National Stock Exchange of India
Circular

Department: Investigation	
Download Ref No: NSE/INVG/55211	Date: January 11, 2023
Circular Ref. No: 09/2022	

To All NSE Members

Sub: Final Order in the matter of Veeram Securities (formerly known as Veeram Ornaments Limited)

SEBI vide its order no. WTM/AB/IVD/ID2/22813/2022-23 dated January 11, 2023 has directed that below mentioned entities are prohibited from buying, selling or otherwise dealing in securities of Veeram Securities Ltd. (formerly known as Veeram Ornaments Limited), directly or indirectly, in any manner, whatsoever, for a period of one (1) year, from the date of this order;

Sr No.	Name of the Entity	PAN
1	Rakshit Mahendrabhai Shah HUF	AATHS7311D
2	Rakshit Mahendra Shah	AKIPS9122R
3	Pinal Rakshitbhai Shah	BEAPS7911B

The detailed order is available on SEBI website (http://www.sebi.gov.in). Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page under “Home-Regulation-Members-Action against Members-Regulatory Actions”.

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to contact the following officials:

Mr. Abhishek Goenka (Extension: 23449), Mr. Anand Jangir (Extension: 22385)
Direct No: 022-26598417/18 Fax: 022-26598195

National Stock Exchange of India

For and on behalf of

National Stock Exchange of India Limited

Anand Jangir
Manager

National Stock Exchange of India

ANNEXURE: Final Order in the matter of Veeram Securities (formerly known as Veeram Ornaments Limited)

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

Under Sections 11(1), 11(4), 11(4A), 11B(1), 11B(2) and 15I of the Securities and Exchange Board of India Act, 1992 read with Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995

In respect of:

Sr. No.	Noticee	PAN
1.	Rakshit Mahendrabhai Shah HUF	AATHS7311D
2.	Rakshit Mahendra Shah	AKIPS9122R
3.	Pinal Rakshitbhai Shah	BEAPS7911B

(The aforesaid entities are hereinafter referred to by their respective names/noticee numbers or collectively as "the Noticees")

In the matter of Veeram Securities Limited (formerly known as "Veeram Ornaments Limited")

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1. The present proceedings emanate from a show cause notice dated May 19, 2021 (hereinafter referred to as "**SCN**") issued by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") to the Noticees wherein it was *prima facie* found that the Noticees have executed contra trades in the scrip of Veeram Securities Limited (hereinafter referred to as **"Veeram/VSL"**), formerly known as "Veeram Ornaments Limited", during the period January 24, 2018 to March 23, 2018 in violation of the provisions of Clause 10 of Schedule B Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by designated persons, read with Regulation 9(1) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to

as "**PIT Regulations, 2015**"). The SCN called upon the Noticees to show cause as to why suitable directions including directions for disgorgement of wrongful gain of Rs.90,94,500/-, jointly and severally under Sections 11(4) and 11B (1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**"), and directions for imposing monetary penalty under Section 15HB read with Section 11(4A) and 11B(2) of the SEBI Act, 1992 should not be issued against the Noticees for the alleged violations mentioned above.

2. The SCN was served upon the Noticees. Noticees vide common reply dated June 16, 2021 sought time to file reply to the SCN and submitted that they are considering settlement process for these proceedings. The request for extension of time was granted and Noticees were advised to file their reply latest by July 09, 2021. The Noticees also sought inspection of documents vide separate letters dated July 08, 2021. Subsequently, vide separate letters dated July 13, 2021, the Noticees submitted settlement application with respect to these proceedings and the same was rejected by the Competent Authority on October 28, 2021. The Noticees were granted opportunity to inspect documents on August 04, 2021 which was rescheduled twice on the request of the Noticees before final opportunity of inspection of documents could be granted on October 06, 2021. Noticees failed to avail the last opportunity of inspection of documents despite rescheduling it twice as per their request. At this stage, the matter was put up before me on October 28, 2021 for further proceedings. An opportunity of personal hearing was granted to the Noticees on March 04, 2022. In response to the hearing notice, vide letter dated February 23, 2022, the Noticees requested to reschedule the personal hearing and requested to grant another opportunity of inspection of documents. Inspection of documents as sought by the Noticees was conducted on March 04, 2022 and personal hearing in the matter was adjourned to March 28, 2022. Post-inspection of documents, Noticees sought additional documents vide letter dated March 07, 2022 and the same were provided to the Noticees. Subsequently, Noticees vide email dated March 25, 2022 requested SEBI to reschedule the date of hearing fixed on March 28, 2022, on medical grounds. Another opportunity of hearing was granted to the Noticees on June 14, 2022 which was subsequently adjourned to July 27, 2022 and August 05, 2022 on the request of the Noticees. On August 05, 2022, the authorized representative of the Noticees and

Noticee no. 1 appeared in person and made submissions in the case. Hearing qua the Noticees was concluded on August 05, 2022

3. SCN, *inter alia,* made the following allegations:

3.1. The Promoter wise shareholding in VSL as disclosed on BSE website for the quarter ended September 2017 to March 2018 is tabulated below:

3.2. Investigation observed that there was change in shareholding of 3 promoter's viz.

Sr. No.	**PAN**	**Entity Name**	**Quarter ended Sept 2017**		**Quarter ended Mar 2018**	
			No. of Shares	**% of Holding**	**No. of Shares**	**% of Holding**
1	AAIHS4202A	Mahendrabhai M Shah	18,000	0.42	18,000	0.42
2	AATHS7311D	Rakshit Mahendrabhai Shah HUF	174,000	4.04	150,000	3.48
3	ADKPS5387F	Mahendrabhai Manchandlal Shah	15,000	0.35	15,000	0.35
4	AGSPS5771N	Vasantbala Mahendrabhai Shah	18,000	0.42	18,000	0.42
5	AKIPS9122R	Rakshit Mahendra Shah	724,111	16.80	710,611	16.49
6	BEAPS7911B	Pinal Rakshitbhai Shah	1,015,845	23.57	1,042,845	24.20
Total			**1,964,956**	**45.59**	**1,954,456**	**45.35**

Rakshit Mahendrabhai Shah HUF (hereinafter referred to as "Noticee No. 1"), Rakshit Mahendra Shah (hereinafter referred to as "Noticee No. 2") and Pinal Rakshitbhai

Shah (hereinafter referred to as “Noticee No. 3”) from the quarter ended September 2017 to quarter ended March 2018.

3.3. Upon analysing the trade details of the Noticees during the investigation period, it was observed that the Noticees have executed contra trades within 6 months of their prior transaction. The following table gives the list of transactions of the Noticees in the scrip of Veeram during the investigation period:

Promoter/ Director Name	Trade Date	Buy Qty	Buy Value	Buy Rate (in Rs.)	Sell Qty	Sell Value	Sell Rate (in Rs.)	Contra Trade Qty	Profit (in Rs.)
Rakshit Mahendra bhai Shah HUF (Noticee No. 1)	24/01/2018	0	0	0.00	18,000	17,82,000	99	36,000	19,98,000
	29/01/2018	0	0	0.00	24,000	24,72,000	103		
	30/01/2018	0	0	0.00	18,000	18,18,000	101.00		
	21/03/2018	18,000	8,28,000	46.00	0	0	0.00		
	22/03/2018	18,000	8,10,000	45.00	0	0	0.00		
	Total	**36,000**	**16,38,000**		**60,000**	**60,72,000**			
Rakshit Mahendra Shah (Noticee No. 2)	24/01/2018	0	0	0.00	18,000	17,82,000	99.00	46,500	25,66,500
	29/01/2018	0	0	0.00	24,000	24,72,000	103.00		
	30/01/2018	0	0	0.00	18,000	18,18,000	101.00		
	19/03/2018	10,500	5,04,000	48.00	0	0	0.00		

Promoter/ Director Name	Trade Date	Buy Qty	Buy Value	Buy Rate (in Rs.)	Sell Qty	Sell Value	Sell Rate (in Rs.)	Contra Trade Qty	Profit (in Rs.)
	21/03/2018	18,000	8,28,000	46.00	0	0	0.00		
	22/03/2018	18,000	8,10,000	45.00	0	0	0.00		
	Total	**46,500**	**21,42,000**		**60,000**	**60,72,000**			
Pinal Rakshitbhai Shah (Noticee No. 3)	24/01/2018	0	0	0.00	18,000	17,82,000	99.00	81,000	45,30,000
	30/01/2018	0	0	0.00	63,000	65,43,000	103.86		
	20/03/2018	69,000	32,43,000	47.00	0	0	0.00		
	21/03/2018	18,000	8,28,000	46.00	0	0	0.00		
	22/03/2018	18,000	8,10,000	45.00	0	0	0.00		
	23/03/2018	3,000	1,35,750	45.25	0	0	0.00		
	Total	**1,08,000**	**50,16,750**		**81,000**	**83,25,000**			

**Profit = Sell Value of Contra Trade Qty. – Buy Value of Contra Trade Qty.*

3.4. As per Clause 10 of Schedule B Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by designated persons, read with regulation 9(1) of PIT Regulations, 2015:

"The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not

execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act."

3.5. Vide email dated October 14, 2020, VSL was advised to provide its comments on the observation that the Noticees have executed contra trades during the period January 24, 2018 to March 23, 2018. After several reminders, VSL provided its reply vide email dated January 20, 2021, wherein, *inter-alia*, the following was submitted:

- VSL declared that the Noticees have not violated Clause 10 of Schedule B Minimum Standards for Code of Conduct of PIT Regulations, 2015, as its Board has empowered the compliance officer to permit on a specific request from director to grant the relaxation from the code for contra trade which was considered due to personal emergency.
- The transactions were approved by the compliance officer on the basis of trading plan and application for pre-clearance submitted quoting personal emergency.
- Since the initial sale of shares was due to emergency demonstrated and repurchased with an intention to retain the promoter's holding, the same were specifically approved.
- All the promoters and directors of VSL were categorized as designated persons as per VSL's code of conduct in terms of PIT Regulations, 2015, during the year 2017 & 2018.

3.6. Vide email dated January 20, 2021, VSL provided the copy of relevant pre-clearance applications and approval documents of the Noticees. In the pre-clearance application for January month trades, the Noticees have referred to some trading plan submitted by them on February 01, 2017 to VSL and have also mentioned that they are in dire need of funds to repay existing loans, which can be raised only by selling VSL's shares. Further, it was mentioned that they wish to retain their shareholding in VSL to the present position of promoter/ director and therefore they will repurchase the shares of VSL as soon as funds become available with them. In the pre-clearance application for March month trades, the Noticees have referred to their pre-clearance application for January month trades and *inter-alia* mentioned that since the funds are available with them now, they wish to repurchase the shares sold in January month.

3.7. In light of the above, the Noticees, vide email dated January 22, 2021 and March 08, 2021, were *inter-alia* asked to provide name of the lender, copy of loan agreement and proof of repayment of loan. Also, the source of funds for purchase of shares etc.

3.8. Vide email dated February 09, 2021, March 06, 2021 and March 11, 2021, Noticee No. 2 provided a reply on behalf of all the Noticees, wherein, *inter-alia*, the following was submitted:

- Noticee No. 3 had a liability to make repayments of amount taken from M/s Veeram Infrastructure, which is a proprietary concern of Noticee No 3.
- Noticee No. 1 and 2 were owing money to Noticee No. 3.
- There was a repayment liability of M/s Veeram Infrastructure to pay M/s India Green Reality Pvt. Ltd. ('IGRPL') to the extent of Rs.2.63 cr. on non-execution of the agreement. The amount was received from IGRPL on September 01, 2016.
- To avoid the losses, penalty and harassment we had to make quick decision for repayment. Only source available at that time was to sell the shares.
- For this purpose, all three of us sold shares of VSL and out of sale proceeds of said shares and other shares, the liability of M/s Veeram Infrastructure was repaid.

3.9. It was observed from the Noticees reply that for making payments to the broker for purchase of shares of VSL in March 2018, the funds were transferred by the Noticees to one another. The Noticees have failed to provide the details of ultimate source of funds.

3.10. From the bank statement of M/s Veeram Infrastructure (submitted by Noticee No. 2), it was observed that total Rs.4.05 cr. were transferred to IGRPL between January 30, 2018 to February 06, 2018. Out of the total amount transferred to IGRPL, Rs.45 Lakhs were received from Veeram Ornaments (now known as VSL).

3.11. It was observed that the Noticees have traded in the scrip of VSL through single broker i.e. ACML Capital Markets Limited. The broker has informed that Noticee No. 2 had put orders on behalf of all 3 Noticees in the scrip of Veeram.

3.12. It was also observed that despite having reasonable shareholding in the other companies, the Noticees chose to sell shares of Veeram quoting personal emergency.

3.13. From the pre-clearance approval document submitted by VSL, it was observed that pre-clearance was given by Mr. Mahendra Shah, as compliance officer, who is also a Managing Director of VSL. VSL was asked to provide supporting document w.r.t. appointment of Mr. Mahendra Shah as the compliance officer. In response, VSL submitted the copy of board resolution dated September 01, 2017, wherein Mr. Mahendra Shah was appointed as compliance officer. However, it was observed that the resolution was signed by Mr. Mahendra Shah, himself.

3.14. On query, VSL, vide email dated February 04, 2021, provided the copy of alleged trading plan dated February 01, 2017 received from the Noticees for the period August 01, 2017 to July 31, 2018. From the same, it was observed that the Noticees gave a plan to sell upto 1,25,000 shares of VSL and purchase the same as soon as funds become available with them.

3.15. As per VSL's reply, the trading plans were approved by the board of directors of VSL in their meeting dated April 12, 2017. VSL provided copy of board resolution dated April 12, 2017 approving Code of Conduct and Trading Plan. The same had signature of Mr. Mahendrabhai Ramniklal Shah only, who is observed to be the relative (uncle) of Noticee No. 2.

3.16. It was noted that there were total 4 directors of VSL during that period viz. Mahendrabhai Ramniklal Shah (relative of Noticee No. 2), Noticee No. 2, Noticee No. 3 (wife of Noticee No. 2) and Rajeshbhai Shah (Independent Director). As per VSL's reply, Mahendrabhai Ramniklal Shah and Rajeshbhai Shah attended the board meeting dated April 12, 2017.

3.17. From VSL's Annual Report for F.Y. 2016-17, it was observed that VSL had informed about cessation of Ms. Noopur Jain who was holding designation of Company Secretary cum Compliance Officer of VSL with effect from June 05, 2017. Ms. Noopur Jain was *inter-alia* asked to provide information relating to trading plan. She responded saying that during her tenure as compliance officer of VSL from June 15, 2016 to June 05, 2017, she had not received and approved any trading plan.

3.18. From the above, it was noted that the alleged trading plan dated February 01, 2017 was not approved by the then compliance officer of VSL, instead it was approved in the board meeting dated April 12, 2017 by two directors, one of whom is the relative of Noticee No. 2.

3.19. BSE was asked to confirm whether any approved trading plan was notified to them by VSL, as per PIT Regulations, 2015 during the period from January 2017 to June 2018. As per BSE reply dated January 21, 2021, VSL has not submitted any announcement with the exchange regarding approved trading plan during the said period.

3.20. Accordingly, vide email dated January 29, 2021 and February 15, 2021, VSL was advised to provide explanation with regard to submission of trading plan with the exchange. VSL, vide email dated February 16, 2021 provided the courier delivery report, wherein the delivery date was May 11, 2017. The same was forwarded to BSE asking them to re-verify their records and provide confirmation about the receipt of trading plans from VSL. In response, vide email dated February 18, 2021, BSE submitted that on May 11, 2017 the exchange had received disclosures (hard copy) under Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and PIT Regulations and provided copy of the same with date stamp of May 11, 2017. Further, it was submitted that the exchange had not received any disclosure w.r.t. approved trading plan from VSL on May 10 & 11, 2017.

3.21. In view of the above, it is noted that the alleged trading plan was not notified to the stock exchange. Therefore, the copy of trading plans submitted by VSL and the Noticees to SEBI during the investigation cannot be said to be authentic/ valid.

3.22. Statement recording of Noticee No. 2 and Mahendrabhai Ramniklal Shah was held on March 12, 2021 and March 17, 2021, respectively. Noticee No. 2 appeared on behalf of Mahendrabhai Ramniklal Shah on March 17, 2021. During the statement recordings and vide reply dated March 11, 2021, Noticee No. 2, *inter-alia*, submitted the following:

- Noticee No. 2 is CA, CS & LLB.
- Noticee No. 2 takes trading decisions and executes trades on behalf of all 3 Noticees.
- Noticee No. 2 was replying to SEBI on behalf of VSL.
- Mahendrabhai Ramniklal Shah is 10th Pass. He takes operational decisions in VSL like buying selling gold. He is the distant relative (uncle) of Noticee No. 2.
- VSL was incorporated in 2011 with the name Veeram T.V. Network Pvt. Ltd., it could not start the business of TV networking and hence, the name was changed to Veeram Spiritual Energies Pvt. Ltd. to carry out the work related to coaching in the field of Mind Power. Then when Mahendrabhai Ramniklal Shah joined VSL, the name again changed to Veeram Ornaments Pvt. Ltd. and business to trading in ornaments. VSL acquired Shakti Jewellers (Proprietorship firm of Mahendrabhai Ramniklal Shah), in 2015. VSL converted to public limited in June 2016. At present, VSL is known as Veeram Securities Limited engaged in wholesale gold ornaments.
- Mahendrabhai Ramniklal Shah does not know about the PIT Regulations, 2015 or any regulations as he is only involved in jewellery operations/trading. He took opinion from external entity namely Manohar Chunara, Company Secretary, while approving preclearance application of the Noticees.

