would have prompted them to buy or sell shares of the target company. As regards the contention of the Noticee that no loss was caused to the investors the Noticee cannot pre-judge the reaction of the investors. It is an admitted fact that the Noticee had not made the disclosure as required and hence there was no dissemination of information to the general investor. By virtue of the failure on the part of the Noticee to make the necessary disclosure, the fact remains that the shareholders/investors were deprived of the information. Under these circumstances, the compliance with the disclosure requirements under SAST and PIT Regulation assumes significance and the Noticee's failure to do so needs to be viewed seriously and an appropriate view is being taken with regard to imposition of monetary penalty in the matter.

19. In the instant case, 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. I find from the records the default is not repetitive.

ORDER

20. After taking into consideration all the facts and circumstances of the case, I impose a penalty of ₹. 1,50,000 (Rupees One lakh fifty thousand only) under Section 15A (b) of SEBI Act, on the Noticee which will be commensurate with the violations committed by it.

21. 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 Mr. B J Dilip, Deputy General Manager, Investigations Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

22. 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: **November 28, 2011** **BARNALI MUKHERJEE**

Place: **Mumbai** **ADJUDICATING OFFICER**