

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 and Regulations 32 and 35 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

In respect of -

TARGET COMPANY	NOTICEE
VAKRANGEE LTD.	VAKRANGEE HOLDINGS PVT LTD.

1. Vakrangee Limited (hereinafter referred to as “Target Company” or “Vakrangee”) is a company incorporated on May 28, 1990 under the Companies Act, 1956 having its registered office at Vakrangee Corporate House, Plot no. 93, Road No. 16, MIDC Marol, Andheri East, Mumbai-400093 and its securities are listed on the National Stock Exchange Limited (‘NSE’) and Bombay Stock Exchange Limited (‘BSE’).
2. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) initiated an investigation into the trading in the scrip of Target Company to examine any violation of provisions of SEBI Act, 1992 and the Regulations made thereunder, during the period with respect to price rise from March 28, 2014 - June 06, 2014 and spurt in volumes between June 03 - June 18, 2013 and November 26, 2013 - December 04, 2013.
3. During the period March 28, 2014 - June 06, 2014, it was observed that price of the scrip rose from Rs 92.95 to high of Rs 131.4 (41.36%) and from Rs 93.3 to high of Rs 131.9 (41.37%) on BSE and NSE respectively in 46 trading days. Volume spurt was also observed on June 07, 2013, June 11, 2013 and June 13, 2013 and on November 29, 2013 on BSE. Similar volume pattern was observed on NSE. There were no corresponding major corporate announcements on these dates. Disclosures were filed by Target company related entities on June 08, 12, and 14, 2013 under SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 and SEBI (Prohibition of Insider Trading) Regulations, 1992. Hence, it was observed that Target Company related entities have traded on above mentioned dates of volume spurts.

4. Investigation observed that during the quarter ending June 2013, the shareholding of one of the promoter entity of the Target Company namely, Vakrangee Holdings Pvt Ltd., (hereinafter referred to as the 'Noticee/VHPL / Acquirer') increased from 11,54,35,194 shares (22.97% of share capital) to 12,53,75,194 shares (24.93% of share capital). The analysis of date-wise changes in shareholding is given below:

Trading details of VHPL in scrip of the Target Company.

Date	Mode	Pre-acquisition shareholding		Bought / sold			Post-acquisition shareholding		Cumulative Change in holding		Date of disclosure to company	Date of disclosure to stock exchange	Disclosure by Company to stock exchange
		No. of shares	% of share capital	No. of shares	% of share capital	Value (Rs)	No. of shares	% of share capital	No. of shares	% of share capital			
13/05/2013	Buy-OM	115435194	22.97	2525000	0.50	187481250	117960194	23.47	2525000	0.50	13/05/2013	14/05/2013 (under SAST)	14/05/2013
14/05/2013	Buy-OM	117960194	23.47	2530000	0.50	187220000	120490194	23.98	5055000	1.01	14/05/2013	15/05/2013 (under SAST)	15/05/2013
23/05/2013	Buy-OM	120490194	23.98	2540000	0.51	187452000	123030194	24.48	7595000	1.51	23/05/2013	24/05/2013 (under SAST)	24/05/2013
24/05/2013	Buy-OM	123030194	24.48	2550000	0.51	188700000	125580194	24.99	10145000	2.02	24/05/2013	25/05/2013 (under SAST)	25/05/2013
27/05/2013	Buy-OM	125580194	24.99	2540000	0.51	188594915	128120194	25.50	12685000	2.52	27/05/2013	28/05/2013 (under SAST)	28/05/2013
28/05/2013	Buy-OM	128120194	25.50	2525000	0.50	187102500	130645194	26.00	15210000	3.03	28/05/2013	29/05/2013 (under SAST)	29/05/2013
29/05/2013	Buy-OM	130645194	26.00	2530000	0.50	187591775	133175194	26.50*	17740000	3.53	29/05/2013	30/05/2013 (under SAST)	30/05/2013
07/06/2013	Sell-OM	133175194	26.48*	-2600000	-0.52	194740024	130575194	25.96	15140000	3.01	07/06/2013	08/06/2013 (under SAST)	11/06/2013
11/06/2013	Sell-OM	130575194	25.96	-2600000	-0.52	194480000	127975194	25.44	12540000	2.49	11/06/2013	12/06/2013 (under SAST)	12/06/2013
13/06/2013	Sell-OM	127975194	25.44	-2600000	-0.52	194350000	125375194	24.93	9940000	1.98	13/06/2013	14/06/2013 (under SAST)	14/06/2013

*Difference in closing % of share capital on May 29, 2013 and opening % of share capital on June 07, 2013, despite same number of shares is on account of increase in share capital of the company by 4,66,000 shares on June 06, 2013.

5. Investigation revealed that pursuant to the above transaction dated May 27, 2013, wherein post-transaction holding of the Noticee has been shown as 25.50%, i.e., exceeding the threshold limit of 25% of total share capital of the company. Investigation also revealed that the Noticee has not made any public announcement for open offer for acquisition of shares, as mandated under regulation 3(1) read with regulation 3(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "Takeover Regulations, 2011").
6. Since the noticee failed to comply with the obligation to make a public announcement of an open offer in respect of the acquisition dated May 27, 2013 in terms of regulation 3(1) read with 3(3) of Takeover Regulations, 2011, SEBI issued a show cause notice dated March 9, 2017 (hereinafter referred to as "the SCN") to the acquirer calling upon it to show cause as to why suitable directions under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") and Regulations 32 and 35 of Takeover Regulations, 2011 should not be issued against it.
7. In response to the SCN, acquirer vide letter dated June 8, 2017 *inter-alia* submitted the following reply to the SCN :-
 - a) *We along with Persons Acting in Concert (PACs) were already holding substantial stake i.e. 34.27% in the target company and were already in control of the same and not acquired any fresh control by acquiring excess 0.50% stake, if any, above the trigger limit of 25%;*
 - b) *No change in management and control of Target Company due to the excess acquisition of 0.50%, if any, hence nothing new has happened;*
 - c) *Our acquisition was within the limit of 5% creeping acquisition every year;*
 - d) *We have not acquired any voting rights in the target company;*
 - e) *Our acquisition has not adversely affected the interest of investors;*
 - f) *We have not violated the spirit of takeover regulations;*
 - g) *Mr. Dinesh Nandvana was controlling the entire promoter holding under the name of various entities be it in the name of Individual, HUF or Companies which shows that he is the ultimate beneficiary and controller of*

the all the promoter entities. Mr. Dinesh Nandwana, Promoter and director of VHPL is also the Promoter and director of the target company since its inception.

- b) The promoter group was holding 34.27 % of shares in the target company as on March 2013 and presently they are together holding 41.59% of shares in the target company. The above facts clearly bring out that all promoter entities (including VHPL) are under the control and management of Mr. Dinesh Nandwana. Hence promoters should be viewed jointly as all the entities are controlled by Mr. Dinesh Nandwana only.*
- i) If open offer is made now, it will be infructuous. Open offer was triggered when the price of the scrip was Rs. 74/- in 2013, current market price of the scrip is Rs. 410, whatever price will be derived to give open offer now it will be infructuous.*
- j) The DII holding of the Target Company as on March 2017 is 6.67% including reputed Institutions such as Life Insurance Corporation of India which particularly holds 6.11% aggregating to about Rs. 1120 Crore. Further, LIC represents hard earned money of common Indian public. Any disciplinary action against the company only due to the technical violation, if any, will erode the huge capital of hard money of common investors.*
- k) The small investors have immense faith which can be seen by increase in number of shareholders from 9,828 shareholders in March 2013 to in 18,237 shareholders in March 2017. The increase in investors itself shows the confidence of public in the promoters group of the target company.*
- l) It is alleged that we have acquired excess 0.50% shares in the target company and failed to give open offer. The 0.5% shares lying in the brokers pool account were disposed of as a corrective and remedial measure.*

8. After considering the reply of the acquirer, an opportunity of personal hearing was granted on September 18, 2017. In the personal hearing Mr. J.J Bhatt, Advocate along with Ms. Parinati Jain, Company Secretary and Mr. Amit Shah (hereinafter referred as the “Authorised Representatives / ARs”) appeared on behalf of the Noticee and *inter-alia* made the following submissions:-

- a) The ARs submitted a brief profile of the company stating that there are about 21 thousand shareholders in the company which included institutions like LIC and number of FPIs. The promoters as on date are holding approximately 42 % shares of the company and the scrip is currently trading at around Rs. 500 per share.*
- b) The ARs submitted that the corporate veil should be lifted in this matter and then it can be appreciated that entire promoter shareholding is with Dinesh Nandwana and Jyoti Nandwana (wife of Dinesh Nandwana) and the same was always more than 25%. They further submitted that Dinesh Nandwana and Jyoti Nandwana are holding 95 % and 5% shareholding in Vakrangee Holdings Private Limited.*

- c) The ARs submitted that because of purchase on May 27, 2013 by Vakrangee Holdings Private Limited, the shareholding of acquirer breached the 25 % limit individually, however the breach is minor, technical and insignificant and only for a few days (till June 13, 2013).
- d) ARs further submitted that the proceedings may be dropped as the open offer direction in this matter is futile because of the increase in share price of the company compared to the price on trigger date including the interest for the period. ARs concluded their submission with the argument that Dinesh Nandwana and Jyoti Nandwana were always in control of the company before and after acquisition and due to the purchase of shares of May 27, 2013, there is no change in control.
- e) ARs further undertook to submit an affidavit from Dinesh Nandwana and Jyoti Nandwana asserting the fact that the transactions carried out by Dinesh Nandwana, in Vakrangee Holdings Private Limited were in concurrence with Jyoti Nandwana.
9. As undertaken, the Noticee vide letter dated October 9, 2017 filed additional submissions reiterating the above contentions along with an affidavit from Mrs. Jyoti D. Nandwana, wife of Dinesh Nandwana along with their shareholding details in Vakrangee Holdings Private Limited and Vakrangee Capital Private Limited (VCPL).

Table 1-Vakrangee Holdings Private Ltd (VHPL)

Particulars	Shareholding as on 31 st March , 2013		Shareholding as on 30 th June, 2013		Shareholding as on 30 th September, 2013	
	No. of Shares	%	No. of Shares	%	No. of Shares	%
Dinesh Nandwana	93,42,700	85.42	93,42,700	85.42	1,03,42,700	94.57
Jyoti Nandwana	5,94,300	5.43	5,94,300	5.43	5,94,300	5.43
Others	10,00,000	9.14	10,00,000	9.14		
Total	1,09,37,000	100	1,09,37,000	100.5	1,09,37,000	100

Table 2- Vakrangee Capital Private Ltd (VCPL)						
Particulars	Shareholding as on March 31st, 2013		Shareholding as on 30th June, 2013		Shareholding as on 30th September, 2013	
	No. of Shares	%	No. of Shares	%	No. of Shares	%
Dinesh Nandwana	21,00,000	42	21,00,000	42	29,52,500	9.06
Jyoti Nandwana	21,00,000	42	21,00,000	42	21,00,000	6.45
VHPL (DN holds 94.57% (JN holds 5.43% stake in VHPL)	8,00,000	16	8,00,000	16	2,75,22,800	84.49
Total	50,00,000	100	50,00,000	100	3,25,75,300	100

Subsequently, vide letter dated November 13, 2017, the Noticee submitted that “the company has declared bonus issue in the ratio of 1:1 in the board meeting held on November 13, 2017” and the same be considered along with other submissions.

10. Pursuant to the hearing held in the matter, due to lapse of time, additional submissions, for updating any relevant developments post the hearing were sought from the noticee, vide email dated May 22, 2018. In response to the email, noticee requested opportunity of personal hearing, to make additional submissions. As requested, another opportunity of personal hearing was granted to the noticee on June 12, 2018. In the personal hearing Mr. Amit Shah along with Ms. Parinati Jain, Company Secretary (hereinafter referred as the “Authorized Representatives / ARs”) appeared on behalf of the Noticee and *inter-alia* made following submissions :-

- a) Corporate veil should be lifted in this matter and then it can be noticed that entire promoter shareholding is with Dinesh Nandwana and Jyoti Nandwana (wife of Dinesh Nandwana) and the same was always more than 25%.
- b) They further submitted that Dinesh Nandwana and Jyoti Nandwana are holding 95 % and 5% shareholding in Vakrangee Holdings Private Limited.
- c) The breach is minor, technical and insignificant and only for a few days.
- d) Dinesh Nandwana and Jyoti Nandwana were always in control of the company before and after acquisition and due to the purchase of shares of May 27, 2013 there is no change in control.

- e) If it is concluded that the noticee is liable to make an open offer, the same should be confined to the shareholders who had shares at the time of the trigger.

11. After the hearing, Noticee vide letter dated June 29, 2018 *inter alia* submitted that :-

- a) Dinesh Nandwana is the ultimate controller of 38.88% shares of target company;
- b) Aggregate holding of Dinesh Nandwana under all promoter entities comes to 31.72%;
- c) No Investors suffered by this acquisition;
- d) No change in management or voting right. No outsider has acquired substantial control;
- e) Violation, if any, is technical and venial in nature;
- f) There is no *Mens rea*;
- g) Not violated the objectives of Takeover Code.

12. From the BSE website, it is noted that the shareholding of the promoter group of the target company is as follows:-

Shareholding of Promoter category during the relevant period:-

S. No	Promoter	<u>Quarter ending March 2013</u>		<u>Quarter ending June 2013</u>	
		No. of shares held	%	No. of shares held	%
1.	Vakrangee Holdings Pvt Ltd	11,54,35,194	22.97	12,53,75,194	24.93
2.	Dinesh Nandwana	2,97,66,000	5.92	2,97,66,000	5.92
3.	Vakarangee Capital Pvt Ltd	2,68,89,120	5.35	3,99,36,220	7.93
4.	Dinesh Nandwana HUF	98,000	0.02	98,000	0.02
5.	Mahendra Nandwana	6,900	0.0014	00	00
	Total	17,21,95,214	34.27	195175414	38.80

13. Even though the quarterly disclosures were as shown above, the SCN alleged that the Noticee had exceeded the threshold acquisition on May 27, 2013 as shown below:-

Date	Mode	Pre-acquisition shareholding		Bought / sold			Post-acquisition shareholding		Cumulative Change in holding		Date of disclosure to company	Date of disclosure to stock exchange	Disclosure by Company to stock exchange
		No. of shares	% of share capital	No. of shares	% of share capital	Value (Rs)	No. of shares	% of share capital	No. of shares	% of share capital			
27/05/2013	Buy-OM	125580194	24.99	2540000	0.51	188594915	128120194	25.50	12685000	2.52	27/05/2013	28/05/2013 (under SAST)	28/05/2013
28/05/2013	Buy-OM	128120194	25.50	2525000	0.50	187102500	130645194	26.00	15210000	3.03	28/05/2013	29/05/2013 (under SAST)	29/05/2013
29/05/2013	Buy-OM	130645194	26.00	2530000	0.50	187591775	133175194	26.50	17740000	3.53	29/05/2013	30/05/2013 (under SAST)	30/05/2013
07/06/2013	Sell-OM	133175194	26.48*	-2600000	-0.52	194740024	130575194	25.96	15140000	3.01	07/06/2013	08/06/2013 (under SAST)	11/06/2013
11/06/2013	Sell-OM	130575194	25.96	-2600000	-0.52	194480000	127975194	25.44	12540000	2.49	11/06/2013	12/06/2013 (under SAST)	12/06/2013
13/06/2013	Sell-OM	127975194	25.44	-2600000	-0.52	194350000	125375194	24.93	9940000	1.98	13/06/2013	14/06/2013 (under SAST)	14/06/2013

Subsequently, the Noticee on June 13, 2013, offloaded 26,00,000 shares in the market thereby reducing its shareholding below 25% as shown in the above table.

14. The defence of the Noticee is that Promoter should be viewed along with PACs and not individually, in which case the Promoter holding is at 38.88% which is in excess of 25% and there is no violation of Regulation 3(1) read with regulation 3(3). For this purpose, the Noticee has also relied on the definition of PAC in the Takeover Regulations. Further, it is the case of the Noticee that Mr Dinesh Nandwana by holding 31.72 % stake in target company is controlling entire promoter holding under the names of various entities, i.e. in his individual name, in the name of HUF or other promoter companies and thus is the ultimate beneficiary, the decision maker and the controller of all the promoter entities. The Noticee has thus urged that the corporate veil be lifted to see who the

ultimate person in control of VHPL is and appreciate that the threshold of 25% will not apply to VHPL.

15. The allegation in the SCN is that VHPL has individually breached the threshold of 25% stipulated in 3(1) and therefore liable to make an open offer. The defense of the Noticee is that VHPL is a PAC with the Promoters and Dinesh Nandwana had the ultimate control over the target company, if the corporate veil is lifted as he was having more than 25% shares (i.e. 38.88%) of the company and therefore the breach against another promoter company, namely VHPL independently will not lie. In the light of the allegation in the SCN and the defence adopted by the Noticee, the questions to be considered would be – (i) whether VHPL's acquisition can be treated as an independent acquisition that would trigger an open offer obligation under regulation 3(1) and 3(3) as it was a PAC with others, (by virtue of the deeming provision in the definition of PAC, and the relationship between them being that of promoter and promoter group entity) and (ii) whether VHPL, being ultimately in the control of Dinesh Nandwana (who owned 31.72% shares in the target company at the relevant time), can be held to have triggered the open offer obligation by the alleged acquisition, if the corporate veil is lifted.
16. At the outset, it is stated that in terms of regulation 3(3), any person individually acquiring shares thereby breaching the threshold stipulated, either in sub-regulation (1) or (2), shall attract the obligation to make open offer, even if such acquirer's holding aggregated with PACs was beyond 25% prior to such acquisition.
17. In this connection, it is relevant to note that VHPL and VCPL are two unlisted companies belonging to the Nandwana family, consisting of Dinesh Nandwana and his wife, Jyoti Nandwana, as shown at tables-1 & 2 (para 9). In VHPL, Dinesh Nandwana and Jyoti Nandwana jointly held 91.36 % of shares. Subsequent to the subject transaction in May 2013 (of VHPL increasing its stake in the target company), Nandwanas acquired the remaining stake in VHPL to make it a 100% holding.
18. In VCPL, Dinesh Nandwana and Jyoti Nandwana held 42% each on June 30, 2013 (total 84%) and the remaining 16 % was held by VHPL. VCPL's shareholding got reconstituted during the quarter ending September, 2013, in such a way that VHPL's shareholding in VCPL went up to

84.49% from 16% and individual promoter's (Dinesh Nandwana and Jyoti Nandwana) shareholding got reduced from 82% to 15.51 %, as seen from the second table at para 9. Thus, by September 30, 2013, both VHPL and VCPL had become 100% owned by Dinesh Nandwana and Jyoti Nandwana and the subject acquisition took place in May 2013. In other words, in the quarter subsequent to the alleged transaction, the shareholding of VCPL shifted substantially to VHPL following the share transfers effected by Dinesh Nandwana and his wife in favour of VHPL.

19. Given this backdrop, I proceed to examine the issues flagged in paragraph 16. The prime issue is whether VHPL's acquisition can be treated as an independent acquisition that would trigger an open offer obligation under regulation 3(3) read with 3(1), as VHPL is deemed as a PAC under regulation 2(2) of Takeover Regulations with Dinesh Nandwana, Dinesh Nandwana HUF and VCPL. Under regulation 2(1)(q)(2) of Takeover Regulations, VHPL, Dinesh Nandwana, Dinesh Nandwana HUF and VCPL are deemed PACs, being the promoter and promoter group entities, even though in the disclosures made to the stock exchange, under regulation 29 of the Takeover regulations, the acquisition was shown to be by VHPL alone and not by VHPL along with PACs . However, regulation 3(3) unambiguously provides that acquisition of shares or voting rights beyond the threshold of 25 %, even by a single entity amongst the PACs would attract the obligation to make an open offer. If the Noticee's contention that the provisions of regulation 3(1) do not apply to any acquisition where the pre-acquisition collective shareholding of the acquirer along with persons acting in concert is more than the prescribed limit of 25% is accepted, then it will render the provisions of regulation 3(3) totally redundant and ineffective, in so far as it relates to regulation 3(1). Regulation 3(3), read in the context of regulation 3(1), is explicitly aimed at any individual acquisition of shares which breaches the threshold level of 25%.
20. The second issue for consideration is whether VHPL, being controlled by Dinesh Nandwana (who owned 31.72% shares in the target company at the relevant time), can be held to have triggered the open offer obligation by the alleged acquisition, if the corporate veil is lifted. Regulation 3 of the Takeover Regulations specifically deals with the issue of 'Substantial acquisition of shares or voting rights' and Regulation 4 deals with 'control'. At this juncture, it is pertinent to reproduce the provisions of the Regulation 3 and Regulation 4 of Takeover Regulations, 2011 which read as under:-

SUBSTANTIAL ACQUISITION OF SHARES, VOTING RIGHTS OR CONTROL

Substantial acquisition of shares or voting rights.

3. (1) No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty-five per cent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

(2) No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations:

Provided that such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding.

Explanation — For purposes of determining the quantum of acquisition of additional voting rights under this sub-regulation,—

- (i) *Gross acquisitions alone shall be taken into account regardless of any intermittent fall in shareholding or voting rights whether owing to disposal of shares held or dilution of voting rights owing to fresh issue of shares by the target company.*
- (ii) *In the case of acquisition of shares by way of issue of new shares by the target company or where the target company has made an issue of new shares in any given financial year, the difference between the pre-allotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition.”*

(3) *For the purposes of sub-regulation (1) and sub-regulation (2), acquisition of shares by any person, such that the individual shareholding of such person acquiring shares exceeds the stipulated thresholds, shall also be attracting the obligation to make an open offer for acquiring shares of the target company irrespective of whether there is a change in the aggregate shareholding with persons acting in concert.*

(4) Nothing contained in this regulation shall apply to acquisition of shares or voting rights of a company by the promoters or shareholders in control, in terms of the provisions of Chapter VI-A of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.]

Acquisition of control.

- 4. Irrespective of acquisition or holding of shares or voting rights in a target company, no acquirer shall acquire, directly or indirectly, control over such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.*
21. Regulation 3 of the Takeover Regulations deals with the obligation to make an open offer, when an acquirer acquires ‘shares or voting rights’ entitling him to exercise voting rights, in the target company, beyond stipulated threshold limit, whereas Regulation 4 deals with such obligation arising out of acquisition of ‘control’ by an acquirer in the target company. The contention raised by the noticee that VHPL is controlled by Dinesh Nandwana at the relevant time, would at best be a defence to counter an allegation levelled under Regulation 4, but the same is not a valid defence for an allegation under Regulation 3, where specific threshold is stipulated without contemplating or considering, who exercises control over the target company. Once the threshold limit is breached, Regulation 3 of the Takeover Regulations is violated and for the purpose of this regulation, it is immaterial who is having the actual control.
22. Another defence taken by the Noticee is that the violation is technical in nature and that the additional acquisition was unintentional without aiming to take over the control of the company and that it is venial. The noticee has also taken the defense that considering the current market price of the scrip, any direction to make an open offer to the acquirer will be infructuous and not in the interest of investors. These arguments are not valid as the sanctity of the threshold cannot be allowed to be undermined by acquirers as the same affects the rights of investor to exit, if an offer is made to the public. In my view, the right to exit is an invaluable right of the public shareholder under the Takeover Regulations and they should not be ordinarily deprived of the same. In this connection, as the provisions contained in Regulation 3(1),(2),(3) and (4) of Takeover Regulations 2011 are in pari materia with Regulations 10, 11 and 12 of Takeover Regulations 1997, I am relying on the observation of the Hon’ble Securities Appellate Tribunal in its order dated

September 08, 2011 in the matter of Nirvana Holdings Private Limited vs. SEBI (Appeal no. 31/2011) which reads as :

"The primary object of the takeover code is to provide an exit route to the public shareholders when there is substantial acquisition of shares or a takeover. This right to exit is an invaluable right and the shareholders cannot be deprived of this right lightly. It is only when larger interest of investor protection or that of the securities market demands that this right could be taken away. Therefore, as a normal rule, a direction to make a public announcement to acquire shares of the target company should issue to an acquirer who fails to do that. The Board need not give reasons as to why such a direction is being issued because that is the mandate of Regulations 10, 11 and 12. However, if the issuance of such a direction is not in the interest of the securities market or for the protection of interest of investors, the Board may deviate from the normal rule and issue any other direction as envisaged in Regulation 44 of the takeover code. In that event, the Board should record reasons for deviation."

23. The Noticee has also contended that there is no logic in giving open offer to present shareholders who were not holding any shares on the date of alleged trigger. In this context, it is relevant to refer to Regulation 7(6) of the SAST Regulations which provides that any open offer made under these regulations shall be made to all shareholders of the target company, other than the acquirer, and PACs with him. In view of the mandate in the Takeover Code that the exit ought to be to all the shareholders of Vakrangee Ltd., I do not find the contention of the Noticee to be legally tenable as it would adversely affect the interest of the shareholders.
24. Noticee has relied on several judgments of Hon'ble Supreme Court, High Court and SAT for considering the entities in promoter group as one and the same. In view of the specific provisions of Regulation 3(3) of Takeover Regulation 2011 dealing with the aforesaid situation, I find that none of the judgments cited by the Noticee has a precedential value with respect to the specific allegation in the SCN and the issues under this adjudication. I refrain from dealing with those judgments. I, thus conclude that the Noticee's acquisition is in violation of Regulations 3(1) & 3(3) of SEBI (Substantial Acquisition of shares and Takeovers) Regulations, 2011.

Directions

25. In view of the above, I, in exercise of powers conferred upon me under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 read with regulations 32 of the Takeover

Regulations, 2011, in the interest of investors, hereby issue the following directions against Vakrangee Holdings Private Limited:-

- a. The noticee, Vakrangee Holdings Private Limited shall make a public announcement to acquire shares of the target company, in accordance with the provisions of the Takeover Regulations, 2011, within a period of 45 days from the date of this order;
- b. It shall along with the consideration amount, pay interest at the rate of 10% per annum from August 20, 2013 till the date of payment of consideration to the shareholders who were holding shares in the target company on the date of violation and whose shares are accepted in the open offer, after adjustment of dividend paid, if any.

26. This order shall come into force with immediate effect. A copy of this order shall be served upon the Noticee, stock exchanges and depositories for ensuring compliance with the above directions.

DATE: August 9, 2018

PLACE: MUMBAI

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA