

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BS/AE/2017-18/1356]

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 AND SECTION 23 I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of:

1. Vas Infrastructure Ltd. (PAN : AAACV3537A)
2. Jayesh V Valia (PAN : AAFPV5698G)
3. Ajay Nautamlal Jani (PAN : ABXPJ0066H)
4. Babulal Jain (PAN : ABUPJ5018N)

In the matter of Vas Infrastructure Ltd.

BACKGROUND

1. Securities and Exchange Board of India (*hereinafter referred to as “SEBI”*) conducted investigation into the trading in the scrip of Vas Infrastructure Ltd. and also regarding the possible violation of the provisions of Clause 41(I)(f), and 41(VI)(a) of the Listing Agreement read with Section 21 of Securities Contracts (Regulation) Act, 1956 (*hereinafter referred to as “SCR Act, 1956”*), Clause 1.1 read with 2.1 of Code of Corporate Disclosure Practices for prevention of Insider Trading specified in Schedule II (*hereinafter referred to as “Code of Corporate Disclosure”*) read with Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (*hereinafter referred to as “PIT Regulations, 1992”*), Regulation 12(1) read with Part A of Schedule I to PIT Regulations, 1992 and Clause 49(II)(A) of the Listing Agreement read with Section 21

of SCR Act, 1956 by i) Vas Infrastructure Ltd. (**Noticee No.1 / VIL**), ii) Shri Jayesh V Valia (**Noticee No. 2**), iii) Shri Ajay Nautamlal Jani (**Noticee No. 3**) and Shri Babulal Jain (**Noticee No. 4**). Noticee No. 1 to 4 are hereinafter collectively referred to as “**Noticees**”.

2. It was observed that the unaudited financial results of VIL for the quarter ended December, 2009 was taken on record in its Board Meeting held on January 30, 2010 and the same was informed by VIL to BSE vide its letter dated February 04, 2010, and the stock exchange published the same on its website on February 06, 2010 at 02:42 PM. It is therefore, alleged that the Noticees delayed in intimating the unaudited financial results to BSE and thereby violated i) Clause 1.1 read with 2.1 of Code of Corporate Disclosure under Schedule II read with Regulation 12(2) of PIT Regulations, 1992 and ii) Clause 41(l)(f) of Listing Agreement read with Section 21 of SCR Act, 1956. It was further observed that VIL vide letter dated February 11, 2013 submitted that the financial results for the quarter ended December, 2009 was published in newspapers on February 18, 2010. It is therefore alleged that the Noticees delayed publishing the financial results for the quarter ended December 2009 and thereby violated Clause 41(VI)(a) of Listing Agreement read with Section 21 of SCR Act, 1956.
3. It was further observed that the Code of Conduct for Board Members and Senior Management for the year 2009-2010 submitted by VIL was not adhering to the model code of conduct prescribed under Regulation 12(1) read with Part A of Schedule I of SEBI (PIT) Regulations, 1992 and it did not provide, *inter alia*, for the appointment of compliance officer, preservation of price sensitive information, closure of trading window, pre-clearance of trades, reporting requirements for transactions in securities, penalty for contravention of code of conduct, and provision for providing information to SEBI in case of violation of PIT regulations. It is, therefore, alleged that the Noticees have failed to frame the code of conduct in accordance with the Model Code of Conduct as prescribed under Regulation 12(1) read with Part A of Schedule I to PIT Regulations, 1992 and thereby violated the aforesaid regulation.

4. It was also observed that the Noticees failed to set up Audit Committee in VIL and therefore it is alleged that the Noticees did not comply with Clause 49(II)(A) of the Listing Agreement read with Section 21 of SCR Act, 1956.

