

## SECURITIES AND EXCHANGE BOARD OF INDIA

## ORDER

Under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992

In respect of: -

Sl. No.	NOTICEES	PAN
1.	Vital Communications Limited	AAACV2016L
2.	Vijay Jhindal	AADPJ9438J
3.	Shubha Jhindal	AAGPJ0051N
4.	Vinay Talwar	AAAPT0316L
5.	Master Finlease Private Limited	AAACM6050D
6.	J. P. Madaan	AIAPM8977E
7.	Rajinder Kumar Garg	Not Available (DIN-01140754)
8.	CBS Systems Ltd	Not Available
9.	Anupama Communications Pvt. Ltd.	AACCA4565H
10.	Brut Finance (India) Pvt. Ltd.	AABCB9386Q
11.	Chankya Apparels Pvt. Ltd.	AAACC0866H
12.	Chankya Overseas Pvt. Ltd.	AAACC0868K
13.	Cosmo Corporate Services Ltd.	AAACC3529P
14.	Fashion Tech India Ltd.	AAACF0332R
15.	Flare Finance (India) Ltd.	AAACF2044G
16.	Heritage Corporate Services Ltd.	AAACH2120D
17.	Perfect Car Scanners Pvt. Ltd.	AAACP7864J
18.	Rajat Stock Investments Pvt. Ltd.	AAACR4085K
19.	Troop Trac Chits Pvt. Ltd.	AAACT0601P
20.	Troop Trac Exports Pvt. Ltd.	AABCT6785F
21.	Troop Trac Electrodes Pvt. Ltd.	Not Available
22.	Wisdom Publishing Pvt. Ltd.	AAACW0942L
23.	S. V. Stock Land	Not Available
24.	Troop Trac Marketing Pvt. Ltd.	AABCT6800D

In the matter of Vital Communications Limited

### Background

1. Pursuant to an investigation, Securities and Exchange Board of India (SEBI) had passed an order dated July 31, 2014 in the matter of Vital Communications Limited (Vital / VCL / the

company) whereby it had *inter alia* debarred the Noticees from accessing the securities market for violation of *inter alia* regulation 3, 4, 5 and 6 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 1995 (PFUTP Regulations, 1995) read with regulation 3 and 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (PFUTP Regulations, 2003). The said order dated July 31, 2014 had recorded *inter alia* the following major observations and findings:

- a) VCL had issued 72 Lakh new equity shares for value of Rs.9 crore to 15 preferential allottees, on December 14, 1999. The company had used its own money to partially finance the preferential allotment.
  - b) During the period May-June, 2002, VCL had issued several false and misleading corporate announcements relating to buy-back of its shares, issue of bonus shares and preferential issue of shares. All these announcements had created artificial demand for the scrip of the company.
  - c) After the misleading advertisements, some of the preferential allottees who were allotted shares during December 1999 sold 71.14 Lakh shares on net basis in market during May 02, 2002 to July 31, 2002 and the sale proceeds were transferred to the accounts of Master Finlease Pvt. Ltd. (MFL), a company promoted by Mr. Vijay Jhindal (promoter-director of VCL during that period of time) and his family. MFL, in turn, transferred funds either to Shri Vijay Jhindal or to his related entities including VCL.
  - d) The whole scheme of things starting from preferential allotment during December 1999 to 15 entities which were connected to VCL, its promoters and directors and to each other, and the subsequent sale of shares by these entities in the market during May-July 2002 and the flow of sale proceeds to the accounts of promoters and their companies was carried out as a devise to enable fraudulent gains to the promoters and directors and to defraud the investors in securities market.
2. Thereafter, SEBI passed an order dated December 16, 2014, *inter alia* directing the Investigation Department of SEBI to examine the feasibility of quantifying the ill-gotten gains, if any, made by the entities mentioned in the SEBI order dated July 31, 2014 and issue

requisite notice for disgorgement of the same. After the said investigation, pursuant to complaints filed by Shri Harishchandra Gupta and Smt. Ramkishori Gupta (together referred to as ‘the complainants’) regarding losses suffered by them due to false corporate announcements made by VCL during May-June 2002, SEBI re-examined the matter and passed another order dated April 01, 2016 *inter alia* directing that the exact figure of ill-gotten gains by Vital Communications Ltd., its promoters/ directors, preferential allottees and MFL be looked into and the disgorgement proceedings against those who perpetrated fraud on the investors be initiated at the earliest. In compliance with the aforementioned order, investigation was again initiated to ascertain the exact amount of ill-gotten gains, if any.

**Investigation by SEBI to ascertain ill-gotten gains and its findings:**

3. The focus of the abovementioned investigation was to ascertain the ill-gotten gains made by VCL, its promoters / directors, preferential allottees and MFL by selling the shares that were allotted to the 15 preferential allottees. The previous investigations by SEBI had noted that the aforesaid preferential allotment was made on December 14, 1999 and the shares were sold by the preferential allottees during May 02, 2002 to July 31, 2002. Accordingly, the period of investigation was taken as the following:
  - (a) June 01, 1999 to May 31, 2000 – For ascertaining the amount of preferential allotment financed by VCL.
  - (b) May 02, 2002 to July 31, 2002 – For calculating the ill-gotten gains made by the preferential allottees by selling shares in market.
4. Based on the previous investigations and the SEBI order dated July 31, 2014, a total of 24 entities were identified. The connections between these entities have already been established in para 4(14), page nos. 6-10 of SEBI order July 31, 2014. The details of these 24 entities along with the roles played by each entity in the scheme are described in table below:

**Table 1 - Details of suspected entities**

S. No.	Name of Entity	Role
1	VCL (Noticee no. 1)	VCL allotted shares to 15 preferential allottees during December 1999 in a fraudulent manner by funding its own shares issued to 15 preferential allottees. Further, it also knowingly published factually incorrect information in its advertisements during May - June 2002.

S. No.	Name of Entity	Role
2	Mr. Vinay Talwar (Noticee no. 4)	Vinay Talwar was director in VCL when the shares were allotted to preferential allottees in a fraudulent manner. He was also an introducer in the bank accounts of various preferential allottees (viz. (Cosmo Corporate, Fashion Tech, Heritage Corporate, Rajat Stock and Wisdom Publishing).
3	Mr. Vijay Jhindal (Noticee no. 2)	Vijay Jhindal was director in VCL when the shares were allotted to preferential allottees in a fraudulent manner.
4	Mr. J. P. Madaan (Noticee no. 6)	Vijay Jhindal, J. P. Madaan and R. K. Garg were directors of VCL and attended the board meetings in which the issue of misleading advertisements was discussed.
5	Mr. Rajinder Kumar Garg (Noticee no. 7)	The payments for such advertisements were made by MFL (a company promoted by Vijay Jhindal and its family members).
6	MFL (Noticee no. 5)	The sale proceeds after sale of shares by preferential allottees reached the bank accounts of Ms. Shubha Jhindal through MFL.
7	Ms. Shubha Jhindal (Noticee no. 3)	Shubha Jhindal was a director of MFL. The sale proceeds after sale of shares by preferential allottees reached the bank accounts of Ms. Shubha Jhindal through MFL.
8	S. V. Stock Land (hereinafter referred to as "SVS" or Noticee no. 23)	Instrumental in selling shares in the market after receiving from preferential allottees which were issued in a fraudulent manner. Instrumental in transfer of funds between preferential allottees and MFL.
9	CBS System Ltd (hereinafter referred to as "CBS" or Noticee no. 8)	Large amount of money was given by company to Anupama Communications Pvt. Ltd. and CBS Systems during the year 1999-2000 which was then transferred to various preferential allottees to subscribe for the allotment of shares.
10	Anupama Communications Pvt. Ltd. (hereinafter referred to as "Anupama" or Noticee no. 9)	These 15 preferential allottees (sl no. 10 to 24) received the shares in a fraudulent manner during December 1999 as the amount of preferential allotment was funded by VCL itself. Further, these entities sold these shares during April 2002 to July 2002 when company issued misleading advertisements.
11	Brut Finance (India) Pvt. Ltd. (hereinafter referred to as "Brut" or Noticee no. 10)	
12	Chankya Apparels Pvt. Ltd. (hereinafter referred to as "CAPL" or Noticee no. 11)	
13	Chankya Overseas Pvt. Ltd. (hereinafter referred to as "COPL" or Noticee no. 12)	
14	Cosmo corporate Services Ltd. (hereinafter referred to as "Cosmo" or Noticee no. 13)	
15	Fashion Tech India Ltd. (hereinafter referred to as "Fashion" or Noticee no. 14)	
16	Flare Finance (India) Ltd. (hereinafter referred to as "Flare" or Noticee no. 15)	

S. No.	Name of Entity	Role
17	Heritage Corporate Services Ltd. (hereinafter referred to as "Heritage" or Noticee no. 16)	
18	Perfect Car Scanners Pvt. Ltd. (hereinafter referred to as "Perfect" or Noticee no. 17)	
19	Rajat Stock Investments Pvt. Ltd. (hereinafter referred to as "Rajat" or Noticee no. 18)	
20	Troop Trac Chits Pvt. Ltd. (hereinafter referred to as "TTCPL" or Noticee no. 19)	
21	Troop Trac Exports Pvt. Ltd. (hereinafter referred to as "TTEXPL" or Noticee no. 20)	
22	Troop Trac Electrodes Pvt. Ltd. (hereinafter referred to as "TTELPL" or Noticee no. 21)	
23	Wisdom Publishing Pvt. Ltd. (hereinafter referred to as "Wisdom" or Noticee no. 22)	
24	Troop Trac Marketing Pvt. Ltd. (hereinafter referred to as "TTMPL" or Noticee no. 24)	

5. As stated in the SEBI order July 31, 2014, VCL made preferential allotment of 72,00,000 shares to the following 15 entities on December 14, 1999:-

**Table 2 - Details of preferential allottees**

S. No.	Name of Preferential Allottee	No. of shares allotted	Total Amount (in Rs.)
1	Anupama	200000	2500000
2	TTMPL	500000	6250000
3	Perfect	500000	6250000
4	Flare	500000	6250000
5	Cosmo	500000	6250000
6	Fashion	500000	6250000
7	Heritage	500000	6250000
8	Rajat	500000	6250000
9	Wisdom	500000	6250000
10	TTCPL	500000	6250000
11	TTEXPL	500000	6250000
12	COPL	500000	6250000
13	Brut	500000	6250000
14	CAPL	500000	6250000
15	TTELPL	500000	6250000
<b>TOTAL</b>		<b>7200000</b>	<b>90000000</b>

6. The bank accounts statements of VCL and preferential allottees obtained from Federal Bank and the details of payments received from allottees were analysed. Based on the said analysis, investigation observed a pattern of circular movement of funds between VCL, Anupama and other preferential allottees, details of which are summarised in the table below:

**Table 3 - Fund movements between VCL, Anupama and other preferential allottees**

Date	Cheque No.	Sender's Name	Sender's Bank*	Sender's Account Number	Receiver's Name	Receiver's Bank*	Receiver's Account Number	Amount from VCL to Anupama	Amount from Anupama to Pref Allottees	Amount from Pref Allottees to VCL
08/12/1999	143852	VCL	FB	13820200003479	Anupama	TVB	9665	950000		
09/12/1999	49982	VCL	BoR	43178	Anupama	TVB	9665	1350000		
09/12/1999	83172	Anupama	TVB	9665	Perfect	TVB	9581		700000	
10/12/1999	83171	Anupama	TVB	9665	TTCPPL	FB	13820200003420		650000	
10/12/1999	83176	Anupama	TVB	9665	Perfect	TVB	9581		300000	
11/12/1999	49983	VCL	BoR	43178	Anupama	TVB	9665	1000000		
11/12/1999	73177	Anupama	TVB	9665	Rajat	BoR	43208		425000	
11/12/1999	83175	Anupama	TVB	9665	CAPL	FB	341		200000	
11/12/1999	83229	Perfect	TVB	9581	VCL	BoR	43178			1000000
14/12/1999	49984	VCL	BoR	43178	Anupama	TVB	9665	1500000		
14/12/1999	83178	Anupama	TVB	9665	COPL	FB	13820200003487		300000	
14/12/1999	83179	Anupama	TVB	9665	Cosmo	BoR	43186		800000	
14/12/1999	142464	CAPL	FB	341	VCL	BoR	43178			200000
14/12/1999	142483	TTCPPL	FB	13820200003420	VCL	BoR	43178			650000
14/12/1999	143856	VCL	FB	13820200003479	Anupama	TVB	9665	1075000		
14/12/1999	947167	Rajat	BoR	43208	VCL	FB	13820200003479			425000
15/12/1999	143864	COPL	FB	13820200003487	VCL	BoR	43178			300000
15/12/1999	947208	Cosmo	BoR	43186	VCL	FB	13820200003479			800000
16/12/1999	83173	Anupama	TVB	9665	TTMPL	TVB	9590		1000000	
16/12/1999	83183	Anupama	TVB	9665	VCL	BoR	43178		400000	400000
16/12/1999	83281	TTMPL	TVB	9590	VCL	BoR	43178			1000000
16/12/1999	143855	VCL	FB	13820200003479	Anupama	TVB	9665	450000		
17/12/1999	49981	VCL	BoR	43178	Anupama	TVB	9665	750000		
18/12/1999	143858	VCL	FB	13820200003479	Anupama	TVB	9665	1200000		
20/12/1999	83182	Anupama	TVB	9665	Wisdom	BoR	43216		950000	
21/12/1999	83180	Anupama	TVB	9665	Wisdom	BoR	43216		1000000	
21/12/1999	947145	Wisdom	BoR	43216	VCL	FB	13820200003479			950000
22/12/1999	947146	Wisdom	BoR	43216	VCL	FB	13820200003479			1000000
23/12/1999	49987	VCL	BoR	43178	Anupama	TVB	9665	1000000		
24/12/1999	83188	Anupama	TVB	9665	Rajat	BoR	43208		1000000	
24/12/1999	460252	VCL	FB	13820200003479	Anupama	TVB	9665	1075000		
27/12/1999	947172	Rajat	BoR	43208	VCL	FB	13820200003479			1000000
28/12/1999	49988	VCL	BoR	43178	Anupama	TVB	9665	250000		
31/12/1999	83191	Anupama	TVB	9665	Cosmo	BoR	43186		175000	
31/12/1999	83192	Anupama	TVB	9665	Wisdom	BoR	43216		1250000	
03/01/2000	947147	Wisdom	BoR	43216	VCL	FB	13820200003479			2050000
03/01/2000	947210	Cosmo	BoR	43186	VCL	FB	13820200003479			1375000
05/01/2000	460261	VCL	FB	13820200003479	Anupama	TVB	9665	1660000		
07/01/2000	83197	Anupama	TVB	9665	TTELPL	FB	343		1500000	
10/01/2000	143504	TTELPL	FB	343	VCL	BoR	43178			100000
10/01/2000	143505	TTELPL	FB	343	VCL	BoR	43178			1400000
11/01/2000	460253	VCL	FB	13820200003479	Anupama	TVB	9665	2000000		
12/01/2000	83200	Anupama	TVB	9665	Heritage	BoR	43194		1900000	
13/01/2000	65148	VCL	BoR	43178	Anupama	TVB	9665	500000		
13/01/2000	65149	VCL	BoR	43178	Anupama	TVB	9665	150000		
13/01/2000	947193	Heritage	BoR	43194	VCL	FB	13820200003479			1800000
14/01/2000	92653	Anupama	TVB	9665	TTCPPL	FB	13820200003420		250000	
14/01/2000	92654	Anupama	TVB	9665	Cosmo	BoR	43186		275000	

