BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BS/AE/2017-18/1320]

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

In respect of:

Name	PAN
1. Jayesh V. Valia (HUF)	AACHJ8696M
2. Mr. Raj J. Valia	AENPV8400N
3. Mr. Madhav J Valia	AENPV8401P
4. Mr. Jayesh V. Valia	AAFPV5698G
5. M/s Yashraj Containeurs Ltd	AAACV4846L
6. M/s Precision Containeurs Ltd.	AAACV4766F
7. Mrs. Sangeeta J. Valia	ACDPV4956F
8. Mr. Vinodrai V. Valia	*Not Available*
9. M/s Vasparr Shelter Ltd. *(Presently known as RV Lifestyle Limited)*	AABCV2888D
10. Vasparr Trading Pvt. Ltd. *(Presently known as Vas Educomp Pvt. Ltd.)*	AABCV2889C
11. M/s Pushpanjali Drums Private Ltd.	AAECP1906D

In the matter of Vas Infrastructure Ltd.

BACKGROUND

1. VAS Infrastructure Ltd. (hereinafter referred to as the **"VIL / target company")** is a company having its registered office at 401, Court Chambers, 4th Floor, S. V. Road, Borivali (West), Mumbai - 400 092. The shares of the target company are listed in Bombay Stock Exchange Ltd. and Ahmedabad Stock Exchange Ltd. The promoter

group of the target company comprising eleven entities - i) Jayesh V. Valia (HUF) (**Noticee no. 1**) ii) Mr. Raj J. Valia (**Noticee no. 2**), iii) Mr. Madhav J. Valia (**Noticee no. 3**), iv) Mr. Jayesh V. Valia (**Noticee no. 4**), v) M/s Yashraj Containeurs Ltd. (**Noticee no. 5**), vi) M/s Precision Containeurs Ltd. (**Noticee no. 6**), vii) Mrs. Sangeeta J. Valia (**Noticee no. 7**), viii) Mr. Vinodrai V. Valia (**Noticee no. 8**), ix) M/s Vasparr Shelter Ltd. (*now known as RV Lifestyle Limited*) (**Noticee no. 9**), x) M/s Vasparr Trading Pvt Ltd (*now known as Vas Educomp Pvt Ltd*) (**Noticee no. 10**) and xi) M/s Pushpanjali Drums Pvt Ltd. (**Noticee no. 11**) held 67,31,554 shares i.e. 53.85% of the share capital of the target company as on March 31, 2011. Noticee nos. 1 to 11 shall hereinafter be collectively referred to as "***Noticees*".**

2. VIL allotted 25,00,000 share warrants (detachable) on April 30, 2010 to Noticee nos. 1 to 6 and certain other non-promoter investors viz. M/s Power Pack Finance & Investments Private Ltd., M/s Leena Investments Consultancy LLP and M/s N.K. Chemplast Private Ltd. Subsequently on April 6, 2011, Noticees nos. 1 to 6 acquired 6,25,000 (2.19%) equity shares of the company upon conversion of their portion of warrants (hereinafter referred to as **"the acquisition"**) which resulted in increase in the shareholding of the Noticees (entire promoter group) in the target company from 53.85% to 56.04%. As the collective shareholding of the Noticees exceeded the limit of 55% as prescribed under Regulation 11(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "**SAST Regulations, 1997**"), the Noticees were required to make public announcement to acquire shares within 4 working days from the date of acquisition as stipulated under Regulation 11(1) read with Regulation 14(1) of SAST Regulations, 1997 which they failed to do. It is, therefore, alleged that the Noticees, by their failure to make public announcement upon acquisition of shares of VIL on April 6, 2011, have violated Regulation 11(1) read with Regulation 14(1) of SAST Regulations, 1997 read with Regulation 35 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (**SAST Regulations, 2011**).

3. It is further alleged that the Noticees did not make the necessary disclosure regarding the acquisition to the company and stock exchanges upon crossing the limit of 54%

shares in the company, and have thus violated Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011. Further, it is alleged that as the aforesaid acquisition of 6,25,000 shares of the company by the Noticee nos. 1 to 6 was 2.19% of the share capital of VIL, it required a disclosure within 2 days of transaction from the Noticees to VIL and the stock exchanges, as stipulated by Regulation 7(1A) read with Regulation 7(2) of SAST Regulations, 1997 which they failed to do, and thus it is alleged that the Noticees have violated the said regulations read with Regulation 35 of SAST Regulations, 2011.

4. With regards to the above violations, an order was passed by Whole Time Member, SEBI on October 28, 2015 in the proceedings under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 (**SEBI Act, 1992**) read with Regulations 44 and 45 of SAST Regulations, 1997 read with Regulation 32 and 35 of SAST Regulations, 2011 wherein the following directions was issued –

> *"Adjudication proceedings under the provisions of the SEBI Act, 1992 read with SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 shall be initiated against the Noticees, viz. Jayesh V. Valia (HUF), Mr. Raj J. Valia, Mr. Madhav J Valia, Mr. Jayesh V. Valia, M/s Yashraj Containeurs Ltd., M/s Precision Containeurs Ltd., Mrs. Sangeeta J. Valia, Mr. Vinodrai V Valia, M/s Vasparr Shelter Ltd., M/s Vasparr Trading Private Ltd. (now known as VAS Educomp Private Ltd.) and M/s Pushpanjali Drums Private Ltd. for violation of Regulation 11(1) read with 14(1) of the SAST Regulations, 1997 and Regulations 7(1) and 7(1A) read with 7(2) of the SAST Regulations, 1997."*

