

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

ORDER

**UNDER SECTIONS 11, 11(4), 11A AND 11B OF THE SECURITIES AND EXCHANGE
BOARD OF INDIA ACT, 1992**

IN THE MATTER OF

Sl. No.	NAME	PAN
1.	V B Industries Limited	AAACV9152B

In Re: SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015

-
1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”), in the interest of investors, vide its letter dated August 7, 2017 took the pre-emptive interim measures under section 11(1) of SEBI Act, 1992, in respect of certain listed companies identified as “shell companies” by the Ministry of Corporate Affairs (hereinafter referred to as “**MCA**”) including M/s V B Industries Limited (hereinafter referred to as “**VBIL**” / “**Company**” / “**Noticee**”). SEBI placed trading restrictions, on the promoters/directors so that they do not exit the company at the cost of innocent shareholders. In view of the said objective, SEBI vide the said letter dated August 7, 2017 also placed the scrip of VBIL in the trade to trade category with limitation on the frequency of trade and imposed a limitation on the buyer by way of 200% deposit on the trade value, so as to alert them trading in the scrip. The said measures were initiated by SEBI pending final determination after verification of credentials and fundamentals by the exchanges, including by way of audit and forensic audit if necessary. The measures also envisaged, on the final determination, delisting of the company from the stock exchange, if warranted. By virtue of these measure, trading in scrip was not suspended but

allowed under strict monitoring so that investors could take informed investment decisions, till SEBI and Exchanges complete their detailed examination of such companies.

2. Aggrieved by the aforesaid letter dated August 7, 2017 issued by SEBI and consequent actions of Stock Exchanges, VBIL filed an appeal No. 251 of 2017 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as “SAT”). The Hon'ble SAT vide order dated October 12, 2017 had noted that VBIL had made representation to BSE and SEBI and directed SEBI to dispose of the representation made by VBIL as expeditiously as possible within a period of four weeks from the date of order. Hon'ble SAT also held that passing of any order on the representation made by VBIL would not preclude SEBI to further investigate the case of VBIL and initiate proceedings if deemed fit.
3. Pursuant to the decision of Hon'ble SAT that the communication of SEBI dated August 7, 2017 is in the nature of quasi-judicial order, in the interest of natural justice, an opportunity of personal hearing was granted to VBIL on October 25, 2017. The authorized representative of VBIL had appeared for hearing and made submissions.
4. Thereafter, SEBI vide Interim Order dated November 09, 2017 (hereinafter referred to as “**Interim Order**”), had modified, subject to para 28(iv) of the interim order, the actions envisaged in SEBI's letter dated August 07, 2017 and the consequential actions taken by Stock Exchanges, against M/s V B Industries Limited as under:

“28.

 - i. *The trading in securities of VBIL shall be reverted to the status as it stood prior to issuance of letter dated August 7, 2017 by SEBI.*
 - ii. *Exchange shall appoint an independent forensic auditor interalia to further verify:*
 - a. *Misrepresentation including of financials and/or business by VBIL, if any;*
 - b. *Misuse of the books of accounts / funds including facilitation of accommodation entries, if any.*

- iii. *The promoters and directors in VBIL are permitted only to buy the securities of VBIL. The shares held by the promoters and directors in VBIL shall not be allowed to be transferred for sale, by depositories.*
- iv. *The other actions envisaged in SEBI's letter dated August 07, 2017 in para 1 (d), as may be applicable, and the consequential action taken by Stock Exchanges shall continue to have effect against M/s V B Industries Limited.*

29. *The 'directors' for the purpose of direction mentioned at para 28(iii) above shall mean and include:*

- (a) the persons who are acting as directors on the date of this order, or*
- (b) the persons who are acting as directors of this company as on August 07, 2017, who cease to be director, by way of disqualification by any other authority, or by way of resignation or by any other means, on or after August 07, 2017.....”*

5. *The prima facie observations in the Interim Order were as under:*

“.....