Date	Cheque No.	Sender's Name	Sender's Bank*	Sender's Account Number	Receiver's Name	Receiver's Bank*	Receiver's Account Number	Amount from VCL to Anupama	Amount from Anupama to Pref Allottees	Amount from Pref Allottees to VCL
14/01/2000	92655	Anupama	TVB	9665	Wisdom	BoR	43216		125000	
14/01/2000	460263	VCL	FB	13820200003479	Anupama	TVB	9665	1800000		
17/01/2000	92656	Anupama	TVB	9665	Heritage	BoR	43194		1600000	
17/01/2000	142485	TTCP	FB	13820200003420	VCL	BoR	43178			250000
17/01/2000	947150	Wisdom	BoR	43216	VCL	FB	13820200003479			125000
18/01/2000	143859	VCL	FB	13820200003479	Anupama	TVB	9665	250000		
18/01/2000	947195	Heritage	BoR	43194	VCL	FB	13820200003479			1700000
19/01/2000	92658	Anupama	TVB	9665	Heritage	BoR	43194		250000	
20/01/2000	947196	Heritage	BoR	43194	VCL	FB	13820200003479			250000
20/01/2000	960202	Cosmo	BoR	43186	VCL	FB	13820200003479			100000
21/01/2000	460266	VCL	FB	13820200003479	Anupama	TVB	9665	100000		
21/01/2000	460270	VCL	FB	13820200003479	Anupama	TVB	9665	1600000		
21/01/2000	460271	VCL	FB	13820200003479	Anupama	TVB	9665	550000		
22/01/2000	92659	Anupama	TVB	9665	Wisdom	BoR	43216		650000	
24/01/2000	947152	Wisdom	BoR	43216	VCL	FB	13820200003479			650000
25/01/2000	92661	Anupama	TVB	9665	Heritage	BoR	43194		1500000	
25/01/2000	460274	VCL	FB	13820200003479	Anupama	TVB	9665	650000		
25/01/2000	460275	VCL	FB	13820200003479	Anupama	TVB	9665	125000		
27/01/2000	92660	Anupama	TVB	9665	TTELPL	FB	343		175000	
27/01/2000	92663	Anupama	TVB	9665	Wisdom	BoR	43216		475000	
27/01/2000	947197	Heritage	BoR	43194	VCL	FB	13820200003479			1500000
27/01/2000	960204	Cosmo	BoR	43186	VCL	FB	13820200003479			175000
28/01/2000	947153	Wisdom	BoR	43216	VCL	FB	13820200003479			475000
29/01/2000	143510	TTELPL	FB	343	VCL	BoR	43178			175000
29/01/2000	460273	VCL	FB	13820200003479	Anupama	TVB	9665	1800000		
31/01/2000	92667	Anupama	TVB	9665	TTELPL	FB	343		1800000	
02/02/2000	65174	VCL	BoR	43178	Anupama	TVB	9665	1800000		
02/02/2000	143512	TTELPL	FB	343	VCL	BoR	43178			1800000
02/02/2000	460277	VCL	FB	13820200003479	Anupama	TVB	9665	110000		
23/02/2000	92673	Anupama	TVB	9665	TTELPL	FB	343		1500000	
24/02/2000	143514	TTELPL	FB	343	VCL	BoR	43178			1500000
25/02/2000	71064	VCL	BoR	43178	Anupama	TVB	9665	1500000		
26/02/2000	83193	Anupama	TVB	9665	Rajat	BoR	43208		1000000	
26/02/2000	92674	Anupama	TVB	9665	Fashion	BoR	43160		500000	
29/02/2000	947247	Fashion	BoR	43160	VCL	FB	13820200003479			500000
29/02/2000	960501	Rajat	BoR	43208	VCL	FB	13820200003479			1000000
28/03/2000	71091	VCL	BoR	43178	Anupama	TVB	9665	2000000		
29/03/2000	71093	VCL	BoR	43178	Anupama	TVB	9665	2000000		
30/03/2000	71094	VCL	BoR	43178	Anupama	TVB	9665	2500000		
04/04/2000	78546	VCL	BoR	43178	Anupama	TVB	9665	400000		
22/04/2000	78572	VCL	BoR	43178	Anupama	TVB	9665	8000000		
24/04/2000	92682	Anupama	TVB	9665	Fashion	BoR	43160		4500000	
24/04/2000	92683	Anupama	TVB	9665	COPL	FB	13820200003487		3500000	
25/04/2000	143865	COPL	FB	13820200003487	VCL	BoR	43178			3500000
25/04/2000	947249	Fashion	BoR	43160	VCL	FB	13820200003479			4500000
26/04/2000	78578	VCL	BoR	43178	Anupama	TVB	9665	3500000		
26/04/2000	460282	VCL	FB	13820200003479	Anupama	TVB	9665	4500000		
28/04/2000	92693	Anupama	TVB	9665	TTCP	FB	13820200003420		4500000	
28/04/2000	92694	Anupama	TVB	9665	COPL	FB	13820200003487		1500000	
29/04/2000	142487	TTCP	FB	13820200003420	VCL	BoR	43178			4500000
01/05/2000	460280	VCL	FB	13820200003479	Anupama	TVB	9665	4500000		
02/05/2000	99551	Anupama	TVB	9665	Rajat	BoR	43208		2000000	
02/05/2000	99552	Anupama	TVB	9665	VCL	FB	13820200003479		2000000	2000000
02/05/2000	99553	Anupama	TVB	9665	CAPL	FB	341		500000	
02/05/2000	143867	COPL	FB	13820200003487	VCL	BoR	43178			1500000
03/05/2000	78600	VCL	BoR	43178	Anupama	TVB	9665	1500000		
03/05/2000	78598	VCL	BoR	43178	Anupama	TVB	9665	4500000		
03/05/2000	142466	CAPL	FB	341	VCL	BoR	43178			500000
03/05/2000	960504	Rajat	BoR	43208	VCL	FB	13820200003479			2000000
06/05/2000	78583	VCL	BoR	43178	Anupama	TVB	9665	5000000		
06/05/2000	78599	VCL	BoR	43178	Anupama	TVB	9665	500000		

Date	Cheque No.	Sender's Name	Sender's Bank*	Sender's Account Number	Receiver's Name	Receiver's Bank*	Receiver's Account Number	Amount from VCL to Anupama	Amount from Anupama to Pref Allottees	Amount from Pref Allottees to VCL
06/05/2000	460284	VCL	FB	13820200003479	Anupama	TVB	9665	4000000		
09/05/2000	99562	Anupama	TVB	9665	VCL	BoR	43178		100000	100000
10/05/2000	83236	Perfect	TVB	9581	VCL	BoR	43178			750000
10/05/2000	83289	TTMPL	TVB	9590	VCL	BoR	43178			250000
10/05/2000	97823	Flare	TVB	9573	VCL	BoR	43178			250000
10/05/2000	99563	Anupama	TVB	9665	Perfect	TVB	9581		750000	
10/05/2000	99564	Anupama	TVB	9665	Flare	TVB	9573		250000	
10/05/2000	99565	Anupama	TVB	9665	TTMPL	TVB	9590		250000	
10/05/2000	99568	Anupama	TVB	9665	Fashion	BoR	43160		250000	
10/05/2000	99574	Anupama	TVB	9665	Rajat	BoR	43208		150000	
12/05/2000	85756	VCL	BoR	43178	Anupama	TVB	9665	950000		
12/05/2000	99569	Anupama	TVB	9665	COPL	FB	13820200003487		250000	
12/05/2000	99570	Anupama	TVB	9665	TTCPPL	FB	13820200003420		750000	
12/05/2000	99571	Anupama	TVB	9665	TTEXPL	FB	13820200003446		250000	
12/05/2000	99572	Anupama	TVB	9665	CAPL	FB	341		250000	
12/05/2000	99573	Anupama	TVB	9665	TTELPL	FB	343		275000	
13/05/2000	142467	CAPL	FB	341	VCL	BoR	43178			250000
13/05/2000	142488	TTCPPL	FB	13820200003420	VCL	BoR	43178			750000
13/05/2000	143515	TTELPL	FB	343	VCL	BoR	43178			275000
13/05/2000	143525	TTEXPL	FB	13820200003446	VCL	BoR	43178			250000
13/05/2000	143868	COPL	FB	13820200003487	VCL	BoR	43178			250000
13/05/2000	947252	Fashion	BoR	43160	VCL	FB	13820200003479			250000
13/05/2000	960506	Rajat	BoR	43208	VCL	FB	13820200003479			150000
15/05/2000	85772	VCL	BoR	43178	Anupama	TVB	9665	1575000		
15/05/2000	460285	VCL	FB	13820200003479	Anupama	TVB	9665	400000		
19/05/2000	99581	Anupama	TVB	9665	Brut	CB	0-413325-005		5250000	
20/05/2000	935508	Brut	CB	0-413325-005	VCL	FB	13820200003479			5250000
22/05/2000	460287	VCL	FB	13820200003479	Anupama	TVB	9665	5250000		
<b>TOTAL</b>								<b>76270000</b>	<b>49925000</b>	<b>51925000</b>

\* TVB implies The Vysya Bank, CB implies CitiBank, FB implies Federal Bank, BoR implies Bank of Rajasthan

7. From the above table, investigation observed that during December 1999 to May 2000, VCL had transferred Rs. 7.62 crore (approx.) to Anupama who had further transferred Rs. 4.99 crore (approx.) to 14 other preferential allottees. The preferential allottees had thereafter transferred Rs 5.19 crore (approx.) back to VCL as consideration for the allotment of shares. Hence, investigation concluded that VCL had indirectly provided funds to the preferential allottees for subscribing to its shares to the tune of Rs. 4.99 crore.
8. From bank account statements of VCL, investigation observed several transactions in which VCL had transferred approx. Rs. 2.57 crore to CBS (Noticee no. 8) during November 1999 to May 2000. The bank account of CBS was maintained with Catholic Syrian Bank, Connaught Place Branch, New Delhi. The below mentioned fund movements were observed in the bank account statements of TTEXPL (Noticee no.20) and COPL (Noticee no.12):-



**Table 4 - Fund movements between VCL, CBS, TTEXPL and COPL**

Date	Cheque No.	Sender's Name	Sender's Bank	Sender's Account Number	Receiver's Name	Receiver's Bank	Receiver's Account Number	Amount
22/04/2000	141779		Catholic Syrian Bank		TTEXPL	FB	13820200003446	5000000
28/04/2000	143524	TTEXPL	FB	13820200003446	VCL	BoR	43178	5000000
04/12/1999	308693		Catholic Syrian Bank		COPL	FB	13820200003487	700000
09/12/1999	143863	COPL	FB	13820200003487	VCL	BoR	43178	700000

9. It was observed that both the preferential allottees (i.e. TTEXPL and COPL) received funds from an unknown entity whose account was with Catholic Syrian Bank, Connaught Place Branch, New Delhi. After receiving funds from the entity, both allottees transferred the funds to VCL as part of consideration for the shares allotted to them. It was also observed that the balance in the bank account of both these allottees was in the range of Rs. 1000-2000, before they received the amount from that entity. Hence, it was inferred that the aforementioned 2 allottees used the funds provided by the entity (whose account was maintained with Catholic Syrian Bank) to pay for the shares allotted to them.
10. The cheque numbers (141779 and 308963) from which the aforementioned 2 allottees received funds from the entity were noted and the bank account statements of other preferential allottees were analysed. On analysis, several credit entries were observed in the bank account statements of the preferential allottees and the cheque numbers were of the same series as the aforementioned 2 cheque numbers. It was also observed that after receiving the funds, almost all the preferential allottees transferred the amount to VCL as consideration for shares allotted to them. Details of such transactions are given in the table below:

**Table 5 - Fund movements between VCL, CBS and other preferential allottees**

Date	Cheque No.	Sender's Name	Sender's Bank	Sender's Account Number	Receiver's Name	Receiver's Bank	Receiver's Account Number	Amount from Pref Allottees to VCL
22/04/2000	141780		CSB		CAPL	FB	341	4500000
24/04/2000	142465	CAPL	FB	341	VCL	BoR	43178	4500000
04/12/1999	308693		CSB		COPL	FB	13820200003487	700000
09/12/1999	143863	COPL	FB	13820200003487	VCL	BoR	43178	700000
01/12/1999	308690		CSB		Cosmo	BoR	43186	150000
02/12/1999	947207	Cosmo	BoR	43186	VCL	FB	13820200003479	150000
20/12/1999	141751		CSB		Cosmo	BoR	43186	800000
21/12/1999	947209	Cosmo	BoR	43186	VCL	FB	13820200003479	800000
24/12/1999	141752		CSB		Cosmo	BoR	43186	1200000
03/01/2000	947210	Cosmo	BoR	43186	VCL	FB	13820200003479	1375000
05/01/2000	141755		CSB		Cosmo	BoR	43186	2275000
07/01/2000	947216	Cosmo	BoR	43186	VCL	FB	13820200003479	2000000
25/11/1999	308684		CSB		Fashion	BoR	43160	500000

Date	Cheque No.	Sender's Name	Sender's Bank	Sender's Account Number	Receiver's Name	Receiver's Bank	Receiver's Account Number	Amount from Pref Allottees to VCL
25/11/1999	947243	Fashion	BoR	43160	VCL	FB	13820200003479	500000
26/11/1999	308686		CSB		Fashion	BoR	43160	300000
29/11/1999	947244	Fashion	BoR	43160	VCL	FB	13820200003479	300000
30/11/1999	308687		CSB		Fashion	BoR	43160	200000
01/12/1999	947245	Fashion	BoR	43160	VCL	FB	13820200003479	200000
05/05/2000	141785		CSB		Flare	TVB	9573	5000000
05/05/2000	97821	Flare	TVB	9573	VCL	BoR	43178	5000000
06/12/1999	308694		CSB		Heritage	BoR	43194	250000
08/12/1999	947191	Heritage	BoR	43194	VCL	FB	13820200003479	250000
29/04/2000	141783		CSB		Perfect	TVB	9581	4500000
29/04/2000	83232	Perfect	TVB	9581	VCL	FB	13820200003479	4500000
29/11/1999	308689		CSB		TTEXPL	FB	13820200003446	600000
03/12/1999		TTEXPL	FB	13820200003446	TTELPL	FB	343	600000
06/12/1999	143502	TTELPL	FB	343	VCL	BoR	43178	600000
01/12/1999	308691		CSB		TTELPL	FB	343	400000
02/12/1999	143503	TTELPL	FB	343	VCL	BoR	43178	400000
22/04/2000	141779		CSB		TTEXPL	FB	13820200003446	5000000
28/04/2000	143524	TTEXPL	FB	13820200003446	VCL	BoR	43178	5000000
02/05/2000	141784		CSB		TTMPL	TVB	9590	5000000
02/05/2000	83285	TTMPL	TVB	9590	VCL	BoR	43178	5000000
25/11/1999	308685		CSB		Wisdom	BoR	43216	600000
25/11/1999	947143	Wisdom	BoR	43216	VCL	FB	13820200003479	600000
27/11/1999	308688		CSB		Wisdom	BoR	43216	400000
30/11/1999	947144	Wisdom	BoR	43216	VCL	FB	13820200003479	400000
24/12/1999	141753		CSB		Wisdom	BoR	43216	1000000
03/01/2000	947147	Wisdom	BoR	43216	VCL	FB	13820200003479	2050000

11. From the above table, it was observed that whenever preferential allottees were receiving funds, the corresponding cheque numbers from which funds were credited belonged to series of either 141751 to 141785 or 308684 to 308694. Further, after receiving the funds, the preferential allottees transferred the funds to VCL. The total amount which got credited into the bank accounts of preferential allottees through the aforementioned cheque numbers was Rs.3.33 crore (approx.). It was also observed that the aforementioned cheque numbers were of Catholic Syrian Bank, Connaught Place Branch, New Delhi, where the bank account of CBS (Noticee no. 8) was also maintained.
12. Based on the aforesaid observations, investigation concluded the following, regarding overall funding by VCL to the preferential allottees:

- a) VCL had transferred Rs. 7.62 crore (approx.) to Anupama during December 1999 to May 2000.
  - b) Thereafter, Anupama transferred Rs. 4.99 crore (approx.) to 14 other preferential allottees. Hence, there was a clear trail of Rs.4.99 crore (approx.) being funded by VCL to preferential allottees through Anupama.
  - c) VCL transferred Rs. 2.57 crore (approx.) to CBS during November 1999 to May 2000 and during the same time, preferential allottees received money to the tune of Rs. 3.33 crore (approx.) from an entity whose account was maintained with Catholic Syrian Bank, Connaught Place Branch, New Delhi (the same bank and branch in which account of CBS was maintained). Therefore, it was inferred that VCL was involved in transferring the funds to preferential allottees through CBS which were ultimately used for paying the consideration amount for shares to VCL. Further, the SEBI order dated July 31, 2014 had also recorded that VCL had given funds to CBS which in turn transferred these funds to some of the preferential allottees.
13. The earlier investigations and the SEBI order dated July 31, 2014 had already established that VCL, Anupama, CBS and preferential allottees were connected to each other and were part of the manipulative scheme. It was also observed that VCL had transferred funds to CBS and Anupama who in turn transferred the money to the preferential allottees. The said transaction were carried out during November 1999 to May 2000 i.e. at the same time that the preferential allotment of share had taken place.
14. Based on the observations and findings made above, the investigation concluded that VCL had completely funded its own preferential allotment during December 1999. In other words, 15 preferential allottees were allotted 7200000 shares of VCL at zero cost.
15. It was observed that out of 15 preferential allottees, five allottees viz. Fashion (Noticee no. 14), Anupama (Noticee no. 9), Perfect (Noticee no. 17), TTEXPL (Noticee no. 20) and Rajat (Noticee no. 18) had traded in the market. The remaining ten preferential allottees had transferred their shares to these five entities and one entity, i.e. SVS (Noticee no. 23) in the off market. These six Noticees then sold the shares in the market and transferred funds to MFL (Noticee no.5) during May 2002 to July 2002. The details of trades executed by the aforementioned 6 entities during May 01, 2002 to July 31, 2002 are given in the table below:

**Table 6 - Details of trades of preferential allottees / other connected entities who have sold shares in market during May 2002 - July 2002**

S. No.	Name of Entity	Broker / Sub Broker	Buy Quantity	Sell Quantity	Buy Amount (in Rs.)	Sell Amount (in Rs.)	Net Sell Quantity	Net Sell Amount (in Rs.)
1	SVS	VSE Securities Ltd. / Thakkar Stock Brokers Pvt. Ltd.	55,89,261	84,32,852	5,80,56,984	7,30,87,484	28,43,591	1,50,30,500
2	Rajat	TCP Stock Brokers Ltd.	23,69,305	34,69,327	2,59,11,491	3,28,04,574	11,00,022	68,93,083
3	TTEXPL	Integrated Master Securities Pvt. Ltd.	41,46,429	60,19,134	3,91,09,225	5,17,80,638	18,72,705	1,26,71,413
4	Fashion	UPSE Ltd. / Saroj & Co.	19,72,327	33,32,577	2,00,73,489	3,10,69,725	13,60,250	1,09,96,236
5	Perfect							
6	Anupama							
TOTAL			1.40.77.322	2.12.53.890	14.31.51.189	18.87.42.421	71.76.568	4.55.91.232

16. As already observed above, VCL had issued 72 lakh shares through preferential allotment in December 1999 and the cost of 72 lakh shares in the hands of preferential allotment was nil. Further, the above table shows that during the period of May 2002 - July 2002, which was the same as the period of misleading advertisements (May 2002 - June 2002), the preferential allottees had net sold 71.76 lakhs (approx.) shares in the market amounting to Rs.4.56 crore (approx.). Considering the same, the investigation concluded that the ill-gotten gains made in the above scheme was Rs.4,55,91,232, as calculated in the Table 7 hereunder:-

**Table 7: Ill-gotten gains made in the above scheme**

Sale value of shares :	Rs.4,55,91,232
Acquisition cost of shares	0
Profit	Rs.4,55,91,232

17. Since it had already been held in the SEBI Order dated July 31,2014 that VCL (Noticee no. 1) , its directors (Noticee nos. 2, 4, 6 and 7), Ms.Shubha Jhindal (Noticee no.3) and three other entities, viz. MFL, CBS and SVS (Noticee nos. 5, 8 and 23) were involved in a fraudulent scheme involving issue of shares to preferential allottees, false misleading advertisements and generation and receipt of ill-gotten gains, and since these Noticees had helped the 15 preferential allottees to generate the profit, the investigation concluded that all these Noticees were involved in generation of the abovementioned ill-gotten gains. Hence, ill-gotten gains to the extent of Rs.4,55,91,232/- were allegedly made by VCL, along with its directors, preferential allottees and three other entities, viz. CBS, SVS and MFL (Noticee nos. 1 to 24) by indulging in a fraudulent scheme in violation of Regulations 3, 4, 5, 6 of the PFUTP

Regulations, 1995 read with Regulations 3 and 4 of the PFUTP Regulations, 2003, as already brought out in the SEBI order dated July 31, 2014.