It was observed that Manohar Chunara was one of the past director of VSL who ceased to be the director w.e.f. April 12, 2017.

3.23. It was observed that there is no demarcation between the Noticees, VSL and Mahendrabhai Ramniklal Shah, who has approved the alleged pre-clearance applications, since (1) Noticee No. 2 takes trading decisions and executes trades on behalf of his wife, Noticee No. 3 and Noticee No. 1, (2) Mahendrabhai Ramniklal Shah is a relative of Noticee No. 2, (3) Noticee No. 2 is the one who had replied to and was in communication with SEBI on behalf of VSL and Mahendrabhai Ramniklal Shah, (4) Noticee No. 2 appeared for statement recording on behalf of Mahendrabhai Ramniklal Shah and (5) VSL's funds were used to satisfy personal liability.

3.24. To summarize, based on the following observations, VSL and Noticees claim that the transactions were approved by the compliance officer on the basis of trading plan and application for pre-clearance submitted quoting personal emergency and repurchase with an intention to retain the promoter's holding is not found tenable:

- The alleged trading plan was not approved by the then compliance officer, instead it was approved in board meeting by two directors, one of whom is the relative of Noticee No. 2. Also, VSL had not notified any trading plan to the stock exchange during the relevant period of time. Hence, it was noted that there was no trading plan at all.
- Noticee No. 2 was replying on behalf of all 3 Noticees, VSL and Mahendrabhai Ramniklal Shah to SEBI during the investigation and appeared for statement recording on behalf of Mahendrabhai Ramniklal Shah. VSL is very small sized company, having only 9 employees (including directors, salesmen, office boy etc.) as on December 2018, as per VSL's reply.
- As noted during the investigation based on the Statement of Noticee No. 2, Mahendrabhai Ramniklal Shah (relative of Noticee No. 2) undertakes the operational part of the business but Noticee No. 2 is the one who takes all other key decisions, supported by his wife, Noticee No. 3, who is also a director in VSL. Noticee No. 2 is the one who handles the financial aspects of VSL and has control over VSL as he is engaged with VSL as promoter and director since its incorporation.
- Noticee No. 2, during statement recording, submitted that Mahendrabhai Ramniklal Shah is 10th pass and does not know about the PIT Regulations, 2015 or any regulations as he is only involved in jewellery operations/trading. He took opinion from an external Company Secretary *viz*. Mr. Manohar Chunara. It was noted from MCA website that Mr. Manohar Chunara was the past director of VSL, he ceased to be director w.e.f. April 12, 2017 and further appointed as director of VSL on May 30, 2020. It was observed that the opinion letter dated March 18, 2018 of Mr. Manohar Churana to VSL (submitted during statement recording by Noticee No. 2) does not give any opinion related to contra trades, as it only pertains to the disclosure requirements.

- From the above, it is inferred that Mr. Mahendrabhai Ramniklal Shah was unaware about the provisions relating to contra trades and PIT Regulations 2015 and it was Noticee No. 2, who was managing VSL.
- Despite having reasonable shareholding in the other companies, the Noticees chose to sell shares of Veeram quoting personal emergency and later executed contra trades (purchase transaction) within 2 months stating that they wish to retain shareholding in VSL.

3.25. In view of all the above observations, it is alleged that the documents, *viz.* pre-clearance applications, approval documents and trading plans, produced by Noticee No. 2 on behalf of VSL and the Noticees to SEBI reflects compliance merely on paper with the provisions related to the contra trades and PIT Regulations, 2015 and not in spirit.

3.26. This has to be seen in light of the fact that there is no demarcation between the 3 entities, VSL and Mahendrabhai Ramniklal Shah, who has approved the pre-clearance applications as the compliance officer, as all these entities are managed/ controlled by Noticee No. 2, who is CA, CS & LLB and he was the nodal point for all the correspondences of SEBI with VSL, Noticee No. 1, Noticee No. 3 and Mr. Mahendrabhai Ramniklal Shah.

3.27. As seen from table given at para 2.3, Noticees have made significant profits by executing contra trades in the scrip of VSL during the investigation period. Details are given below:

Noticee No.	**Name**	**Contra Trade Qty**	**Profit (in Rs.)**
1	Rakshit Mahendrabhai Shah HUF	36,000	19,98,000
2	Rakshit Mahendra Shah	46,500	25,66,500
3	Pinal Rakshitbhai Shah	81,000	45,30,000

3.28. In view of the above, it is alleged that the Noticees, designated persons of VSL, have executed contra trades within a period of 6 months of their prior transaction during the period January 24, 2018 to March 23, 2018 and thereby, violated Clause 10 of Schedule B Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by designated persons read with Regulation 9(1) of SEBI PIT Regulations, 2015. Further, the profits from such contra trades has not been disgorged and remitted to SEBI as stipulated under Clause 10 of Schedule B Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by designated persons read with Regulation 9(1) of PIT Regulations, 2015.

4. The Noticee vide his reply dated August 09, 2022 and June 14, 2022, has submitted inter alia the following:

i. It is pertinent to note that adjudication proceedings under Section l5 HB of SEBI Act are initiated against Shri Mahendra Ramniklal Shah for alleged violation of clause 10 of Schedule B Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by designated persons read with Regulation 9(1) of SEBI (Prohibition of Insider Trading) Regulations, 2015.

ii. It is submitted that Regulation 9(3) of the SEBI (Prevention of Insider Trading Regulation, 2015) confers the duty on the compliance officer of the company to administer the code of conduct and other requirements under these regulations. In the present case it was the duty of Shri. Mahendra Shah who was Compliance officer to administer the code of conduct during the relevant period.

iii. It is respectfully submitted that Section 11 B proceedings are initiated against us whereas the actual cause of action if any, is of violation of Code of Conduct. As stated above, PIT Regulation 9 (3) cast the duty on the compliance officer for administering the code of conduct. To cast out the anomaly if any and for harmonious interpretation of application of provisions of SEBI Act and PIT Regulations therein we are to make following submissions:-

- The principle of subsidiary rules as referred in the maxim "Generalia specialibus non derogant" maxim explained - In cases of conflict between a specific provision and a general provision the specific provision prevails over the general provision and the general provision applies only to such cases which are not covered by the special provision.
- In the case of British Airways Pic vs. Union of India, (2002) 2 sec 95 the principle of harmonious interpretation was laid down as, it is cardinal principle of construction of a statute that efforts should be made in construing the different provisions so that each provisio will have its play and in the event of any conflict a harmonious construction should be given. The well-known principle of harmonious construction is that effect shall be given to all the provisions and for that any provision of the, statute should be construed with reference to the other provisions so as to make it workable. A particular provision cannot be picked up and interpreted to defeat another provision made in that behalf under the statute. It is the duty of the Court to make such construction of a statute which shall suppress the mischief and advance the remedy."

  In view of the above submissions, we most respectfully submit that proceedings against us under Section 11B of the SEBI Act may not be proceeded with.

iv. It is pertinent to note that Ld. Adjudicating Officer, SEBI has initiated proceedings against Mr. Mahendra R Shah, the Compliance Officer of VSL vide Show Cause Notice dated 13.08.2021 on the same subject matter of the captioned proceedings i.e. alleged contra-trades executed by us. It is m mentioned in the said SCN that it is the responsibility of the compliance officer of VSL to administer the code of conduct and monitor compliance with the regulations. Further, it is alleged that VSL has failed to disgorge the profits arising out of said contra trades, which is the subject matter of present proceedings.

v. In this regard, we would like to submit that the said Adjudication Proceedings has not yet reached finality and will have direct bearing on our proceedings as the subject matter is same to the caption proceedings. Hence, we humbly request to kindly keep the present proceedings in abeyance till the time adjudication proceedings as initiated against Mr. Mahendra R Shah, Compliance Officer of VSL is concluded.

vi. It is wrongly alleged in the SCN that the compliance as done by us w.r.t. our transactions in VSL was only in letter and not in spirit. However, the investigation report of SEBI itself mentions that no manipulative pattern was observed (Ref Page No. 32 of Investigation Report). Further, it is pertinent to note that during the said investigation conducted by SEBI, it has perused each and every documents/ details/ data such as UCC details from BSE, bank statements, off-market transactions, MCA data, Annual Report 2017-18 and details of promoters shareholding given in prospectus, trade analysis etc., still no allegation of any manipulation w.r.t. our trades in VSL has been observed. Hence, it cannot be said that we did not comply with the compliance requirements w.r.t. our trades in VSL in spirit.

vii. Mr. Mahendra R Shah is our distant relative and he is not covered under the definition of relative as defined under Companies Act, 2013. The same was also conveyed to SEBI during investigation by Rakshit Shah's letter dated 08.03.2021. However, no cognizance of Rakshit Shah's letter dated 08.03.2021 is taken while issuing the SCN. Hence, great prejudice is caused to us.

viii. We submitted trading plan to VSL on 01.02.2017. The trading plan was for the period from 01.08.2017 to 31.07.2018. The trading plan was w.r.t. sell and purchase of shares of VSL. It is categorically mentioned in the trading plan that purchase of VSL shares will only be if there is sell of shares and not otherwise.

ix. It is pertinent to mention that during the period when the trading plan was submitted and when it was approved i.e. 12.04.2017, the Company Secretary of VSL was on leave. Hence, the said trading plan was approved by two directors out of which one director was independent director, vide board resolution dated 12.04.2017 in the board meeting held on 12.04.2017. Further, the said trading plan was submitted to the Ahmedabad Office of BSE on 10.05.2017. Further, we would like to state that the said trading plan was also sent via courier to BSE office at Mumbai on 10.05.2017 via Shree Mahavir Express Services Pvt Ltd and the same was delivered to BSE, Mumbai office on 11.05.2017.

x. Also, VSL by email dated 11.05.2022 had sought confirmation from BSE w.r.t. trading plan submitted by uson 10.05.2017. Along with the said email, acknowledgement received from BSE w.r.t. our trading plan was also attached.

xi. In response to the said ernail, BSE vide email dated 11.05.2022, confirmed on the document received at the Ahmedabad Office of BSE. Further, BSE also confirmed that the documents were couricred to Mumbai HO on the same day. The POD (POD No. 2338200000097) was also mentioned in the said email.

xii. Hence, it is wrongly alleged in the SCN that the trading plan has not been filed with the stock exchange as in fact trading plan has been filed with BSE at its Ahmedabad office on 10.05.2017 and it was also sent to BSE at its Mumbai office via courier on 10.05.2017.

xiii. If any adverse view w.r.t. trading plan filed with BSE is drawn, then we request your Honour to kindly grant us an opportunity of cross examination of relevant BSE officials who have acknowledged the receipt of trading plan and also of official who has forwarded the same to BSE, Mumbai office. Without prejudice to what is stated aforesaid, we would like to submit that BSE had vide circular dated 11.03.2016 (Ref No. DCS/COMP/33/2015- 16) had made it mandatory to file disclosures in Electronic mode. However, there was no compulsion/mandatory to file trading plan in electronic mode. Hence, the said trading plan was physically filed with BSE (Ahmedabad Office} and the same was also couriered to BSE, Mumbai office. Hence, no adverse inferences be drawn against us in this regard.

xiv. It is alleged in the SCN that Rakshit Shah was replying on behalf of all 3 noticees and that Rakshit Shah recorded statement on behalf of Mr. Mahendra R Shah. In this regard, we submit that during the time when investigation was conducted by SEBI, Mr. Mahendra R Shah was severally ill. When he was called for recording his statement by SEBI he had specifically mentioned that he is not well and requested another date for recording his statement. However, on insistence by SEBI to be present for statement recording, Mr. Mahendra R Shah authorized Rakshit Shah to record of statement on his behalf.

xv. We state that due to the said medical condition of Mr. Mahendra R Shah and reluctance of SEBI to provide another date for statement recording, he could not appear before SEBI and he authorized Rakshit Shah to record statement before SEBI on his behalf. Further, Rakshit Shah is husband of Pinal Shah and Karta of Rakshit M Shah HUF. Hence, no adverse inferences be drawn against us in this regard.

xvi. It is alleged in the SCN that that the opinion provided by CS Manohar Chunara, practicing Company Secretary was only with respect to disclosure requirements and not on contra trades. In this regard, we submit that SEBI has not considered Rakshit Shah's letter dated 18.03.2021 which was submitted during the course of investigation. In the said letter Rakshit Shah had attached opinion of CS Manohar Chunara, practicing Company Secretary. The said opinion clearly mentions when the shares were sold and when it was intended to be purchased back. However, CS Manohar Chunara, Practicing Company Secretary had only mentioned about disclosure requirements under SEBI (Substantial Acquisition of Shares and Takeover), Regulations, 2011 and SEBI (Prohibition of Insider Trading) Regulations, 2015. However, there was no mention of any restrictions w.r.t. contra trade in CS Manohar Chunaras letter dated 18.03.2018. SEBI has not considered the opinion of CS Manohar Chunara in totality during the course of investigation and has concluded that opinion of CS Manohar Chunara was based only on the disclosure requirements of transactions of the said promoters.

xvii. It is alleged in the SCN that Rakshit Shah was the one who was taking all the decisions w. r.t. VSL. However, SEBI has completely ignored the submissions made by Rakshit Shah during the investigation wherein he had categorically mentioned that Mr. Mahendra R Shah who has vast experience in jewellery business was in charge of the business operations of VSL. Further it was also mentioned that Mrs. Pinal R Shah, has passed her B.SC. and she looks after designing of jewellery.

Hence, the SCN wrongly alleges that Rakshit Shah is the one who is taking all the decisions at VSL. Hence, no adverse inference be drawn against us.

xviii. We submit that we have met with all the compliance requirements w.r.t. our selling and buying of shares of VSL i.e. pre-clearance approval for selling & buying of shares, requisite disclosures under Regulation 7(2) r. w. Regulation 6(2) of SEBI (Prohibition of insider Trading) Regulations, 2015 w.r.t. our sell and buy transactions in VSL. Further, we have followed all the requirements as stated in Insider Trading Prohibition Code of VSL. All the pre-clearance letters, disclosures etc. have been filed along with our Written Submissions dated 14.06.2022.

xix. We submit that selling and buying shares of VSL was as per the trading plan submitted by us which was approved in the meeting of Board of Directors. Hence, the said trades cannot be classified as contra trades as alleged in the SCN or otherwise as the trades were approved via trading plan as well as necessary pre-clearances for selling and buying of shares of VSL was sought & the same was granted and the same was filed with BSE. Further, we would also like to state that trading window norms and restrictions on contra trade is not applicable for the trades carried out in accordance with an approved trading plan.

xx. I would like to state that during the period when the trading plan was approved i.e. 12.04.2017, Ms. Noopur Jain, who was VSL Secretary at that point in time, was on leave from 21.01.2017 to 30.04.2017 and thereafter she resigned as a Company Secretary cum Compliance Officer of VSL w.e.f. 05.06.2017. Therefore, the said resolution was approved by the two directors of VSL one of which was an Independent Director.

xxi. Pre -clearance request for sell of shares of VSL. Reasons for making pre-clearance request for sell of shares is as under:

(i) I was proprietor of Veeram Infrastructure. Veeram Infrastructure owed huge amount of funds to India Green Reality Pvt. Ltd.

(ii) As the amount of Rs. 2.63 Crores owed by Veeram Infrastructure to India Green Reality Pvt. Ltd became due, the repayment liability of Veeram Infrastructure began. As I was proprietor of Veeram Infrastructure, I had to myself repay liability of Veeram Infrastructure.