APPOINTMENT OF ADJUDICATING OFFICER

5. Shri S.V. Krishnamohan, Chief General Manager was appointed as the Adjudicating Officer **(AO)** vide order dated February 15, 2016 issued by SEBI to inquire into and adjudge under Section 15A(b) and 15H of the SEBI Act, 1992, the aforesaid violations alleged to have been committed by the Noticees. Subsequently, the undersigned was

appointed as the AO 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 common Show Cause Notice ref. no. EAD-5/ADJ/SVKM/AA/OW/15716/1-11/2016 dated June 01, 2016 (*hereinafter referred to as '**SCN**'*) was issued to the Noticees in terms of Section 15I of SEBI Act, 1992 read with Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 ("***Adjudication Rules***") for the violations as specified in the SCN.

7. The Noticees vide letters dated August 10, 2016, requested for additional time period of four weeks to file their reply to the SCN. Vide letter dated September 30, 2016, the Noticees filed their reply in the matter and following are their main submissions –

   i. *It is submitted that on March 16, 20 10, notice was given to the shareholders of VIL of an extra-ordinary general meeting proposed to be held on April 3, 2010. One of the agenda items of the meeting was the proposed issuance of the Warrants at the price of Rs. 55 per Warrant (Rs. 10 per equity share and Rs. 45 as premium) amounting to Rs. 13,75,00,000/ - to the following nine entities:*
      i. *Raj J. Valia;*
      ii. *Madhav J. Valia;*
      iii. *Jayesh V. Valia;*
      iv. *Jayesh V. Valia (H.U.F);*
      v. *Yashraj Containeurs Limited;*
      vi. *Precision Containeurs Limited;*
      vii. *N. K. Chem Plast Private Limited;*
      viii. *Power Pack Finance & Investments Private Limited;*
      ix. *Leena Investments Consultancy LLP.*

   ii. *The terms of issuance of the Warrants were set out in said notice. The Warrants were convertible within a period of 18 months from the date of the allotment at the sole discretion of each subscriber. Further the holder was required to pay an upfront amount of Rs. 13.75 per Warrant i.e. 25% of the consideration in relation to the Warrant. The terms clearly specified that the amount paid by the subscriber would be forfeited in the event that the subscriber did not exercise the option of converting the Warrants into shares of VIL.*

   iii. *At a meeting of the Board of Directors of VIL on April 30, 2010, the Warrants were allotted to the allotees set out above. The Warrants were therefore convertible by September 30, 2011.*

iv. *The Investors did not remit their share of the application money in relation to the Warrants even after the issuance of the Warrants by VIL. VIL therefore issued letters to the Investors on May S, 2010 and June 25, 2010 requesting them to make payment of the 25% subscription money.*

v. *However by December 2010, the entire amount of the subscription money of 25% on the Warrants was paid by all the subscribers of the Warrants.*

vi. *The Noticees submit that at the relevant time, the Noticees had the requisite funds to pay for Conversion of the Promoter Warrants. The Noticees therefore wanted to effect the Conversion before the due date of maturity of the Warrants.*

vii. *It is submitted that the Noticees were indeed aware of the implications of the Conversion and there was therefore an understanding with the Investors that the Promoter Warrants and the Investor Warrants would be converted together.*

viii. *It is submitted that it was the bona fide belief of the Noticees that the Investors would also effect conversion of the Investor Warrants. It was understood that the resultant increase in the overall paid-up capital of VIL would ensure that there would be no increase in the percentage holding of the Noticees as well as the Investors.*

ix. *The Noticees therefore went ahead with Conversion of their portion of the Warrants on April 6, 2011. The Investors however, did not effect conversion of their portion of the Warrants for reasons not known to the Noticees. This was not expected and resulted in a bona fide expectation being belied.*

x. *The Investors failed to convert the Investor Warrants as a result of which the Investor Warrants lapsed and the amount equivalent to 25% of the value of the Investor Warrants, paid at the time of the issuance of the Investor Warrants, was forfeited by VIL. This amount has been included in the financial statement of VIL for the financial year 20 11-20 12 at Page 28 under "Additions on account of share forfeitures" and the same is also reflected in the Balance Sheets for the subsequent periods.*

xi. *In fact, that there was nothing sinister or planned is borne out by the communication sent to the BSE Ltd. on June 10, 20 11 informing about the Conversion by the Noticees and seeking listing of the shares of VIL so issued.*

xii. *Upon the suggestion of the BSE in this regard, a communication dated March 5, 2012 was issued to SEBI with the bona fide purpose of seeking an exemption in relation to the increase in the shareholding of the Noticees pursuant to the Conversion.*

xiii. *It is submitted that the Noticees, on becoming aware of such increase in their shareholding in VIL reduced their shareholding in VIL to 52.30% from 56.04% during the period April to June 2011. This was done by selling a total of 1,50,000 shares (between April 13, 2011 and April 19, 2011) and 1,75,000 shares (on June 16, 2011) by Vasparr Trading Private Ltd., Pushpanjali Drums Pvt. Ltd and Ms. Sangeeta Valia.*

xiv. *It is submitted that the acquisition of the entire movement from 53.85% to 56.04% was in one stroke and was not in series of steps that would take them from their*

original level to the resultant level. In any case, the Conversion was well within the perceived annual permissible limit of 5% additional voting rights.

