

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER

ORDER

Under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulations 44 and 45 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 read with Regulation 35 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 in respect of Mr. Vijay Jamnadas Vora (PAN No. ACOPV9937D) and Mrs. Hina Vijaykumar Vora (PAN No. AFEPV5742H) in the matter of acquisition of shares of Sky Industries Ltd.

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an investigation into the dealings in the scrip of Sky Industries Ltd. (hereinafter referred to as "SIL"). The investigation was primarily based on the surveillance alerts received by Integrated Surveillance Department of SEBI and also on the basis of a report from Bombay Stock Exchange Ltd. (BSE) that certain connected entities were continuously found to be contributing to daily trading volume in the scrip of SIL during the period January 01, 2009 to May 10, 2010. The shares of SIL are listed on Bombay Stock Exchange (BSE), Jaipur Stock Exchange and Kolkata Stock Exchange.
2. The investigation *inter alia* revealed that under the category of "persons belonging to Public and holding more than 1% of the total number of shares of SIL" as available on BSE website, a trading member, M R Share Broking Pvt. Ltd. (hereinafter referred to as "M R Share Broking"), was stated to have the following shareholding:

Table I

For quarter ended	31.12.2008	31.3.2009	30.6.2009	30.9.2009	31.12.2009	31.3.2010	30.6.2010
	No.of Shares	No.of Shares	No.of Shares	No.of Shares	No.of shares	No.of Shares	No.of Shares
Shares of SIL held by M.R.Share Broking as per BSE website	649138 (16.32%)	579256 (14.57%)	678819 (17.07%)	593726 (14.93%)	581876 (14.63%)	510115 (15.83%)	615318 (15.47%)



3. As a matter of preliminary inquiry, SEBI, vide letters dated 28.12.2012, 05.02.2013 and 15.02.2013, sought details regarding the aforesaid shareholdings from M R Share Broking. In reply to the said letters, M R Share Broking, vide its letters dated 08.01.2013, 06.02.2013 and 18.02.2013 *inter alia* forwarded the details of shares held by it on behalf of Mr. Vijay Jamnadas Vora (hereinafter referred to as "Vijay Vora"). M R Share Broking also forwarded a letter dated 16.02.2013 of Vijay Vora wherein it was stated that "*...whatever shares purchases/sales/holdings activities in the scrip of Sky Industries Ltd. through M R Share Broking since 2004 till the date is belonging to me*". Following were the details of the shares held by M R Share Broking on behalf of Vijay Vora, as forwarded to SEBI by M R Share Broking:

Table II

For quarter ended	31.12.2008	31.3.2009	30.6.2009	30.9.2009	31.12.2009	31.3.2010	30.6.2010
	No. of Shares	No. of Shares	No. of Shares	No. of Shares	No. of Shares	No. of Shares	No. of Shares
Shares held by M.R.Share Broking Pvt. Ltd. on behalf of Vijay Vora	583349 (14.67%)	553730 (13.93%)	653793 (16.44%)	668200 (16.80%)	676350 (17.01%)	484589 (12.19%)	589792 (14.83%)

4. Investigation further revealed that under the category of "persons belonging to the category Public and holding more than 1% of the total number of shares" of SIL as available on BSE website, Vijay Vora along with his wife; Mrs. Hina Vijaykumar Vora (hereinafter referred to as "Hina Vijaykumar") were also holding shares as stated below:

Table III

Client	31.12.2008	31.3.2009	30.6.2009	30.9.2009	31.12.2009	31.3.2010	30.6.2010
Vijay Vora	4.03 %						1.24%
Hina Vijaykumar	2.49 %	1.33%					
Total share holding of the acquirers	6.52 %	1.33%					1.24%