21. *Based on the replies given by the company in response to SEBI's queries, prima facie observations are as under:*

- (a) Vide affidavit dated October 26, 2017, Mr. Vikash Kothari stated that he was appointed as Additional Director of the company w.e.f March 10, 2014 and subsequently appointed as Managing Director for 5 years w.e.f January 01, 2015. He resigned from post of Managing Director w.e.f. from August 21, 2017 because he wanted to promote his family business and full-fledged engaged himself in that business only. He did not hold any shares of the company. In personal capacity, he had no connection with Mr. Jagadish Purohit. He had interacted with Mr. Jagadish Purohit, as Mr. Jagadish Purohit was legal advisor to the company for some matters.*

- (b) *Vide affidavit dated October 26, 2017, Mr. Jagganath Pandit, stated that he had interacted with Mr. Jagadish Purohit in official capacity as Mr. Jagadish Purohit is the legal advisor of the company.*
- (c) *Vide affidavit dated October 30, 2017, Mr. Shyam Sundar Parasramka stated that he was appointed as Additional Director of the company w.e.f September 21, 2017. He is not associated directly or indirectly with Mr. Vikash Kothari, as Mr. Vikash Kothari resigned from the directorship on August 21, 2017, i.e. before his appointment as director. In day to day business of company he took decisions of his own and in some time he seek advice from his team members.*
- (d) *For the company, auditor has qualified its opinion stating that Rs. 29 crore worth of inventory is not in company's name. This audit qualification was appearing in the annual reports of past 3 years i.e. 2014-15, 2015-16 and 2016-17. The company stated that as per the annual report 2016-17, the inventories as on March 31, 2017 was Rs. 90.02 lakhs and as on March 31, 2016 was Rs. 29.92 crores. The company also submitted that inventory of Rs 29.92 crores as on March 31, 2016, which was not in name of the company was subsequently sold in Financial Year (FY) 2016-17. Hence, no financial risk to the company. However it is noted that the company admitted to having sold shares worth Rs. 29.9 crores (i.e. 25% of total revenue of the company) which were not in company's name.*
- (e) *From the annual report of FY 2016-17, it is observed that the company's revenue from sale of yarn was approximately Rs. 81 crores. Company had submitted the purchase and sale invoices (for months April to August 2016) for revenue/turnover from yarn business. However, company did not submit the invoice for month of September 2016. Based on purchase and sales statement of company for FY 2016-17 as submitted by the company, prima facie it appears that company had Rylan Trades Pvt Ltd. as its only vendor and Rotokul Suppliers Pvt. Ltd as its only client. However,*

on perusal of bank statement of VBIL submitted for period from April 01, 2015 to March 31, 2017 with Kotak Mahindra Bank having account number 8511215869, prima facie it appears that there is no bank statement entry w.r.t. transaction with either Rylan Trades Pvt Ltd. or Rotokul Suppliers Pvt. Ltd.

(f) Thus, from paras 21(d) & 21(e) above, there appears to be prima facie evidence that company had misrepresented its financials.

(g) For FY 2015-16, Company has submitted that as on April 01, 2015, company was holding 6,88,321 shares of PS IT Infrastructure & Services Limited worth of Rs. 37.86 crores and during FY 2015-16 company had sold 1,44,345 shares of PS IT Infrastructure & Services Limited worth of Rs. 7.94 crores. However, as per the information provided by CDSL, as on April 01, 2015, company was not holding any shares of PS IT Infrastructure & Services Limited and during the FY 2015-16 company had bought 2,00,000 shares of PS IT Infrastructure & Services Limited and had not sold any shares of PS IT Infrastructure & Services Limited.

For FY 2016-17, Company has submitted that as on April 01, 2016, company was holding 5,43,976 shares of PS IT Infrastructure & Services Limited worth of Rs. 29.86 crores and during the FY 2016-17 company had sold 5,43,976 shares of PS IT Infrastructure & Services Limited worth of Rs. 29.86 crores. However, as per the information provided by CDSL, as on April 01, 2016 company was holding 2,00,000 shares of PS IT Infrastructure & Services Limited and during the FY 2016-17 company had neither bought nor sold any shares of PS IT Infrastructure & Services Limited. It is also noted that Mr. Johar Pal Singh is independent director of VBIL and whole time director of PS IT Infrastructure & Services Ltd for FY 2015-16 and FY 2016-17. Thus this would be a related party transaction.

For FY 2016-17, Company has submitted that as on April 01, 2016, company was holding nil shares of Denim Developers Limited and during the FY 2016-17 company had bought 1,15,500 shares of Denim Developers Limited worth of Rs 5,77,750/- and sold 1,15,500 shares of Denim Developers Limited worth of Rs 5,77,750/-. However, as per the information provided by CDSL, as on April 01, 2016 company was holding

22,87,900 shares of Denim Developers Limited and during the FY 2016-17 company had bought 44,95,900 shares of Denim Developers Limited and sold 41,89,000 shares of Denim Developers Limited.