(iii) It is pertinent to, mention that repayment to India Green Reality Pvt. Ltd was important so as to maintain creditworthiness. It is pertinent to note that Noticees were threatened with criminal actions by India Gree Reality Pvt. Ltd. for failing to repay the debt obligations. Hence, decision was made to sell shares and from the said proceeds, repay the outstanding amount due to India Green Reality Pvt Ltd.

xxii. It is only on my assurance of buying back the shares of VSL when I have funds available with me, clearance for selling shares of VSL was given to me based on the pre clearance application for sale as submitted by me. It is pertinent to mention that my trades in VSL are in compliance to Regulation 5(3) of PIT Regulations wherein the trading plan as submitted by me has been reviewed by the Board of Directors of VSL. Pursuant to the review by the Board of Directors of VSL, the trading plan was approved and the same was intimated to BSE on 10.05.2017. It is pertinent to note that even though no pre clearance was required as the trading plan was already approved by the Board of Directors of VSL and submitted to the BSE, I had sought pre clearance for selling shares of VSL as well as for buying shares of VSL as per my trading plan which was duly approved by the compliance officer of VSL. It is pertinent to note that implementation of trading plan was approved and monitored by the compliance officer of the Company. Further, I would also like to state that trading window norms and restrictions on contra trade is not applicable for the trades carried out in accordance with an approved trading plan. Hence, no allegation of any contra trade can be alleged against me as my trades were carried out in_ compliance to the trading plan as submitted by me and approved by the Board of Directors of VSL and the same being submitted to the BSE.

xxiii. Further, I would like to place reliance on the "Report of Committee on Fair Market Conduct" under the Chairmanship of Dr. T.K. Viswanathan dated 08.08.2018 which is also referred to in Guidance note for Prevention of Insider Trading

(Revised Addition: January 2022) issued by the ICSI. The said committee report states as under:
(Refer Heading Insider Trading Para (e) on Page no. 9 of Committee Report dated 08.08.2018)

"e. The Committee noted that trading plans continue to remain unpopular as far as promoters and perpetual insiders are concerned. However, it could not arrive at a consensus on this issue and thus, agreed to continue with the current provisions, while clarifying that transactions pursuant to trading plans will not require pre-clearance and will not be subject to trading window norms and restrictions on contra trades."

xxiv. From the aforesaid, it can be seen that that -once there is a trading plan in place, the provisions of trading window norms and restrictions on contra trade will not be applicable. So, I cannot be alleged that I indulged in contra trades and violated Clause 10 of Schedule B Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by designated persons r.w. Regulation 9(1) of PIT Regulations. I would also like to mention that restriction to execute contra trades is construed to be only ·in respect of securities to which the UPSI pertains and will be applicable to insiders (Ref: Para 4(iv) on unnumbered Page no. 5 of Informal Guidance - letter dated 23.12.2016 issued by SEBI). It is pertinent to mention that in the SCN there is no allegation that traded in the scrip of VSL based on any UPSI. My trades were based on the trading plan as submitted by me and approved by the Board of Directors of VSL and the same being submitted to the BSE. Hence, no allegation of any contra trade can be alleged against me.

xxv. We would like to rely on Order dated 05.07.2022 passed by Hon'ble Securities Appellate Tribunal in the matter of Bhargav Ranchhodlal Panchal & Anr. Vs. SEBI (Appeal No. 471 of 2020)
13. .... If penalty is not specified under Chapter-VIA from Section 15-A to Section 15-HAA for failure to comply with such type of directions then penalty can be imposed after adjudication under the residuary clause Section 15HB.

14. In our opinion, Section 15HB cannot be invoked for noncompliance of any directions issued under Section 1 1B after enquiry and adjudication."

xxvi. Order dated 28.04.2021 passed by Hon'ble Securities Appellate Tribunal in the matter of Snehlata R Tiwari Vs. SEBI (Appeal No. 175 of 2020)

"13. In the instant case, since Clause 10 provides a mechanism for disgorgement of the profit earned. In that case, only the profit earned could have been disgorged and no separate penalty could have been imposed under Section 15HB.

xxvii. Order dated 23.09.2021 bearing reference no. WTM/SM/IVD/ID7I 13475/2021-22 passed by Ld. Whole Time Member, SEBI in respect of Sunil Khandelwal & Anr.

“I note that SCN in the present matter has also been issued under Section 11(1), 11(4), 11B(l) and 11B(2) of the SEBI Act, 1992. I further note that power vested under Section 11B(2) is without prejudice to the power to issue direction in terms of power given under Section 11B(1) of the SEBI Act, 1992. Therefore, considering the totality of fact and allegation made in the SCN, the nature of default made by the Noticees, the observations noted above stating that the remedial measure, as mentioned in Clause 10 of Code of Conduct under Schedule B read with Regulation 9(7) of PIT Regulations, 2015 has been duly complied with by the Noticees by depositing the profit accrued out of such contra trades in SEBI-Investor Protection and Education Fund and further by giving undertaking (by the Noticees) to take due care in their dealings with respect to Securities Market to avoid any violation in future, I am of the view that it would be sufficient to meet the end of justice that the present proceeding is disposed of with issuance of warning to the Noticees to be careful in respect to their trades in future.

Consideration of submissions and findings:

5. In the present case, I note that allegation in the SCN is that Noticees have executed contra trades within 6 months of their prior transaction, in violation of Clause 10 of Schedule B Minimum Standards for Code of Conduct to Regulate, Monitor and Report

Trading by designated persons, read with Regulation 9(1) of PIT Regulations, 2015 and thus, made a total profit of Rs. 90,94,500/-. The details of transactions of the Noticees in the scrip of VSL during the investigation period is as follows:

Promoter/ Director Name	**Trade Date**	**Buy Qty**	**Buy Value**	**Buy Rate (in Rs.)**	**Sell Qty**	**Sell Value**	**Sell Rate (in Rs.)**	**Contra Trade Qty**	**Profit (in Rs.)**
Rakshit Mahendrabhai Shah HUF (Noticee No. 1)	24/01/2018	0	0	0.00	18,000	17,82,000	99	36,000	19,98,000
	29/01/2018	0	0	0.00	24,000	24,72,000	103		
	30/01/2018	0	0	0.00	18,000	18,18,000	101.00		
	21/03/2018	18,000	8,28,000	46.00	0	0	0.00		
	22/03/2018	18,000	8,10,000	45.00	0	0	0.00		
	Total	**36,000**	**16,38,000**		**60,000**	**60,72,000**			
Rakshit Mahendra Shah (Noticee No. 2)	24/01/2018	0	0	0.00	18,000	17,82,000	99.00	46,500	25,66,500
	29/01/2018	0	0	0.00	24,000	24,72,000	103.00		
	30/01/2018	0	0	0.00	18,000	18,18,000	101.00		
	19/03/2018	10,500	5,04,000	48.00	0	0	0.00		
	21/03/2018	18,000	8,28,000	46.00	0	0	0.00		
	22/03/2018	18,000	8,10,000	45.00	0	0	0.00		
	Total	**46,500**	**21,42,000**		**60,000**	**60,72,000**			
Pinal Rakshitbhai Shah (Noticee No. 3)	24/01/2018	0	0	0.00	18,000	17,82,000	99.00	81,000	45,30,000
	30/01/2018	0	0	0.00	63,000	65,43,000	103.86		
	20/03/2018	69,000	32,43,000	47.00	0	0	0.00		
	21/03/2018	18,000	8,28,000	46.00	0	0	0.00		
	22/03/2018	18,000	8,10,000	45.00	0	0	0.00		
	23/03/2018	3,000	1,35,750	45.25	0	0	0.00		
	Total	**1,08,000**	**50,16,750**		**81,000**	**83,25,000**			

**Profit = Sell Value of Contra Trade Qty. – Buy Value of Contra Trade Qty.*

6. In response to the allegation of entering in contra trades, as made in the SCN, the Noticees have contended that the impugned trades were executed by them in pursuance of their respective trading plans. The Noticees have also submitted a copy of their respective trading plans which are found to be identical. In order to examine the contention of the Noticees, the relevant extract of the trading plan submitted by Noticee no. 1 in response to the SCN is reproduced below:

"Details of Trades to be executed by Director

Particulars of person		Name of VSL	ISIN	Period or Dates of Proposed Trades (the period mentioned here should be six months post application and not less than one year thereafter)			Quantity of Proposed Trades Quantity
Name	Relation with company			From	To	Date of Trade	Sell/Purchase
Rakshit Shah	Promoter	Veeram Ornaments Limited	INE607V01010	01-08-2017	31-07-2018	-	Up to 1,25,000 Shares Sell
Rakshit Shah	Promoter	Veeram Ornaments Limited	INE607V01010	01-08-2017	31-07-2018	-	Up to 1,25,000 shares Purchase in case if the sale is made

7. I note that during the investigation also, Noticees had submitted that they had undertaken the contra trades in pursuance of their respective trading plans. However, their submission in this regard, was not relied upon in the SCN as BSE informed the investigating authority that no trading plan was received by it. In their replies dated June 14, 2022, the Noticees

have submitted an email dated May 11, 2022 written at 4:26 p.m. by one Mr. Malav Choksi, Senior Manager BSE Regional Center – Ahmedabad wherein in response to the Veeram's email dated May 11, 2022 written at 4:08 pm for seeking confirmation from BSE regarding receipt of trading plans of the Noticees by BSE, the said Mr. Choksi has confirmed the receipt of the documents at Ahmedabad office of BSE five years ago. Alongwith said email Mr. Choksi has attached scanned copies of the trading plans of the Noticees with acknowledgement of BSE on the first page. In their written submissions dated August 09, 2022, the Noticees have referred to Circular no. dcs/comp/33/2015-16 dated March 11, 2016 of BSE to contend that though vide the said circular BSE had made it mandatory to file disclosures in electronic mode, however, there was no compulsion/mandatory to file trading plan in electronic mode. From this submission of the Noticees, I note that though Noticees accept that in terms of aforesaid BSE circular, the disclosures referred to in point no. 12 were required to be made through electronic mode, however, the said requirement was not applicable to the trading plans. In this regard, I note that in terms of the aforesaid circular of BSE, with effect from March 21, 2016, disclosures under SAST and PIT regulations by listed entities were to be accepted only through the "Listing Centre" which is the electronic platform for filing compliance and submissions by the listed entities. A combined reading of Regulation 5(1) and 5(5) of PIT Regulation, 2015 shows that a trading plan is also required to be publicly disclosed and for this purpose it is required to be notified to the stock exchanges. Therefore, for a trading plan to be in line with Regulation 5 of PIT Regulations, 2015, is also a disclosure required to be made under PIT Regulations, 2015 and is thus covered by the aforesaid circular of BSE requiring its disclosure to be made in electronic form only. Therefore, the contention of the Noticees that the aforesaid circular did not mandate filing of trading plan through electronic mode (Listing Centre) is not tenable. I note that the aforesaid circular of BSE also provides that compliances/submission under SAST and PIT Regulations, 2015 that are not filed through the Listing Centre, shall be considered as non-submission and non-compliance with the Regulations and would be subject to the attendant penal actions. I find that as the trading plans of the Noticees were not filed electronically in accordance with the aforesaid BSE circular, therefore, in terms of the said circular such trading plans have to be considered as not submitted to the stock exchange. Accordingly, I find that trading plans of the Noticees are not in consonance with Regulation 5(1) and 5(5) of the PIT Regulations, 2015 and hence, are not trading plans as envisaged under PIT Regulations, 2015, on this count also.

8. I note that Regulation 5 of PIT Regulations, 2015 deals with trading plans. Regulation 5(2) lays down as to what a trading plan shall or shall not have. For the ease of reference, Regulation 5 of PIT Regulations, 2015 has been reproduced hereunder:

> "Trading Plans.
>
> 5. (1) An insider shall be entitled to formulate a trading plan and present it to the compliance officer for approval and public disclosure pursuant to which trades may be carried out on his behalf in accordance with such plan.
>
> (2) Such trading plan shall:–
>
> (i) not entail commencement of trading on behalf of the insider earlier than six months from the public disclosure of the plan;
>
> (ii) not entail trading for the period between the twentieth trading day prior to the last day of any financial period for which results are required to be announced by the issuer of the securities and the second trading day after the disclosure of such financial results;
>
> (iii) entail trading for a period of not less than twelve months;
>
> (iv) not entail overlap of any period for which another trading plan is already in existence;
>
> (v) set out either the value of trades to be effected or the number of securities to be traded along with the nature of the trade and the intervals at, or dates on which such trades shall be effected; and
>
> (vi) not entail trading in securities for market abuse.
>
> (3) The compliance officer shall review the trading plan to assess whether the plan would have any potential for violation of these regulations and shall be entitled to seek such express undertakings as may be necessary to enable such assessment and to approve and monitor the implementation of the plan.

(4) The trading plan once approved shall be irrevocable and the insider shall mandatorily have to implement the plan, without being entitled to either deviate from it or to execute any trade in the securities outside the scope of the trading plan. Provided that the implementation of the trading plan shall not be commenced if any unpublished price sensitive information in possession of the insider at the time of formulation of the plan has not become generally available at the time of the commencement of implementation and in such event the compliance officer shall confirm that the commencement ought to be deferred until such unpublished price sensitive information becomes generally available information so as to avoid a violation of sub-regulation (1) of regulation 4.

(5) Upon approval of the trading plan, the compliance officer shall notify the plan to the stock exchanges on which the securities are listed."

9. From a plain reading of Regulation 5(2)(v) of PIT Regulations, 2015, it is evident that a trading plan shall contain either the value of trades to be effected or the number of securities to be traded along with the nature of the trade and the intervals at, or dates on which such trades shall be effected.

10. From the trading plans submitted by the Noticees, I note that these trading plans mentions that total number of securities of VSL that can be sold by respective Noticees as "upto 1,25,000". This is not in accordance with Regulation 5(2)(v) which requires exact number of securities to be traded is to be disclosed and not the upper limit upto which securities can be traded. Further, the time interval or dates on which trades will be executed is not mentioned in the trading plans submitted by the Noticees instead it is mentioned that during August 01, 2017 and July 31, 2018, each Noticee could sell upto 1,25,000 VSL shares and in case such a sale is made, Noticees could buy upto 1,25,000 shares of VSL. Further, Regulation 5(2)(ii) provides that the trading plan shall not entail trading for the period between the twentieth trading day prior to the last day of any financial period for which results are required to be announced by the issuer of the securities and the second trading day after the disclosure of such financial results. In the present case, the trading plan submitted by the Noticees sought blanket approval for selling and buying upto 1,25,000 VSL shares during August 01, 2017 and July 31, 2018 and does not even take into account the periods during which trading plan can not envisage any trading as envisaged in Regulation 5(2)(ii) of PIT Regulations, 2015 which restricts trading in securities during the disclosure of financial results. Therefore, I find that the trading plan submitted by the

Noticees was not formulated in line with Regulation 5 of PIT Regulations, 2015 and therefore, cannot be said to be trading plan as envisaged under PIT Regulations, 2015.

11. I further note that the Noticees have submitted that even though no pre-clearance was required for their trades in view of the trading plan already approved by the board of directors of VSL, they had sought pre-clearance for selling and buying shares of VSL from the compliance officer of VSL. In this regard, firstly, I note that the submission that there was pre-clearance of trades even when it was not required is misplaced as clause 6 of Schedule B of PIT Regulations, 2015 provides that the designated persons have to take pre-clearance for all trades (including contra trades) above such thresholds as the board of directors may stipulate. I further note that Clause 8 of Schedule B of PIT Regulations, 2015, provides that the pre-clearance of trades is provided by the compliance after seeking declaration from the applicant that the applicant is not in possession of any unpublished price sensitive information. While granting pre-clearance, the compliance officer shall have regard to whether any such declaration is reasonably capable of being rendered inaccurate. Thus, I find that the pre-clearance of trades cannot be treated as an exemption from contra trade restrictions by compliance officer.

12. The Noticees by referring to question no. 38 and 46 of FAQ on PIT Regulations, 2015, informal guidance letter dated September 09, 2021 issued by SEBI in the matter of KDDL Limited and para 2 on page no. 9 of Insider Trading Prohibition Code of VSL, have contended that the compliance officer of VSL had granted waiver to them to buy shares of VSL within 6 months after sale of shares of VSL by them. The Noticees have also contended that they had submitted requisite waiver application as prescribed under Insider Trading Prohibition Code of VSL. In this regard, Noticees have submitted their respective application for pre-clearance of trading seeking waiver from the compliance officer of VSL from the holding period of six months in respect of their proposed purchase of shares of VSL. In this regard, I note that Regulation 9 of the PIT Regulations, 2015, as existing at the relevant time, provided as under:

> "**Code of Conduct.**
> 9.(1)The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employee

and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner."

13. Regarding contra-trades, Clause 9 of Schedule B of PIT Regulations, 2015, as existing at the relevant time, provided as under:

> "10.The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act."

14. VSL has made a Code of Conduct which is available on its website. In respect of contra trades, the said code of conduct of VSL provides as under:

> **"Other Restrictions:**
>
> - The Designated Persons shall hold their investments in securities for a minimum period of six months irrespective of mode of acquisition in order to be considered as being held for investment purposes. The Designated Persons permitted to trade shall not be permitted to execute a contra trade within a period of six months from the date of said trade. The restriction on contra trades shall not be applicable for trades pursuant to exercise of stock options.
>
> In case the sale of securities is necessitated by personal emergency, the Compliance Officer may waive the holding period of such trade after recording in writing his or her reasons in this regard. An application for waiver of holding period for contra trade shall be made to the Compliance Officer in the format set out in Form A as per Annexure- II, as amended from time to time."

15. In terms of the aforesaid provision of the code of conduct of VSL which is on the lines of Clause 10 of Schedule B of the PIT Regulations, 2015, the compliance officer of VSL was empowered to waive the holding period required for entering into any contra trade within 6

months of the previous trade, pursuant to receipt of an application for waiver in Form A of Annexure-II of the code of the conduct of VSL. In the present case, the Noticees have submitted their respective applications (made during March 17 -19, 2018) for waiver of holding period, made by them to the compliance officer of VSL in Form A of Annexure-II of the code of the conduct of VSL. The Noticees have also submitted respective waivers granted to them by the compliance officer of VSL, i.e. Shri Mahendra Shah. Therefore, in order to ascertain whether the Noticees were having necessary waiver from the compliance officer of VSL, as envisaged in Clause 9 of Schedule B of PIT Regulations, 2015 and replicated in Code of Conduct of VSL, it is necessary to examine as to whether Shri Mahendra Shah can be termed as compliance officer of VSL. On perusal of the record pertaining to the matter and the publicly available information regarding VSL, Shri Mahendra Shah can not be termed as compliance officer of VSL for the following reasons:

(i) In terms of Regulation 2(1)(c) of PIT Regulations, 2015, compliance officers must be financially literate and be capable of appreciating requirements for legal and regulatory compliance under the PIT Regulations, 2015. In the present case, it has been claimed by the Noticees that Mr. Mahendrabhai Ramniklal Shah was the compliance officer who gave them relaxation from prohibition on entering into contra trades within 6 months. In this regard, I note that Noticee no. 2 himself, during his statement recording on March 12, 2021, before the investigating authority in the present matter had stated that Mr. Mahendrabhai Ramniklal Shah is 10^{th} pass and he does not know about PIT Regulations, 2015 or any regulations, as he was only involved in jewelry operations/trading. Thus, Mr. Mahendrabhai Ramniklal Shah was not qualified to be a compliance officer under PIT Regulations, 2015.

(ii) As per Regulation 6 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "**LODR Regulations**"), a listed entity shall appoint a qualified company secretary as the compliance officer. In the present case, the Noticees in response to the SCN have submitted a certified true copy of resolution passed in board meeting scheduled on September 01, 2017 appointing Mr. Mahendrabhai Ramniklal Shah (Managing Director of VSL) as compliance officer under LODR Regulations. The said board resolution provides that in absence of a qualified company secretary, Mr.

Mahendrabhai Ramniklal Shah was appointed as compliance officer in terms of Regulation 6 of LODR Regulations. From the statement of Noticee no. 2 recorded on March 12, 2021 by SEBI, I note that Mr. Mahendrabhai Ramniklal Shah is 10th pass. Therefore, I find that Mr. Mahendrabhai Ramniklal Shah was not qualified to be appointed as the Compliance Officer of a listed entity in terms of LODR Regulations and accordingly, he could not be appointed as a compliance officer of VSL. This fact assumes significance in view of the fact that Mr. Rakshit Shah (Noticee no. 2) who is one of the directors of VSL was a qualified company secretary and chartered accountant and therefore Noticee's contention that Mr. Mahendrabhai Ramniklal Shah was appointed as compliance officer in absence of a qualified company secretary is not tenable.

(iii) The Noticees have claimed that Mr. Mahendrabhai Ramniklal Shah was appointed as compliance officer as compliance officer by the board of VSL in board meeting held on September 01, 2017. Every listed company is required to make disclosure about its impending board meeting with agenda to be discussed as well as the outcome of its board meetings. On perusal of the website of BSE, it is noted that there is an intimation dated August 22, 2017 regarding the board meeting to be held on September 01, 2017 and intimation dated September 01, 2017 regarding the outcome of the board meeting held on September 01, 2017 available on the website of BSE as made by VSL regarding its board meeting held on September 01, 2017. From the said intimations as available on BSE's website, I note that the disclosure of Mr. Shah being appointed as compliance officer of VSL as claimed by the Noticees was neither mentioned as agenda/business to be discussed in the intimation of board meeting scheduled on September 01, 2017 nor mentioned in the outcome of the said board meeting.

(iv) I also note that in terms of Section 2(51) of Companies Act, 2013, the company secretary of a company is a Key Managerial Person (KMP) and Regulation 6 of LODR Regulations provides that company secretary shall be appointed as the compliance officer of the listed entity. I note that in terms of Section 117(1) of Companies Act, 2013 read with Rule 24 of Companies (Management and Administration) Rules, 2014 which stipulate that resolutions pertaining to matters specified under Section 117(3) shall be filed with RoC in Form No. MGT. 14 within 30 days from passing of such resolution by the board, all board resolutions for appointment of KMPs are to be filed with Registrar of Companies (RoC) within 30 days. Section 117(3)(g) stipulates that all resolutions passed by the board, under Section 179(3) shall be filed with the RoC. Section 179(3) of Companies Act, 2013 enumerate powers which can be exercised by the board by means of resolution passed in their meeting. Section 179(3)(k) in addition to the matters provided under Section 179(3) (a) to (j), the other matters can also be prescribed by Central Government through rules. Central Government in exercise of such powers in Rule 8 of Companies (Meetings of Board and its Powers) Rules, 2014 has provided three more powers which includes power to appoint or remove KMP, which can be exercised by the board by means of resolution passed in their meeting. Therefore, any resolution appointing or removing KMP is also required to be filed with RoC in accordance with Section 117(3)(g) of Companies Act, 2013. In the present case, the board resolution claimed to be passed in board meeting scheduled on September 01, 2017 was for appointment of Shri Mahhendrabhai Ramniklal Shah as compliance officer of VSL. Therefore, resolution pertaining to the appointment of Mr. Shah as compliance officer, was required to be filed with RoC. However, record available on MCA 21 shows that no such resolution has been filed with RoC.

(v) Another reason for rejecting the contention of the Noticees regarding appointment of Mr. Mahhendrabhai Ramniklal Shah as the compliance officer is that Noticees have produced certified true copy of resolution passed in board meeting scheduled on September 01, 2017 for appointment of Mr. Shah as the compliance officer of VSL. However, Mr. Mahhendrabhai Ramniklal Shah is shown as the compliance officer of VSL even in the Annual Report of VSL for F.Y 2016-17, which further raises doubt on the veracity of the board resolution as well as the disclosure made in the said Annual Report. Either of them is wrong. Therefore, I find that the board resolution appointing Mr. Mahhendrabhai Ramniklal Shah as compliance officer of VSL as submitted by the Noticees is not reliable.

16. In view of the above discussion, I find that Mr. Mahhendrabhai Ramniklal Shah was not appointed as the compliance officer of VSL, in fact he was not even qualified to be

appointed as the compliance officer of the VSL. Contention that Mr. Mahendrabhai Shah was compliance officer is an afterthought to wriggle out the outcome of the present proceedings. Therefore, I find that the contention of the Noticees that they had the waiver from the compliance officer of VSL for carrying out the contra trades, is not sustainable.

17. In view of the above, I find that the Noticees have executed contra trades in the scrip of VSL within a period of 6 months of their prior transaction and thereby violated Clause 10 of Schedule B Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by designated persons read with Regulation 9(1) of PIT Regulations, 2015. Further, the profits from such contra trades has not been disgorged and remitted to SEBI as stipulated under Clause 10 of Schedule B Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by designated persons read with Regulation 9(1) of PIT Regulations, 2015.

18. I note that the Noticees have submitted that the proceedings against Mr. Mahendrabhai Ramniklal Shah who is the compliance officer of the VSL is pending before the Adjudicating Officer of SEBI and accordingly, these proceedings should be kept in abeyance. In this regard, firstly, as discussed in para 15 above, the contention of the Noticees that Mr. Mahendrabhai Ramniklal Shah was appointed as a compliance officer of VSL on September 01, 2017 has been found to be not tenable. Secondly, the proceedings before the Adjudicating Officer are independent proceedings and there is no provision under SEBI Act, 1992 that stipulates that the quasi-judicial proceedings under Section 11 of SEBI Act, 1992 shall be kept in abeyance till the completion of Adjudication proceedings in a connected matter.

19. Noticees have referred to order dated July 05, 2022 passed by Hon'ble SAT in *Bhargav Racnhhodlal Panchal & Anr vs. SEBI* (Appeal No. 471 of 2020). In the said matter, Hon'ble SAT has *inter alia* observed that Section 15HB of SEBI Act, 1992 cannot be invoked for non-compliance of any directions issued under Section 11B after enquiry and adjudication. I find that the said order is distinguishable on facts with the present matter which does not pertain to non-compliance of directions issued under Section 11B of SEBI Act, 1992 after enquiry or adjudication proceedings. Therefore, reliance placed by the Noticees on Hon'ble SAT's order dated July 05, 2022 in *Bhargav Racnhhodlal Panchal & Anr vs. SEBI* is not

correct.

20. Noticees have also referred to SEBI's order dated September 23, 2021 in the matter of Alok Industries Ltd. (referred to as Sunil Khandelwal matter in the written submissions of the Noticees), to contend that in a similar case of contra trades, SEBI has issued only warning against the noticees. On perusal of the said order, it is noted that SEBI has issued warning for executing contra trades in view of the fact that Noticees had deposited profit accrued out of contra trades in SEBI-Investor Protection and Education Fund. I find that the said order is distinguishable on facts with the present matter as the Noticees herein have not deposited the profits accrued out of the contra trades in SEBI-Investor Protection and Education Fund. Therefore, reliance placed by the Noticees on SEBI's order dated September 23, 2021 in the matter of *Alok Industries Limited*, is misplaced.

21. In view of the above, I find that Noticees are in violation of Clause 10 of Schedule B - Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by designated persons, readwith Regulation 9(1) of PIT Regulations, 2015.

22. The Noticees have contended that no penalty under Section 15HB of SEBI Act, 1992 can be imposed upon them in view of the fact that penalty for entering into contra-trades in violation of Clause 10 of Schedule B of PIT Regulations, 2015 has been provided under the said clause itself in the form of disgorgement of profits made, therefore, a penalty under Section 15HB is not attracted which is attracted only in cases of violations where no separate penalty is provided. In this regard, Noticees have relied upon observation made by Hon'ble SAT in its order dated April 28, 2021 in *Snehlata R Tiwari vs. SEBI* wherein it was held that in case of contra trades since Clause 10 of Schedule B of PIT Regulations, 2015 provides a mechanism for disgorgement of the profit earned, therefore, only the profit earned could have been disgorged and no separate penalty could have been imposed under Section 15HB of SEBI Act, 1992. With respect to the contention of Noticees, it is observed that:

(a) Under Section 15HB of SEBI Act, 1992, penalty can be imposed for the violations for which no separate "penalty" has been provided under Chapter VIA of SEBI Act, 1992, i.e. Section 15A to 15HAA. The word "penalty" has not been defined under the SEBI Act, 1992. Under Clause 10 of Schedule B of PIT Regulations, 2015 the words used are "liable to be disgorged" which though results into monetary consequence to the person entering into contra-trade, however, are not same or even similar to "penalty" as used in Section 15HB. Hon'ble SAT in its various orders have explained the meaning and nature of disgorgement. In this regard, in its order dated July 12, 2019 in the matter of *Gagan Rastogi Vs. SEBI*, Hon'ble SAT held that in the Indian context disgorgement is treated as an equitable remedy and not as a penal provision. Similarly, in *Dushyant Dalal & Anr. Vs. SEBI*, in its order dated November 12, 2010, Hon'ble SAT *inter alia* held that disgorgement is not a punishment but only a monetary equitable remedy meant to prevent a wrong doer from unjustly enriching himself as a result of his illegal conduct. In *Karvy Stock Broking Ltd. vs. SEBI*, Hon'ble SAT in its order dated May 02, 2008 held that disgorgement is a monetary equitable remedy that is designed to prevent a wrongdoer from unjustly enriching himself as a result of his illegal conduct. It is not a punishment nor is it concerned with the damages sustained by the victims of the unlawful conduct. In terms of Section 11(5) of the SEBI Act, 1992, the disgorgement amounts are credited to the IPEF established by SEBI whereas in terms of Section 15JA penalties imposed under the SEBI Act, 1992 including under Section 15HB, are credited to consolidated fund of India. I note that in the present matter, Noticees have not disgorged the profits made out of the contra trades. Further, the present proceedings against the Noticees are also for regulatory directions against Noticees in the form of disgorgement and debarment.

(b) SEBI had preferred Civil Appeal No. 4652 of 2021 against the order dated April 28, 2021 passed by Hon'ble SAT in Snehlata matter. Hon'ble Supreme Court vide its order dated August 16, 2022 has dismissed the said civil appeal while leaving the question of law open. In its order, Hon'ble Supreme Court has also directed that the order dated August 16, 2022 shall not be treated as precedent. It is also noteworthy that Hon'ble Allahabad High Court in *Faujdar Singh Vs. State of U.P. 2016 SCC Online All 3877* while considering the effect of "question of law kept open" by Hon'ble Supreme Court while dismissing SLP against the judgment and order of Hon'ble Allahabad High Court, held that such impugned judgment cannot be treated as laying down any principle of law on the issue involved herein nor does it constitute a binding precedent in this regard. Relevant extract of the said judgment of the Hon'ble Allahabad High Court is reproduced below:

> *"……………What is most important is that against the said judgment S.L.P. bearing no. S.L.P.(C) CC 20655 of 2012 was filed by the State Government which was dismissed, but the question of law was kept open. For ready reference the order of the Supreme Court is quoted hereinbelow:*
>
> *"Delay condoned.*
> *Special leave petition is dismissed.*
> *Question of law is kept open."*
>
> *Therefore, the judgment of the Division Bench in Hridesh Daysl Srivastava cannot be treated as laying down any principle of law on the issue involved herein nor does it constitute a binding precedent in this regard. This aspect of the matter appears to have skipped the attention of this court while deciding other writ petitions filed earlier i.e. in W.P. No.6264(SS) of 2013, 2496(SS) of 2009, special Appeal (defective) No.417 of 2014, upon which reliance is being placed by the petitioner………………"*

Directions and monetary penalties:

23. In view of the aforesaid findings, discussions and having regard to the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11(4A),11B(1) and 11B(2) of SEBI Act, 1992 read with Section 19 of SEBI Act, 1992 and Rule 5 of the Rules, direct as under:

(i) Noticees are directed to disgorge the amounts indicated against their respective names in table below, along with an interest at the rate of 12% per annum payable from the respective dates of sale of shares made by them in January, 2017 till the date of actual payment, within a period of 45 days from the date of this Order:

Noticee No.	Name of Noticee	Profit (in Rs.)*
1	Rakshit Mahendrabhai Shah HUF	19,98,000
2	Rakshit Mahendra Shah	25,66,500
3	Pinal Rakshitbhai Shah	45,30,000

(* The aforesaid profit has been arrived as difference between sell and buy value of contra- trade quantity – Refer para 3.3. above)

The aforesaid amounts shall be remitted by Noticees to Investor Protection and Education Fund (IPEF) referred to in Section 11(5) of the SEBI Act, 1992. An intimation regarding the payment of the aforesaid disgorgement amounts, shall be sent to "The Division Chief, IVD-ID2, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051.

(ii) Noticees are prohibited from buying, selling or otherwise dealing in securities of Veeram Securities Ltd. (formerly known as Veeram Ornaments Limited), directly or indirectly, in any manner, whatsoever, for a period of one (1) year, from the date of this order;

(iii) The Noticees are hereby imposed with the penalties, as specified hereunder:

Noticee No.	**Name of Noticees**	**Provisions under which penalty imposed**	**Penalty Amount** (In Rupees)**
Noticee no. 1	Rakshit Mahendrabhai Shah HUF	Section 15HB of the SEBI Act, 1992.	Rs. 5,00,000/- (Rupees Five Lakh Only)
Noticee no. 2	Mr. Rakshit Mahendra Shah	Section 15HB of SEBI Act, 1992	Rs. 5,00,000/- (Rupees Five Lakh Only)
Noticee no. 3	Ms. Pinal Rakshitbhai Shah	Section 15HB of SEBI Act, 1992	Rs. 5,00,000/- (Rupees Five Lakh Only)

(** Arrived at after taking into account, the factors under Section 15J of SEBI Act, 1992, including SCN does not allege any loss caused to any specific investor or a group of investors, as a result of violations committed by Noticees and SCN does not allege that the violations committed by Noticees are repetitive in nature.)

(i) The Noticees shall remit / pay the said amount of penalties within 45 days from the date of coming into force of this order. The Noticees shall remit / pay the said amount of penalties through either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of Chairman/ Members -> PAY NOW. In case of any difficulties in online payment of penalties, the said Noticees may contact the support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to "The Division Chief, IVD-ID3, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in in the format as given in table below:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount/ legal charges along with order details)	

24. The obligation of the Noticees, restrained/ prohibited by this Order from dealing in the securities of VSL, in respect of settlement of securities of VSL, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of coming into force of this Order, are allowed to be discharged irrespective of the restraint/prohibition imposed by this Order.

25. This Order comes into force with immediate effect.

26. This Order shall be served on all the Noticees, Recognized Stock Exchanges, Depositories and Registrar and Share Transfer Agents of mutual funds to ensure necessary compliance.

Sd-

ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date: January 11, 2023
Place: Mumbai