

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. EAD-2/DSR/VS/879/2017]**

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**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.**

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In respect of:

**India Focus Cardinal Fund**

In the matter of

**TULSI EXTRUSIONS LIMITED**

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1. Securities and Exchange Board of India (hereinafter referred as 'SEBI') had observed non-compliance with respect to Regulation 13(1), 13(3) read with Regulation 13(5) of the SEBI (Prevention of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations') and Regulation 7(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as 'SAST Regulations') by India Focus Cardinal Fund (hereinafter referred to as 'IFCF / Noticee') in the scrip of Tulsi Extrusions Limited (hereinafter referred to as 'TEL'), a company listed in Bombay Stock Exchange (BSE) and National Stock Exchange (NSE) during the period from September 1, 2010 to November 26, 2010.

**Appointment of Adjudicating Officer**

2. Pursuant to transfer of the previous Adjudicating Officer Ms. Anita Kenkare, I have been appointed as the Adjudicating Officer vide Order dated October 4, 2017 under Section 15-I (1) of SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Adjudication Rules") to inquire and adjudge under Section 15A(b) of the SEBI Act, 1992, against Noticee for the alleged violation of the provisions of law.

**Show Cause Notice, Reply and Personal Hearing**

3. A Show Cause Notice dated February 24, 2016 (herein after referred to as SCN) was issued to the Noticee in terms of Rule 4 of the said Rules requiring them to show

cause as to why an inquiry should not be held for the alleged violation of provisions of law. However, the SCN sent at India Focus Cardinal Fund, 365, Royal road, Rose Hill, Mauritius had returned undelivered with the reason 'gone away'.

4. SEBI received a letter dated March 06, 2017 from Mr. Reaz Emambocus, the liquidator IFCF stating that IFCF was ordered to be wound up under the Provisions of the Insolvency Act, 2009 and he had been appointed as a provisional liquidator (PL) of IFCF (vide court order ref no. SC/COM/PET/01121/2016 dated November 22, 2016) by the Supreme Court of Mauritius.
5. Further, vide the said letter, the Liquidator has stated that there is a ban on all shares / investments held by IFCF and has requested for the procedures to remove the ban so that the holdings held by IFCF may be disposed of and make applicable distribution to the investors / shareholders / creditors of IFCF.
6. Pursuant to my appointment as Adjudicating Officer, I have issued a letter dated November 10, 2017 (along with a copy of the SCN dated February 24, 2016) to the PL advising him to submit reply on behalf of IFCF, if any, in the matter. The PL vide email dated November 13, 2017 submitted as under:

"This is to inform you that Mr. Raj Deokumar Gangoosirdar has been appointed joint liquidator of IFCF, together with Mr. Reaz Emambocus on May 09, 2017; a copy of the appointment order is herewith attached.

In a public notice from the Financial Services Commission - Mauritius , dated 14th September 2015, the latter stated ' in accordance with Section 74(7) of the Act, the Company has been directed to initiate the necessary actions for the orderly dissolution of its business and to discharge of its liabilities as per the Insolvency Act, 2009.

in view of the above and since the liquidation started after all these transgressions occurred, we would request the Whole Time Member to exclude IFCF (in liquidation) from the commission of enquiry so that the liquidators may finalise with the liquidation and thus reimburse the investors".

## Consideration of Issues

7. After perusal of the material available on record, the following issues arise for consideration, viz.,

- a) Whether the Noticee has violated the provisions of 13(1), 13(3) read with Regulation 13(5) of the PIT Regulations and Regulation 7(1) of SAST Regulations?
- b) Whether the violations, if any, on the part of the Noticee attract any penalty under Section 15A(b) of the SEBI Act?
- c) If yes, what should be the quantum of monetary penalty that can be imposed on the Noticee?