Thus, it is observed that company's submission w.r.t. transactions in Denim Developers Ltd and PS IT Infrastructure & Services Ltd. do not reconcile / match with the transaction statement of company received from CDSL. This mismatch would need to be verified against physical shares held/transacted, if any.

(h) Auditor has observed that interest on loan is not computable, During the course of hearing and vide email dated October 27, 2017, VBIL was advised to submit full list of entities to whom the loan has been given along with the amount of the loan and underlying loan documentation (when it was given, due date, interest rate and loan agreement etc.) and also submit bank statements of company for 2 years i.e. FY 2015-16 and 2016-17 in which loan disbursement, return of interest and principal should be marked/highlighted. Company had submitted list of entities to whom loan was given along with the amount as ledger entry of interest received. VBIL also submitted its bank statement with Kotak Mahindra Bank having account number 8511215869. However, company did not submit the underlying loan documentation (i.e. when loan was given, due date, interest rate, etc.) except for few entities. Upon perusal of loan agreement following are observed:

- (i) The copy of loan agreement which are provided in respect of few entities are made on plain paper without a date of stamp purchase/notarization, the date of document creation is not confirmed.
- (ii) From Company's Annual report 2016-17, it is observed that Mr. Sandip Ray is shown as independent director of company. However, on the loan agreements submitted by company to SEBI, Mr. Sandip Ray is representative of the VBIL who signed the loan agreements on company's behalf. This raises a question about the claimed independent status of Mr. Sandip Ray.
- (iii) For all the companies to whom the loan was given by VBIL, the bank statement does not reflect the interest received. Also, for the companies to whom the loan was

given before April 2016, i.e. for JSR Industries Pvt. Ltd. & Smart Tie Up Pvt. Ltd., no corresponding bank entry was highlighted by the company for these entities. This raises a suspicion of genuineness of these transactions.

- (iv) In respect of loan agreement with Smart Tie Up Pvt. Ltd., Fine Health Pvt. Ltd. (Joint Venture), GU Merchandise Pvt. Ltd., JSR Industries Pvt. Ltd. and Vasupati Niketan Pvt. Ltd. it is noted that the amount of loan and the interest rate mentioned in the loan agreement and as mentioned in the Annual Report FY 2016-17 (page 59-60) does not reconcile/match and this constitutes serious misrepresentation.*
- (v) Similarly, company had submitted the loan agreement with The Right Address Ltd., however the name of The Right Address Ltd does not appear in list of loan given to entity as mentioned at page 59-60 of Annual report 2016-17.*
- (vi) In respect of loan agreement with Fine Health Pvt. Ltd., VBIL has mentioned that the agreement shall remain in effect for period of 9 months from the date of agreement. Upon expiration of this period, both the parties will enter into JV Agreement. However, the interest rate for this 9 month period is not mentioned in the agreement.*

- (i) During the course of hearing, VBIL was advised to submit the underlying documentation for purchase of debtors of Rs. 45 lakhs for FY 2016-17. Company had submitted the loan sale agreement done on April 17, 2015 by VBIL (buyer of loan account) with Pay Point India Network Pvt. Ltd. (seller of loan account) for purchase of loan of M/s OSS Retails Pvt Ltd. having interest receivable as Rs. 4.48 crores. The principal and interest along with collateral security is receivable by the buyer of loan agreement. However, upon perusal of documents submitted, it is observed that on main agreement there is no signature of buyer or seller. On Annexure B to the agreement, there is only buyer's signature and seller's signature is not there. Also, the month mentioned in page 1 of the agreement is of June 2015 and the date of which is blank. Thus, the credibility of the submitted document is questionable.*

- (j) *Thus, from paras 21(h) & 21(i) above, it is observed that VBIL had submitted insufficient documents w.r.t. the loans and advances given and submitted non-credible loan sale agreement with Pay Point India Network Pvt. Ltd leading to suspicion of misuse of funds/books of accounts..*
- (k) *SEBI vide letter dated October 10, 2017, had advised the company to provide whether company and its director/promoter are directly or indirectly connected/associated or dealt with Mr. Jagadish Purohit. Company vide letter dated October 11, 2017, stated that company has no dealing with Mr. Jagadish Purohit directly or indirectly. However, Mr. Vikash Kothari and Mr. Jagganath Pandit in their affidavit stated that they had interacted with Mr. Jagadish Purohit and that Mr. Jagadish Purohit is the legal advisor of the company.*
- (l) *Auditor had mentioned that in FY 2016-17, confirmation of balances are not available. During the course of hearing, VBIL was advised to submit the documents with respect to the confirmation of balances from counterparties. Company has submitted the documents for confirmation of accounts from the counterparties. Upon perusal of the documents following is observed:*
- (i) *Confirmation of Accounts with Mr. Jagadish Kumar Purohit and family/associates (linked to each other based on same address in Confirmation of accounts) shows that the total amount given to them appears to be Rs. 5.63 crore.*
- (ii) *One of the confirmation of account shows Rs 15 lakh given to Mr. Jagdish Purohit having address as 6/1, Bijoy Mukherjee Rd., Bhowahipur, Kolkata – 700025 on March 09, 2017.*
- (iii) *Another account showed Rs. 2.875 crores as opening balance for Ms. Mamta Purohit on April 01, 2016 having same address as mentioned above. (Rs. 2.875 crores was credited to Mamta Purohit from VBIL on various dates in 2015 (August 6, 2015 to December 19, 2015).*
- (iv) *Rs 15 lakhs were given to Mr. Sourav Purohit on March 09, 2017 having same address as mentioned above.*

- (v) *Rs 23 lakhs and 16 lakhs were given to Mr. Sushil Kumar Purohit (Rs 23 lakhs to Mr. Sushil Kumar Purohit is shown as opening balance for April 01, 2016 and Rs 16 lakhs is given on March 09, 2017), again having the same address as mentioned above.*
- (vi) *Rs 3.4 lakhs shown as opening balance on April 01, 2015 for Mr. Anil Kumar Purohit having same address as mentioned above.*
- (vii) *Rs 3 lakhs shown as opening balance on April 01, 2015 for Ms. Dolly Purohit having same address as mentioned above.*
- (viii) *Rs 90 lakhs shown as opening balance on April 01, 2015 and Rs. 45.5 lakhs as credited in April 2015 to Ms. Chandrakala Purohit's account from VBIL account, totaling to Rs. 1.355 crores credited to Ms. Chandrakala Purohit having same address as mentioned above.*
- (ix) *Credit of Rs. 42.19 lakhs to Krishna Devi Purohit (opening balance on April 01, 2015) having same address as mentioned above.*
- (x) *Rs 17 lakhs was credited on November 18, 2015 and Rs 6 lakhs was debited on November 17, 2015 to/from Kailash Prasad Purohit having same address as mentioned above.*

Few of names stated above are reflected in company's short term loans and advances.

- (m) *From the bills, details of stock of shares of company submitted by VBIL it is observed VBIL has bought and sold shares of following scrips (except PS IT Infrastructure and Services Ltd.) at same price and quantity.*
 - (i) *VBIL has invested in JMD Sounds Ltd. in which Kailash Prasad Purohit is director, who has same address as that of Mr. Jagadish Prasad Purohit mentioned above. This investment was done in FY 2016-17 and also sold off in FY 2016-17, both for Rs. 3.80 crores. It also purchased and sold shares of JMD Sounds Ltd in FY 2015-16 worth Rs. 28 lakhs. Part of these shares were purchased by VBIL from Blue Circle Services Ltd. which has Anil Kumar Purohit as director (who is also director of Risewell Suppliers Pvt Ltd in which VBIL has invested Rs 1 crore).*

- (ii) VBIL has invested in Prince Tradecom Ltd. in FY 2016-17. In this scrip Kailash Prasad Purohit is director who has same address as that of Mr. Jagadish Prasad Purohit mentioned above. This investment was sold off in FY 2016-17 for Rs. 1 lakh.
- (iii) In FY 2015-16 VBIL had invested Rs. 1 crores in shares of Risewell Suppliers Pvt Ltd. which had Jagadish Prasad Purohit and Anil Kumar Purohit as directors.
- (iv) VBIL bought shares of Shree Ganesh Sugar Mills Pvt Ltd. from Prantikole Dealers Pvt. Ltd. From the MCA database, it is observed that Prantikole Dealers Pvt. Ltd does not exist. Thus, there is a prima facie suspicion that VBIL had made false submission.
- (v) In FY 2016-17, VBIL purchase and sold off its investment in Denim Developers Ltd. (in which Mr. Jagadish Prasad Purohit was director in period 2009-13) worth Rs. 5.77 lakh. In FY 2015-16, company sold shares worth Rs. 3.12 crore of Denim Developers Ltd.
- (vi) Based on the bill submitted, VBIL sold shares of scrip PS IT Infrastructure & Services Ltd. to Unisys Softwares & Holding Industries Ltd. (a company where Jagadish Purohit is director). Few of the transactions are shown as under:
- 9800 shares worth Rs 551 each for total amount of Rs. 54 lakhs on 5.4.2016
 - 2725 shares worth Rs. 551 each for total amount of Rs. 15 lacs on 1.9.2016
- (n) Thus, from paras 21(k), 21(l) & 21(m) above, it is observed that company had numerous direct and indirect dealing with Mr. Jagadish Purohit and his associates / associates' company, which is in contradiction to company's submission vide letter dated October 11, 2017 that company has no dealing, directly or indirectly, with Mr. Jagadish Purohit. This constitutes a false submission to SEBI by the company either vide letter dated October 11, 2017 or vide letter dated October 27, 2017.