**Show Cause Notice, replies and personal hearings:**

18. In view of the above, common notice dated January 19, 2018 (SCN) was issued to the Noticees calling upon them to show cause as to why appropriate directions u/s 11B of the SEBI Act, 1992 for disgorgement of the ill-gotten gains should not be issued against them. The SCN was served upon the Noticees by way of Speed Post Ack. Due / affixture/ email/ newspaper publication. Thereafter, Shri Vinay Talwar (Noticee no. 4) replied to the SCN vide his letter dated February 21, 2018. Ms. Shubha Jhindal (Noticee no. 3) vide letter dated March 12, 2018 sought four weeks' time to file reply. However, no reply was subsequently filed by her. VCL (Noticee no. 1) vide letter dated April 09, 2018 requested SEBI for various documents and their inspection. SEBI vide letter dated April 24, 2018 provided an opportunity of inspection of documents on May 08, 2018 and also clarified to VCL that all relevant documents had already been provided to it with the SCN. Another opportunity of inspection of documents was provided to VCL by scheduling it on June-13-14, 2018 and the same was availed by it on July 14, 2018. VCL vide various emails made requests for certain documents, in response to which SEBI clarified to it that all relevant documents had already been provided to it. However, no reply regarding the charges in the SCN was received from VCL. Shri JP Madaan replied to the SCN vide letter dated April 13, 2018. As regards the other Noticees, no response was received from them in respect of the SCN.
19. An opportunity of personal hearing was provided to the Noticees by scheduling the same on May 22, 2018. The notices of hearing were served through Speed Post Ack. Due / newspaper publication. VCL (Noticee no. 1), Shri Vinay Talwar (Noticee no. 4) and Shri JP Madaan (Noticee no. 6) vide their emails / letters dated May 10, 2018 and May 18, 2018 and May 21, 2018 respectively requested for adjournment of the hearing. As regards the rest of the Noticees, none of them attended the personal hearing on May 22, 2018. Further, personal hearings for VCL, Shri Vinay Talwar and Shri JP Madaan were rescheduled on June 28, 2018. VCL (through its authorized representative, Shri Jaikishan Lakhwani, Advocate) and Shri Vinay Talwar (through his authorized representatives led by Shri Pradeep Sancheti, Senior Advocate) attended the said hearing. However, Shri JP Madaan requested for another

opportunity of hearing which was granted to him on July 11, 2018. Shri Madaan attended the said hearing through his authorized representative, Shri KRCV Seshachalam (Advocate). VCL, Shri Vinay Talwar and Shri JP Madaan made further written submissions vide letters dated June 28, 2018; July 05, 2018 and July 07, 2018 respectively.

20. Shri Vinay Talwar vide his letters dated February 21, 2018 and July 05, 2018 and during the personal hearing made *inter alia* the following submissions:

- (a) SEBI's order dated February 20, 2008 in the matter of VCL, wherein charges against the Noticee were dropped, had become final and binding on all the parties including SEBI.
- (b) The Noticee was forcibly and wrongly removed as a Director / Managing Director of the company w.e.f. 06.09.2000. The same is supported by copies of Form-32 filed by the company with RoC, public notice issued by the company and various other records, enclosed with the reply. Thereafter, he had no involvement in VCL. The false corporate announcements and the sale of shares resulting in illegal gains referred to in the SCN were made during May-July 2002 which is much after the Noticee was removed as a director of the company and his relationship with VCL had ended. The SEBI order dated February 20, 2008 had also exonerated him in respect of the fraudulent transactions.
- (c) The SCN itself states that the ill-gotten gains referred therein were made through trades conducted during May 01, 2002 to July 31, 2002 by six entities who sold the shares and transferred the funds to MFL (an entity of Vijay Jhindal, Noticee no. 2). The Noticee had nothing to do with the illegal gains as he was not a preferential allottee and he neither sold the shares nor received the proceeds thereof. Thus, on the face of the records, it is apparent that no illegal gains had been made by the Noticee.
- (d) The order of disgorgement cannot be made against the Noticee who has not made any sale of shares nor received any ill-gotten gains from the alleged transactions.
- (e) In the SCN, there is no allegation of sale of shares or receipts of proceeds thereof by the Noticee. However, SEBI is wrongfully trying to club all entities together, irrespective of the fact whether they have made any ill-gotten gains or not.
- (f) It is a settled principle of law that ill-gotten gains have to be firstly computed for each party based upon the sale proceeds realized minus the cost of acquisition, and only

thereafter can the same be recovered from the respective entity, to the extent of the ill-gotten gains made by them. No uniform order applicable to all parties to pay jointly or severally can be made and any such order against any entity has to be based upon the ill-gotten gains by the said entity. An entity cannot be asked to pay back the gains made by another party. The same principle is also inherent in Section 11B of the SEBI Act, 1992.

- (g) The SCN is contrary to the law laid down by the Hon'ble SAT in various cases and also to the principles of disgorgement followed by SEBI in other matters.
- (h) The Noticee has already suffered a more severe punishment / penalty vide order dated July 31, 2014 in the form of debarment for his negligence for the incidents which happened during the period up to 06.09.2000 when the Noticee was a director of the company. The said period of debarment was excessive since a uniform restraint order was passed against all the Noticees without considering the role played by each of them in the preferential allotment of shares by VCL and their subsequent sale, resulting in gains.

21. Shri J.P. Madaan vide his letters dated April 13, 2018 and July 07, 2018 and during the course of personal hearing has submitted *inter alia* the following:

- (a) The Noticee has not incurred any gains by virtue of his position as an employee of the company. He never held any shares nor traded in the scrip of the company.
- (b) He had no role in the preferential allotment of shares by the company carried out during December 1999, as he was appointed as a director in the company only on 22.01.2000. Even after being appointed as director, he was merely involved in the administrative affairs of the company and the day-to-day activities and financial matters of the company fell out of the purview of his job specifications.
- (c) As regards the false and misleading advertisements issued by the company, considering the discussions in the board meeting and other facts and circumstances placed before him by other promoters/directors, he had in good faith believed the intention behind the advertisements to be genuine and without any mala fide.
- (d) The alleged misleading advertisements were issued by the company under the aegis and guidance of Shri Vijay Jhindal, who being a promoter and director controlled the company.

- (e) The Noticee denies the allegation that he had aided and abetted the issuance of fraudulent and misleading advertisements by VCL. Further, the Noticee was not involved in the generation of ill-gotten gains, as alleged in the SCN.
- (f) In the SCN, there is no observation against the Noticee regarding the preferential allotment by VCL in December 1999 and the indirect provision of funds by VCL to 15 preferential allottees.. Thus, the allegation regarding his role in generation of ill-gotten gains is misconceived and baseless.
- (g) The Noticee had no knowledge of sale of shares in the open market after the fraudulent advertisements. It was only on the receipt of SCN that he became aware about the modus operandi of fraud referred therein.
- (h) The Noticee is not connected with any of the preferential allottees or the entities to whom funds were transferred or the entities who sold the shares. He was not involved in the alleged fund transfers.
- (i) Since the Noticee did not make any illegal gains, he cannot be directed to disgorge the same. Such directions can be imposed only on such wrongdoers who have made illegal gains. The same is also inherent in power under Section 11B of the SEBI Act, 1992.
- (j) The Noticee has already been penalised in the matter by SEBI vide order dated July 31, 2014 whereby he was debarred from the securities market for a period of three years. Since SEBI has failed to prove any accrual of illegal gains to the Noticee, the direction of disgorgement should not be passed against him.

22. VCL vide its written submissions dated June 28, 2018 and during the course of personal hearing submitted *inter alia* the following:

- (a) SEBI has not furnished various documents to the Noticee, as requested by it.
- (b) The alleged disgorgement of the ill-gotten gains, as referred to in the SCN, pertain to acts done by the past directors of VCL and other entities, mentioned in the SCN. VCL was not a party to any unjust enrichment or ill-gotten gains. All relations, direct or indirect, with the past directors of the company, which were the only nexus connecting VCL to the matter, have been completely severed even before the SCN was issued. The said



directors have vacated the office and hold no relationship with the company. The company is being run by a different set of directors.

- (c) VCL, which has a separate legal existence, did not receive any consideration or share in the alleged ill-gotten gains.
- (d) The allegations pertaining to the ill-gotten gains by VCL is nowhere reflected in the bank accounts of the company nor has SEBI explained the possibility of any ill-gotten gains by VCL. SEBI has itself admitted that the alleged gains were parked into the accounts of certain entities and finally into the account of MFL. The failure to prove VCL's share in any ill-gotten gains absolves VCL of any liability arising out of the acts of its directors and other Noticees.
- (e) The SCN is in conflict with the SEBI order dated July 31, 2014, as regards the amounts of fund transferred to Anupama, CBS and various preferential allottees.
- (f) Due to the proceedings by SEBI, the shareholders of the company are suffering as they have no means to liquidate their investment.

### **Consideration of issues**

- 23. I have considered the facts of the case and the allegations against the Noticees as contained in the SCN, the replies and the submissions of the Noticees and other material available on record. I note that the present proceedings are limited to determining the exact quantum of illegal gains made pursuant to the violations already established against the Noticees in the SEBI order dated July 31, 2014 and the liability of the individual Noticees for the purpose of disgorgement of illegal gains. Consequently, the role of the Noticees in the fraudulent dealings pertaining to preferential allotment by VCL, false corporate announcements and subsequent sale of shares to make illegal gains, as conclusively settled by the said order, cannot be revisited. With these fetters, I proceed to decide the issues at hand.
- 24. I note that except the three Noticees, viz. VCL, Shri Vinay Talwar and Shri JP Madaan, none of the other Noticees have responded to the charges in the SCN. I further note that sufficient opportunities have been provided to the Noticees to put forth their case. Thus, I proceed to decide the issues *ex-parte* in respect of the said Noticees who have not responded to the SCN,

based on material available on record. Needless to say, the submissions of the three Noticees, who have replied to the SCN, have been considered while deciding the issues.

25. I note that the investigation has arrived at the exact quantum of the ill-gotten gains in this matter, by taking into account the zero cost of acquisition of shares by the preferential allottees and the net proceeds of sale of the shares, as calculated in Table-6 under para 15 above. The ill-gotten gains as calculated by the investigation and mentioned in Table-7 under para 16 above come to Rs.4,55,91,232/-. I note that none of the Noticees has challenged the fact that illegal gains were made as a result of fraudulent dealings, as detailed in the SEBI order dated July 31, 2014 and summarized hereinabove. The quantum of such illegal gains made in the entire process, as calculated by the investigation and mentioned in the SCN, has also not been disputed by the Noticees, except VCL, which has cited certain contradictions in the SEBI order dated July 31, 2014 and SCN, as regards the amounts of fund transferred to Anupama, CBS and various preferential allottees. In this regard, I note that while the SEBI order dated July 31, 2014 has primarily dealt with the role of the Noticees in the fraud and manipulations without quantifying the actual illegal gains, the SCN has relied on a subsequent investigation carried out specifically for the purpose of quantifying the ill-gotten gains and initiating disgorgement proceedings in respect of the same. Thus, the figures of ill-gotten gains, as calculated by the investigation and mentioned in the SCN, have to be given precedence, in case of any contradiction with figures in the order dated July 31, 2014 or any other record.
26. As regards Shri Vinay Talwar (Noticee no. 4), I have considered the submissions made by him. Shri Talwar has rested his case primarily on the ground that since he had left the company much before the false corporate announcements and the sale of shares by the preferential allottees and since he had not received any ill-gotten gains, he cannot be made liable for disgorgement of any ill-gotten gains. I note that while the SEBI order dated July 31, 2014 has already established the role of the Noticee in the fraudulent preferential allotment for which he was debarred from securities market for a period of three years, the current proceedings is limited to quantifying the ill-gotten gains and disgorgement of the same. I note that the Hon'ble SAT in the matter of *Karry Stock Broking Limited Vs. SEBI* (Order dated 02.05.2008 in Appeal no. 06 of 2007) has held as follows:

*“ (5) Before we deal with the contentions of the parties, it is necessary to understand what disgorgement is. It is a common term in developed markets across the world though it is new to the securities market in India. Black’s Law Dictionary defines disgorgement as “The act of giving up something (such as profits illegally obtained) on demand or by legal compulsion.” In commercial terms, disgorgement is the forced giving up of profits obtained by illegal or unethical acts. It is a repayment of ill-gotten gains that is imposed on wrongdoers by the courts. 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. Disgorgement of ill-gotten gains may be ordered against one who has violated the securities laws/ regulations but it is not every violator who could be asked to disgorge. Only such wrongdoers who have made gains as a result of their illegal act(s) could be asked to do so. Since the chief purpose of ordering disgorgement is to make sure that the wrongdoers do not profit from their wrongdoing, it would follow that the disgorgement amount should not exceed the total profits realized as the result of the unlawful activity. In a disgorgement action, the burden of showing that the amount sought to be disgorged reasonably approximates the amount of unjust enrichment is on the Board.”*

27. From the above judgment of the Hon’ble SAT, it is clear that disgorgement can be directed only against such wrongdoers who have made gains as a result of their illegal act(s). In the instant case, I note that Shri Vinay Talwar had been removed from the directorship of the company with effect from 06.09.2000 which is after the preferential allotment during December 1999 but much before the false corporate announcements and sale of shares by preferential allottees during May-July 2002. Further, SEBI order or the subsequent investigation has not recorded any finding about any receipt of ill-gotten gains by him. Thus, there is no proof of Shri Vinay Talwar having received an ill-gotten gains in this matter. Considering these facts in light of the abovementioned judgment of the Hon’ble SAT, I hold that Shri Vinay Talwar (Noticee no. 4) is not liable to disgorge the ill-gotten profits in this matter.

28. As regards Shri JP Madaan (Noticee no. 6), I note that he has also rested his case on the ground that since he did not receive any monetary benefit out of the proceeds of sale of shares by the preferential allottees, he cannot be directed to disgorge any illegal profit. I note that similar to the case of Shri Vinay Talwar (Noticee no. 4), while the SEBI order dated July 31, 2014 has established his role in the fraudulent dealings for which he was debarred from the

securities market for a period of three years, the said order and the subsequent investigation has not recorded any accrual of monetary benefits to the Noticee as a consequence of his involvement in the fraudulent dealings. Thus, on similar lines as in case of Shri Vinay Talwar, I hold that Shri JP Madaan (Noticee no. 6) is not liable to disgorge the ill-gotten gains in this matter.

29. As regards VCL (Noticee no. 1), I note that it had played a direct role in the abovementioned fraudulent dealings involving preferential allotment of shares funded by itself, false corporate announcements which resulted in the ill-gotten gains. The same has conclusively been established by the SEBI order dated July 31, 2014. VCL has contended that the directors of the company, referred to in the SCN, have left the company and that it is now run by a different set of directors. It has also contended that VCL, having a separate legal existence, cannot be made liable for the acts of its past directors. I note that the said argument is without any merit. A mere change of directors does not have a bearing on the legal status or existence of a company, which as per VCL's own admission has a distinct identity. Moreover, the SEBI order dated July 31, 2014 had not only indicted its past directors but also the company itself for the said fraudulent dealings. In fact, the order dated July 31, 2014 also records that VCL had also received funds through MFL after the sale of shares by the preferential allottees. Thus, the company cannot absolve itself from the liabilities arising on account of such fraudulent dealings and receipt of ill-gotten gains. Thus, the direct and active role of the company in such manipulative dealings and generation of the resultant ill-gotten gains and also receipt of funds out of the said ill-gotten gains by VCL stand established, which makes it liable to disgorge the ill-gotten profits.

30. As regards the rest of the Noticees, I note from the SEBI order dated July 31, 2014 and the findings of subsequent investigations that the Noticee nos. 9-22 and 24 are the preferential allottees who received shares in the preference allotment funded by VCL and subsequently sold the said shares after false corporate announcements by VCL, either directly or indirectly, and transferred the sale proceeds to MFL. CBS (Noticee nos. 8) has acted as a conduit between VCL and the preferential allottees in respect of funding of preferential allotment by VCL. SVS (Noticee no. 23) has facilitated the preferential allottees in offloading shares after the false corporate announcements and was instrumental in transferring of funds between preferential allottees and MFL which in turn reached Vijay Jhindal, Shubha Jhindal and related entities

including VCL. MFL (Noticee no. 5) has facilitated the transfer of proceeds of the sale of shares by preferential allottees (i.e. ill-gotten gains) to Ms. Shubha Jhindal, Vijay Jhindal and his related entities, including VCL. Shri Vijay Jhindal (Noticee no. 2) and Ms. Shubha Jhindal (Noticee no. 3) have received funds after sale of shares by preferential allottees which were transferred to them through MFL (an entity promoted and controlled by Vijay Jhindal). Shubha Jhindal was also a promoter/director of MFL. Hence, I find that apart from VCL (Noticee no. 1), the Noticees nos. 2, 3, 5 and 8-24 also had a direct and active role in the fraud and manipulation and generation of resultant ill-gotten gains. I have no doubt that these entities (i.e. Noticee nos. 1, 2, 3, 5 and 8-24), who had played a direct and active role in the fraud in collusion with each other, have collectively benefitted from the resultant ill-gotten gains as a group. The same is further bolstered by the fact that out of these entities (i.e. Noticee nos. 1, 2, 3, 5 and 8-24), except VCL (Noticee no. 1), none of the Noticees has responded to the SCN even after sufficient opportunities. As regards Shri Rajinder Kumar Garg (Noticee no. 7), I find that by failing to respond to the SCN even after sufficient opportunities, he has presented himself as an acquiescing party in the entire fraud and the resultant ill-gotten gains. Thus, I hold that the Noticee nos. 1, 2, 3, 5 and 7-24 have collectively made the ill-gotten gains of Rs.4,55,91,232/- as calculated above and are liable to disgorge the same.

31. I note that the Hon'ble SAT, vide order dated April 30, 2013 in Appeal no. 207/2012 (*Mrs. Ramkishori Gupta & Anr. Vs SEBI & Ors.*), while deciding on the claims for compensation made by the complainants in this matter, has observed that in case SEBI finds VCL guilty of playing fraud on the investors, it may consider directing the concerned entity or VCL to refund the actual amount spent by the complainants on purchasing the shares with appropriate interest as per law. Further, SEBI vide order dated April 01, 2016 had observed that it was appropriate to take on record the complainants' claims for compensation for the losses suffered by them and that the same may be considered in accordance with the provisions of the SEBI Act, 1992 and the Regulations framed thereunder. In this regard, I note that the Hon'ble SAT, vide the abovementioned order has *inter alia* held that:

*"8. The Appellants have raised a twofold issue in the present appeal. Firstly, they seek a clear relief in the form of a direction to the BSE and VCL to compensate them for the alleged losses suffered on account of purchase/sale of 1,71,773 shares of the company in question. The claim is to the tune of Rs.51,53,190 in the form of damages for the alleged loss. Secondly, the Appellants have raised grievances regarding*

*misleading advertisements by VCL in various newspapers which motivated the Appellants to purchase the shares of the company. Such allegations have also been made against the BSE.*

*9. ... .. In view of this legal position, the prayer of the Appellants seeking a direction to the SEBI to grant them compensation to the tune of Rs.51,53,190/- for the alleged loss suffered on account of the purchase/sale of 1,71,773 shares of VCL is totally misconceived and is hereby rejected. In fact, the Appellants' prayer for compensating him for the alleged loss is in the nature of a claim for damages on account of such alleged fraudulent and misleading representations by the VCL through various advertisements. This aspect needs to be looked into by a civil court of competent jurisdiction in a trial and not by SEBI under the SEBI Act, 1992 for the simple reason that SEBI has neither the expertise nor infrastructure for this purpose. There is no mandate in law requiring SEBI to do so in case any investor suffers loss on account of trading in shares etc. Such jurisdiction is not envisaged anywhere in the entire scheme of the SEBI Act, 1992. In fact, the law of damages/compensation is a complex area and SEBI is not supposed to undertake the same for reasons stated hereinabove."*

32. The above judgment makes it amply clear that any restitution by SEBI of the losses suffered by the complainants is outside the scope of SEBI. Further, as regard the observation of the Hon'ble SAT that SEBI may pass a direction to VCL to compensate the losses suffered by the complainants, I have duly considered the submissions and claims of the complainants as recorded in the SEBI Order dated December 16, 2014 and April 01, 2016. However, I find that such a direction is not feasible for a variety of reasons. First of all, the fraud committed in this matter by the Noticees has not only affected the complainants but also a large number of investors who had traded during the relevant time. The shares held by the complainants in this matter were not directly issued to them by the company but were purchased by them in the secondary market where the shares frequently change hands. It would be unfair to compensate only the complainants selectively as there are many others who may have suffered similar losses by trading in the scrip. Any selective restitution only to the complainants would go against the principle of protecting the interest of the investors as a class. However, considering the fact that the fraud in the matter dates back to the year 2002 or before, the identification of each of such investors and the quantification of losses suffered by each of them for the purpose of restitution to investors as a class is a hugely complex task beyond the capacity of SEBI. Further, while the complainants may have suffered losses in this matter, they cannot deny the fact that any investment in the securities market carries inherent risks,

which an investor is expected to factor in. Thus, having considered all the facts and circumstances in totality, I deem it fit not to issue any direction regarding restitution of losses to the complainants.

### **Directions**

33. In view of the above, in exercise of powers conferred upon me under Sections 11, 11B read with Section 19 of the Securities and Exchange Board of India Act, 1992, I hereby issue the following directions:

- (a) The Noticee nos. 1, 2, 3, 5 and 7-24 (i.e. VCL, Vijay Jhindal, Shubha Jhindal, MFL, Rajinder Kumar Garg, CBS, Anupama, Brut, CAPL, COPL, Cosmo, Fashion, Flare, Heritage, Perfect, Rajat, TTCPL, TTEXPL, TTELPL, Wisdom, SVS and TTMPL) shall, jointly and severally, disgorge the unlawful gain, as calculated in Table 7 under para 16 above, totalling to Rs.4,55,91,232/- (Rupees Four Crore Fifty Five Lakh Ninety One Thousand Two Hundred Thirty Two Only) . They shall also pay interest on this unlawful gain at the rate of 10% per annum from August 01, 2002 till the date of payment. The above-named Noticees 1, 2, 3, 5 and 7-24 shall disgorge the abovementioned amount with applicable interest within 45 days from the date of receipt of this order, by way of crossed demand draft drawn in favour of “Securities and Exchange Board of India”, payable at Mumbai. In case the aforesaid amount is not paid within the specified time, the above named Noticee nos. 1, 2, 3, 5 and 7-24 shall be restrained from buying, selling or dealing in securities market in any manner whatsoever or accessing the securities market, directly or indirectly, for a period of five years from the end of the specified time of 45 days. The same shall be without prejudice to SEBI’s right to initiate appropriate enforcement action under SEBI Act, 1992 including Recovery, Adjudication or Prosecution.
- (b) Copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action.

**Place: Mumbai**  
**Date: September 28, 2018**

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