

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. JJ/AM/AO-118/2014

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of:

Ms. Neha Jainarain Agarwal

(PAN – AIQPA8864L)

In the Matter of: Jaipan Industries Limited

BACKGROUND

1. Securities and Exchange Board of India **(SEBI)** conducted an examination in the scrip of Jaipan Industries Limited **(Company)**. The shares of the Company are listed on BSE Limited **(BSE)**.
2. It was observed that Neha Jainarain Agarwal **(Noticee)** was a Promoter of the Company. It was also observed that as per the disclosure made by the Company for the quarter ending March 2013, the Noticee was holding 50,000 shares of the Company. It was further observed that subsequent to the said disclosure, the Noticee further acquired shares of the Company aggregating to 25,338 shares. However, the Noticee did not make the necessary disclosures to BSE under provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 **(PIT Regulations)**.
3. The undersigned was appointed as the Adjudicating Officer vide order dated June 18, 2014 and the said appointment was conveyed vide proceedings of the Whole Time Member dated June 23, 2014 to inquire and adjudge under Section 15A(b) of the SEBI Act, 1992, the alleged violation of provisions of Regulation 13(4A) read with 13 (5) of PIT Regulations committed by the Noticee.

SHOW CAUSE NOTICE, HEARING & REPLY

4. Show Cause Notice (**SCN**) in terms of the provisions of Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (**Adjudication Rules**) was issued to the Noticee on June 26, 2014, calling upon the Noticee to show cause why an inquiry should not be held against her under Rule 4(3) of the Adjudication Rules and penalty be not imposed under Section 15A(b) of the SEBI Act, 1992 for the alleged violations.
5. The aforesaid SCN was duly delivered to the Noticee on June 27, 2014. However, as no reply was received, vide Notice dated July 18, 2014 the Noticee was granted an opportunity of personal hearing on August 07, 2014. The Noticee failed to avail the opportunity of personal hearing and hence vide Notice dated August 08, 2014 the Noticee was given final opportunity of personal hearing on August 22, 2014. Vide email dated August 08, 2014 the Noticee (through her email id agarwalneha86@gmail.com) *inter alia* made the following submissions:
 - *This is to bring to your notice that attached disclosures were made to BSE.*
 - *The filing was done as soon as it had come to the notice of Promoter.*
 - *The delay in filing was due to unawareness and lack of knowledge.*
 - *I assure you that the mistake won't be repeated further.*
6. I note that despite receiving the two Hearing Notices dated July 18, 2014 and August 08, 2014; the Noticee failed to avail the opportunity of personal hearing. For the reasons mentioned above, I observe that the Noticee was provided with enough opportunity of being heard and hence, the inquiry is proceeded with taking into account the material available on record.

ISSUES FOR CONSIDERATION

7. After perusal of the material available on record, I have the following issues for consideration, viz.,
 - A. Whether the Noticee has violated provisions of Regulation 13(4A) read with 13(5) of PIT Regulations?
 - B. Whether the Noticee is liable for monetary penalty under Section 15 A(b) of the SEBI Act, 1992?

C. What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

FINDINGS

8. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

ISSUE 1: Whether the Noticee has violated provisions of Regulation 13(4A) read with 13(5) of PIT Regulations?

9. The aforesaid provisions of PIT Regulations read as under:

Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992

***Disclosure of interest or holding in listed companies by certain persons
Continual disclosure.***

13 (4A) Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

13 (5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within 2 working days of:

- (a) the receipts of intimation of allotment of shares, or*
- (b) the acquisition or sale of shares or voting rights, as the case may be.*

10. From the material available on record, I note that the Noticee, a Promoter of the Company, was holding 50,000 shares of the Company as on March 31, 2013. Subsequent to the said disclosure, the Noticee further acquired shares of the Company aggregating to 25,338 shares; details of which were as follows:

Date of Holding as per DWBIS Data	Shares Acquired	Shares Post Holding	Applicable Disclosure
29.1.2013		50000	Disclosed by the company on BSE, under the shareholding pattern for March 2013.
3.4.2013	10638	60638	
4.4.2013	350	60988	
5.4.2013	5000	65988	
8.4.2013	100	66088	
9.4.2013	1000	67088	

10.4.2013	800	67888	
12.4.2013	3000	70888	
15.4.2013	3000	73888	
16.4.2013	500	74388	
27.9.2013	950	75338(1.22%)	Regulation 13(4A) of PIT Regulations, as the change in the entities shareholding was more than 25,000 shares from the last disclosure made.

11. The aforesaid transactions of the Noticee resulted in a change in shareholding of the Noticee in the Company, exceeding 25,000 shares. Hence, the Noticee ought to have made the required disclosures to BSE in Form D, within two working days of acquisition of shares. However, the Noticee had failed to make the disclosures as required under provisions of Regulation 13(4A) read with 13(5) of PIT Regulations. From the SCN and submissions of the Noticee I note that the Noticee had crossed the threshold limit requiring disclosure on September 27, 2013. Hence, the Noticee should have made the disclosure under provisions of Regulation 13(4A) to the Company and also to BSE within two working days. However, the Noticee made the disclosure to the Company after a lapse of several months and had failed to make the disclosure to BSE. The position with respect to the disclosures required and disclosures made is as follows:

Date of the transaction	Due date of Compliance	Actual date of Compliance to the Stock Exchange u/R 13(4A)	Actual date of Compliance to the Company u/R 13(4A)	Alleged Violation
27.9.2013	1.10.2013	Not Disclosed	04.03.2014	Delay of 154 days in disclosing to the Company and Non –disclosure to the Stock Exchange.

12. I note that vide email dated August 08, 2014 the Noticee submitted that disclosures were made to BSE and delay in filing was due to unawareness and lack of knowledge. However, on perusal of the attachments to the email of the Noticee, I note that the Noticee had made disclosure to the Company on March 04, 2014 and the Company had in turn disclosed to the stock exchange as per the provisions of Regulation 13(6) of PIT Regulations. Hence, it is clear that the Noticee, by herself had not submitted any disclosure to the stock exchange. A reading of Regulation 13(4A) and 13(5) of PIT Regulations clearly point out that the person concerned has to make the necessary disclosures not only to the company but to stock exchanges also within 2 working days of acquisition/sale of shares. The object underlying these regulations is to bring more

transparency by dissemination of complete information to the stakeholders not only by the concerned company but by the individual acquirer/seller as well. Hence, I hold that the Noticee has failed to make the required disclosures to BSE. Therefore, the Noticee has violated the provisions of Regulation 13(4A) read with 13(5) of PIT Regulations.

ISSUE 2: Whether the Noticee is liable for monetary penalty under Section 15 A(b) of the SEBI Act, 1992?

13. The provisions of Section 15A(b) of the SEBI Act, 1992, read as under:

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*

(a)

(b) *to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.*

14. In the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)*, the Hon'ble Supreme Court of India has held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant*".

15. As already observed, the Noticee failed to make disclosures as required under Regulation 13(4A) read with 13(5) of PIT Regulations. Therefore, I find that the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992.

ISSUE 3: What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

16. While imposing monetary penalty it is important to consider the factors stipulated in Section 15J of the Act, which reads as under:

"15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.”

17. In the absence of material on record, the amount of disproportionate gain or unfair advantage made as a result of the default and the amount of loss caused to the investors due to the said default cannot be quantified. However, the fact remains that the Noticee, who is a Promoter of the Company, transacted in substantial number of shares of the Company, but failed to fulfill her duty of making necessary disclosures to the stock exchange. Our entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Hence, the omission on part of the Noticee was detrimental to the interest of investors in securities market. However, there is no material on record to indicate that the default of the Noticee was repetitive.

18. In view of the aforesaid paragraphs, it is now established that the Noticee had violated the provisions of Regulation 13(4A) read with 13(5) of PIT Regulations for which I find that imposing a penalty of ₹ 3,00,000/- (Rupees Three Lakhs only) on the Noticee would be commensurate with the violation committed.

ORDER

19. Considering the facts and circumstances of the case, in terms of the provisions of SEBI Act, 1992 and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹ 3,00,000/- (Rupees Three Lakhs only) on Neha Jainarain Agarwal under Section 15A(b) of the SEBI Act, 1992 for violation of provisions of Regulation 13(4A) read with 13(5) of PIT Regulations.

20. The penalty shall be paid by way of demand draft drawn in favour of “SEBI – Penalties Remittable to Government of India” payable at Mumbai within 45 days of receipt of this Order. The said demand draft shall be forwarded to the Division Chief, Integrated Surveillance Department,

Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.

21. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this Order are being sent to the Noticee and also to Securities and Exchange Board of India.

Date: August 28, 2014
Place: Mumbai

Jayanta Jash
Adjudicating Officer