xv. *It is submitted that:*

a. *The increase of the shareholding of the Noticees in VIL from 53.85% to 56.04% i.e. by 2.19% was on account of the Investors not converting the Investor Warrants.*

b. *The Investors had indeed confirmed that they would be converting the Investor Warrants but did not do so even while the Noticees exercised their Warrants. Had the Investors honoured their commitment, the shareholding of the Noticees would have remained within the 55% threshold.*

c. *There was no additional 'substantial' acquisition of shares by the Noticees (since the acquisition was of 2.19% only).*

d. *In any case, the Noticees have always been promoters of VIL and there was no change of control at all.*

e. *The Noticees were under the bona fide belief that converting the Promoter Warrants in one stroke would not result in any increase that would trigger any provision of an open offer because they believed the Investors would convert too.*

f. *In the circumstances, the Noticees genuinely believed bona fide that they were not undertaking any transaction that would trigger any of the regulatory objectives or legislative intent of the 1997 Takeover Regulations.*

g. *The Noticees suo moto reduced their shareholding in VIL in April 2011 itself to 52.30%. This was even below their earlier shareholding of 53.85%. It is submitted humbly that this demonstrates that the Noticees did not want to increase their shareholding or cross the threshold of 55% prescribed by Regulation 11(1) of the 1997 Regulations.*

h. *The BSE was indeed informed of the increase in shareholding pursuant to the Conversion on June 10, 2012.*

i. *The shares acquired pursuant to the Conversion continue to be under lock-in as required.*

j. *The excess shares have also been sold out and the Noticees are back to their original position and in any event they never intended to increase their stake or benefit from the Conversion - they were under the bona fide belief that they were conserving their dilution.*

xvi. *It is submitted that the said limit of 55% was not considered sacrosanct earlier for the purpose of the provisions of Regulation 11 of the 1997 Takeover Regulations. It was in the year 2009 that an amendment was brought about to include language into Regulation 11(1) of the 1997 Takeover Regulations as it appeared at the relevant time. Even at the relevant time, the Report of the Takeover Regulations Advisory Committee dated July 19, 2010 was published by the SEBI ("TRAC Report"). The TRAC Report recommended inter alia that:*

"...The Committee also felt that the current threshold beyond which creeping acquisition is no longer permitted is not appropriate in the context of a mandatory 100% open offer and hence recommended that creeping acquisition of 5 % per annum be allowed up lo the maximum permissible non-public shareholding limit..."

xvii. *The TRAC Report clearly indicated that the amendments proposed to the 1997 Takeover Regulations would enable acquirers to acquire shares or voting rights upto 5% every financial year until such time that the minimum public shareholding limit was reached. In other words, there was indeed a proposal to allow acquisitions upto 5% every financial year without regard to whether the 55% limit was crossed or otherwise.*

xviii. *The TRAC Report was published at the relevant time and the Noticees indeed believed that the same approach would be adopted whilst reading the provisions of the 1997 Takeover Regulations. Eventually, SEBI too accepted this recommendation and in fact considered the separate threshold of 55% to be cumbersome and not a material threshold for the administration of an obligation to make an open offer.*

xix. *In the circumstances, taking the totality of policy objectives, it is humbly submitted that the Noticees have not done anything to warrant any penalty against them.*

xx. *It is submitted that the acquisition of 2.19% shareholding pursuant to the Conversion was much below the 5% limit allowed during a financial year. The arrangement in this regard was specifically arrived at to ensure that the limit for open offer would not be triggered. It is unfortunate that owing to the Investors, the present situation came to be. It is submitted that the Noticees ought not to be penalised merely on account of a technical and strict reading of the provisions of the 1997 Takeover Regulations.*

xxi. *There was no change in control or change in the composition of the promoter holding in VIL on account of the Conversion. This is another relevant and critical aspect of the matter. The purpose of the takeover regulations is to enable shareholders an opportunity of exit every time that there was a substantial acquisition or change in control in relation to the target company.*

xxii. *In the present case, there was neither any substantial acquisition nor any shift in control on account of the Conversion. Therefore, on a purposive interpretation of the 1997 Takeover Regulations, no penalty ought to be imposed upon the Noticees. In fact, in keeping with these principles, the WTM Order has not directed the Noticees to make an open offer.*

xxiii. *In any event, pursuant to an amendment to Regulation 11(2) of the 1997 Takeover Regulations, an acquirer could acquire upto 5% shareholding or voting rights in addition to acquisitions under Regulation 11(1) of the 1997 Takeover Regulations. The requirement in this regard indeed was to ensure that such acquisitions are effected from the open market. However this means that the intention of the regulations was to allow further acquisitions beyond the 55% limit threshold without making an open offer. It is submitted therefore that it was*

indeed possible for the Noticees to acquire upto 10% additional shares or voting rights at the relevant time without making an open offer. However for the acquisition of a mere 2.19% shareholding, the Noticees would be penalised. It is submitted that this lead to an absurd and incongruous position. In that view of the matter, a purposive and correct approach ought to be adopted in the matter.