.....”

6. Vide said interim order, SEBI had advised VBIL to file its reply/objections to the said interim order within 30 days from the date of receipt of the said interim order and also indicate in its reply whether it desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard, if any. The said interim order also mentioned that if VBIL had failed to file the reply or request for an opportunity of personal hearing within the said 30 days, the preliminary findings of the said interim order and ad-interim directions mentioned at para 28 of the said interim order shall stand confirmed automatically, without any further orders.
7. Vide email dated November 09, 2017 the copy of interim order was forwarded to VBIL. Vide letter dated November 09, 2017, the copy of interim order was also sent to VBIL at “*V B Industries Limited, 9, 5th Floor, Old China Bazar Street, Room No. 85, Kolkata, West Bengal, 700001*” through Speed Post and the same was delivered.
8. VBIL vide letter dated December 06, 2017 had acknowledged the receipt of interim order and stated as under:
- “
- (a) *We object entire Interim Order passed by the SEBI except for the Interim Order mentioned in point no. 28(i).*
- (b) *That the Balance Sheet of the company is already audited by the Independent and Qualified Chartered Accountant / Auditor possessing a degree given to him by ICAI which is a statutory body establishment under an act of parliament. That the Balance Sheet scrutiny and audit is outside the scope of SEBI and it is stringent order passed by the SEBI.*
- (c) *Our Company has already provided detailed clarifications to your good offices as asked through email / letters for the Affidavits by directors, turnover, loan details, etc. But as per the interim order you have not considered the same and passed such an interim action of forensic audit in our company.*

- (d) *There is no proper evidence which forms the basis for declaring our company as suspected shell company as we have considered the MCA letter dated 9th June, 2017 provided by you.*
- (e) *We wish to give a detailed reply to this interim order and therefore we urge you to provide us the following documents and information for our inspection:*
- (i) *Written / oral communication with individuals / entities / brokers / stock exchanges / banks / Income Tax Department / MCA / Other govt. organization etc. in this regards,*
 - (ii) *Investigation Report of Stock Exchange, if any.*
 - (iii) *Investigation Report of SEBI*
 - (iv) *Internal Notes, Making, Minutes and Communication within SEBI in this regards as far as same is relevant in my case.*
 - (v) *Any communication in this regards with me.*
 - (vi) *Any other documents, statement, evidences, report, annexures, etc. used in preparation of Interim Order.*
 - (vii) *Current status of Investigation.*
- (f) *Out of the 331 Suspected Shell Companies our being in Sr. No. 56 which is being sourced by Income Tax Department (ITD) we request you to provide us Written / Oral communication made with ITD with this regards.*
- (g) *Kindly provide us all the details / documents as requested above to enable us to submit our detailed reply to your above mentioned Interim Order.*
-”

9. In reply to VBIL letter dated December 06, 2017, SEBI vide letter dated January 02, 2018 had communicated to VBIL that MCA letter dated June 09, 2017 and additional inputs received from MCA / SFIO was already provided to VBIL vide SEBI letter dated November 08, 2017.

In addition to this, SEBI vide letter dated January 02, 2018 had provided following documents to VBIL:

- (a) Relevant snippets of examination report of BSE & Auditor's certificate submitted by company to BSE.
- (b) Letter sent to the company seeking additional information dated October 10, 2017.
- (c) Mail sent to company pursuant to documents sought during WTM hearing dated October 25, 2017.
- (d) Holding statement of VB Industries as received from CDSL.
- (e) Relevant MCA website snippet.

SEBI vide letter dated January 02, 2018 also communicated to VBIL that followings are the documents which were relied upon but not provided to VBIL as the same are already available with VBIL or available in public domain:

- (a) Annual Report of Company for Financial Year (FY) 2016-17.
- (b) Annual Report of PS IT Infrastructure & Services Limited for FY 2015-16 and FY 2016 -17 available on BSE website.
- (c) Company's replies dated 11.10.2017 and 27.10.2017 sent to SEBI.

Vide said letter dated January 02, 2018, SEBI also stated that the interim order dated November 09, 2017 passed by SEBI was on reliance of facts that emerged out of its independent enquiry.

10. In reply to SEBI's letter dated January 02, 2018, VBIL vide letter dated January 11, 2018 submitted as under:

- (a) SEBI has cherry picked the documents as per their convenience.
- (b) VBIL once again requested the same set of documents [i.e. documents mentioned at paragraph 8(e) above] sought by them vide letter dated December 06, 2017. Further, VBIL stated that SEBI has not provided any of the documents which the Company were not having or which were not available in public domain.

- (c) SEBI has not provided any investigation reports nor SEBI have called the Company for seeking inspection of documents.
- (d) VBIL request SEBI to provide them with all the communications done with the authorities like Income Tax, MCA, BSE etc. as to on what basis VBIL is being declared as Shell Company.
- (e) Requested SEBI to provide the current status of investigation of VBIL.

11. In reply to VBIL letter dated January 11, 2018 SEBI vide letter dated February 14, 2018 had communicated to VBIL that relevant/relied upon documents pertaining to the matter has already been forwarded to VBIL vide SEBI's letters dated November 8, 2017 and January 02, 2018 for inspection at their end. Vide said letter dated February 14, 2018 SEBI once again informed to VBIL that interim order dated November 09, 2017 was passed on the basis of VBIL submissions and SEBI's preliminary observations thereof. SEBI also informed VBIL to submit its reply and confirm whether it desires to avail an opportunity of personal hearing for further clarification/submission with respect to interim order dated November 09, 2017 within 7 days from the receipt of letter dated February 14, 2018.

12. In reply to SEBI's letter dated February 14, 2018, VBIL vide letter dated February 21, 2018, 2018 submitted as under:

- (a) VBIL once again requested the same set of documents [i.e. documents mentioned at paragraph 8(e) above] sought by them vide letters dated December 06, 2017 and January 11, 2018.
- (b) VBIL requested to keep the personal hearing in abeyance till they get opportunity of inspection of documents.
- (c) VBIL will opt for personal hearing only after getting opportunity of inspection of documents sought vide its letters dated December 06, 2017 and January 11, 2018.

13. I note that SEBI vide letter dated January 02, 2018 had informed VBIL that the interim order passed by SEBI was on reliance of facts that emerged out of its independent enquiry. Further, it is also observed that all relevant and relied upon documents was provided to VBIL vide SEBI's letters dated November 08, 2017 and January 02, 2018. Vide letter dated February 14, 2018 SEBI once again informed to VBIL that interim order dated November 09, 2017 was passed on the basis of VBIL submissions and SEBI's preliminary observation thereof. Therefore, in the interest of natural justice, SEBI vide letter dated March 16, 2018, had granted VBIL an opportunity of personal hearing on April 04, 2018 at Head Office, Mumbai. Further, vide said letter dated March 16, 2018, SEBI also provided complete BSE analysis report to VBIL. VBIL vide email dated April 03, 2018 had informed SEBI that due to unavoidable circumstances, they are not in a position to attend the hearing scheduled on April 04, 2018.

14. In view of VBIL email dated April 03, 2018, the hearing scheduled on April 04, 2018 was postponed. In the interest of natural justice, SEBI vide letter dated April 20, 2018 had granted VBIL another opportunity of personal hearing on May 16, 2018. VBIL vide email dated May 16, 2018 stated as under:

“.....Sorry for the inconvenience caused to you by our delay in replying but there is no point in appearing for the hearing until & unless we get the documents and details required by us as mentioned in our earlier reply also.

So it's a humble request to the authority that kindly provide us the documents so that we also can proceed further in this matter.....”