## Evidence and Findings

8. I note from SCN that (as per corporate announcements available on BSE website), the company had informed BSE that the Company had allotted 12,50,00 GDRs at USD 11.46 each, underlying 1,25,00,000 equity shares of Rs. 10/- (Rupees Ten only) each, at Rs. 54/- (Rupees Fifty Four only) each to “the Bank of New York Mellon” in its capacity as depository, during the meeting of Board of Directors held on August 23, 2010.
9. The transaction details of IFCF as regards sale of shares and purchase of GDRs during the investigation period along with disclosures required to be made under the SAST Regulations / PIT Regulations, which were allegedly not made are as under:

Date	Description of Transaction	No. of Units	Balance No. of Shares and GDRs	Percentage of Share Holding	Disclosure required under SEBI (SAST) Regulations, 1997	Disclosure required under SEBI (PIT) Regulations, 1992
14/09/10	Purchase of GDRs	1,10,000 GDRs	1,10,000 GDRs	4.40%	No disclosure required	No disclosure required
16/09/10	Purchase of GDRs	60,000 GDRs	0Shares and 1,70,000 GDRs	6.80%	Yes, under Regulation 7(1)	Yes, under Regulation 13(1)
17/09/10	Conversion of GDRs in Tulsi Shares	11,00,000 shares	11,00,000 shares and 60,000 GDRs	6.80%	No disclosure required	No disclosure required
20/09/10	Sales of Tulsi Shares	11,00,000 shares	0 shares and 60,000 GDRs	4.40%	No disclosure required	Yes, under Regulation 13(3) read with 13(5)
	Purchase of GDRs	50,000 GDRs	0 shares and 1,10,000 GDRs			
21/09/10	Conversion of GDRs in Tulsi Shares	11,00,000 shares	11,00,000 shares and 0 GDRs	4.40%	No disclosure required	No disclosure required
22/09/10	Purchase of GDRs	50,000 GDRs	11,00,000 shares and 50,000 GDRs	6.40%	Yes, under Regulation 7(1)	Yes, under Regulation 13(1)

23/09/10	Sale of Tulsi Shares	8,70,082 shares	2,29,918 shares and 50,000 GDRs	2.92%	No disclosure required	Yes, under Regulation 13(3) read with 13(5)
24/09/10	Purchase of GDRs	97,000 GDRs	2,29,918 shares and 1,47,000 GDRs	6.80%	Yes, under Regulation 7(1)	Yes, under Regulation 13(1)
07/10/10	Purchase of GDRs	70,000 GDRs	2,29,918 shares and 2,17,000 GDRs	9.60%	No disclosure required	Yes, under Regulation 13(3) read with 13(5)
25/10/10	Purchase of GDRs	75,000 GDRs	2,29,918 shares and 2,92,000 GDRs	7.80%	No disclosure required	No disclosure required
	Conversion of GDRs in Tulsi Shares	9,70,000 shares	11,99,918 shares and 1,95,000 GDRs			
	Sale of Tulsi Shares	11,99,918 shares	0 shares and 1,95,000 GDRs			
26/10/10	Conversion of GDRs in Tulsi Shares	12,00,000 shares	12,00,000 shares and 75,000 GDRs	3.00%	No disclosure required	Yes, under Regulation 13(3) read with 13(5)
	Sale of Tulsi Shares	12,00,000 shares	0 shares and 75,000 GDRs			
27/10/10	Purchase of GDRs	1,59,000 GDRs	0 shares and 2,34,000 GDRs	9.36%	Yes, under Regulation 7(1)	Yes, under Regulation 13(1)
28/10/10	Conversion of GDRs in Tulsi Shares	12,00,000 shares	12,00,000 shares and 1,14,000 GDRs	10.56%	Yes, under Regulation 7(1)	No disclosure required
	Sale of Tulsi Shares	6,00,000 shares	6,00,000 shares and 1,14,000 GDRs			
	Purchase of GDRs	90,000 GDRs	6,00,000 shares and 2,04,000 GDRs			
29/10/10	Conversion of GDRs in Tulsi Shares	6,00,000 shares	12,00,000 shares and 1,44,000 GDRs	10.56%	No disclosure required	No disclosure required
01/11/10	Sale of Tulsi Shares	12,00,000 shares	0 shares and 1,44,000 GDRs	5.76%	No disclosure required	Yes, under Regulation 13(3) read with 13(5)
02/11/10	Purchase of GDRs	1,20,000 GDRs	0 shares and 2,64,000 GDRs	10.56%	Yes, under Regulation 7(1)	Yes, under Regulation 13(3) read with 13(5)
03/11/10	Conversion of GDRs in Tulsi Shares	12,00,000 shares	12,00,000 shares and 1,44,000 GDRs	5.76%	No disclosure required	Yes, under Regulation 13(3) read with 13(5)
	Sale of Tulsi Shares	12,00,000 shares	0 shares and 1,44,000 GDRs			
04/11/10	Conversion of GDRs in Tulsi Shares	12,00,000 shares	12,00,000 shares and 24,000 GDRs	5.76%	No disclosure required	No disclosure required
08/11/10	Sale of Tulsi Shares	5,00,000 shares	7,00,000 shares and 24,000 GDRs	3.76%	No disclosure required	Yes, under Regulation 13(3) read with 13(5)
10/11/10	Sale of Tulsi Shares	7,00,000 shares	0 shares and 24,000 GDRs	0.96%	No disclosure required	No disclosure required
18/11/10	Purchase of GDRs	1,20,217 GDRs	0 shares and 1,44,217 GDRs	5.77%	Yes, under Regulation 7(1)	Yes, under Regulation 13(1)
	Conversion of GDRs in Tulsi Shares	12,00,000 shares	12,00,000 shares and 24,217 GDRs			
22/11/10	Sale of Tulsi Shares	4,00,000 shares	8,00,000 shares and 24,217 GDRs	4.17%	No disclosure required	No disclosure required
23/11/10	Conversion of GDRs in Tulsi Shares	2,170 shares	8,02,170 shares and 24,000 GDRs	4.17%	No disclosure required	No disclosure required