xxiv. *With regards the alleged defaults relating to non-disclosures, it is submitted that the entire process of issuance of the Warrants, the Conversion and the subsequent listing of the shares thereby was in the public domain. It is submitted that the shareholders of VIL therefore did have notice of the fact of the acquisition of the shares pursuant to the Conversion.*

xxv. *In any case, the Noticees were under the bona fide belief that Regulation 7(1A) gets triggered only when an individual acquirer acquires more than 2% shares, and, in this case, no individual acquirer has acquired more than 2% of shares.*

xxvi. *In light of the above, given the mitigating factors set out above, there is no reason for imposing any monetary penalty against the Noticees. We request therefore that the present proceedings be disposed of without any penalty against the Noticees.*

8. An opportunity for personal hearing was granted to the Noticees on September 27, 2016, however the same was not attended by the Noticees. Subsequently, an opportunity of personal hearing was granted to the Noticees on October 27, 2016. The hearing was attended by Mr. Paras Parekh (Advocate), Ms. Neerja Balkrishan (Advocate), Mr. Jayesh V Valia, Mr. H K Bijlani and Mr. Vidyadhar Saunkhe, on behalf of the Noticees and made submissions mainly reiterating their earlier submissions in the reply.

9. Subsequent to the appointment of the undersigned as AO, the Noticees were granted one more opportunity of personal hearing on November 09, 2017. The following authorized representatives (**ARs**) - Mr. Paras Parekh (Advocate), Ms. Stuti Shah (Advocate), Mr. Jayesh V Valia, Mr. H K Bijlani and Mr. Vidyadhar Saunkhe, appeared on behalf of the Noticees, and made the following submissions –

i. *They 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.*

ii. *As regards, the open offer matter, the breach of the threshold has occurred due to non- conversion of warrants issued to non-promoters, as explained in their reply on record. As soon as the violation was brought to the notice of the management, a*

conscious decision was taken to divest the holding and bring it back to the levels previously held.

iii. Infusion of funds to the company was necessitated on account of financial difficulties faced by the company which has been declared as a sick company by the BIFR.

10. The representatives were granted time till November 20, 2017 for providing the details as to the price paid for the acquisition of shares in April 2010 as well as the amount realized on the sale of such shares subsequently.

11. Vide reply dated November 20, 2017, the Noticees made the following submissions –

i. The Noticees have already submitted that the alleged breach was on account of non-conversion of warrants by non-promoter entities who were required to convert warrants along with the Noticees. It is submitted that had such conversion been effected, the shareholding of the Noticees would have infact reduced and not increased, crossing the threshold of 55%. It is submitted that there is no change in control in the Target Company on account of the transactions in question. It is submitted that the Noticees had infused an amount of Rs. 3,43,75,000/- (6,25,000 warrants at Rs. 55 per warrant) by subscription of the warrants in question. The purpose of the issuance of the warrants was construction of townships by VIL and not on account of VIL being registered with the BIFR as inadvertently stated during the personal hearing. The same is apparent from the explanatory statement containing statement of objects pursuant to which the shareholders resolution dated April 3, 2010 approving the issuance of the warrants was passed.

ii. The fact that the Noticees did not desire to increase their shareholding is apparent from the fact that when the Noticees suo moto reduced their shareholding from 56.04% to 53.30% during theperiod from April to June 2011 by selling a total of 1,50,000 shares (between April 13, 2011and April 19, 2011) and 1,75,000 shares (on June 16, 2011) by Vasparr Trading Private Ltd., Pushpanjali Drums Pvt. Ltd and Ms. Sangeeta Valia.

iii. It is submitted that the sole purpose for the sale of these shares was to enable the shareholding of the Noticees to be reduced below the threshold of 55%.

iv. It is submitted that the total amount received from the sale of the above securities was Rs. 3,38,94,959.67/-.

v. It is pertinent to note that:

a. There was no additional 'substantial' acquisition of shares by the Noticees (since the acquisition was of 2.19% only).

b. Another factor to be considered to mitigate the penalty, if any, is that it was in the year 2009 that an amendment was brought about to include language into Regulation 11(1) of the Takeover Regulations as it appeared at the relevant time. Additionally, the Report of the Takeover Regulations Advisory Committee dated

*July 19, 2010, which was published by the SEBI ("**TRAC Report**") recommended that:*

"…The Committee also felt that the current threshold beyond which creeping acquisition is no longer permitted is not appropriate in the context of a mandatory 100% open offer and hence recommended that creeping acquisition of 5 % per annum be allowed up to the maximum permissible non-public shareholding limit…"

c. Therefore there was a proposal to allow acquisitions up to 5% every financial year without regard to whether the 55% limit was crossed or otherwise. SEBI accepted this recommendation and in fact considered the separate threshold of 55% to be cumbersome and not a material threshold for the administration of an obligation to make an open offer. It is submitted that the Noticees ought not to be penalised merely on account of a technical and strict reading of the provisions of the 1997 Takeover Regulations.

vi. *Additionally, the Noticees submit that it must be considered that the alleged violations did not result in any hardship or loss to the investors in VIL and the Noticees did not gain any benefit or undue advantage on account of the alleged non-disclosure. No such gain or undue benefit is alleged or attributed to the Noticees in the Show Cause Notice or otherwise.*

vii. *In view of the above, given the mitigating factors set out above, it is humbly prayed that a reasonable view may be taken in the matter and no penalty be imposed upon the Noticees.*

CONSIDERATION OF ISSUES AND FINDINGS

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

I) Whether the Noticees have violated Regulation 11(1) read with 14(1) of the SAST Regulations, 1997; and Regulations 7(1) and 7(1A) read with 7(2) of the SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011?

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

III) Quantum of penalty.

FINDINGS

13. Before I proceed with the matter, it is pertinent to mention the relevant provisions which are reproduced below:

SAST Regulations, 1997

Acquisition of 5 per cent and more shares or voting rights of a company.

7(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four percent 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.

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.

Consolidation of holdings.

11(1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, with post acquisition shareholding or voting rights not exceeding fifty five per cent in any

financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.

Timing of the public announcement of offer.

14(1) The public announcement referred to in regulation 10 or regulation 11 shall be made by the merchant banker not later than four working days of entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein.

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;

<u>Issue I)</u> Whether the Noticees have violated Regulation 11(1) read with 14(1) of the SAST Regulations, 1997; and Regulations 7(1) and 7(1A) read with 7(2) of the SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011?

Violation of Regulation 11(1) read with 14(1) of SAST Regulations, 1997

14. From the materials / facts available on record, I note that the Noticees belong to the promoter group of VIL and were holding 67,31,154 shares constituting 53.85% of the share capital of the company as on March 31, 2011. VIL allotted 25,00,000 share warrants (detachable) on April 30, 2010 to Noticee nos. 1 to 6 and certain other non-promoter investors, namely M/s Power Pack Finance & Investments Private Ltd., M/s Leena Investments Consultancy LLP and M/s N.K. Chemplast Private Ltd. On April 6, 2011, Noticee nos. 1 to 6 converted their portion of warrants i.e. 6,25,000 warrants and thus acquired 6,25,000 equity shares of the company. Consequently, the shareholding of the Noticees increased from 53.85 % to 56.04% equity shares of the target company upon conversion of warrants on April 6, 2011. The shareholding of the Noticees in terms of number of shares and percentage prior to the acquisition and subsequent to the acquisition are shown in the following table –

	Pre Acquisition holding of the Promoter Group / Acquirer as on 31/03/2011		**Shares acquired pursuant to conversion of warrants on 06/04/2011**	**Post Acquisition holding of the Promoter Group / Acquirers as on 06/04/2011**	
Name of Promoter Group / Acquirer	**No. of shares**	**%**	**No. of shares**	**No. of shares**	**%**
Jayesh V. Valia (HUF)	3,45,825	2.77%	1,04,200	4,50,025	3.43%
Shri Raj J. Valia	0	0.00%	1,04,200	1,04,200	0.79%
Shri Madhav J Valia	2,82,800	2.26%	1,04,200	3,87,000	2.94%
Shri Jayesh V. Valia	2,83,800	2.27%	1,04,200	3,88,000	2.95%
M/s Yashraj Containeurs Ltd.	10,71,511	8.57%	1,04,100	11,75,611	8.96%
M/s Precision Containeurs Ltd Containeurs Ltd	13,49,562	10.80%	1,04,100	14,53,662	11.08%
Ms. Sangeeta J. Valia	5,04,671	4.03%	0	5,04,671	3.84%
Mr. Vinodrai V. Valia	153	0.00%	0	153	0.00%
M/s Vasparr Shelter Ltd. (now known as RV Lifestyle Limited)	6,00,516	4.80%	0	6,00,516	4.58%
M/s Vasparr Trading P. Ltd.(now known as VAS Educomp Private Ltd)	9,74,836	7.80%	0	9,74,836	7.43%
M/s Pushpanjali Drums P. Ltd.	13,17,880	10.55%	0	13,17,880	10.04%
Total	**67,31,554**	**53.85%**	**6,25,000**	**73,56,554**	**56.04%**

15. In this regard, I note that the Noticees in their submissions in the matter have not disputed the above acquisition of 6,25,000 shares. I note that as the collective shareholding of the Noticees increased from 53.85% to 56.04% upon conversion of 6,25,000 warrants into the equity shares of the company in the aforesaid manner and thereby exceeding the limit of 55% as prescribed under Regulation 11(1) of SAST Regulations, 1997, the Noticees were required to make public announcement to acquire shares within 4 working days from the date of acquisition as stipulated under Regulation 11(1) read with Regulation 14(1) of SAST Regulations, 1997. However, the Noticees have not made any public announcement to acquire shares from the remaining shareholders, consequent to their aforesaid acquisition.

16. The Noticees in their replies dated September 30, 2016 and November 20, 2017 have stated that they "*were indeed aware of the implications of the Conversion and there was therefore an understanding with the Investors that the Promoter Warrants and the Investor Warrants would be converted together." and that "it was the bona fide belief of the Noticees that the Investors would also effect conversion of the Investor Warrants. It was understood that the resultant increase in the overall paid-up capital of VIL would ensure that there would be no increase in the percentage holding of the Noticees as well as the Investors".* They have further stated that the other investors did not convert their portion of warrants for reasons not known to them. In this regard, Regulation 11(1) and 14(1) of the SAST Regulations, 1997 requires that an acquirer together with persons acting in concert, who has acquired 15% or more but less than 55%, in accordance with law, shall not acquire additional shares or voting rights, which entitles him to exercise more than 5% of the voting rights, (with his post-acquisition shareholding or voting rights not exceeding 55%, in any financial year ending on 31st March) unless such acquirer makes a public announcement to acquire shares in accordance with the regulations within four working days of acquisition of shares or voting rights in the target company. In effect, this means that the acquirer falling under this regulation can acquire upto 5% shares or voting rights in a financial year without making a public announcement, however, if the acquirer acquires more than 5% shares/voting rights or his post acquisition shareholding exceeds fifty five percent, he shall make a public announcement in accordance with the regulations.

Thus, upon a reading of the relevant Regulations as above, I find that the reasons quoted by the Noticees cannot be a ground for exemption from making open offer under the Regulation 11(1) read with 14(1) of the SAST Regulations, 1997, and therefore I find no merit in their contentions. The requirement to make an open offer in terms of the provisions of the regulations were triggered by the Noticees, at the moment their shareholding crossed the threshold limit of 55%. The obligation to make an open offer is not dependent on conversion of warrants by other non- promoter entities as contended by the Noticees. Further the fact that there has been no change in control cannot dilute the requirement of open offer when the same is the result of breaching the threshold limit of 55% as happened in this case.

17. The Noticees had submitted that they had *suo moto* reduced their shareholding subsequently, and in their replies it was stated that "*the Noticees, on becoming aware of such increase in their shareholding in VIL reduced their shareholding in VIL to 52.30% from 56.04% during the period April to June 2011. This was done by selling a total of 1,50,000 shares (between April 13, 2011 and April 19, 2011) and 1,75,000 shares (on June 16, 2011) by Vasparr Trading Private Ltd., Pushpanjali Drums Pvt. Ltd and Ms. Sangeeta Valia".* The Noticees had further submitted the copies of contract notes of the sale of shares by Noticee nos. 7, 10 and 11. In this regard, I note that the Noticees acquired 6,25,000 shares on April 06, 2011 resulting in their shareholding crossing 55% and thus they were obliged to make public announcement within four working days from April 06, 2011, to acquire shares from the remaining shareholders. I find that there is no provision for granting exemption under the Regulations 11(1) read with 14(1) of SAST Regulations, 1997, once the open offer requirement is triggered. The contention that the Noticees have sold shares subsequently (i.e. post April 13, 2011) does not absolve the Noticees from making the open offer as stipulated in Regulation 11(1) of the SAST Regulations, 1997, and therefore I find no merit in the above contention of the Noticees.

18. The Noticees in their replies had submitted that *"the acquisition of the entire movement from 53.85% to 56.04% was in one stroke and was not in series of steps that would take them from their original level to the resultant level. In any case, the Conversion*

was well within the perceived annual permissible limit of 5% additional voting rights". In this regard, it may be pointed out that the requirement under Regulation 11(1) of the SAST Regulations, 1997 is that the acquirer falling under the said regulation, shall not acquire additional shares or voting rights, which entitles him to exercise more than 5% of the voting rights, (with his post-acquisition shareholding or voting rights not exceeding 55%, in any financial year ending on 31st March) unless such acquirer makes a public announcement to acquire shares. Accordingly, I find that the contention of the Noticees that the acquisition was within the permissible limit of 5% additional voting rights cannot negate the fact that their shareholding did indeed cross 55% on April 06, 2011 post their acquisition, and as such they were under obligation to make a public announcement to acquire shares.

19. The Noticees have contended that "*said limit of 55% was not considered sacrosanct earlier for the purpose of the provisions of Regulation 11 of the 1997 Takeover Regulations. It was in the year 2009 that an amendment was brought about to include language into Regulation 11(1) of the 1997 Takeover Regulations as it appeared at the relevant time".* In this regard, I note that the amendment requiring the acquirer to make a public announcement if the post acquisition shareholding of the acquirer exceeds 55%, came into effect on 06.11.2009, and hence the condition specified therein was very much applicable on the Noticees when the trigger for making open offer occurred i.e. April 06, 2011 (date of acquisition). The Noticees have further contended that the Takeover Regulations Advisory Committee (TRAC) Report dated July 19, 2010 published by SEBI had "*indicated that the amendments proposed to the 1997 Takeover Regulations would enable acquirers to acquire shares or voting rights upto 5% every financial year until such time that the minimum public shareholding limit was reached. In other words, there was indeed a proposal to allow acquisitions upto 5% every financial year without regard to whether the 55% limit was crossed or otherwise. The TRAC Report was published at the relevant time and the Noticees indeed believed that the same approach would be adopted whilst reading the provisions of the 1997 Takeover Regulations. Eventually, SEBI too accepted this recommendation and in fact considered the separate threshold of 55% to be cumbersome and not a material threshold for the administration of an obligation to*

make an open offer". In this regard, I note that the SAST Regulations, 1997 was repealed and the new SAST Regulations, 2011 came into force on October 22, 2011. As per the provisions of the SAST Regulations, 2011, the acquirer can acquire upto 75% of the shares, by way of the creeping acquisition of upto 5% in a financial year. However in the present case I find that the acquisition of the Noticees, which resulted in their shareholding exceeding 55%, was made in April 2011, during which the provisions of SAST Regulations, 1997 were the applicable regulations. As such the provisions of SAST Regulations, 2011 cannot be applied retrospectively. Hence, I find that the acquisition of shares by the Noticees breaching the threshold limit of 55% in the instant case and their failure to make public announcement, is a violation of Regulation 11(1) read with 14(1) of the SAST Regulations, 1997.

20. The Noticees have contended that there was no substantial acquisition or any change in control on account of the conversion of the warrants. In this regard, I note that while there may have been no change in control of the target company on account of conversion of warrants, the requirement of open offer under the Regulation 11(1) of SAST Regulations, 1997 is also to ensure that any purchase of shares by a person in control holding beyond 55% should take place in a transparent manner through public offer. I find that the Noticees, by exceeding the threshold limit of 55% have triggered the open offer requirement mandated by Regulation 11(1) of SAST Regulations, 1997. The Noticees, have also stated that "*In fact, in keeping with these principles, the WTM Order has not directed the Noticees to make an open offer".* I am unable to accept the said contention of the Noticees, as the same does not absolve the Noticees of the violation of the provisions of Regulation 11(1) of the SAST Regulations, 1997. On the contrary, the Whole Time Member, SEBI's order dated October 28, 2015, which is being referred to here by the Noticees, has issued directions (as mentioned in para 4 of this order) to initiate adjudication proceedings against the Noticees for the violations of Regulations 11(1) read with 14(1) of SAST Regulations, 1997, apart from the violations of Regulations 7(1) and 7(1A) read with 7(2) of SAST Regulations, 1997.

21. The Noticees have contended that "*In any event, pursuant to an amendment to Regulation 11(2) of the 1997 Takeover Regulations, an acquirer could acquire upto 5% shareholding or voting rights in addition to acquisitions under Regulation 11(1) of the 1997 Takeover Regulations. The requirement in this regard indeed was to ensure that such acquisitions are effected from the open market. However this means that the intention of the regulations was to allow further acquisitions beyond the 55% limit threshold without making an open offer. It is submitted therefore that it was indeed possible for the Noticees to acquire upto 10% additional shares or voting rights at the relevant time without making an open offer"*. In this regard, I note that the provision of Regulation 11(2) of SAST Regulations, 1997, being referred by the Noticees, allowed creeping acquisition upto 5%, subject to the condition that the acquisition is made through open market purchase in normal segment on the stock exchange but not through bulk deal /block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buy back of shares by the target company. However, in the present case, I note that the shareholding of the Noticees had not increased through an acquisition in the open market, or through a buy back of shares by the company. Hence, the provisions of Regulation 11(2) of SAST Regulations, 1997 is not applicable in the present case and therefore I find no merit in the above contention of the Noticees.

22. In view of the above, it is found that the acquirers crossed the threshold limit of 55% on April 6, 2011 and were required to make public announcement by April 13, 2011. I note that Noticees have failed to make public announcement as mandated by Regulation 11(1) read with 14(1) of the Takeover Regulations, 1997 thereby violating the said regulations and hence are liable for penalty under Regulation 15 H(ii) of SEBI Act.

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

23. From the materials / facts on record, I note that the shareholding of the Noticees increased from 53.85% to 56.04% upon conversion of 6,25,000 warrants into shares on April 06, 2011. As the shareholding of the Noticees crossed the threshold limit of 54%, they were required to make a disclosure of the acquisition to the target company

and the stock exchanges, where shares of the target company are listed, within two working days from the date of acquisition, as specified under Regulation 7(1) read with 7(2) of the SAST Regulations, 1997. However, as per the materials / facts on record, the Noticees have not made any disclosures under Regulation 7(1) read with 7(2) of the SAST Regulations, 1997, to the target company and the stock exchange(s) within two days from April 6, 2011. In this regard, I note that the Noticees vide their replies vide letters dated September 30, 2016 and November 20, 2017 have not disputed the fact that no disclosure under Regulation 7(1) read with 7(2) of the SAST Regulations, 1997 has been filed by them. The Noticees have stated that "*With regards the alleged defaults relating to non-disclosures, it is submitted that the entire process of issuance of the Warrants, the Conversion and the subsequent listing of the shares thereby was in the public domain. It is submitted that the shareholders of VIL therefore did have notice of the fact of the acquisition of the shares pursuant to the Conversion".* In this regard, I note that obligation to make disclosure under SAST Regulations, 1997 is a mandatory statutory obligation on the Noticees. Further, I note that the Hon'ble Securities Appellate Tribunal (SAT) in Premchand Shah and Others V. SEBI vide order dated February 21, 2011, held that *".....When a law prescribes a manner in which a thing is to be done, it must be done only in that manner.....Non-disclosure of information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take informed decision while making investments..... ".*

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

24. From the materials / facts on record, I note that the Noticees acquired 6,25,000 shares upon conversion of 6,25,000 warrants on April 06, 2011, post which their shareholding increased from 53.85% to 56.09%. As the acquisition was more than 2% of the share capital of VIL, it required a disclosure within 2 days of transaction from the Noticees to VIL and the stock exchanges where shares of VIL are listed, as stipulated by regulation 7(1A) read with regulation 7(2) of SAST Regulations, 1997. However, as per the materials / facts on record, the Noticees have not made any disclosures under Regulation 7(1A) read with 7(2) of the SAST Regulations, 1997, to the target

company and the stock exchange(s) within two days from April 6, 2011. I note that the Noticees vide their replies vide letters dated September 30, 2016 and November 20, 2017 have not disputed the fact that no disclosures under Regulation 7(1A) read with 7(2) of the SAST Regulations, 1997 have been filed by them. The Noticees vide their reply dated September 30, 2016 have stated "*the Noticees were under the bona fide belief that Regulation 7(1A) gets triggered only when an individual acquirer acquires more than 2% shares, and, in this case, no individual acquirer has acquired more than 2% of shares".* In this regard, it is observed that the definition of acquirer includes within its ambit, the persons acting in concert (PACs). In the instant case, the Noticees are the promoter group entities of the target company and hence they were all acting in concert. Thus, I find that the Noticees, by not making disclosures under Regulation 7(1A) read with 7(2) of SAST Regulations, 1997 have violated the said provisions.

25. The Noticees have submitted that "*it must be considered that the alleged violations did not result in any hardship or loss to the investors in VIL and the Noticees did not gain any benefit or undue advantage on account of the alleged non-disclosure. No such gain or undue benefit is alleged or attributed to the Noticees in the Show Cause Notice or otherwise".* In this regard, I note that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is warranted for non-compliance with the mandatory obligation. The Hon'ble SAT in its Order dated September 30, 2014, in the matter of Akriti Global Traders Ltd. Vs SEBI had observed that -

> *"Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/receipt, percentage of shares held*

by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations."

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

26. The Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram Mutual Fund held that "*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow*".

27. 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 that *"Once it is established that the mandatory provisions of Takeover code was violated the penalty must follow".*

28. Thus the violations of Regulations 11(1) read with 14(1) of the Takeover Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011 by the Noticees make them liable for penalty under Section 15H(ii) of the SEBI Act, 1992 and the violation of 7(1) and 7(1A) read with 7(2) of the SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011 by the Noticees make them liable for penalty under Section 15A(b) of the SEBI Act, 1992. The provisions of Sections 15H(ii) and 15A(b) of the SEBI Act, 1992 read as under -

SEBI Act, 1992

Penalty for non-disclosure of acquisition of shares and take-overs

15H. If any person, who is required under this Act or any rules or Regulations made thereunder, fails to-

(ii) make a public announcement to acquire shares at a minimum price;

he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder,—

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

Issue III) Quantum of penalty.

29. In this regard, the provisions of Section 15J of the SEBI Act, 1992 and Rule 5 of the Rules, require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely; -

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

30. From the material available on record, it is difficult to quantify the exact disproportionate gains or unfair advantage enjoyed by the Noticees and the consequent losses suffered to the investors. However, the fact remains that the Noticees by their failure to make public announcement to acquire shares, deprived the shareholders at the relevant time of their right and opportunity to exit from the company and to this extent, there was loss to the shareholders. As per law, a minimum of 20% of the voting capital of the company ought to have been acquired by the Noticees at the relevant point in time. Though, later the law has been changed, and as per the SAST Regulations, 2011 the open offer has to be made for atleast 26% of the total shares of the company, as the open offer requirement was triggered on April 06, 2011, the minimum number of shares mandated to be acquired as per Regulation 21(1) of SAST Regulations, 1997 was 20%. A mitigating factor pointed out by the Noticees, was that there was no change in control pursuant to the acquisition. The Noticees

have also submitted that subsequently, as soon as the violation was detected, the shareholdings of the Noticees were brought down to the previous levels, by selling of shares during the period from April to June 2011. It is also noted that subsequently, as per the new SAST Regulations, 2011 which came into force on October 22, 2011 the threshold limit has been modified to 75% instead of 55% limit (as per the earlier SAST Regulations, 1997). Considering the mitigating factors, as mentioned above, a lenient view is taken with regard to penalty warranted in respect of the violation on account of failure on the part of Noticees to make a public announcement to acquire shares. I further note that the Noticees have not filed disclosures to the company and stock exchanges as was required under Regulation 7(1) and 7(1A) read with 7(2) of SAST Regulations, 1997 and had thus committed multiple disclosure violations and as such have deprived the investors of important information at the relevant point in time.

ORDER

31. Taking into account the violations stated above, and in exercise of power conferred upon me under section 15 I of the SEBI Act read with rule 5 of the Rules, I hereby impose under Section 15H(ii) of the SEBI Act, 1992, a penalty of Rs. 1,00,00,000/- (Rupees One crore only) on the Noticees, to be paid jointly and severally, for the failure to make public announcement / open offer under Regulation 11(1) read with 14(1) of SAST Regulations, 1997. With regard to the violation of non-disclosure of shareholding and acquisition in terms of the provisions of Regulation 7(1) read with 7(2) 1992 of SAST Regulations, 1997, I impose under Section 15A(b) of the SEBI Act, 1992a penalty of Rs. 1,00,000/- (Rupees One Lac only) on the Noticees, to be paid jointly and severally. Further, for the violation of non-disclosure under Regulation 7(1A) read with 7(2) 1992 of SAST Regulations, 1997, I impose under Section 15A(b) of the SEBI Act, 1992, a penalty of Rs. 1,00,000/- (Rupees One Lac only) on the Noticees, to be paid jointly and severally. The details of the penalties imposed on the Noticees is mentioned in a tabular form below –

Violation	Penalty on the Noticees
Regulation 11(1) read with 14(1) of SAST Regulations, 1997	Rs. 1,00,00,000/- (Rupees One crore only) to be paid jointly and severally
Regulation 7(1) read with 7(2) of SAST Regulations, 1997	Rs. 1,00,000/- (Rupees One Lac only) to be paid jointly and severally
Regulation 7(1A) read with 7(2) of SAST Regulations, 1997	Rs. 1,00,000/- (Rupees One Lac only) to be paid jointly and severally
Total	**Rs. 1,02,00,000/- (Rupees One crore and two lacs only) to be paid jointly and severally**

32. The amount of penalty shall be paid either by way of demand draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department - DRA-II), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051."

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

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

Place: Mumbai **BIJU S**

DATE: 29.12.2017 **ADJUDICATING OFFICER**