15. From the above, I note that VBIL vide letters dated December 06, 2017, January 11, 2018 and February 21, 2018 had requested copies/inspection of documents mentioned at paragraph 8 (e) above. In reply to it, SEBI stated that it had provided all relevant and relied upon documents to VBIL vide its letter dated November 08, 2017, January 02, 2018 and March 16, 2018. The observations on documents sought by VBIL are as under:

Sr. No.	Documents/information sought by VBIL	Status on reliance by SEBI-If relied upon whether copy granted.
1	Written/oral communication with individuals/entities/brokers/stock exchanges/banks/Income Tax department/MCA/Other govt. organizations etc. in this regards	<p>a. MCA letter along with other inputs from MCA/SFIO was provided to VBIL vide SEBI's letter dated November 8, 2017.</p> <p>b. Information from MCA website (Directorship of firms) and CDSL (shares held by VBIL i.e. holding statement of VBIL), which was relied upon for passing the interim order was provided to VBIL vide SEBI's letter dated January 02, 2018.</p>
2	Investigation report of Stock Exchange, if any	BSE examination/analysis report was provided to VBIL vide SEBI's letter dated March 16, 2018.
3	Investigation report of SEBI	There is no investigation report in the matter. The observations in the interim order reflect preliminary findings of SEBI.
4	Internal notes, marking, Minutes and communications within SEBI in this regards as far as same is relevant in my case	File notings are for internal purpose and cannot be shared.
5	Any communication in this regards with me (company)	SEBI's letter dated October 10, 2017 to VBIL and SEBI's email dated October 25, 2017 to VBIL was provided to VBIL vide SEBI's letter dated January 02, 2018.
6	Any other documents, statements, evidences, report, annexure, etc. used in preparation of Interim Order	<p>Other documents relied upon for passing of Interim Order were:</p> <ol style="list-style-type: none"> 1. VBIL reply dated October 11, 2017 and October 27, 2017. 2. Annual reports of VBIL for 2016-17

		<p>3. Annual report of PS IT Infrastructure & Services Limited for FY 2015-16 and FY 2016-17</p> <p>SEBI vide letter dated January 02, 2018 informed to VBIL that all above documents were not shared with VBIL as the said information is either publicly available or provided by VBIL itself.</p>
7	Current status of Investigation	Forensic audit report is yet to be received by SEBI.

16. From the above table, it is noted that all relevant and relied upon documents for passing of Interim Order dated November 09, 2017 were already provided to VBIL. It is also noted that till date VBIL had not submitted any reply to the interim order including on those documents whose copies were already provided to them. Thus, I note that ample opportunity has been given to VBIL to appear before me and to submit its reply to interim order. Despite having been given ample opportunities, VBIL had failed to avail of the same. I am, therefore, proceeding with the matter based on material available on record and the issue for consideration before me is whether the directions in the Interim Order need to be continued, revoked or modified in any manner. Before proceeding further, I proceed to find whether the principles of natural justice have been observed in this matter in view of the claim by the noticee that SEBI has not granted the documents sought by it.

17. While discussing on the scope of right of fair hearing, in ***Kanwar Natwar Singh vs Directorate of Enforcement & Anr*** (MANU/SC/0795/2010), the Hon'ble Supreme court in its order dated October 05, 2010 reiterated that “...*the right to fair hearing is a guaranteed right. Every person before an Authority exercising the adjudicatory powers has a right to know the evidence to be used against him. This principle is firmly established and recognized by this Court in*

Dhakeswari Cotton Mills Ltd. Vs. Commissioner of Income Tax, West Bengal [(1955) 1 SCR 941, MANU/SC/0073/1954] ”

18. The Hon’ble Supreme Court further held in its order dated October 05, 2010 passed in ***Kanwar Natwar Singh vs Directorate of Enforcement & Anr*** (MANU/SC/0795/2010) that “...even the principles of natural justice do not require supply of documents upon which no reliance has been placed by the Authority to set the law into motion. Supply of relied on documents based on which the law has been set into motion would meet the requirements of principles of natural justice”. “...Concept of fairness is not a one way street. The principles of natural justice are not intended to operate as roadblocks to obstruct statutory inquiries. Duty of adequate disclosure is only an additional procedural safeguard in order to ensure the attainment of the fairness and it has its own limitation.”
19. In view of the above position of law and the request for documents by the Noticee the question that arises for consideration is whether the said documents requested by the Noticee were relied upon in respect of the findings in the order dated November 09, 2017 and whether such relied upon documents were given to the Noticee. The documents copy of which were requested by the Noticee, the fact of whether such documents were relied upon by SEBI in the interim order dated November 09, 2017 and if relied upon whether the copy of the same was granted to SEBI are discussed in the Table above. From the above Table, I note that all relevant and relied upon documents for passing of Interim Order dated November 09, 2017 were already provided to VBIL.
20. I note that interim order dated November 09, 2017 was passed on the basis of VBIL’s submissions and SEBI’s preliminary observations thereof and the same also been communicated by SEBI vide said letter dated January 02, 2018 and February 14, 2018. Apart from this SEBI has made reliance on documents such as Annual reports of VBIL for 2016-17, Annual report of PS IT Infrastructure & Services Limited for FY 2015-16 and FY 2016-17 which are available in the public domain. SEBI has also made reliance on documents such as

holding statement of VBIL obtained from CDSL and information obtained from MCA website with respect to the directorship details of VBIL, the said documents were already provided by SEBI to VBIL.