10. From the above table, I note that, the noticee was required to disclose their transaction details in terms of Regulation 7(1) of SAST Regulations, Regulation 13(1) and 13(3) of PIT Regulations, which the Noticee allegedly failed to do on several occasions.
11. From the reply to the SCN, I note that the noticee had been ordered to be wound up and the Provisional Liquidators have been appointed by the Supreme Court of Mauritius. It is pertinent to mention the relevant law i.e. Insolvency Act, 2009 of Mauritius which reads as under:

**Section 105 of Insolvency Act, 2009**

***Proceedings against company***

*(1) At any time after the presentation of a petition under section 102 and before a winding up order is made, the company, a creditor or a contributory may, where any action or proceedings against the company is pending, apply to the Court to stay or restrain further proceedings in the action or proceedings, and the Court may stay or restrain the proceedings accordingly on such terms as it thinks appropriate.*

*(2) Where a winding up order has been made or a provisional liquidator has been appointed, no action or proceedings shall be proceeded with or commenced against the company except—*

*(a) by leave of the Court; and*

*(b) on such terms as the Court thinks appropriate.*

12. It is clear from the above provisions of Section 105 of Insolvency Act, 2009 of Mauritius, when a winding up order has been made or provisional liquidator has been appointed, no action or proceedings shall be proceeded with or commenced against the company except by leave of court. I note that Adjudication proceedings against the Noticee commenced vide the SCN dated February 24, 2016 whereas the Noticee had been ordered to be wound up by the Supreme Court of Mauritius vide order dated November 22, 2016. I note that there is no material on record to suggest that the leave of the Court has been taken in the matter in terms of Section 105 of Insolvency Act, 2009. Therefore, I am of the view that the present Adjudication proceedings against the Noticee (which is under liquidation) cannot be continued without the leave of the Court.

## **ORDER**

**13.** In view of the above, after considering all the facts and circumstances of the case and in exercise of the powers conferred upon me under Section 15-I of the Act and Rule 5 of said Rules, I conclude that the Adjudication proceedings initiated against the noticee viz, India Focus Cardinal Fund vide SCN dated February 24, 2016 are not maintainable. The matter is, accordingly, disposed of.

**14.** In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

**Date: December 13, 2017**  
**Place: Mumbai**

**D.SURA REDDY**  
**GENERAL MANAGER &**  
**ADJUDICATING OFFICER**