



VAS INFRASTRUCTURE LTD.

CIN NO : L74999MH1994PLCO76538

Regd. Off. : Plot No. 757/758, Jwala Estate, Soniwadi, Near Kora Kendra, S. V. Road, Borivali (W), M - 92. T. : 022-2899 7506 / 3234 / 2658 Fax : +91-22-2899 7806
Email : vasinfrastructureltd@yahoo.com # Website : www.vasinfrastructureltd.com

REF.NO: VAS/BOMSTOCK/2022

February 2, 2022

The Listing Manager
Bombay Stock Exchange Ltd,
Phiroze Jeejeebhoy Towers,
Dalal Street,
Mumbai -400 001

Dear Sirs,

SUB: Notice of Board Meeting on Saturday, February 12, 2022, for approving the UAFR for the Quarter and Nine months ended 31st December, 2021

Ref: Company No. 531574

NOTICE is hereby given that the meeting of the Board of Directors of the Company is scheduled to be held on Saturday, February 12, 2022, at 12.00 noon at Jwala Estate, Pushp Vinod 2, 2nd Floor Soniwadi, S.V. Road, Borivali (West), Mumbai 400 092, to consider inter-alia the following items:

- 1) To take on record the Unaudited Financial Results for the Quarter and Nine months ended on 31st December, 2021, alongwith Assets & Liabilities.
- 2) To take on record the Limited Review Report given by the Statutory Auditors on the Unaudited Financial Results for the Quarter and Nine months ended 31st December, 2021, alongwith Assets & Liabilities.
- 3) To take on record the Related Party transactions entered by the Company with the Group Companies.
- 4) To note the Appeal filed by our Company against SEBI Order dated October 10, 2019, and SAT directed vide Order dated 23.11.2021 (copy emailed) and set aside the Open Offer and our matter is now transferred to Wholetime Member to issue appropriate direction and now the matter is pending at SEBI office.
- 5) To take note of Statutory Compliance Certificate pursuant to Clause 34 (Read With Schedule V) as on December 31, 2021.
- 6) To note the Statutory Compliances with BSE for the Quarter ended 31st December, 2021
- 7) Any other business with the permission of the chair.



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Please arrange to upload on our website

Thanking you,

Yours faithfully,
FOR VAS INFRASTRUCTURE LTD.

A handwritten signature in blue ink, appearing to read 'Hariram Bijlani', is written over a faint circular stamp.

(HARIRAM BIJLANI)
COMPANY SECRETARY

Enc:a/a

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 09.11.2021

Date of Decision : 23.11.2021

Appeal No. 576 of 2019

1. RV Lifestyle Ltd.
(Erstwhile, Vasparr Shelter Ltd.)
Flat No. G-002, Ground Floor,
Pushpvinod-2, A-wing, S. V. Road,
Borivali (West), Mumbai – 400 092.
2. Vas Educomp Private Limited
(Erstwhile, Vasparr Trading Private
Ltd.)
401, Court Chambers, 4th Floor,
S. V. Road, Borivali (West),
Mumbai – 400 092.
3. Pushpanjali Drums Private Limited
402, Court Chambers, 4th Floor,
S. V. Road, Borivali (West),
Mumbai – 400 092.
4. Yashraj Containeurs Limited
Madhav Niwas CHSL, Flat No. B-1A,
1st Floor, Natakwala Lane,
Opp. S. V. Road Court Chambers,
Borivali (West), Mumbai – 400 092.
5. Precision Containeurs Limited
Madhav Niwas CHSL, Flat No. B-1,
1st Floor, Natakwala Lane,
Opposite S. V. Road,
Borivali (West), Mumbai – 400 092.
6. Raj J. Valia
B-1701, Pushpvinod-1,

S. V. Road, Borivali (West),
Mumbai – 400 092.

7. Madhav J. Valia
B-1701, Pushpvinod-1,
S. V. Road, Borivali (West),
Mumbai – 400 092.

8. Jayesh V. Valia
B-1701, Pushpvinod-1,
S. V. Road, Borivali (West),
Mumbai – 400 092.

9. Jayesh V. Valia (HUF)
B-1701, Pushpvinod-1,
S. V. Road, Borivali (West),
Mumbai – 400 092.

....Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.

... Respondent

Mr. Somasekhar Sundaresan, Advocate with Ms. Yugandhara Khanwilkar, Mr. Paras Parekh, Mr. Abhineet Sharma, Ms. Mitravinda Chundururu, Mr. Samyak Pati, Advocates i/b Parinam Law Associates for the Appellants.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Abhiraj Arora, Ms. Rashi Dalmia, Mr. Karthik Narayan, Mr. Harshvardhan Nankani, Advocates i/b ELP for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Justice M. T. Joshi, Judicial Member

Per : Justice Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated September 30, 2019 passed by the Whole Time Member (hereinafter referred to as 'WTM') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') directing the appellants to make a public announcement to acquire shares of the target company, namely, Vas Infrastructure Ltd. (hereinafter referred to as 'VIL') and to pay interest at the rate of 10% per annum.