21. VBIL contented that the balance sheet scrutiny and audit is outside the scope of SEBI. In respect of said contention of VBIL, I note that one of the primary objectives of SEBI is to ensure that there should be full, timely and accurate disclosure of financial results and other information that is material to investors' decision. Investor confidence is fundamental to the successful operation of the securities market and it depends on investors having credible and reliable financial information when making decisions about their capital allocation.

Further I note that, in order to perform the functions of the Board as mentioned in section 11 of the SEBI Act, the Board may take such measures as it thinks fit as mentioned in section 11(1) and 11(2) of the SEBI Act. The section 11(2)(i) of SEBI Act states that "*Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market, intermediaries and self-regulatory organisations in the securities market.*" I note that VBIL is a listed company and associated with securities market. Thus, I am of the view that SEBI has the power to conduct audit of the persons associated with securities market and stock exchanges can be directed to conduct audit. Therefore, in view of this, I do find any merit in the said contention of VBIL.

22. VBIL contented that "*There is no proper evidence which forms the basis for declaring our company as Shell Company*". In respect of the said contention of VBIL, it is noted that VBIL has been identified as Shell Company by MCA and the same has not been done by SEBI. Further, it is observed that the Government Agency categorizing the company as a Shell Company was a trigger for SEBI that the company may possibly have misrepresented their financials or misused their books of accounts and thereby may have violated the securities laws. Therefore, SEBI had conducted independent enquiry and based on the *prima facie*

findings mentioned at per para 21 of the interim order as reproduced hereinabove at paragraph 5, SEBI is of the view that there is a *prima facie* evidence that the company has misrepresented its financials and *prima facie* suspicion of misuse of funds/books of accounts of the company. Therefore, in view of this, I do find any merit in the said contention of VBIL.

23. With respect to the contention of VBIL that SEBI has not considered its reply and affidavit of its director while passing interim order and directing the forensic audit of VBIL, I note that SEBI has noted the reply of VBIL at para 15 of the interim order. I also note that after consideration of VBIL reply and its director's affidavit, SEBI has noted its *prima facie* observations at para 21 of interim order dated November 09, 2017 and thereby in the interest of investors, SEBI had ordered the direction of forensic audit of VBIL to unearth the genuineness of transactions reflected in its books of accounts. Thus, from para 15 and 21 of interim order as reproduced hereinabove at paragraph 5, I am of the view that SEBI has considered VBIL replies and its director's affidavit while passing of interim order dated November 09, 2017. Thus, I do find any merit in the said contention of VBIL.

24. I note that VBIL has chosen not to appear for hearing and has also not submitted any response to the allegations/*prima facie* findings/ directions in the Interim Order. Further, no material has been brought to my notice contradicting the allegations/*prima facie* findings as described in the Interim Order or warranting any change in the directions passed in the Interim Order.

25. Therefore, in order to protect the interest of investors, based on the *prima facie* findings brought out in the interim order, which company has chosen not to contest, I note that the entire extent of violations can be unearthed only by means of forensic audit. Therefore, the forensic audit and restrictions on promoters/directors, which has been directed vide Interim Order dated November 09, 2017 needs to continue.

26. In view of the above, I find that the facts and circumstances of the case as brought out in the Interim Order have not changed, justifying the dis-continuation or modification or revocation of the directions passed in the Interim Order.
27. Thus, I, in exercise of the power conferred upon me under sections 11, 11(4), 11A and 11B read with section 19 of the Securities and Exchange Board of India Act, 1992 hereby confirm the directions contained in the Interim Order dated November 09, 2017 and forensic audit of VBIL as directed vide Interim Order shall continue.
28. Copy of this Order shall be forwarded to the recognized stock exchanges for information and necessary action.
29. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs, Serious Fraud Investigation Office and Directorate of Economic Offences, Kolkata for their information.

-Sd-

DATE: OCTOBER 05, 2018

PLACE: MUMBAI

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA