

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

Under Sections 11, 11(4) and 11B of the Securities and Exchange Board of India Act, 1992

In the matter of Voltaire Leasing and Finance Ltd.

In re: Violation of provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

In respect of:

Name of the Entity	PAN	DIN
Mr. Harivallabh Mundra	AAAPM8378D	00434785

1. The Securities and Exchange Board of India (SEBI) had conducted an investigation into the trading and dealings in the scrip of Voltaire Leasing & Finance Limited ("**VLFL**" or "**the Company**") pursuant to receipt of a reference from Department of Income Tax, Chandigarh, for possible violation, if any, of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") and rules and regulations made thereunder. Investigation was conducted in the scrip of VLFL for the period August 12, 2014, to July 31, 2015 (hereinafter referred to as "**Investigation Period/ IP**"). During the IP the price of the scrip opened at Rs. 2.42 and reached a high price of Rs. 32.10 and closed at Rs.32.10. Pursuant to the investigation, a common Show Cause Notice (SCN) dated October 13, 2017, was issued to the concerned entities, including Mr. Harivallabh Mundra (hereinafter referred to as "**Noticee**").
2. It was alleged in the SCN that the off-market transferors, group of connected sellers and VLFL, as well as its directors, including the Noticee, have violated Regulations 3 (a), (b), (c) and (d) and Regulations 4(1) and 4(2) (a) and (e) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as the "**PFUTP Regulations**").

Order in the matter of Voltaire Leasing & Finance Limited

3. The Noticee was called to show cause as to why suitable directions under Sections 11(1), 11(4) and 11B of the SEBI Act should not be issued against him for the violations alleged in the SCN. The documents enclosed as annexure to the SCN were (a) relevant extract of the reference received from the IT Department, Chandigarh, (b) corporate announcements of the Company during the investigation period, (c) the documents on the basis of which connection was established between entities, (d) reply received from BSE, (e) complete trade log and (f) order log for VLFL scrip for the period and sell order log analysis.
4. The SCN was served on the Noticee and an opportunity of personal hearing was also granted on August 22, 2019. The Noticee sought an adjournment and a new date of October 16, 2019, was granted. The Authorized Representative of the Noticee, vide an email sent on the day of the hearing again requested for an adjournment, which was rejected since one request for adjournment had already been granted. The Noticee was granted 10 days' time to submit his reply.
5. Subsequently, vide order dated April 13, 2020, the Noticee was restrained from accessing the securities market for a period of two (02) years from the date of the order. It was recorded in the order that despite two opportunities for hearing being granted to the Noticee, neither had he appeared before SEBI, nor had he submitted any reply to the SCN.
6. The Noticee appealed against the above mentioned order in the Hon'ble Securities Appellate Tribunal (SAT). It was mentioned in the appeal that the Noticee had filed a reply on October 15, 2019, which was not considered by SEBI. The appeal was allowed by the Hon'ble SAT vide order dated August 10, 2020, and the impugned order of SEBI was quashed in so far as the Noticee is concerned. The matter was remitted to SEBI to reconsider the matter afresh after considering the reply of the Noticee and after taking into consideration all other factors and after giving an opportunity of hearing to the Noticee.
7. Subsequently, the Noticee was granted an opportunity of hearing on August 27, 2020, and the same was attended by the authorized representative of the Noticee. During the hearing, the Noticee reiterated its submissions made vide letter dated October 15, 2019, which are as below:

- 7.1. SEBI granted inspection of certain documents and records on November 12, 2018; however, inspection of investigation report and other relevant documents was refused. The same amounts to violation of Principles of Natural Justice.
- 7.2. Noticee denies that he was an Executive Director of the Company during the investigation period or that he was aware of any transactions between the Company and Looklike or that he was involved in the said alleged manipulation of the scrip price. Nothing contained in the SCN may be considered as having been accepted or admitted by the Noticee merely on account of *non-traverse*.
- 7.3. Noticee submits that he had ceased to be involved in the affairs of the Company since 2011 after the Company was taken over by Mrs. Madhuri Damani. He formally submitted his resignation as a Director to the Company vide letter dated March 31, 2014, a copy of which is annexed to the SCN. However, from the records provided by SEBI showed that the Company filed Form DIR 12 with the ROC/MCA only on October 10, 2014, and in said form, wrongly stated that the Noticee ceased to be a Director w.e.f. September 29, 2014. It is a trite law that resignation of a Director takes effect on the date of submission of his resignation to the Company. Therefore, the observation in the SCN that the Noticee was an Executive Director in the Company till September 29, 2014, is erroneous and false. Moreover, in its Annual Report for FY 2014-15, the Company falsely declared that the Noticee had attended Board Meetings and AGMs.
- 7.4. Since SEBI was refusing to provide any document other than those annexed to the said SCN and since Noticee was no longer associated with the Company and had no access to its records, vide letter dated July 2, 2018, Noticee sought clarification regarding the statement of the Company in its annual report for FY 2014-15 that he had attended Board Meetings and AGMs and regarding Form DIR 12. Till date no, despite reminders, Noticee is yet to hear from the Company. Copy of letter sent to Company was attached. Noticee submits that without these records, he is unable to effectively reply to the charges against him.

- 7.5. Noticee submits that SEBI has relied upon the bank statement of the Company to show connection between it and Looklike through fund transaction, which took place on January 09, 2015, and another transaction which took place on March 27, 2015. Noticee submits that both these transactions occurred much after he ceased to be a director in the Company, whether on March 31, 2014, or September 29, 2014. Neither the Company nor Noticee is not otherwise shown to be associated or connected with Looklike. Therefore, the said bank statement cannot be basis to allege that Noticee was aware of the connection between the Company and Looklike and/ or that he was involved in a scheme to manipulate the scrip price.
- 7.6. The SCN does not set out the directions proposed to be issued by SEBI. As per the conditions set out by the Hon'ble Supreme Court in Gorkha Security Services vs. Government (NCT of Delhi) and others, the SCN should fulfil the requirements of principles of natural justice viz., (i) material/ ground to be stated which according to the department necessitates an action and (ii) particular penalty/ action which is proposed to be taken. Hence, SCN is not compliant with principles of natural justice.
- 7.7. Noticee requests that the Company may be directed to provide him with all relevant documents and records pertaining to Board Meetings and Shareholder Meetings for FY 2014-15 and relating to acceptance of his resignation as a Director and that he may be given 4 weeks' time from date of receipt of such documents to make further submissions.
8. During the personal hearing on August 27, 2020, the Noticee was advised to submit the following information:
- 8.1. Copy of the resignation letter sent to the Company along with the acknowledgment of its receipt by the Company.
- 8.2. Whether the Noticee filed Form DIR-11 (Notice of resignation of a director to the Registrar) with ROC/ MCA? If not filed, then the reason for the same.
- 8.3. Whether Noticee has any evidence to show that he did not attend the Board Meetings of the Company in FY 2013-14 and FY 2014-15?

9. The submissions of the Noticee vide letter dated September 04, 2020, are as below:
- 9.1. Noticee was a Director in the Company from June 21, 1990, to March 31, 2014. However, post-2011, the Noticee ceased to be involved in the management and decision making activities after the Company was taken over by Mrs. Madhuri Damani.
- 9.2. Noticee sent his resignation to the Company vide letter dated March 31, 2014, which was received by them on June 17, 2014. Copy of letter and postal acknowledgement thereof is annexed.
- 9.3. Noticee, in his earlier reply dated October 15, 2019, has wrongly mentioned that the resignation letter was part of the annexures to the SCN and regrets the error.
- 9.4. Noticee submits that Section 168 of the Companies Act, 2013, requiring the Director to submit Form DIR 11 with the ROC became effective only from April 01, 2014, and hence, as on date of sending the resignation letter, Noticee understood that he was not required to file Form DIR 11 with the ROC. This is further substantiated by the resignation letter which categorically mentioned that the Noticee *under advice requests that the Company may file the requisite Form 32 with the ROC* which is as per the erstwhile Companies Act, 1956.
- 9.5. As can be seen from the annual report for FY 2013-14 (pg. 26), the Company had removed the Noticee from decision making positions; he was replaced from the Investor Grievance Committee by one Mr. Amlesh Sadhu.
- 9.6. Noticee submits that to the best of his recollection, during FY 2014-15, he did not attend a single Board Meeting or AGM of the Company. A director attending any Board Meeting is entitled to sitting fees which is stated in their annual reports. No such fee or remuneration was received by the Noticee during FY 2014-15; this substantiates his recollection that he did not attend any board meetings during the relevant time. The Noticee repeats, reiterates and submits that despite his requests, the Company has not made available

to him copies of the minutes of the Board Meetings and AGM/EGM for FYs 2013-14 and 2014-15. The Noticee repeats and reiterates that he has not attended any meeting with regard to nor is aware of the purported transactions which are subject matter of the current proceedings.

9.7. The annual report of the company for FY 2014-15 wrongly mentions that the Noticee was present during 7 of the 13 Board Meetings in the said year. Further the report mentions that the Noticee is a Non-Executive director; this is contrary to their own record and resignation letter. The Noticee submits that it is only after receipt of the SCN dated October 13, 2017, that the Noticee became aware that he was shown as an attendee during such meetings and as a non-executive director. In order to clarify the situation, the Noticee has sought information from the company vide letter dated July 03, 2018, and has not received any reply as yet.

9.8. The Noticee humbly submits that the share transfers took place in August 2014 onwards, which is much after the resignation letter was received by the Company. The Noticee was admittedly not involved nor in charge or a director during the relevant time of fund transfers to Looklike or transfer of equity shares by them in off-market transfers.

10. In view of the above submissions, the Noticee has prayed that he may be given the benefit of doubt and discharged from the present proceedings by passing of an appropriate order.

Issues for Consideration and Findings:

11. Before determining the issues that arise for consideration, I note here that as already established in the order dated April 13, 2020, the pre-meditated scheme for manipulating the price of the scrip of VLFL involved, *inter alia*, the following:

11.1. Preferential allotment of shares of VLFL to one of the off-market transferors viz., Looklike Trade Pvt. Ltd. (hereinafter referred to as “**Looklike**”) in FY 2013-14.

11.2. Transfer of shares of VLFL by the off-market transferors through off-market transfers to the connected sellers during the investigation period i.e., in

August 2014.

11.3. The subsequent trading pattern of these sellers whereby they have contributed to an increase in the net and positive LTP of the share price of the Company.

11.4. Fund transfer from VLFL to Looklike in January 2015.

12. A clear connection was established between VLFL and Looklike in view of the preferential allotment of shares made to Looklike and the subsequent fund transfer made by VLFL to Looklike during the investigation period. It was also held in the order that this pre-meditated scheme to manipulate the share price of VLFL is a fraudulent activity, which is covered under the definition of fraud, as per Regulation 2(1)(c) of the PFUTP Regulations. I note here that this pre-meditated scheme was set in motion in FY 2013-14, when the preferential allotment of shares of VLFL was made to Looklike.

13. I have considered the allegations of the SCN, submissions made by the Noticee and the material available on record. The following issues arise for consideration:

13.1. ***Issue No. 1: In view of the submissions of the Noticee, whether he is part of the scheme for manipulating price of the scrip of VLFL during the period August 12, 2014, to July 31, 2015?***

13.2. ***Issue No. 2: If answer to Issue No. 1 is in affirmative, whether the Noticee has violated the provisions of PFUTP Regulations?***

13.3. ***Issue No. 3: If answer to Issue No. 2 is in affirmative, what directions, if any, should be issued against the Noticee?***

Issue No. 1: In view of the submissions of the Noticee, whether he is part of the scheme for manipulating price of the scrip of VLFL during the period August 12, 2014, to July 31, 2015?

