

**NATIONAL COMPANY LAW TRIBUNAL
AMEDABAD BENCH
AHMEDABAD**

**IA/291, 293, 295, 296, 297, 299, 300, 302, 303, 304, 305,
306, 307, 308, 309, 310, 311 & INV. P. No. 2 & 3 of 2017
IN TP No. 132/397-398/NCLT/AHM/2016 (New)
CP No. 61/397-398/CLB/MB/2016 (old)**

1. Mr. Thakor Govindlal Sheth
A-32 Adhar Society
Waghodia Road
Vadodara **Applicant in I.A. No. 291 of 2017**

2. Mrs. Vilasben Vinubhai Patel
14 Tirupati Society
Opp. Mental Hospital
Karelibaug
Vadodara **Applicant in I.A. No. 293 of 2017**

3. Mr. Kanubhai Chaturbhai Patel
828 Fortune Tower,
Sayajigunj
Vadodara **Applicant in I.A. No. 295 of 2017**

4. Mr. Jayesh Ramanbhai Patel
725 Fortune Tower,
Sayajigunj
Vadodara **Applicant in I.A. No. 296 of 2017**

5. Mr. Nitin Dinubhai Dave
A/4, Ishwar Shanti Society
Karelibaug
Vadodara **Applicant in I.A. No. 297 of 2017**

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6. Mr. Jayant Laxmanrao Gaekwad
829 Fortune Tower,
Sayajigunj
Vadodara **Applicant in I.A. No. 299 of 2017**

7. Mr. Shailesh M. Bhoite
C-68, Mangalya Park Society
Warasiya Ring
Vadodara 725 Fortune Tower,
Sayajigunj
Vadodara **Applicant in I.A. No. No. 300 of 2017**

8. Mr. Manan Bharat Shah
722 Fortune Tower
Sayajigunj
Vadodara **Applicant in I.A. No. 302 of 2017**

9. Mr. Sanjay Amratlal Panchal
513 Fortune Tower, Sayajigunj
Vadodara 725 Fortune Tower,
Sayajigunj
Vadodara **Applicant in I.A. No. 303 of 2017**

10. Mr. Sanjay Nagjibhai Bengali
A-5 Shivasaray Society
Nr. Petrol Pump
Vasna Road
Vadodara 725 Fortune Tower,
Sayajigunj
Vadodara **Applicant in I.A. No. 304 of 2017**

11. Mr. Ashish Jashwantlal Chokshi
Shop No. 24, Bombay Shopping Centre
Race Course
Vadodara 725 Fortune Tower,
Sayajigunj
Vadodara **Applicant in I.A. No. 305 of 2017**

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12. M/s. S.L. Bansal Securities P. Ltd.
429, Fortune Tower
Sayajigunj
Vadodara **Applicant in I.A. No. 306 of 2017**
13. Mr. Shethji Yagnesh Krishnavadan
Opp. Nabejrai Akhada
Dandia Bazar
Vadodara **Applicant in I.A. No. 307 of 2017**
14. M/s. Thakkar Stock Brokers Pvt. Ltd.
211 Fortune Tower
Sayajigunj
Vadodara **Applicant in I.A. No. 308 of 2017**
15. Mrs. Darshana Jayesh Thakkar
24 Shantikunj Society
Akota
Vadodara **Applicant in I.A. No. 309 of 2017**
16. Mr. Mukesh Dahyabhai Joshi
A-2, Sundervan Duplex
Opp. GEB Water Tank
Karelibaug
Vadodara **Applicant in I.A. No. 310 of 2017**
17. Mr. Sandip Babulal Mehta
409 Fortune Tower
Sayajigunj
Vadodara **Applicant in I.A. No. 311 of 2017**