APPOINTMENT OF ADJUDICATING OFFICER

5. Shri S.V. Krishnamohan, Chief General Manager was appointed as the Adjudicating Officer (**AO**) vide order dated September 24, 2015 to inquire into and adjudge under Section 23A(a) and 23E of SCRA, 1956 and Section 15HB of the SEBI Act, 1992, the aforesaid violations alleged to have been committed by the Noticees. Subsequently, the undersigned was appointed as the Adjudicating Officer vide order dated September 15, 2017 in the place of Shri S. V. Krishnamohan.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A common Show Cause Notice dated March 16, 2016 (*hereinafter referred to as 'SCN'*) was issued to the Noticees in terms of Section 15I of the SEBI Act, 1992 read with Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 ("**SEBI Adjudication Rules**"), and Section 23I of SC(R) Act, 1956 read with Rule 4 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 ("**SCR Adjudication Rules**") for the violations as specified in the SCN.
7. Vide letter dated April 4, 2016, Noticee No. 1 and 2 requested for inspection of documents in the matter and the same was granted on May 16, 2016.
8. An opportunity for personal hearing was provided to the Noticees on September 26, 2016, however the same was not attended by the Noticees. Subsequently, a personal hearing was held in the matter on October 27, 2016, wherein Mr. Paras Parekh (Advocate), Ms. Neerja Balkrishan (Advocate), Mr. Jayesh V Valia, Mr. H K Bijlani and Mr. Vidyadhar Saunkhe, appeared on behalf of Noticee No. 1 and 2, and made oral submissions and requested for time to file detailed written submissions. The Noticees were granted time till November 15, 2016 to file the written submissions.

9. Noticee No. 1 and 2, vide letter dated November 15, 2016 provided written submissions to the SCN and their main submissions are the following–

- i. The Noticees submit that a reasonable view must be taken in relation to the alleged violations against the Noticees for the following amongst other reasons:*
 - a. The Noticees had taken steps to ensure compliance with various regulatory requirements alleged to have been violated in the Show Cause Notice. However due to some oversight and due to reasons beyond the control of the Noticees, the same could not be complied with. For instance, the Noticees did endure to find independent directors for appointment on board of VIL. However despite such bona fide attempts, there was no response for the same.*
 - b. There has been no major complaint against the Noticees in relation to the working of VIL.*
 - c. The Noticees did effect the disclosure of the outcome of the board meeting on January 30, 2010. The slight delay of four days in intimating the same to the BSE Ltd. and publishing the same was inadvertent.*
 - d. The alleged non-disclosure under the SAST Regulations did not result in any hardship or loss to the investors in VIL as the Noticees.*
 - e. 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.*
 - f. Furthermore, the Noticees have taken steps to ensure that there is compliance with all applicable provisions, including but not limited to the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 and the Listing Agreement.*
- ii. In view of the above, it is humbly prayed that a reasonable view may be taken in the matter and no penalty be imposed upon the Noticees.*

10. 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 Noticee No. 1 and 2, and reiterated their submissions made in their replies submitted earlier. The ARs submitted that the intention was not to violate any provision of law, however for any delay in disclosures, a lenient view may be taken based on submissions already placed on record. The Noticees were granted time till November 20, 2017 to file additional replies, if any. Vide letters dated November 16, 2017, Noticee No. 3 and 4 informed that that they are authorizing the abovementioned ARs to be their representatives for the purposes of the SCN and that they adopt all the submissions/contentions/arguments made by the ARs pursuant to the SCN and the personal hearing held on November 09, 2017 in the matter. Noticee No. 3 and 4 also submitted that they would like to adopt any further submissions that may be made by the aforesaid representatives in relation to the hearing held on November 09, 2017.
11. Vide letter dated November 20, 2017, the ARs filed reply in the matter on behalf of Noticee No. 1 to 4, and reiterated the submissions made earlier vide their letter dated November 15, 2016. The submissions are already summarized in paragraph 9 above. The Noticees made the additional submission as follows – *“Furthermore, the Noticees have taken steps to ensure that there is compliance with all applicable provisions, including but not limited to the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 and the Listing Agreement”*.

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 :

1a) Whether the Noticees have violated Clauses 41(I)(f), and 41(VI)(a) of Listing Agreement read with Section 21 of SCR Act, 1956, and Clause 1.1 and 2.1 of Code of Corporate Disclosure read with Regulation 12(2) of PIT Regulations, 1992?

lb) Whether the Noticees have violated Regulation 12(1) read with Part A of Schedule I to PIT Regulations, 1992?

lc) Whether the Noticees have violated Clause 49(II)(A) of Listing Agreement read with Section 21 of SCR Act, 1956?

II) Whether the violations mentioned in sl. Ia, Ib, and Ic above, if established, attract monetary penalty under Section 23A(a) and 23E of SCR Act, 1956, and Section 15HB 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:

As the violations alleged in the SCN had taken place prior to the promulgation of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the relevant provisions of the Listing Agreement and the SC(R) Act, 1956, which are applicable in the present matter read as under:

Listing Agreement

41. The company agrees to comply with the following provisions:

I) Preparation and Submission of Financial Results

a.

b.

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f. The financial results covered under this sub-clause shall be submitted to the stock exchange within fifteen minutes of conclusion of the meeting of the Board or Committee in which they were approved pursuant to sub-clause (II), through such mode as may be specified by the stock exchange.

41. The company agrees to comply with the following provisions:

VI) Publication of financial results in newspapers

a) *The company shall, within 48 hours of conclusion of the Board or Committee meeting at which the financial results were approved, publish a copy of the financial results which were submitted to the stock exchange in at least in one English daily newspaper circulating in the whole or substantially the whole of India and in one daily newspaper published in the language of the region, where the registered office of the company is situated:*

Provided *that where the company has opted to submit audited financial results under sub-clause I(b)(ii), it shall also publish the qualifications or reservations, if any, expressed by the auditor together with the audited results.*

49. CORPORATE GOVERNANCE

The company agrees to comply with the following provisions:

II Audit Committee

(A) Qualified and Independent Audit Committee

A qualified and independent audit committee shall be set up, giving the terms of reference subject to the following:

- (i) The audit committee shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors.*
- (ii) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.*

Explanation 1: *The term “financially literate” means the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.*

Explanation 2: *A member will be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual’s financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.*

- (iii) The Chairman of the Audit Committee shall be an independent director;*

- (iv) The Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries;*
- (v) The audit committee may invite such of the executives, as it considers appropriate (and particularly the head of the finance function) to be present at the meetings of the committee, but on occasions it may also meet without the presence of any executives of the company. The finance director, head of internal audit and a representative of the statutory auditor may be present as invitees for the meetings of the audit committee;*
- (vi) The Company Secretary shall act as the secretary to the committee.*

SCR Act, 1956

Conditions for listing.

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

The provisions of the Listing Agreement have now been rescinded and the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 has been promulgated and Regulation 103 of the said Regulations reads as follows -

SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 Repeal and Savings

103.(1) On and from the commencement of these regulations, all circulars stipulating or modifying the provisions of the listing agreements including those specified in Schedule X, shall stand rescinded.

(2) Notwithstanding such rescission, anything done or any action taken or purported to have been done or taken including any enquiry or investigation commenced or show cause notice issued in respect of the circulars specified in sub-regulation (1) or the Listing Agreements, entered into between stock exchange(s) and listed entity, in force prior to the commencement of these regulations, shall be deemed to have been done or taken under the corresponding provisions of these regulations.

PIT Regulations, 1992

Code of internal procedures and conduct for listed companies and other entities.

12. (1) *All listed companies and organisations associated with securities markets including:*

(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;

(b) the self-regulatory organisations recognised or authorised by the Board;

(c) the recognised stock exchanges and clearing house or corporations;

(d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and

(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies,

shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same.

(2) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.

CODE OF CORPORATE DISCLOSURE PRACTICES FOR PREVENTION OF INSIDER TRADING

1.0 Corporate Disclosure Policy

1.1 To ensure timely and adequate disclosure of price sensitive information, the following norms shall be followed by listed companies:—

2.0 Prompt disclosure of price sensitive information

2.1 Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.

SEBI (Prohibition of Insider Trading) Regulations, 2015

Repeal and Savings.

12. (1) *The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992* are hereby repealed.

(2) *Notwithstanding such repeal,—*

(a) *the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and*

(b) *anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;*

Issue Ia) Whether the Noticees have violated Clauses 41(I)(f), and 41(VI)(a) of Listing Agreement read with Section 21 of SCR Act, 1956, and Clause 1.1 and 2.1 of Code of Corporate Disclosure read with Regulation 12(2) of PIT Regulations, 1992?

14. From the facts available on record, it is noted that the position of the Noticee no. 2, 3 and 4 in the company as per the Annual Report of VIL for the year 2009-10 is as under:

Sr. no.	Name of Director	Designation on the Board
1.	Dr. Jayesh V. Valia	Chairman
2.	Ajay Nautamlal Jani	Director
3.	Babulal Jain	Director
4.	S.K.Kittur	Director (Expired on Aug 11, 2010)

15. I note that the unaudited financial results of VIL for the quarter ended December, 2009 was taken on record in its Board Meeting held on January 30, 2010 and the same was informed by VIL to BSE vide its letter dated February 04, 2010. BSE published the same on its website on February 06, 2010 at 02:42 PM.

16. In this regard, I note that Clause 1.1 read with 2.1 of Code of Corporate Disclosure under Schedule II of PIT Regulations, 1992 require that price sensitive information has to be disseminated by the company on an immediate basis. Further, Clause 41(I)(f) of the Listing Agreement, requires the company to submit the financial results to the stock exchange within fifteen minutes of conclusion of the meeting of the Board.
17. From the materials and facts available on record, I note that VIL vide their letter dated March 26, 2012 submitted to SEBI that – *“ordinarily the intimation would have gone to BSE on Monday, the 1st February, 2010, as 31st being the Sunday. However, inadvertently, intimation in writing remained to be sent immediately for which we regret. We have taken note of your notice and confirm that in future such incidents will not occur.”* I also note that BSE, vide its e-mail dated March 27, 2012 to SEBI, informed that the said results were received by them only by way of a letter delivered in the inward section on February 04, 2010 and same was not received by Fax.
18. It was therefore, alleged that the Noticees delayed intimating the unaudited financial results to BSE and thereby violated i) Clause 1.1 read with 2.1 of Code of Corporate Disclosure under Schedule II read with Regulation 12(2) of PIT Regulations, 1992 and ii) Clause 41(I)(f) of Listing Agreement read with Section 21 of SCR Act, 1956.
19. I also note that from the replies of the Noticees dated November 15, 2016 and November 20, 2017 wherein they have submitted that *“The slight delay in intimating the same to the BSE Ltd. and publishing the same was inadvertent”*.
20. In the present case, based on facts as explained above, I find that VIL informed the unaudited financial results to BSE with a delay of 5 days. Therefore, I find that the Noticee No. 1 to 4 have violated Clause 1.1 read with 2.1 of Code of Corporate Disclosure under Schedule II of PIT Regulations, 1992 and Clause 41(I)(f) of the Listing Agreement read with Section 21 of the SCR Act, 1956.
21. From the material available on record, I observe that VIL vide letter dated February 11, 2013 submitted that the financial results for the quarter ended December, 2009 were published in newspapers on February 18, 2010. It was therefore alleged that the Noticees have delayed in publishing the financial results for the quarter ended

December 2009 in newspapers and thereby violated Clause 41(VI)(a) of Listing Agreement read with Section 21 of SCR Act, 1956.

22. In this regard, I note that the Noticees in their replies dated November 15, 2016 and November 20, 2017 submitted that *"The slight delay in intimating the same to the BSE Ltd. and publishing the same was inadvertent"*.
23. I note that Clause 41(VI)(a) of the Listing Agreement requires the company to publish the financial results in newspapers within 48 hours of conclusion of the Board meeting. In the present case, the financial results for the quarter ended December 2009 which was taken on record in the board meeting of VIL held on January 30, 2010 was published in newspapers only on February 18, 2010. Accordingly, I conclude that there was a delay in publishing the financial results in the newspapers and thus, the Noticee No. 1 to 4 have violated Clause 41(VI)(a) of the Listing Agreement read with Section 21 of the SCR Act, 1956.

Issue Ib) Whether the Noticees have violated Regulation 12(1) read with Part A of Schedule I to PIT Regulations, 1992?

24. From the facts and material on record, it is noted that SEBI vide letter dated August 05, 2011, asked VIL to provide a copy of the 'Model code of conduct for prevention of Insider Trading' adopted by the company as specified under PIT Regulations, 1992. I note from VIL's letter dated August 11, 2011, that its reply to the above query was stated as "No". Subsequently, SEBI vide letter dated April 20, 2012, required VIL to submit a copy of Code of Conduct as required under PIT Regulations, 1992 for the year 2009-10. VIL vide its letter dated April 27, 2012 submitted a copy of "Code of Conduct for Board Members and Senior Management". I note that the Code of Conduct for Board Members and Senior Management as submitted by VIL is a requirement in terms of Clause 49(I)(D) of the Listing Agreement and not under the PIT Regulations, 1992. Further, I note that the same was not in accordance with the model code of conduct prescribed under Regulation 12(1) read with Part A of Schedule I of SEBI (PIT) Regulations, 1992 as it did not provide, *inter alia*, for the appointment

of compliance officer, preservation of price sensitive information, closure of trading window, pre-clearance of trades, reporting requirements for transactions in securities, penalty for contravention of code of conduct, information to SEBI in case of violation of PIT Regulations.

25. I also note that the fact regarding the failure to frame the code of conduct in accordance with the Model Code of Conduct as prescribed under Regulation 12(1) read with Part A of Schedule I of PIT Regulations, 1992, has not been refuted by the Noticees in their replies vide letters dated November 15, 2016 and November 20, 2017.
26. Therefore in view of the above, I find that the Noticees have failed to frame the code of conduct in terms of the Model Code of Conduct as prescribed under Regulation 12(1) read with Part A of Schedule I of PIT Regulations, 1992 and thereby violated the provisions of Regulation 12(1) of PIT Regulations, 1992.

Issue Ic) Whether the Noticees have violated Clause 49(II)(A) of Listing Agreement read with Section 21 of SCR Act, 1956?

27. From the facts and material available on record, in respect of failure to constitute audit committee in the prescribed manner, VIL vide its letter dated April 27, 2012, had stated that - *"Company sent letters to various persons from the database available on Prime Directors.com in order to bring adequate no. of Independent Directors to enable it to form Audit Committee, however there was very lukewarm response as such for want of sufficient number of Independent Directors it could not form Audit Committee."*
28. I also note from the replies of the Noticees to the SCN vide letters dated November 15, 2016 and November 20, 2017, wherein they have submitted that *"The Noticees had taken steps to ensure compliance with various regulatory requirements alleged to have been violated in the Show Cause Notice. However due to some oversight and due to reasons beyond the control of the Noticees, the same could not be complied with. For instance, the Noticees did endure to find independent directors for appointment on board of VIL. However despite such bona fide attempts, there was no response for the same."*

29. In this regard, I note that Clause 49(II)(A) provides the various requirements regarding the manner of constitution of a qualified and independent Audit Committee of the company. From the above, I find that VIL has failed to set up the Audit Committee as per the requirements under Clause 49(II)(A) of the Listing Agreement. I also note that the fact regarding failure to set up the Audit Committee has not been refuted by the Noticees. In view of the above, I find that the Noticee No. 1 has violated Clause 49(II)(A) of Listing Agreement read with Section 21 of SCR Act, 1956.

Issue II) Does the violations mentioned in sl. Ia, Ib, and Ic above, if established, attract monetary penalty under Section 23A(a) and 23E of SCR Act, 1956, and Section 15HB of SEBI Act, 1992?