14. I note here that VLFL, though a legal entity, cannot act by itself and can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. In terms of Section 179 of the Companies Act, 2013, the Board of Directors of a company shall be entitled to

exercise all such powers and do all such acts and things as the company is authorized to exercise and do. Therefore, the Board of Directors being responsible for the conduct of the business of a company are liable for acts of commission and omission and such liability shall be upon the individual directors also. Hon'ble Supreme court while describing what is the duty of a Director of a company held in Official Liquidator vs. P.A. Tendolkar (1973) 1 SCC 602 that

“A Director may be shown to be so placed and to have been so closely and so long associated personally with the management of the Company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially”.

15. Further, in cases of fraud, it is a settled position of law that the corporate veil can be lifted and the directors can be held liable for the fraud of the Company. In this regard, I place reliance on the decision of Hon'ble Supreme Court (Larger Bench) in the matter of LIC vs. Escorts Limited (1986 AIR 1370), wherein while discussing the doctrine of corporate veil, the Court had observed:

“90. ... the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected, etc.”

16. In view of the above, I now consider the submissions of the Noticee vis-à-vis the material available on record to determine his role, if any, in the pre-mediated scheme for manipulating the price of VLFL.

17. As regards the designation of the Noticee, I note that the following was mentioned in the SCN:

DIN/PAN	Name	Designation	Appointment Date	Cessation Date
00434785/ AAPM8378D	Harivallabh Mundra	Executive Director	21-Jun-1990	26-Sept- 2014

18. The Noticee has denied that he was an Executive Director in VLFL during the investigation period or that he was aware of any transactions between the Company and Looklike or that he was involved in the said alleged manipulation of the scrip price. He has claimed that he formally submitted his resignation as a Director to the Company vide letter dated March 31, 2014, which was received by them on June 17, 2014. He submitted that resignation of a Director takes effect on the date of submission of his resignation to the Company. Therefore, he submitted that the observation in the SCN that the Noticee was an Executive Director in the Company till September 29, 2014, is erroneous and false.

19. I have examined the copy of the resignation letter submitted by the Noticee along with the acknowledgement card of its receipt. The letter is dated March 31, 2014, and is addressed to the Board of Directors of VLFL. The Noticee has mentioned that he is resigning as a Director due to personal reasons with immediate effect. While the acknowledgement card mentions the receipt date as June 17, 2014, and is addressed to the Board of Directors of VLFL, I note the following points:

19.1. The date on the letter is written by hand, while the rest of the letter is typed.

19.2. There is no stamp of the post office that is delivering the letter to the addressee.

19.3. There is no signature of the person who may have accepted the letter on behalf of the addressee.

19.4. The resignation letter and the print out of the acknowledgement card has an initial on it but it is not clear who the initials belong to. The Noticee has also not elaborated on the same.

19.5. The resignation letter is dated March 31, 2014, and addressed to the Board of VLFL at their Fort, Mumbai, address, while the address on the acknowledgement card is of Malad.

19.6. The letter is an intra-city letter; however, as per submissions of Noticee, it has been received by VLFL on June 17, 2014, i.e., after two and a half months of being posted.

20. In view of the above observations, I am of the view that the evidence provided by the Noticee is not sufficient to show that his resignation letter was received by VLFL on June 17, 2014. Hence, I am inclined to hold that the Noticee ceased to be a Director of the Company on September 26, 2014, as recorded in MCA records. It is important to note that the Noticee did not provide any explanations for the evident discrepancies observable in the copy of the resignation letter and acknowledgement card while he submitted those documents to SEBI. I further note that even if I were to accept that the Noticee has resigned on March 31, 2014, or that the resignation letter was indeed received by VLFL on June 17, 2014, as already mentioned above, the pre-meditated scheme of price manipulation was set in motion in FY 2013-14 i.e., when admittedly, the Noticee was a Director in VLFL.
21. In view of his claim that his resignation was accepted on June 17, 2014, I note that the Noticee has denied that he was an Executive Director in VLFL during the investigation period, which starts from August 12, 2014, and extends till July 31, 2015. In view of the finding at Paragraph 20, the resignation of the Noticee has taken effect from September 26, 2014, i.e., after the start of the investigation period. While the investigation period covers the period starting from the first off-market transfer of shares from Looklike and the manipulation in the price of the scrip, I note that the pre-meditated scheme also includes the preferential allotment of shares made to Looklike in August 2013. Here, I would like to refer the following material which is available from the Annual Reports of VLFL:
- 21.1. As per the Annual Reports of the Company, the Noticee has been a Director in the Company since June 21, 1990.
 - 21.2. As per the Annual Report for FY 2012-13, the Noticee has been designated as 'Executive Director' and has also been referred to as the Whole-Time Director and a Key Management Personnel as part of Related Party Disclosures.
 - 21.3. The Board of Directors of the Company in its meeting dated July 02, 2013, approved the allotment of shares through preferential allotment and the resolution to allot the shares to Looklike Trade Pvt. Ltd. was approved by the Board in its meeting held on August 03, 2013.
 - 21.4. As per the Annual Report for FY 2013-14, i.e., for the period when the preferential allotment was made to Looklike Trade Pvt. Ltd., the Noticee is

designated as 'Executive Director' as on March 31, 2014, though the same annual report also mentions his designation as 'Non-Executive Director'.

21.5. As per the Annual Report for FY 2014-15, the Noticee has been designated as an 'Independent Director' as well as an 'Non-Executive Director'.

22. I note here that the Noticee has NOT denied that he was an Executive Director in VLFL during FY 2013-14 i.e., during the period when the preferential allotment of shares was made to Looklike and when the pre-meditated scheme to manipulate the price of the scrip of VLFL was put into place. The Noticee has also not denied that he was a Director in VLFL since 1990 and hence, I note that he has been closely and for a long period associated personally with the management of the Company. Here, I once again refer to the judgment of the Hon'ble Supreme Court in the matter of *Official Liquidator vs. P.A. Tendolkar (1973) 1 SCC 602*, wherein it has described the duty of a Director of a company (relevant extract of the judgment is referred to in Paragraph 14 above). However, the Noticee has submitted that he had ceased to be involved in the affairs of the Company since 2011 after the Company was taken over by Mrs. Madhuri Damani. He has also submitted that in FY 2013-14, he was removed from decision making positions viz., he was replaced from the Investor Grievance Committee by one Mr. Amlesh Sadhu. Hence, I proceed to determine the role of the Noticee in FY 2013-14 and FY 2014-15 (till his resignation) in VLFL on the basis of the material available in the annual reports.

23. As per Item I, Para A, Sub-clause (iii) of Clause 49 of the Listing Agreement specified by SEBI vide its circular dated SEBI/CFD/DIL/CG/1/2004/12/10 dated October 29, 2004, as amended from time to time, I note the following conditions are to be satisfied for an Independent Director:

"I. Board of Directors

(A) Composition of Board

- (i) The Board of directors of the company shall have an optimum combination of executive and non-executive directors with not less than fifty percent of the board of directors comprising of non-executive directors.*
- (ii) Where the Chairman of the Board is a non-executive director, at least one-third of the Board should comprise of independent directors and in case he*

is an executive director, atleast half of the Board should comprise of independent directors.

Provided that where the non-executive Chairman is a promoter of the company or is related to any promoter or person occupying management positions at the Board level or at one level below the Board, at least one-half of the Board of the company shall consist of independent directors.

Explanation-For the purpose of the expression “related to any promoter” referred to in sub-clause (ii):

- a. If the promoter is a listed entity, its directors other than the independent directors, its employees or its nominees shall be deemed to be related to it;*
- b. If the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.”*

(iii) For the purpose of the sub-clause (ii), the expression ‘independent director’ shall mean a non-executive director of the company who:

- a. apart from receiving director’s remuneration, does not have any material pecuniary relationships or transactions with the company, its promoters, its directors, its senior management or its holding company, its subsidiaries and associates which may affect independence of the director;*
- b. is not related to promoters or persons occupying management positions at the board level or at one level below the board;*
- c. has not been an executive of the company in the immediately preceding three financial years; (emphasis supplied)*
- d. is not a partner or an executive or was not partner or an executive during the preceding three years, of any of the following:*
 - i) the statutory audit firm or the internal audit firm that is associated with the company, and*
 - ii) the legal firm(s) and consulting firm(s) that have a material association with the company.*
- e. is not a material supplier, service provider or customer or a lessor or lessee of the company, which may affect independence of the director;*
- f. is not a substantial shareholder of the company i.e. owning two percent or*

*more of the block of voting shares;
g. is not less than 21 years of age.”*

24. I note that all the above-mentioned conditions are required to be satisfied and non-satisfaction of even one condition would render a director ineligible to be an Independent Director. With respect to the Noticee, I note that there is no material to show that he either does not meet or meets any of the conditions mentioned at points (a), (b), (d), (e) and (f), while he does meet the condition mentioned at point (g). However, as noted earlier, the Annual Report of the Company for the year 2012-13, designates him as an Executive Director and also refers to him as the Whole-Time Director and a Key Management Personnel as part of Related Party Disclosures. Therefore, it is clear that the Noticee held an ‘executive’ role in the Company in the year 2012-13 and if he did so, then, by virtue of the condition at point (c) above, he was not eligible to be an Independent Director in the Company for the next three financial years i.e., FY 2013-14, FY 2014-15 and FY 2015-16. I note here that the Annual Report for FY 2012-13 clearly designates the Noticee as an Executive Director and Key Management Personnel for VLFL and no material has been provided by the Noticee to show that he never received this report or that he has taken up the issue of his designation with the Company. Hence, I hold that the Noticee was not an ‘Independent Director’ in the Company in FY 2013-14 and FY 2014-15.

25. If he was a ‘Non-Executive Director’ in 2013-14 and 2014-15, then the same would be possible when he was reappointed as a ‘Non-Executive Director’ in the Annual General Meeting (AGM) held in September 2013. I note from the Annual Reports of 2012-13 and 2013-14 that no such resolution has been approved in the AGM of 2013-14. In fact, the Annual Report of 2013-14 mentions that in the AGM held on September 26, 2014, the Noticee will retire by rotation as he does not offer himself for re-appointment. Therefore, in the absence of any such records, there is a preponderance of probability that the Noticee has continued to act as an ‘Executive Director’ in FY 2013-14 and continued in that role till the time he chose to retire by rotation. In view of the above fact and circumstances, the inconsistent designations of ‘Non-Executive’ and ‘Independent’ Director mentioned against his name in the Annual Reports appear to be erroneous and therefore, not acceptable.

26. In view of the above, I am constrained to conclude that the Noticee was an Executive Director in the Company:

26.1. When the preferential allotment of shares to Looklike took place i.e., in FY 2013-14 and

26.2. When the off-market transfer of 1000 shares of VLFL took place from Looklike to Badriprasad Chiripal (August 14, 2014) i.e., before the date of his cessation from the Board of VLFL i.e., September 26, 2014.

27. However, as already mentioned above, even if it is accepted that he ceased to be a member of the Board from March 31, 2014/ June 17, 2014, i.e., prior to start of the investigation period, he was an Executive Director in VLFL when the preferential allotment of shares was made to Looklike i.e., when the pre-mediated scheme to manipulate the scrip price was already put in place.

28. While the fund transfer between VLFL and Looklike took place in January 2015 i.e., after the date of his cessation, I note that this fund transfer is not the only basis to allege connection between VLFL and Looklike. In view of the observations made at Paragraph 26 above, the Noticee was an Executive Director in VLFL when the pre-meditated scheme was put in place and therefore, he is also responsible for the acts of the Company.

29. The Noticee has not provided any concrete evidence to substantiate his claim that he was not involved in the affairs of the Company since 2011. With respect to his submission that in FY 2013-14, he was replaced in the Investor Grievance Committee of the Company, I note that the role of this committee is confined to resolving investor/ shareholder grievances and that the committee is not involved directly in the affairs of the Company. Hence, merely because he was replaced in the committee, it cannot be categorically said that the Noticee did not continue to be involved in the affairs of the Company or that he was not involved in decision making roles in the Company.

30. On the other hand, I note from documents uploaded to the MCA website that in the meeting of the Board of Directors held on May 20, 2014, resolutions were passed wherein the following documents were approved by the Board:

- 30.1. The Annual Audited Financial Accounts for the quarter and year ended March 31, 2014, and
- 30.2. The report of the Board of Directors together with the Corporate Governance Report and Management Discussion & Analysis.
31. I note from the resolutions passed that the Noticee, in his capacity as a Director, along with the Managing Director of VLFL, was jointly and severally authorized to sign the above mentioned documents on behalf of the Board and to do all necessary acts to give effect to the resolutions. Management Discussion & Analysis is one of the vital piece of information placed before the Board for determination of strategy to be adopted by the Company going forward. The resolution indicates that the Noticee has been given the assignment for giving effect to the resolution, which includes deciding on the strategic way forward for the company. Therefore, the Noticee was not only directly involved in the affairs of the Company but involved in strategic decision making for the future of the company.
32. Hence, in view of the above conclusion that the Noticee continued to be an Executive Director in the Company till his cessation from the Board, I cannot accept the submissions of the Noticee that he had ceased to be involved in the affairs of VLFL or that he was removed from decision making positions in FY 2013-14. As long as he continues to be an Executive Director in VLFL, he remains in a decision making role and is responsible for all acts of VLFL, unless he provides specific credible evidence to the contrary.
33. I note that the Noticee has sought certain clarifications from VLFL regarding the date of his resignation and on the contents of the annual report for FY 2014-15, wherein it has been stated that he has attended the Board Meetings and AGMs for that year. As submitted by him, he is yet to receive this information from VLFL. I note here that this information acquires importance if the Noticee was an Independent Director to show whether he was part of the Board process. The Noticee has submitted that to the best of his recollection, during FY 2014-15 he has not attended a single Board Meeting/ AGM and has not received any sitting fees for the same. I am not inclined to accept these submissions of the Noticee as no evidence in this regard, including relevant bank statements, have been submitted by him. I also note that the Noticee has not provided any evidence to

show that he has lodged a complaint against VLFL with the appropriate authorities or served a legal notice or taken any legal action on VLFL for the alleged misrepresentations in their Annual Reports. In any case, as held above, the Noticee was an Executive Director in the Company in FY 2013-14 when the preferential allotment of shares was made to Looklike.

34. The Noticee has also contended that by denying him inspection of investigation report and other relevant documents, SEBI has violated the Principles of Natural Justice. I note here that all the documents, which have been relied upon when preparing the SCN, have been provided as annexures to the SCN. Hence, I note that the Noticee has been given all the relevant documents to provide a response to the charges levied against him in the SCN and that the Principles of Natural Justice have been duly complied with and no prejudice has been caused to the Noticee.
35. The Noticee has also contended that the SCN does not set out the directions proposed to be issued by SEBI and that the same is not compliant with Principles of Natural Justice. I note here that the SCN issued to the Noticee has spelt out the provisions under which the directions, if found necessary, would be issued. The SCN also clearly indicates the specific nature of violations that have been alleged against the Noticee in terms of different provisions of the SEBI Act and the PFUTP Regulations, which if eventually found to be breached, would require issuance of suitable directions under specific provisions as mentioned under the SCN. Furthermore, the SCN issued to the Noticee unequivocally states provisions under which preventive measures, if any would be issued. One such provision mentioned in the SCN is Section 11(4) (b) of SEBI Act, 1992 which states that upon completion of an inquiry, a person can be restrained from accessing the securities market and can also be prohibited from being associated with the securities market. Thus, it is incorrect to contend that SCN does not envisage the directions that may be issued against them. In view of the same, I do not find any merit in this contention of the Noticee.
36. In view of the above, I hold that the Noticee, by virtue of being an Executive Director of the Company, was in charge of its affairs at the time of the violations, and along with the other entities party to the SCN, is part of the scheme, which was set in motion right from the allotment of shares to Looklike in FY 2013-14, for