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18. . Viel Insurance Services P. Ltd.
Anandiai Gosavi Yashiet Pada
Kurar Village, Malad (East)
Mumbai 400 097
19. Traub Automatics Ltd.
Having its registered Address at
Chincholi Bunder Road, Malad (West)
Mumbai, Maharashtra -400064
20. Lisa Finvest Pvt Ltd
Having its registered Address at
Gokul Bungalow Near,
Inox Multiples Race Course,
Baroda, Gujarat-390007

...Applicant in Inv. P. No. 2 of 2017

21. Mr. Shailesh M. Bhoite
C-68, Mangalya Park Society
Warasiya Ring
Vadodara 725 Fortune Tower,
Sayajigunj
Vadodara
22. Shri Shailesh Thakor Govindlal Sheth
23. Shri Jayant Laxmanrao Gaekwad
24. Shri Nitin Dinubhai Dave
25. Shri Kanubhai C. Patel
26. Shri Manan B Shah
27. Sanjay A. Panchal
28. Mrs. Vilasben Vinubhai Patel
29. Shri Ashish Jaswant Chokshi
30. Shri Sanjay Nagjibhai Bengali
31. Shri Yagnesh K. Sethji
32. Mrs. Darshana Jayesh Thakkar
33. Shri Mukesh Dayabhai Joshi
34. Shri Sandip Babulal Mehta
35. S.L. Bansal Securities Private Ltd.
Through its Director Mr. Sanjay Bansal

**Applicants in
Inv. P. No.
3 of 2017**

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36. M/s. Thakkar Stock Brokers Pvt. Ltd.
Through its Director Mr. Jayesh Thakkar

37. Shri Jayesh R Patel

VERSUS

1. Dr. Markand Parikh
109, Dhananjay Society
Vadodara 390 020

Original Petitioner

2. Vadodara Stock Exchange Limited.
3rd Floor, Fortune Towers
Opp. Parsi Agiyari
Sayajigunj
VADODARA - 390 005

**Original
Respondents
1 to 3**

3. Jagdish Vinodchandra Thakkar
2, Arunoday Society, Alkapuri
VADODARA 390 005

4. Nitin Hasmukh Parikh
A/1 Shaktidham, Old Padra Road
Diwalipura
VADODARA 390 007

5. Shailendrakumar Mansingrao Bhoite
C/68, Mangalya Park Society
Hami Warsiya Ring Road
VADODARA 390 006

6. Shashikant Punjalal Parikh
40, Muktanand Society
Karelibaug,
VADODARA 390 018

**Original
Respondents**

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7. Satyanarayan Madanlal Shah
1/A, Shrenik Park, Jain Derasar
VADODARA 390 020 } **4 to 10**
8. Manoj Vallabhdas Shah
476, Chandranagar Society
Nr. State Bank, Mandvi
VADODARA 390 006 }
9. Jayant Laxman Gaekwad
5, Ishwar Sadan, 2nd Floor
Opp. Lakdi Pool, Dandi Bazar
VADODARA 390 001 }
10. Sonal Jayeshbhai Parikh
20-B, Lalbaug Society, Manjalpur
VADODARA 390 011 }
11. Ashish Jashwantlal Chokshi
40, Shakuntal Park Society
Bhind Shreyas School, Manjalpur
VADODARA 390 011 }
12. Financial Technologies (India) Ltd.
Shakti Tower-1, 7th Floor, Premises E,
766, Anna Salai, Thousand Lights
Chennai
TAMIL NADU 600 002 }
13. Maharani Securities Pvt. Ltd.
824, Fortune Towers
Opp. Parsi Agiyari
Sayajigunj
VADODARA 390 005 } **Original
Respondents
11 to 15**

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14. Gauri Yagnesh Bapat
8, Jay Bajrang Society
Opp. Sitaram Complex
Subhanpura
VADODARA 390 023
15. Chamanlal Vedviyas Mathrani
158, Kenya Nagar, Abhilasha Circle
New Sama Road
Fatehgunj
VADODARA 390 008
16. VSE Stock Services Limited
3rd Floor, Fortune Towers
Opp. Parsi Agiyari
Sayajigunj
VADODARA 390 005

Order delivered on 20th December, 2017

CORAM: Hon'ble Mr. Bikki Raveendra Babu, Member Judicial

Hon'ble Ms. Manorama Kumari, Member Judicial

Appearance:

For the petitioners: Learned Advocate Mr. Paritosh Calla
(Inv P. 2/2017)
Learned CA Mr. Kiran Shah

For the respondents:

01. Intervening Petition No. 2 of 2017 is filed by the shareholders of Vadodara Stock Exchange Limited. who are together holding 12.5% of the total paid up share capital of Vadodara Stock Exchange Limited. seeking their intervention in the proceedings in T.P. No. 132 of 2016 (New) C.P. No. 61 of 2016 (Old).
02. Intervening Petition No. 3 of 2017 is filed by the applicants in IA 291, 293, 295 to 297, 299, 300, 302 to 311 of 2017 seeking their intervention in the proceedings in Company Petition No.

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61 of 2016 (Old) TP No. 132 of 2016 (New) and to allow the intervening applicants to join as parties to CP No. 61 of 2016 (Old) TP No. 132 of 2016 (New).

03. Facts in brief that are essential for the disposal of all these applications are as follows: -

04. Dr. Markand Jagmohandas Parikh described as the first respondent in this common order filed Company Petition No. 61 of 2016 before Hon'ble Company Law Board, Mumbai Bench under section 397, 398, 402 and 403 alleging certain acts of oppression and mismanagement, prayed for the following reliefs, to put an end to the oppression and mismanagement seeking directions to original respondents who are described as respondents No. 2 to 15 in this common order, to appoint a proper person to manage the company, to grant order of permanent injunction restraining the respondents No. 3 to 13 and respondent No. 15 herein from exercising their voting rights, to give directions to reinstate petitioner, Mr. Dakshay Thakkar and Mr. Himanshu V. Parekh as Directors of the first respondent company, to appoint independent Chartered Accountants as Special Auditors for carrying out special audit of the company, to pass perpetual order of injunction restraining respondents from creating false accounts and for declaration that extra-ordinary general meeting held on 20.02.2016 is invalid and some other reliefs.



05. After constitution of National Company Law Tribunal, CP No. 61 of 2016 was transferred to this Tribunal at Ahmedabad. In the first instance, IA No. 2 of 2017 is filed. Thereafter, some other shareholders in Vadodara Stock Exchange Ltd. filed IA 291, 293, 295 to 297, 299, 300, 302 to 311 of 2017 seeking vacation/modification of interim order dated 28.04.2016 passed by the Hon'ble Company Law Board, Mumbai. Following is the order passed by Hon'ble Company Law Board on 28.04.2016.

"On the mentioning made by the petitioner side, for having the respondents' counsel conceded to maintain status quo over the shareholding and capital of the company and also not to create third party rights over the fixed assets of the company without prior approval from this Bench, for there being no objection to the petitioner counsel for passing such a direction, this Bench has, therefore, accordingly directed the respondents.

Respondents are directed to file reply within four weeks hereof, rejoinder, if any, within six weeks thereof.

06. Thereafter, applicants in IA 291 of 2017 and batch in the aforesaid applications filed Intervening Petition No. 3 of 2017.





07. It is the case of intervening petitioners in Intervening Petition No. 2 of 2017 that respondents are indulging in certain acts of oppression and mismanagement and they are committing fraud upon the shareholders. It is also alleged that respondent No. 10 who is acting as Chairman of the respondent company is misusing the company to fabricate records and taking arbitrary decisions. It is further stated that applicants together in Intervening Petition No. 2 of 2013 are holding 12.5% of the total paid up share capital of the second respondent company. It is further stated that requisition for calling Extra Ordinary General Meeting dated 25.01.2017 was hand delivered to the Board of Directors of the second respondent company, but respondent No. 10 herein rejected the aforesaid requisition on 10.02.107 stating that the Board of Directors of the second respondent company is unable to act upon the said requisition since the same does not satisfy the requirements of the relevant provisions of the Companies Act, 2013.
08. For all the above reasons, according to the applicants in Intervening Petition No. 2, they have got right to intervene in the proceedings of CP No. 61 of 2016 (Old) in TP No. 132 of 2016 (New).
09. Vadodara Stock Exchange Limited filed reply stating that Rule 32 provides for filing on interlocutory applications but not intervening application. It is also stated that applicants have no separate cause of action different from the cause of action





pleaded in Company Petition No. 61 of 2016. Second respondent company denied the allegation of oppression and mismanagement.

10. Respondent No. 4 herein filed reply stating that application is filed without authorisation of respective Board of Directors of the applicant company and, therefore, it is liable to be dismissed.
11. Respondent No. 3 herein filed reply stating that there is inconsistency in verification of the affidavits and the resolution authorising Mr. Manoj Vatekar to file this application.
12. Learned counsel appearing for the original petitioner i.e. respondent No. 1 herein reported no objection for allowing the Intervening Application No. 2 of 2017.
13. On perusal of the pleadings in CP No. 61 of 2016 (Old) it appears that there is a dispute in the management of Vadodara Stock Exchange Ltd. There are two groups of Directors and two groups of shareholders in Vadodara Stock Exchange Ltd. The applicants in Intervening Application No. 2 of 2017 are the shareholders in Vadodara Stock Exchange Ltd. having shareholding of 12.5%.
14. Applicants stated on oath that their requisition for calling of Extra Ordinary General Meeting has been rejected by



respondent No. 10 herein who is acting as Chairman of the company.

15. The cause of action for filing CP No. 61 of 2016 is an act of oppression and mismanagement. Intervening petitioners are shareholders of Vadodara Stock Exchange Limited. and their right to participate in the proceedings cannot be taken away when they have got right to question about the acts of oppression and mismanagement, if any, in the conduct of affairs of Vadodara Stock Exchange Limited. When already a petition is pending alleging certain acts of oppression and mismanagement in the conduct of affairs of Vadodara Stock Exchange Limited. there is nothing wrong in allowing the applicants/shareholders to intervene in the matter. Simply because the applicants in Intervening Petition No. 2 of 2017 are allowed to intervene the cause of action is not going to change. This Tribunal ultimately has to decide whether there are any acts of oppression and mismanagement or not after final hearing in the main petition. Therefore, this Tribunal is of the considered view that Intervening Petitioners in Intervening Petition No. 2 of 2017 are proper and necessary parties to the proceedings in TP No. 132 of 2016 and there is need to add them as respondents No. 16 to 18 and allow them to file their pleadings. Therefore, there shall be a direction to the original petitioner to amend the cause title of the original petition to include the names of applicants in Intervening Petition No. 2 of

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2017 as respondents No. 16 to 18. Intervening Petition No. 2 of 2017 is disposed of accordingly.

16. Intervening Petition No. 3 of 2017 is filed by applicants in IA 291, 293, 295 to 297, 299, 300, 302 to 311 of 2017 who are shareholders of Vadodara Stock Exchange Limited. Their grievance is that they are unable to sell their shares even though there is good offer to purchase their shares, in view of order passed by Hon'ble Company Law Board on 28.04.2016 wherein status quo over the shareholding and capital of the company has been ordered. Since applicants in IA 291, 293, 295 to 297, 299, 300, 302 to 311 of 2017 are not parties to the proceedings they have filed Intervening Petition No. 3 of 2017.
17. In applications IA 291, 293, 295 to 297, 299, 300, 302 to 311 of 2017 and in Intervening Petition No. 3 of 2017 it is the plea of the respondents that there shall not be any modification of interim order dated 28.04.2016 passed by Hon'ble Company Law Board regarding shareholding.
18. Now this Tribunal proceed to consider how far request of the applicants in IA 291, 293, 295 to 297, 299, 300, 302 to 311 of 2017 can be considered by this Tribunal.
19. Respondent No. 7 herein has also stated that the present Board did not follow the direction of the exit order of SEBI dated 09.11.2015 in respect of Vadodara Stock Exchange Ltd.





20. Original petitioner filed detailed reply stating that applicants contravened the provisions of the Companies Act, 2013. It is also stated that the applicants moved the said application in collusion with Ms. Sonal Parikh who is respondent No. 9 in the main petition. In support of the same, he placed copy of SMS from Ms. Sonal Parikh asking the promoters to offer their shares for a fancy price. It is alleged that Ms. Sonal Parikh who is seeking to get hold of majority in the respondent company is purchasing shares of other shareholders. It is stated that M/s. Northvale Capital Pte. Ltd. is a company that does not exist in India and it may be a foreign company. The applicants further stated that they have entered into an agreement to sell their shares to M/s. Northvale Capital Pte. Ltd. According to the original petitioner, Ms. Sonal Parikh wants to acquire majority of shares and then convene AGM which is scheduled to be held on or before 30th September, 2016. Original petitioner also alleged that there is violation of interim order dated 28.04.2016 in respect of maintaining the shareholding and capital of Vadodara Stock Exchange Ltd. and for which original petitioner is contemplating separate action.
21. In the Intervening Application No. 3 of 2017 resolutions of the Board of Directors of the Company relating to the intervening applicants is filed and therefore objection of the original petitioner/first respondent herein that there is no resolutions of





the Board of Directors of some of the applicants or corporate shareholders do not merit acceptance.

22. Learned C.A. appearing for original applicants in IA 291, 293, 295 to 297, 299, 300, 302 to 311 of 2017 and the Intervening Petition No. 3 of 2017 relying upon a decision of Hon'ble Supreme Court of India in the matter of Darius Rutton Kavasmaneck vs. Gharda Chemicals Ltd. contended that restriction of transfer of shares of any public limited company is violation of provisions of the Companies Act.

23. In that judgement, in para 44 and 45, Hon'ble Supreme Court referred to the decision of the Hon'ble High Court. Hon'ble High Court examined whether there can be any restriction on the shareholder's right to transfer shares in a public company. Hon'ble High Court came to the conclusion that in view of amendments made in 1998 and 2000 to the Companies Act, Article 57 of the Articles of Association of the first respondent company would no longer govern the rights of the shareholders to transfer their shares. Hon'ble High Court also held in case of a public limited company, merely because its shares are not listed in any recognized stock exchange does not mean that there is any restriction on their transfer. Hon'ble High Court also held that the shares continue to be freely transferable as they are shares of a public company. The said decision of Hon'ble High Court was upheld by Hon'ble Supreme Court. In





para 85 of the said judgement, Hon'ble Supreme Court observed
as follows: -

"85 For all the above-mentioned reasons, we are unable to agree with the submission of the respondents that by the Amendment Act 53 of 2000 and more particularly sub-section (11) of Section 43 A, the Parliament intended to curtail or destroy the collective right of the shareholders of a HYBRID company to impose restrictions on the rights of the individual shareholders to have unfettered right of transfer of their shares. Such a restriction which, in our view, constitutes a restriction on the fundamental rights under Article 19 (1) (c), requires a more express legal authority and cannot be brought in by inference. "

24. In the case on hand, Vadodara Stock Exchange Limited is a public limited company although it is not a listed company. Therefore, shareholders of Vadodara Stock Exchange Limited have got every right to sell their shares.
25. The main objection of the original petitioner and respondent No. 7 is that the applicants in collusion with Ms. Sonal Parikh filed this petition and Ms. Sonal Parikh wants to gain majority in the General Body Meeting by purchasing the shares of other shareholders. Even if it is true, it is not a ground to restrain





shareholders of Vadodara Stock Exchange Limited from selling their shares if there is a good offer of money for their shares. For that matter, even the original petitioner can purchase shares of other shareholders also.

26. Only reason for the applicants to approach this Tribunal is interim order dated 28.04.2016 passed by Hon'ble Company Law Board. Order of Hon'ble Company Law Board reads that status quo be maintained in respect of shareholding and capital. It is obviously an order not to change the authorised share capital or the paid up share capital of the first respondent company but not restricting the sale of shares of a public limited company by shareholders. So long as there is no change in the shareholding pattern i.e. authorised and paid up share capital of company, there cannot be any grievance either to the original petitioner or to any of the original respondents, if some of the shareholders sell their shares for a good value of money. In that view of the matter it is just and proper to permit the applicants in IA 291, 293, 295 to 297, 299, 300, 302 to 311 of 2017 to sell their shares subject to approval, if any, required from the Regulatory Authorities. However, there shall not be any change in the share holding pattern of Vadodara Stock Exchange Ltd. The interim order dated 28.04.2016 passed by Hon'ble Company Law Board is only in respect of shareholding pattern and capital of the second respondent company herein i.e. only respect of authorised share capital and paid up share capital. This order is applicable to the applicants who

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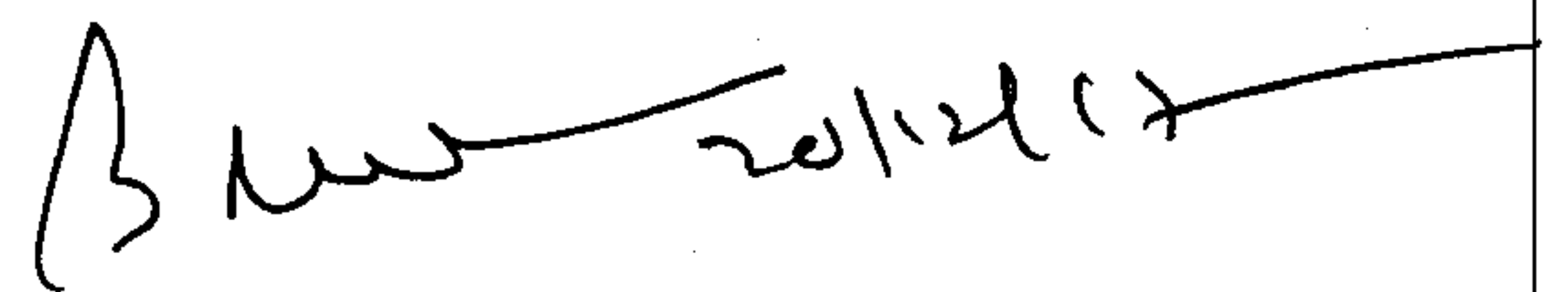
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approached this Tribunal but not for other shareholders of Vadodara Stock Exchange Ltd. Since applicants in IA 291, 293, 295 to 297, 299, 300, 302 to 311 of 2017 not being parties they have come up with an application to intervene. Therefore, intervention of applicants in IA 291 of 2017 and batch in the proceedings is necessary to a limited extent since they want to sell away their shares to one person or the other. Therefore, their intervention is necessary only for the purpose of seeking orders in respect of sale of their shares and to that limited extent Intervening Petition No. 3 of 2017 is allowed.

27. In the result, IA 291, 293, 295 to 297, 299, 300, 302 to 311 of 2017 are disposed of permitting the applicants to sell their shares in Vadodara Stock Exchange Ltd. to any person of their choice, subject to approval, if any, required from other Regulatory Authorities. But, there shall not be any change in the shareholding pattern of Vadodara Stock Exchange Limited. i.e. authorised share capital and paid up share capital. Intervening Petition No. 2 of 2017 is allowed. Amendments shall be carried out as mentioned in para 15 of this order. Intervening Petition No. 3 of 2017 is allowed to the limited extent of considering the IAs 291, 293, 295 to 297, 299, 300, 302 to 311 of 2017.



Ms. MANORAMA KUMARI
MEMBER JUDICIAL



BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced in open court on the 20th day of December, 2017.