5. On the basis of the aforesaid information, it was observed that as on 31.12.2008, Vijay Vora had individually acquired 18.7% shares of SIL and along with, Hina Vijaykumar, together as persons acting in concert (PAC) acquired 21.19% shares of SIL. (For the purpose of reference, Vijay Vora and Hina Vijaykumar would be together referred to as "acquirers" and individually by their respective names). Since it appeared that pursuant to the said acquisition, no public announcement was made by the acquirers as mandated by the provisions of Regulation 10 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "Takeover Regulations, 1997"), SEBI vide letter dated 21.02.2013 and reminder dated 01.03.2013, *inter alia* directed the acquirers to furnish the information regarding the specific date(s) on which their combined holding crossed 15%. The letter of Vijay Vora dated 16.02.2013 (mentioned in Paragraph No. 3 above) forwarded to SEBI by M.R. Share Broking was also forwarded to Vijay Vora for his comments. However, Vijay Vora did not reply to SEBI's letters, though the letter dated 21.02.2013 was duly delivered to him.
6. In view of this, based on the materials and information available on record, a Show Cause Notice (SCN) dated May 28, 2013 was issued to the acquirers to show cause as to why directions including directions to debar them from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period of time and/or to make public offer to the shareholders of the target company to acquire shares in accordance with the provisions of Regulations, should not be issued against them for the alleged violation of Regulation 10 of Takeover Regulations, 1997 read with Regulation 35 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "Takeover Regulations, 2011"). However, the acquirers have not replied to the said SCN issued by SEBI.
7. Subsequent to this, the acquirers were granted an opportunity of personal hearing on September 3, 2013 vide letter dated August 14, 2013. It is noted that even though the hearing



notice was duly delivered to the acquirers, they failed to avail the opportunity of personal hearing granted to them.

8. As the acquirers neither responded to the SCN issued by SEBI nor appeared for hearing, additional information/details in respect of the shareholding of the acquirers before 2008 were collected thereafter from the depositories viz. National Securities Depository Ltd. (NSDL) and Central Depository Services Ltd. (CDSL) and also from the broker, M.R. Share Broking, in order to ascertain the specific date(s) on which the acquirer's combined holding crossed 15%. Based on the additional information/details of the shareholdings of the acquirers before 2008, so collected from the NSDL, CDSL and M.R. Share Broking, a letter dated 13/01/2014 was issued to the acquirers, seeking their comments on the following factual observations,

- During the quarter ended December 2007, Vijay Vora was individually holding 16.34%, and, along with Hina Vora, he was holding 18.19% of the shares of SIL.
- The day-wise analysis of the share holding details for the period October 1 to December 31, 2007, indicated that on October 9, 2007 Vijay Vora was individually holding 13.82% shares of SIL and alongwith Hina Vora, their combined holdings were 15.01%, without making any public announcement in accordance with the provisions of Regulation 10 of Takeover Regulations, 1997 read with Regulation 35 of Takeover Regulations, 2011.

8.1 The acquirers were also advised, vide the aforesaid letter, to inform the exact date on which their holding crossed 15% threshold limit.

9. The acquirers failed to reply to the aforesaid allegations. In view of this, I am constrained to proceed *ex -parte* in the matter based on the material and information available on record. I have carefully considered the SCN dated 28.05.2013 issued to the acquirers and the letter dated 13.01.2014 issued to the acquirers alongwith the documents contained therein; the correspondence between SEBI and M R Share Broking along with the documents contained



therein; details of shareholdings as available on BSE website, data collected from NSDL and CDSL etc.

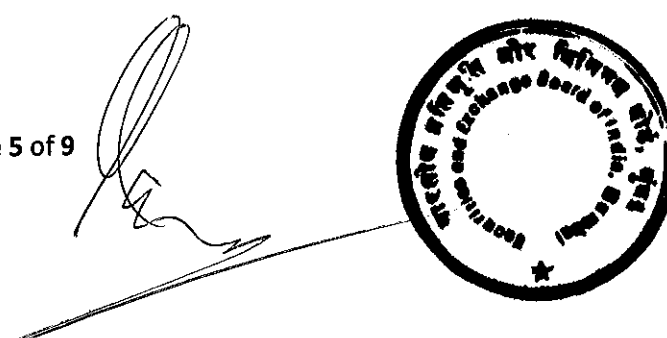
10. Regulation 10 of the Takeover Regulations, 1997 statutorily mandates an acquirer to make a public announcement to acquire shares in accordance with the Regulations, if the shareholding/voting rights of the acquirer, individually or collectively alongwith persons acting in concert with him, exceed the levels (percentages) mentioned in Regulation 10. The text of Regulation 10 of the Takeover Regulations 1997 at the relevant time provided that ,

"No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen percent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations."

11. In the instant matter, the issue under consideration is whether the acquirers have acquired shares, which entitled them to exercise fifteen percentage or more of voting rights in SIL without making a public announcement as prescribed by Regulation 10 of the SAST Regulations, 1997.

- 11.1 It is observed from the details of share holdings of Vijay Vora forwarded by M.R. Share Broking (mentioned in the Table II of Paragraph No. 3 above) and the details of the shareholding of the acquirers collected from the BSE website (reproduced in Table III of Paragraph No. 4 above), that Vijay Vora individually acquired 18.7% shares of SIL and together with his wife, Hina Vijaykumar, as persons acting in concert (PAC) acquired 21.19% shares of SIL as on 31.12.2008.

- 11.2 Further, from the materials available on record, in respect of the share holding of the acquirers before 2008, collected from the depositories viz. NSDL and CDSL and also from the broker, M.R. Share Broking to ascertain the exact date on which the threshold limit was breached by the acquirers, it is observed that the share holdings of the acquirers during the quarter ended June 2006 till December 2007 were as under,



Client	30.06.2006	30.09.2006	31.12.2006	31.03.2007	30.06.2007	30.09.2007	31.12.2007
Vijay Jamnadas Vora	28063 (0.71%)	199017 (5.0%)	343954 (8.65%)	350464 (8.81%)	419810 (10.56%)	497865 (12.52%)	649920 (16.34%)
Hina Vijaykumar Vora					49842 (1.25%)	47272 (1.19%)	73239 (1.84%)

11.3 Further, on analyzing the day-wise holding of shares from the aforesaid data collected from NSDL, CDSL and the Broker, M.R. Share Broking, it is observed that on 09.10.2007 Vijay Vora individually acquired 13.82.% shares of SIL and along with Hina Vijaykumar (PAC), who was holding 1.19% of shares, together acquired 15.01.% (i.e, 5,96,784 shares) shares of SIL, thereby crossing the threshold limit of 15% as provided in Regulation 10 of the Takeover Regulations, 1997.

12. In view of what has been stated in Paragraph No. 11 above, the acquirers crossed the threshold limit of 15% on 09.10.2007, without making the public announcement as mandated by the provisions of Regulation 10 of the Takeover Regulations, 1997.

13. The acquirers failed to reply to SEBI's letter dated 21.02.2013 and reminder dated 01.03.2013, seeking information regarding specific date(s) on which the combined holding of the acquirers crossed 15%. They also failed to reply to the SCN dated 28.05.2013 and the subsequent letter dated 13.01.2014 issued to them. The aforementioned findings in Paragraph Numbers 11 & 12 coupled with the failure of the acquirers to co-operate with SEBI's investigation and present proceedings entitles me to draw adverse inference against the acquirers.

14. Having found that the acquirers have violated Regulation 10 of the Takeover Regulations 1997 by failing to make any public announcement, I now proceed to determine the nature of direction to be issued against the acquirers in respect of the violation. Regulation 10 of the

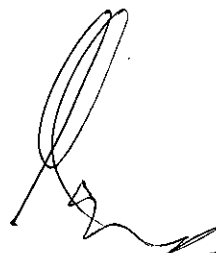


Takeover Regulations, 1997 clearly states that any acquirer whose acquisition, together with the persons acting in concert with him, increases their shareholdings beyond the threshold limit of 15%, shall make a public announcement and open offer to acquire the shares of that company in accordance with the Takeover Regulations. Further, Regulation 44 of the Takeover Regulations, 1997 provides for various kinds of directions for enforcing the provisions of the Regulations in the interest of securities market and for the protection of investors. Considering the facts and circumstances of the case, I am of the considered opinion that an order directing the acquirers to make a public offer would be appropriate and would meet with the objectives of the scheme of the Takeover Regulations. In this context, it is pertinent to note the following observations of the Hon'ble Securities Appellate Tribunal (SAT) in its Order dated September 08, 2011 in Appeal No. 31 of 2011; **Nirvana Holdings Private Limited vs. SEBI**,

"It must be remembered that whenever an acquirer violates Regulation 10, 11 or 12 of the takeover code by not making a public announcement, he should be directed to comply with the provision by making a public offer. The words "unless such acquirer makes a public announcement" appearing in Regulations 10 and 11(1) make these provisions mandatory and a public announcement has to be made. Similar words appear in Regulation 12 as well. These provisions make the acquisition conditional upon a public announcement being made. The primary object of the takeover code is to provide an exit route to the public shareholders when there is substantial acquisition of shares or a takeover. This right to exit is an invaluable right and the shareholders cannot be deprived of this right lightly. It is only when larger interest of investor protection or that of the securities market demands that this right could be taken away. Therefore, as a normal rule, a direction to make a public announcement to acquire shares of the target company should be issued to an acquirer who fails to do that. The Board need not give reasons as to why such a direction is being issued because that is the mandate of Regulations 10, 11 and 12.

However, if the issuance of such a direction is not in the interest of the securities market or for the protection of interest of investors, the Board may deviate from the normal rule and issue any other direction as envisaged in Regulation 44 of the takeover code. In that event, the Board should record reasons for deviation. "

15. In the instant case, as the acquirers have failed to make the requisite public announcement and public offer as mandated by Regulation 10 as discussed above and considering the interest of the securities market and the interests of investors, I find no reasons to depart



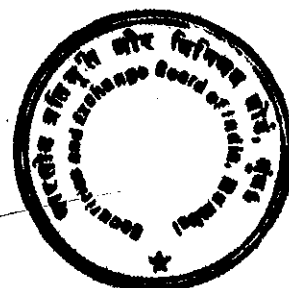
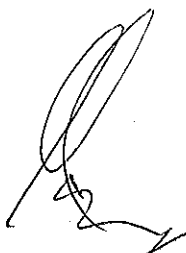
from the normal rule of public announcement and public offer and I am inclined to issue necessary directions as envisaged in Regulation 44 of the Takeover Regulations, 1997.

16. As has been discussed in the preceding paragraphs, based on the materials available on record, the reference date for reckoning the threshold limit of 15% in terms of Regulation 10 of the Takeover Regulations, 1997, is taken as 09.10.2007 as the acquirers (as PACs) have triggered the obligation under Regulation 10 of the Takeover Regulations, 1997 by crossing the threshold limit of 15% of voting rights, on 09.10.2007. In this context, it is noted that though the Takeover Regulations, 1997 have been repealed by the Takeover Regulations, 2011, in terms of Regulation 35 of the Takeover Regulations, 2011, the obligation or liability acquired, accrued or incurred under the repealed regulations, shall remain unaffected as if the repealed Regulations had never been repealed.

16.1 In the instant case, the acquirers were bound to make requisite public announcement within four working days from 09.10.2007, as mandated by Regulation 14(1) of the Takeover Regulations, 1997. Had the acquirers complied with the provisions of Takeover Regulations, 1997 and made the public announcement within the timelines specified under the Takeover Regulations, 1997, then all formalities with respect to their public announcement and the open offer would have been completed on 14.01.2008. As the acquirers failed to make public announcement within the timelines specified by the Regulations and the public announcement in compliance with this Order would be made after considerable delay, I am of the view that the acquirers shall pay interest on offer price determined in terms of the provisions of the Takeover Regulations, 1997 to the shareholders who tender their shares in the open offer and who are eligible for interest as per law.

Order-

17. I, therefore, in exercise of powers conferred upon me under Sections 19, 11 and 11B of the SEBI Act, 1992 and Regulations 44 and 45 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 read with Regulation 32(1)(h) of the SEBI (Substantial

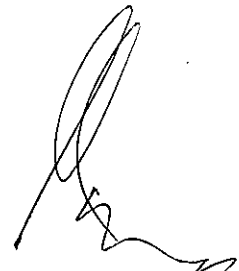


Acquisition of Shares and Takeovers) Regulations, 2011, hereby issue the following directions :

- I. The acquirers, viz. Mr. Vijay Jamnadas Vora and Mrs. Hina Vijaykumar Vora shall make a combined public announcement to acquire shares of the target company, Sky Industries Limited, in terms of Regulations 10 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, within a period of 45 days from the date of this Order.
- II. The acquirers shall, along with consideration amount, pay interest at the rate of 10% per annum from 14.01.2008 till the date of payment of consideration to the shareholders who were holding shares in the target company on the date of violation and whose shares are accepted in the open offer, after adjustment of dividend paid, if any.

18. This Order shall come into force with immediate effect.

Date: March 28, 2014
Place: Mumbai


S RAMANI
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