2. The facts leading to the filing of the present appeal is, that the appellants are promoters / promoter group of VIL holding 41.82% of the total shareholding of the company. The appellants are in control of the management and affairs of the company and undertook redevelopment of a project of the company in relation to a building called Pushp Vinod in Borivali, Mumbai. For this purpose, the Union Bank of India granted credit facility of Rs. 42 crore on the term that the company will infuse funds to the extent of Rs. 20 crore. For this purpose, the company called an Extra Ordinary General Meeting on January 24, 2009 wherein the shareholders approved issuance of 75,00,000 warrants convertible into equity shares in favour of the promoters and promoter group. This resolution was approved in-principle by Bombay Stock Exchange Ltd. (hereinafter

referred to as 'BSE') on March 31, 2009, based on which, the appellants were allotted 25,00,000 warrants between April 1, 2009 to May 30, 2009. On the basis of the aforesaid, 20,00,000 warrants were converted into equity shares on April 11, 2009 and 5,00,000 warrants were converted into equity shares on May 30, 2009. On August 20, 2009, BSE issued a public notice intimating that 25 lacs equity shares have been issued to the appellants.

3. After two years, SEBI sought information with regard to issuance of warrants and its conversion to equity shares and consequently, the increase in the capital of the company vide letters dated July 29, 2011 and August 5, 2011. Requisite information was duly supplied by the company. SEBI did not stir in the matter but after five years issued a show cause notice on September 30, 2015 alleging that the capital of the company had increased from 1,00,00,400 shares as on March 31, 2009 to 1,25,00,400 shares as on June 30, 2009 i.e. increase by 25,00,000 shares. The show cause notice alleged that the appellants were acting in concert as per the Regulation 2(1)(e) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as 'SAST Regulations') and that the appellants were connected or related to each other and had acquired

the shares with the common objective and are, thus, persons acting in concert.

4. The show cause notice alleged that as per the Regulation 11(1) of the SAST Regulations, an acquirer holding more than 15% shares but less than 55% of the shares in the target company could acquire up to 5% of the shares in a financial year without attracting the obligation to make an open offer. It was alleged that the appellants as on March 31, 2009 had a shareholding of 41.82% which increased to 51.52% on April 11, 2009 and further increased to 53.45% on May 30, 2009. Thus, there was a total increase of 9.58% whereas only 5% in financial year was permissible and, therefore, directed the appellants to show cause as to why appropriate orders should not be passed for violation of Regulation 11(1) of the SAST Regulations.

5. After considering the replies of the appellants and the material evidence on record, the impugned order was passed directing the appellants to make an open offer in view of violating the provisions of Regulation 11(1) of SAST Regulations.

6. We have heard Mr. Somasekhar Sundaresan, the learned counsel with Ms. Yugandhara Khanwilkar, Mr. Paras Parekh, Mr. Abhineet Sharma, Ms. Mitravinda Chundurur, Mr. Samyak Pati,

the learned counsel for the appellants and Mr. Pradeep Sancheti, the learned senior counsel with Mr. Abhiraj Arora, Ms. Rashi Dalmia, Mr. Karthik Narayan, Mr. Harshvardhan Nankani, the learned counsel for the respondent through video conference.

7. The contention of the appellants is, that violation of Regulation 11(1) of the SAST Regulations is admitted but contended that the violation was not deliberate but was inadvertent. It was contended that the appellants were already in control of the target company and, therefore, the additional acquisition of the shares was not for the purpose of acquiring control of the company, but was for the purpose of complying with the conditions imposed by the Union Bank of India to infuse funds and, thus, the increase in the shareholding of the appellants was inadvertent. It was also contended that on account of the delay in the initiation of the proceedings and in passing the impugned order thereafter, the directions to make an open offer after 10 years from the date of the alleged transactions becomes inappropriate and other directions contemplated under Regulation 44 of the SAST Regulations should have been taken into consideration. It was, thus, urged that the direction in the impugned order to make an open offer is totally arbitrary in the facts and circumstances of the given case and should be set aside.

8. On the other hand, the learned senior counsel for the respondent submitted that in view of the admission that there has been a violation of the provision of Regulation 11(1) of the SAST Regulations, the direction to make an open offer was just and proper in the facts and circumstances of the case.

9. In order to proceed further, it would be appropriate to refer the relevant provisions of the SAST Regulations, namely, Regulations 11(1) and 44 which are extracted hereunder :-

“11. (1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, [15 per cent or more but less than [fifty five per cent (55%)]] of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than [5% of the voting rights], [with post acquisition shareholding or voting rights not exceeding fifty five per cent.,] [in any financial year ending on 31st March] unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.”

“44. Without prejudice to its right to initiate action under Chapter VIA and section 24 of the Act, the Board may, in the interest of securities market or for protection of interest of investors, issue such directions as it deems fit including:—

- (a) directing appointment of a merchant banker for the purpose of causing disinvestment of shares acquired in breach of regulation 10, 11 or 12 either through public auction or market*

mechanism, in its entirety or in small lots or through offer for sale;

- (b) directing transfer of any proceeds or securities to the Investors Protection Fund of a recognised stock exchange;*
- (c) directing the target company or depository to cancel the shares where an acquisition of shares pursuant to an allotment is in breach of regulation 10, 11 or 12;*
- (d) directing the target company or the depository not to give effect to transfer or further freeze the transfer of any such shares and not to permit the acquirer or any nominee or any proxy of the acquirer to exercise any voting or other rights attached to such shares acquired in violation of regulation 10, 11 or 12;*
- (e) debarring any person concerned from accessing the capital market or dealing in securities for such period as may be determined by the Board;*
- (f) directing the person concerned to make public offer to the shareholders of the target company to acquire such number of shares at such offer price as determined by the Board;*
- (g) directing disinvestment of such shares as are in excess of the percentage of the shareholding or voting rights specified for disclosure requirement under regulation 6, 7 or 8;*
- (h) directing the person concerned not to dispose of assets of the target company contrary to the undertaking given in the letter of offer;*
- (i) directing the person concerned, who has failed to make a public offer or delayed the making of a public offer in terms of these regulations, to pay to the shareholders, whose shares have been accepted in the public offer made after the delay, the consideration amount along with interest at*

the rate not less than the applicable rate of interest payable by banks on fixed deposits.”

10. Admittedly, Regulation 11(1) of the SAST Regulations requires an acquirer holding more than 15% but less than 55% of shares in a target company could acquire upto 5% of the shares in the financial year without attracting the obligation to make an open offer. We find that as on March 31, 2009, the appellants' shareholding was 41.82% and, therefore, it was more than 15% but less than 55% as provided under Regulation 11(1). The acquisition of shares could only be upto 5% in a financial year. However, we find that as on May 30, 2009, the shareholding of the appellants increased by 9.58% through acquisition of shares which was far above the ceiling of 5% in a financial year as provided under Regulation 11(1) of the SAST Regulations. Therefore, violation of Regulation 11(1) is proved.

11. Regulation 44 gives power to the authority to pass appropriate directions for violation of Regulation 11(1) and one such direction that could be passed is to make an open offer as provided under Regulation 44(1)(f).

12. In our view, the direction given in the impugned order directing the appellants to make an open offer at this stage is not purposeful. Much water has flown. It is not known as to whether the

shareholders as on the trigger date are still the shareholders or not. We find that the transactions occurred between April and May 2009. The show cause notice was issued on September 30, 2015 after more than five years. The information of acquisition of the additional shares was available in the public domain and, therefore, there was no justification on the part of the respondent in issuing the show cause notice belatedly. We find that the information was sought by the respondent in 2012 and in spite of getting the information it took the respondent another three years to issue the show cause notice.

13. We also find that replies were filed by the appellants as early as possible and the hearing took place on October 27, 2016 after which orders were reserved and the impugned order was passed on September 30, 2019 after almost three years. There is no justifiable explanation as to why the order could not be passed earlier.

14. Thus, we are satisfied that the directions in the impugned order passed on September 30, 2019 to make an open offer after 10 years from the date of the triggering of Regulation 11(1) is not appropriate in the facts and circumstances of the case.

15. In *Mr. Rajiv Bhanot and Ors. Vs. SEBI in appeal No. 396 of 2018 decided on July 9, 2021*, this Tribunal held as under :-

“23. Even otherwise, long delay in initiating proceedings by itself causes prejudice. In addition to the aforesaid, we find that the target Company had merged with another Company. Nothing has been brought on record to show as to who are the original shareholders to whom the open offer is to be made. It is not known as to whether the original shareholders of the original target Company are alive or dead. In the absence of any exercise being done by the respondent on these grounds a serious prejudice has been caused and, therefore, the contention of the respondent cannot be accepted.”

16. In our view, considering the long lapse of time in culminating the proceedings, the directions to make an open offer was thus not appropriate in the circumstances of the case.

17. For the reasons stated aforesaid, the impugned order cannot be sustained and is quashed. The appeal is allowed. The matter is remitted to the WTM to issue an appropriate direction as provided under Regulation 44 other than the direction to make an open offer. Such order may be passed by the WTM within four months from today after giving an opportunity of hearing to the appellants. In the circumstances of the case, the parties shall bear their own costs.

18. The present matter was heard through video conference due to Covid-19 pandemic. At this stage, it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the Registry. In these circumstances, this order will be digitally signed by the Private Secretary on behalf of the bench and all concerned

parties are directed to act on the digitally signed copy of this order.

Parties will act on production of a digitally signed copy sent by fax and/or email.

Justice Tarun Agarwala
Presiding Officer

Justice M. T. Joshi
Judicial Member

23.11.2021
PTM

RAJALA Digitally signed
by RAJALAKSHMI H
KSHMI NAIR
Date: 2021.11.26
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