30. 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."*
31. I note that Noticee No. 2, 3 and 4 were the directors of the company at the relevant time when the violations occurred. In this regard, I note that the Hon'ble Securities Appellate Tribunal (**SAT**) in the case of N. Narayanan v. The Adjudicating Officer, SEBI (Appeal No. 29 of 2012 decided on October 05, 2012), while commenting on the role of directors, had observed that: *"With the changing scenario in the corporate world, the concept of corporate responsibilities is also rapidly changing day by day. The director of a company cannot confine himself to lending his name to the company, but, taking light responsibility for its day to day management. While functions may be delegated to professionals, the duty of care, diligence, verification of critical points by directors cannot be abdicated. The directors are expected to have a hands on approach in the running of the company and take up responsibility not only for the achievements of the company, but, also the failings thereto."*
32. Thus, the delay in intimating and publishing unaudited financial results in terms of Clauses 41(I)(f) and 41(VI)(a) of Listing Agreement read with Section 21 of SCR Act,

1956, and Clauses 1.1 read with 2.1 of Code of Corporate Disclosure read with Regulation 12(2) of PIT Regulations, 1992, and Regulation 12(1) read with Part A of Schedule I of PIT Regulations, 1992 by the Noticees makes them liable for penalty under Section 23A(a) of the SCR Act, 1956, and Section 15HB of the SEBI Act, 1992. Further, the failure to frame Code of Conduct in terms of Regulation 12(1) read with Part A of Schedule I of PIT Regulations, 1992, by the Noticees makes them liable for penalty under Section 15HB of the SEBI Act, 1992. In addition to the same, the failure on the part of VIL, the failure to constitute Audit Committee in terms of Clause 49(II)(A) of Listing Agreement read with Section 21 of SCR Act, 1956, makes the Noticee No. 1 liable for penalty under Section 23E of the SCR Act, 1956. The provisions of Section 23A(a) and 23E of the SCR Act, 1956 and Section 15HB of the SEBI Act, 1992 read as under :

SCR Act, 1956

Penalty for failure to furnish information, return, etc.

23A. Any person, who is required under this Act or any rules made thereunder, -
(a) to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange, 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 for each such failure;

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E. If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.

SEBI Act, 1992

Penalty for contravention where no separate penalty has been provided.

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

Issue III) : Quantum of penalty.

33. In this regard, the provisions of Section 23J of the SCR Act, 1956 and Rule 5 of SCR Adjudication Rules and Section 15J of the SEBI Act, 1992 and Rule 5 of SEBI Adjudication 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.*
34. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that no quantifiable figures or data are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default of the Noticees. I note that securities market is based on free and open access to information. An informed investor can always make wise and balanced decisions while investing. I note that there has been a delay on the part of the Noticees, in providing information in terms of the provisions of the Listing Agreement and PIT Regulations, 1992 at the relevant point of time. However as the delay was only for 5 days, I am of the view that the same does not warrant any penalty.

35. I also note that the Noticees failed to frame Code of Conduct in accordance with the provisions of PIT Regulations, 1992 as well as failed to constitute the Audit Committee. Thus, the Noticees failed to implement measures which could serve as important tools in relation to preventing insider trading and also in promoting effective corporate governance in the company. The failure on the part of the Noticees warrant penalty.

ORDER

36. Accordingly, taking into account the aforesaid observations and in exercise of power conferred upon me under section 15 I of the SEBI Act read with rule 5 of the SEBI Adjudication Rules, and under Section 23I of the SCR Act, 1956 read with Rule 5 of the SCR Adjudication Rules, I hereby impose the following penalties on the Noticees, under 23E of SCR Act, 1956 and Section 15HB of SEBI Act, 1992 –

Noticee	Violation	Penal Provisions	Penalty
Noticee No. 1 to 4	Failure to frame Code of Conduct in terms of Regulation 12(1) read with Part A of Schedule I of PIT Regulations, 1992	Section 15HB of SEBI Act, 1992	Rs. 1,00,000/- (Rupees One lac only) on Noticee No. 1 to 4 to be paid jointly and severally
Noticee No. 1	Failure to constitute Audit Committee in terms of Clause 49(II)(A) of Listing Agreement read with Section 21 of SCR Act, 1956	Section 23E of SCR Act, 1956	Rs. 1,00,000/- (Rupees One lac only) on Noticee No. 1

37. 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-IV), 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 :	

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

Place: Mumbai

DATE: 09.01.2018

BIJU S

ADJUDICATING OFFICER