

**ADJUDICATION ORDER NO. AO/JS/VRP/ 76-82 /2018**

**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:**

<b>Sr. No.</b>	<b>Name of the Entity &amp; PAN No.</b>	<b>Sr. No.</b>	<b>Name of the Entity &amp; PAN No.</b>
1	Jagdish T Jain PAN No. AAFPJ8045D	5	Ugamdevi Jain PAN No. AAHPJ0840J
2	Sherisha Technologies Pvt Ltd PAN No. AAHCS6471P	6	Dimple Jain PAN NO. AAHPJ0840J
3	Tarachand Jain PAN No. AAFPJ8044C	7	Seema Jain PAN No. AEZPJ8013K
4	Anil Jain PAN No. AADPA8582A		

**In the matter of Refex Industries Limited**

**BACKGROUND**

1. Securities and Exchange Board of India (**SEBI**) observed that during the period of July 1, 2015 to July 23, 2015 (**relevant period**) the entities viz. Jagdish T Jain, Sherisha Technologies Pvt Ltd., Tarachand Jain, Anil Jain, Ugamdevi Jain, Dimple Jain and Seema Jain (**Noticees**) had allegedly violated the provisions of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (**SAST Regulation, 2011**).

2. The date wise change in shareholding of promoter group is as under:

<b>Date</b>	<b>% of shareholding held by the promoters to the total shareholding</b>				
	<b>Jagdish Jain</b>	<b>Sherisha Technologies P. Ltd.</b>	<b>Other Promoters whose shareholding did not change</b>	<b>Total promoter group holding</b>	<b>Cumulative change in total holding</b>
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>
31/03/2015	2.52	13.34	18.71	34.57	0.00
05/04/2015	2.52	13.46	18.71	34.69	0.12
30/06/2015	1.94	13.46	18.71	34.11	-0.46
02/07/2015	1.00	13.46	18.71	33.17	-1.4
08/07/2015	0.68	13.46	18.71	32.85	-1.72
09/07/2015	0.65	13.46	18.71	32.82	-1.75
23/07/2015	0.32	13.46	18.71	32.49	-2.08

Thus, it was alleged that the Noticees Jagdish Jain along with PAC i.e. other

Noticees from the promoter group namely Sherisha Technologies P. Ltd, Tarachand Jain, Anil Jain, Ugamdevi Jain, Dimple Jain & Seema Jain were required to disclose the change in holding under Regulation 29 (2) read with 29 (3) of Takeover Regulations, 2011 with the trigger date of July 23, 2015 as stated in column F in above table.

### **APPOINTMENT OF ADJUDICATING OFFICER**

3. An Adjudicating Officer was appointed vide order dated May 16, 2017 under Section 19 read with section 15-I of the Securities and Exchange Board of India Act, 1992 (**SEBI Act, 1992**) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rule, 1995 (**Adjudication Rules**), to inquire into and adjudge under Section 15A(b) of SEBI Act, 1992.

### **SHOW CAUSE NOTICE, REPLY AND HEARING**

4. A common Show Cause Notice (hereinafter referred to as '**SCN**') in terms of the provisions of Rule 4 of Adjudication Rules read with Section 15I of SEBI Act, 1992 was issued on October 25, 2017 to the Noticees calling upon the Noticees to show cause as to why an inquiry should not be held against them under Rule 4 of the Adjudication Rules and penalty be not imposed for the alleged violation.
5. The SCN was duly delivered to the Noticees. The entities sought further time to reply to the SCN, which was granted to them.
6. The Noticees submitted their reply and sought to rely on a SEBI Order dated February 02, 2017 passed in the matter of Refex Industries Limited in respect of Shri Anil T Jain wherein in similar matter has been dealt with by SEBI. The individual submissions of the notices are as under:
  - 6.1. The Noticee viz, Jagdish Jain made preliminary submissions vide letter dated November 14, 2017, and also sought further time to reply to the SCN vide email dated November 25, 2017, which was granted and the Noticee was advised to file the response by December 07, 2017. Noticee filed a response dated December 08, 2017 and December 19, 2017 and hearing in the matter was held on December 21, 2017. The Authorized Representative (**AR**) appeared during the hearing and reiterated the written submissions made earlier. Further additional submissions were made vide letter dated January 06, 2018 which are as follows:

*I was holding 3,89,704 shares as of 06/03/2015 which represents 2.52% of the total share capital of the Company.*

*Disposed off 2,89,500 equity shares upto 17/07/2015 which represents 1.87% of the total share capital of the Company.*

*non-executive Director in Refex Industries Ltd. until 20/03/2015 on which date I resigned my directorship of the Company and ceased all my relationship with the Company.*

*I understand the necessary ROC formalities had also been completed by the Company.*

*I would also like to submit that I do not have any pecuniary relationship with the Company since my ceasing to be the Whole Time Director of the Company.*

*I had ceased to be the Whole Time Director w.e.f. 01/01/2014 after which I continued only as non-executive non independent Director till 20/03/2015 and on which date as mentioned earlier*

*You will appreciate that after my resignation I have not received any intimation from the Company regarding any of the Board meetings since I ceased to be the Director of the Company from 20/03/2015.*

*I am financially independent and as such I do not look to Refex Industries Ltd. or its promoters for any monetary help and assistance. The intention to sell the shares of Refex Industries Ltd. was to provide funds to my Company which is into the business of steel trading.*

*I run my own steel trading business and due to urgent fund requirement I had sold the shares in good faith to support my financial requirements in my business and also repay the certain outstanding loans taken by me.*

*any non-disclosure of change in shareholding has been consequential and not deliberate. I have not traded in the shares of Refex Industries but only sold the shares to meet my pressing financial requirements.*

*I did neither have nor possess any information as an insider of the Company.*

*I request you to drop the proceedings against me both under Regulation 29(2) read with 29(3) of SAST Regulation 2011 and the Regulation 7(2) (a) of SEBI (PIT) Regulation 2015 for which I shall be ever grateful.*

Pursuant to hearing, the noticee made additional submission vide letter dated January 8, 2018:-

*the shareholding of Smt. Seema Jain has remained unchanged since the quarter ending March 2015 and consequent to which there has not been any change in the percentage of shareholding.*

*I had resigned from the Board w.e.f. 20/03/2015. The necessary documentary proof as filed with ROC is attached.*

*the audited annual reports for the year ended 31/03/2015 where you will be pleased to observe that I had resigned from the Board of Refex and the same has been in the knowledge of the shareholders of the Company as also in the public domain as necessary filing had been made to the stock exchanges.*

*The investigation department of SEBI had also sent a notice (Ref. No. IVD/ID4/GRM/DB/24871/4 dated 1st September 2016) to explain the sale of shares in Refex for which I had submitted my replies vide letter dated 22/10/2016 and no further communication has been received so far.*

*I have already made an application to Refex Industries Ltd. seeking reclassification as a non promoter and to remove from the promoter group. The company ....is in the process of .....reclassification ....."*

6.2. The Noticee viz, Sherisha Technologies Pvt. Limited sought further time to reply to the SCN vide email dated November 25, 2017, which was granted and Noticee was advised to file the response by December 07, 2017. Noticee filed a response dated December 07, 2017, and hearing in the matter was held on December 21, 2017. The AR appeared during the hearing and reiterated the written submissions made earlier which are as follows:

*"our holdings in Refex Industries Ltd. both on the dates 01/07/2015 and 23/07/2015 was 20,83,411 equity shares which works out to 13.46% of the total paid up share capital of the Company.*

*As there was no change in the shareholding of Refex Industries Ltd. between 01/07/2015 & 23/07/2015, it appears that there was no requirement on our part for disclosure to the Stock Exchanges in terms of Regulations 29(2) & (3) of SEBI (SAST) Regulations 2011. the acquisition of 18,076 equity shares acquired between 03/04/2015 to 10/04/2015 represents 0.12% of the total share capital of the Company.*

*We further understand that in terms of the SEBI (SAST) Regulations, 2011 and SEBI (Prohibition of Insider Trading) Regulations, 2015, there is a necessity to disclose to the exchanges in case there is a change in the total percentage of shareholding by the*

*promoter and promoter group. The requirement of disclosure is necessitated when such change exceeds 2% of the total share capital of the Company.*

*the total promoter and promoters group and person acting in concert, there has been a change of hardly 2.08% i.e. from a holding of 34.57% as of 31/03/2015, the holding has come down to 32.49% as of 23/07/2015.*

*there has not been any substantial change or acquisition/sale in violation of prohibition of insider trading Regulations or Takeover Regulations.*

*request you to kindly drop the proceedings against us for which we shall be ever grateful.”*

6.3. The Noticee viz, Tarachand Jain sought further time to reply to the SCN vide email dated November 25, 2017, which was granted and the Noticee was advised to file the response by December 07, 2017. Noticee filed a response dated December 07, 2017, and hearing in the matter was held on December 21, 2017. The AR appeared during the hearing and reiterated the written submissions made earlier which are as follows:

*“I was holding 2,52,206 equity shares at the end of 31/03/2015 and even as of 30/09/2015 the same number of shares have been held by me in Refex Industries Ltd.*

*I am one of the promoters of the Company along with Mr. T. Anil Jain who is my son. Considering the total equity share capital of Refex Industries which is 1,54,75,176 equity shares of Rs.10/- each (Rs.15.48 crores)*

*my holding is only 2,52,206 equity shares which represents 1.63% of the total paid up share capital of the Company.*

*there has not been any change in my shareholding in these quarters*

*I do not participate in the day to day affairs of the Company, hence the proceedings against me for any violation for non disclosure to the stock exchanges may please be dropped.*

*I further understand that in terms of the SEBI (SAST) Regulations, 2011 and SEBI (Prohibition of Insider Trading) Regulations, 2015, there is a necessity to disclose to the exchanges in case there is a change in the total percentage of shareholding by the promoter and promoter group. The requirement of disclosure is necessitated when such change exceeds 2% of the total share capital of the Company.*

*the total promoter and promoters group and person acting in concert, there has been a change of hardly 2.08% i.e. from a holding of 34.57% as of 31/03/2015, the holding has come down to 32.49% as of 23/07/2015.*

*there has not been any substantial change or acquisition/sale in violation of prohibition of insider trading Regulations or Takeover Regulations.*

*request you to kindly drop the proceedings against me for which I shall be ever grateful.*

*I would request you to give me an opportunity for a personal hearing.”*

6.4. The Noticee viz, Anil Jain sought further time to reply to the SCN vide email dated November 25, 2017, which was granted and the Noticee was advised to file the response by December 07, 2017. Noticee filed a response dated December 07, 2017, and hearing in the matter was held on December 21, 2017. The AR appeared during the hearing and reiterated the written submissions made earlier which are as follows:

*“I was holding 19,57,796 equity shares at the end of 31/03/2015 and even as of 30/09/2015 the same number of shares have been held by me in Refex Industries Ltd.*

*I am one of the promoters of the Company along with Mr. Tarachand Jain who is my father. My holding is only 19,57,796 equity shares which represents 12.65% of the total paid up share capital of the Company.*

*There has not been any change in my shareholding in these quarters, hence the proceedings against me for any violation for non-disclosure to the stock exchanges may please be dropped.*

*I further understand that in terms of the SEBI (SAST) Regulations, 2011 and SEBI (Prohibition of Insider Trading) Regulations, 2015, there is a necessity to disclose to the exchanges in case there is a change in the total percentage of shareholding by the promoter and promoter group. The requirement of disclosure is necessitated when such change exceeds 2% of the total share capital of the Company.*

*the total promoter and promoters group and person acting in concert, there has been a change of hardly 2.08% i.e. from a holding of 34.57% as of 31/03/2015, the holding has come down to 32.49% as of 23/07/2015.*

*there has not been any substantial change or acquisition/sale in violation of prohibition of insider trading Regulations or Takeover Regulations."*

- 6.5. The Noticee viz, Ugamdevi Jain sought further time to reply to the SCN vide email dated November 25, 2017, which was granted and the Noticee was advised to file the response by December 07, 2017. Noticee filed a response dated December 07, 2017, and hearing in the matter was held on December 21, 2017. The AR appeared during the hearing and reiterated the written submissions made earlier which are as follows:

*"I was holding only 3,97,031 equity shares of Refex Industries Ltd. both as at the end of 31/03/2015 and 30/09/2015.*

*my holding is only 3,97,031 equity shares which represents 2.56% of the total paid up share capital of the Company.*

*I do not participate in the day to day affairs of the Company and also not part of the Board of Directors of the Company.*

*I request you to kindly drop any proceedings against me for any violation for non disclosure to the stock exchanges.*

*I would like to further add that in terms of the Regulations I am classified as Promoters relative. I would once again most respectfully submit that the proceedings for non disclosures under Regulation 29(2) read with 29(3) of SAST Regulations for which the notice has been sent may please be dropped."*

- 6.6. The Noticee viz, Dimple Jain sought further time to reply to the SCN vide email dated November 25, 2017, which was granted and the Noticee was advised to file the response by December 07, 2017. Noticee filed a response dated December 07, 2017, and hearing in the matter was held on December 21, 2017. The AR appeared during the hearing and reiterated the written submissions made earlier which are as follows:

*"I was holding only 72,000 equity shares of Refex Industries Ltd. both as at the end of 31/03/2015 and 30/09/2015.*

*My holding is only 72,000 equity shares which represents 0.47% of the total paid up share capital of the Company.*

*I do not participate in the day to day affairs of the Company and also not part of the Board of Directors of the Company.*

*I request you to kindly drop any proceedings against me for any violation for non disclosure to the stock exchanges. I would like to further add that in terms of the Regulations I am classified as Promoters relative. I would once again most respectfully submit that the proceedings for non disclosures under Regulation 29(2) read with 29(3) of SAST Regulations for which the notice has been sent may please be dropped."*

- 6.7. The Noticee viz, Seema Jain sought further time to reply to the SCN vide email dated November 25, 2017, which was granted and the Noticee was advised to file the response by December 07, 2017. Noticee filed a

response dated December 07, 2017, and hearing in the matter was held on December 21, 2017. The AR appeared during the hearing and reiterated the written submissions made earlier which are as follows:

*"I was holding 2,16,000 equity shares at the end of 31/03/2015 and even as of 30/09/2015 the same number of shares have been held by me in Refex Industries Ltd.*

*I am one of the promoters of the Company along with Mr. T Jagdish Jain who is my husband.*

*my holding is only 2,16,000 equity shares which represents 1.40% of the total paid up share capital of the Company.*

*there has not been any change in my shareholding in these quarters*

*I do not participate in the day to day affairs of the Company, hence the proceedings against me for any violation for non-disclosure to the stock exchanges may please be dropped.*

*in terms of the SEBI (SAST) Regulations, 2011 and SEBI (Prohibition of Insider Trading) Regulations, 2015, there is a necessity to disclose to the exchanges in case there is a change in the total percentage of shareholding by the promoter and promoter group. The requirement of disclosure is necessitated when such change exceeds 2% of the total share capital of the Company.*

*In the total promoter and promoters group and person acting in concert, there has been a change of hardly 2.08% i.e. from a holding of 34.57% as of 31/03/2015, the holding has come down to 32.49% as of 23/07/2015.*

*Thus there has not been any substantial change or acquisition/sale in violation of prohibition of insider trading Regulations or Takeover Regulations."*

## **ISSUES FOR CONSIDERATION**

7. After perusal of the material available on record, the following issues arises for consideration:-

- I. Whether the Noticees Jagdish T Jain, Sherisha Technologies Pvt Ltd., Tarachand Jain, Anil Jain, Ugamdevi Jain, Dimple Jain and Seema Jain have violated of the provisions of the Regulation 29(2) read with 29(3) of SAST Regulation, 2011?*
- II. Does the violation, if any, on the part of the Noticees Jagdish T Jain, Sherisha Technologies Pvt Ltd., Tarachand Jain, Anil Jain, Ugamdevi Jain, Dimple Jain and Seema Jain Noticee attract monetary penalty under Section 15A(b) of the SEBI Act, 1992?*
- III. If so, what quantum of monetary penalty should be imposed on the Noticees considering the factors stated in section 15J of SEBI Act, 1992?*

## **FINDINGS**

8. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticees, the findings are given hereunder.

***ISSUE I: Whether the Noticees Jagdish T Jain, Sherisha Technologies Pvt Ltd., Tarachand Jain, Anil Jain, Ugamdevi Jain, Dimple Jain and Seema Jain have violated of the provisions of the Regulation 29(2) read with 29(3) of SAST Regulation, 2011?***

9. The text of the provisions alleged to have been violated by the Noticees are as under:-

***"29.(2) Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target***

*company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.*

**29 (3)** *The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—*

*(a) every stock exchange where the shares of the target company are listed; and*

*(b) the target company at its registered office.”*

10. Noticee Jagdish Jain has not disputed the alleged transactions stated in the SCN. Jagdish Jain has submitted that he was holding 3,89,704 shares as of quarter ending March 31, 2015 which represented 2.52% of the total paid up share capital of Refex Industries Ltd. (1,54,75,176 equity shares of Rs.10/- each). This had come down to 50,204 equity shares as of quarter ended September 2015 resulting in total shareholding being reduced to 0.32% of the total paid up capital of the company.
11. The Noticee has mentioned that he has resigned as director and he has ceased to be a director on March 20, 2015 based on the filing made by the company. Further vide his letter dated December 08, 2017 he requested the company for reclassification as “public” shareholder from the existing promoter shareholder under regulation 13A(7) (d) of the SEBI LODR, 2015. It is thus without doubt that till date this process is completed the Noticee continues to be a promoter group entity.
12. In terms of Regulation 29 (2) any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose to the company and the stock exchange the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub regulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified. It is noted that the Noticees shareholding reduced from 2.52% to 0.32% that is there was change in shareholding by 2.2%. Thus this attracts the provisions for disclosure within two days of the change in shareholding.
13. It is noted that Noticee Jagdish Jain has only in December 2017 written to company for reclassifying him as a public shareholder but it is not in dispute that Jagdish Jain was a promoter/ promoter group shareholder when the change in shareholding took place.
14. After considering the above, it is concluded that the Jagdish Jain has violated Regulation 29(2) read with 29(3) of SAST Regulation, 2011 for not disclosing

the change in shareholding of 2.08% of promoter group during the period March to July 23, 2015 to the Company and to the Stock Exchange with in two working days.

15. As regards the other Noticees, it is clear that there was no change in the shareholding. Thus they have contended that they are not required to make any such disclosure.

16. It is noted from the replies of the Noticees viz Sherisha Technologies Pvt Ltd., Tarachand Jain, Anil Jain, Ugamdevi Jain, Dimple Jain and Seema Jain that they have mainly contended that their individual change in shareholding had not crossed the prescribed limit of 2% as stated in Regulation 29(2) of SAST Regulations, 2011 and hence there was no requirement on their part to make disclosure to the company and the Stock Exchanges in terms of Regulations 29(2) read with (3) of SEBI (SAST) Regulations 2011.

17. It may be noted that the provisions of the 29(2) and 29(3) of the SAST Regulations 2011 are similar to obligations cast on entities in regulation 7(1 A) and 7(2) of the SAST Regulations of 1997.

18. The Hon'ble SAT had on an occasion interpreted the provisions of regulation 7(1A) of the SAST Regulations 1997. In the matter of O.P. Gulati v. SEBI (Appeal No. 185 of 2011 decided on January 11, 2012) has held as under:

*"...The next question that arises is whether it casts an obligation on her to make a disclosure under regulation 7(1A) of the takeover code. Does the said regulation require each and every acquirer within the meaning of the takeover code to make a declaration to the stock exchanges is the moot question. We are of the view that it is not so. The said regulation casts an obligation to disclose purchase or sale of the share capital of the target company to the target company and to the stock exchanges within two days of such purchase or sale if:*

- 1) person is an acquirer;*
- 2) that person has acquired shares or voting rights;*
- 3) such acquisition is under sub-regulation (1) to regulation 11; and*
- 4) purchase or sale aggregates two per cent or more of the share capital of the target company.*

*To attract the provisions of regulation 7(1A), it is necessary that all the four conditions stipulated above are satisfied.*

*...*

*The purpose of declaration to the target company and to the stock exchanges where shares of the target company are listed is well served by the disclosure to be made by the acquirer who acquires the shares of the target company. A person who may fall within the definition of acquirer under the takeover code but has not acquired the shares and is not a person acting in concert with the person acquiring the shares is not obliged to make disclosure under regulation 7(1A) of the takeover code.*

*In a given case, suppose there are 20 persons in a target company who may fall within the definition of 'acquirer' under the takeover code and say only two of them have purchased or sold shares aggregating two per cent or more of the share capital of the target company and these two persons are not acting in concert with any of the other eighteen persons.*

*If the argument of learned counsel for the respondent Board is accepted then all the twenty persons who fall within the definition of 'acquirer' are required to make disclosure to the*



*company as well as to the concerned stock exchanges. Such additional disclosure by eighteen persons who have neither purchased nor sold shares, nor are persons acting in concert with the two acquirers, serves no purpose.”*

19. Given the above, there is no hesitation in applying the above ratio in deciding the case for the other entities and the charges made out against the other Noticees Sherisha Technologies Pvt Ltd., Tarachand Jain, Anil Jain, Ugamdevi Jain, Dimple Jain and Seema Jain in the SCN cannot thus survive.

***ISSUE II: Does the violation, if any, on the part of the Noticees Jagdish Jain, Sherisha Technologies Pvt Ltd., Tarachand Jain, Anil Jain, Ugamdevi Jain, Dimple Jain and Seema Jain attract monetary penalty under Section 15A(b) of the SEBI Act, 1992?***

20. The violations referred at para 14 on the part of the Noticee Jagdish Jain attract monetary penalty under Section 15A(b) of the SEBI Act. The text of the said provision is as follows:

***“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 <sup>1</sup>[which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees];*

*(c) .....*

21. While the Noticee Jagdish Jain has mentioned that “*any non-disclosure of change in shareholding has been consequential and not deliberate*”, however it is clear that once the violation has occurred, the liability of penalty follows and intention is not relevant.

22. In this respect the Hon’ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) has also 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 Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...*”.

23. In view of the finding at para 19 above the Noticees viz Sherisha Technologies Pvt Ltd., Tarachand Jain, Anil Jain, Ugamdevi Jain, Dimple Jain and Seema Jain does not attract monetary penalty under Section 15A(b) of the SEBI Act, 1992.

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<sup>1</sup> Substituted for the words —of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less|| by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.

**ISSUE III: If so, what quantum of monetary penalty should be imposed on the Noticees considering the factors stated in section 15J of SEBI Act, 1992?**

24. In view of the finding referred to at para 23 above no penalty is imposable on the Noticees viz Sherisha Technologies Pvt Ltd., Tarachand Jain, Anil Jain, Ugamdevi Jain, Dimple Jain and Seema Jain.

25. As regards Jagdish Jain, while determining the quantum of monetary penalty under Section 15A(b) of SEBI Act, 1992, the factors stipulated in Section 15-J of SEBI Act are to be considered, which read as under:

***“Factors to be taken into account by the adjudicating officer.***

*15J. 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.*

*<sup>2</sup>[Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]”*

26. As per Section 15A(b) of the SEBI Act, 1992 the Noticee Jagdish Jain is liable to penalty, not less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees, as the violations is in continuation. Further, under Section 15-I of the SEBI Act, the adjudicating officer has to give due regard to certain factors which have been stated as above while adjudging the quantum of penalty.

27. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee.

28. There is no information on records to state that the act of the Noticee is repetitive in nature. Further no case has been made out against the Noticees that they had wilfully not disclosed the change in the shareholding in order to benefit from it.

29. Given all of the above it is determined that a reasonable penalty needs to be imposed on Jagdish Jain.

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<sup>2</sup> Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Prt II Section 1 dated March 31, 2017. This shall come into force from April 26, 2017.

## **ORDER**

30. After taking into consideration all the facts and circumstances of the case, and after considering the factors enumerated in section 15J of SEBI Act, 1992, a penalty of **Rs 3,00,000/- (Rupees Three Lakh Only)** under Section 15 A(b) on the Noticee Jagdish Jain will be commensurate with the violations committed by the Noticee.

31. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through e-payment facility into Bank Account the details of which are given below;

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

32. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI (EFD-DRA-1). The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided At Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under;

1. Case Name :
2. Name of Payee:
3. Date of payment:
4. Amount Paid:
5. Transaction No:
6. Bank Details in which payment is made:
7. Payment is made for: (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details).

33. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the SEBI.

**Date: January 31, 2018**  
**Place: Mumbai**

**Jeevan Sonparote**  
**Adjudicating Officer**