manipulating the price of the scrip of VLFL during the period August 12, 2014, to July 31, 2015. The findings relating to the entire scheme are already recorded in the order dated April 13, 2020. The findings in this order shall be read along with the findings of the SEBI order dated April 13, 2020.

Issue No. 2: If answer to Issue No. 1 is in affirmative, whether the Noticee has violated the provisions of PFUTP Regulations?

37. As already held above, the Noticee, by being party to the pre-mediated scheme to manipulate the share price of VLFL, has indulged in a fraudulent activity, which is covered under the definition of fraud as per Regulation 2(1)(c) of the PFUTP Regulations, which is as under:

(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent, (7) deceptive behaviour by a person depriving another of informed consent or full participation,

(8) a false statement made without reasonable ground for believing it to be true.

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And "fraudulent" shall be construed accordingly;

38. Further, I note that this activity of the Noticee is covered under the following provisions of the PFUTP Regulations:

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.

(2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following:—

(a) knowingly indulging in an act which creates false or misleading appearance of trading in the securities market;

....

(e) any act or omission amounting to manipulation of the price of a security including, influencing or manipulating the reference price or bench mark price of any securities;

39. Therefore, the Noticee, has been party to the premeditated scheme to manipulate the price of the scrip of VLFL and this act on his part falls within the definition of fraud as per the PFUTP Regulations. This act of the Noticee is prohibited under the above mentioned provisions of the PFUTP Regulations.

40. In view of the above, I hold that the Noticee is in violation of Regulations 3 (b), 3(c), 3(d) and Regulations 4(1), 4(2)(a) and 4(2)(e) of the PFUTP Regulations.

Issue No. 3: If answer to Issue No. 2 is in affirmative, what directions, if any, should be issued against the Noticee?

41. As already established above, the Noticee has been held to be in violation of the provisions of the Regulations 3 (b), 3(c), 3(d) and 4(1), 4(2)(a) and 4(2)(e) of the PFUTP Regulations. In view of this, appropriate directions debarring him from the securities market need to be issued.

ORDER

42. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under Section 19 of the Securities and Exchange Board of India Act, 1992, read with Sections 11, 11(4) and 11B of the SEBI Act, hereby issue the following directions:

42.1. The Noticee, Mr. Harivallabh Mundra (PAN: AAAPM8378D) is restrained from accessing the securities market and buying, selling or dealing in securities, either directly or indirectly, in any manner for a period of two years from the date of this Order.

42.2. The period of restraint already served by the Noticee from the date of the initial order i.e., April 13, 2020, till the date of the order of the Hon'ble SAT shall be counted while determining the period of restraint mentioned above.

42.3. Needless to say that in view of the prohibition on sale of securities, during the period of restraint, the existing holding, including units of mutual funds, of the Noticee shall remain frozen.

42.4. It is made clear that if the Noticee has any open positions in any exchange traded derivative contracts, he can close out/ square off such open positions within 3 months from the date of Order or at the expiry of such contracts, whichever is earlier. It is also clarified that the Noticee can settle the pay-in and pay-out obligations in respect of transactions, if any, which have taken

place before the close of trading on the date of this Order.

43. The above directions shall come into force with immediate effect.

44. A copy of this Order shall be sent to the Noticee. Copy of this Order shall be forwarded to the recognised Stock Exchanges, Depositories and Registrar and Share Transfer Agents for information and necessary action.

45. A copy of this Order shall also be forwarded to the Income Tax Department, Chandigarh, for their information and necessary action.

DATE: February 15, 2021
PLACE: MUMBAI

Sd/-
MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA