

**ADJUDICATION ORDER NO. AO/JS/VRP/12-13/2018**

**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:**

Sr. No.	Name of the Entity and PAN No.	Sr. No.	Name of the Entity and PAN No.
1	T J R Finance Limited PAN No. AAAC5701E	2	T J R Sons Limited PAN No. AAAC4502F

**In the matter of Kenal Industries Limited**

**BACKGROUND**

1. Securities and Exchange Board of India (**SEBI**) conducted investigation in the scrip of Kenal Industries Limited (**The Company**) during the period December 01, 2013 to March 31, 2014 (**investigation period**).
2. Pursuant to investigations, it was alleged by SEBI that entity viz. TJR Finance Limited and TJR Sons Limited (**The Noticees**) had violated the provisions of the Regulations 13(4A) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 for transfer of 2,32,900 shares by TJR Finance Limited to TJR Sons Limited on March 06, 2014 of the company.

**APPOINTMENT OF ADJUDICATING OFFICER**

3. An Adjudicating Officer was appointed vide order dated May 18, 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 Show Cause Notice (**SCN**) in terms of the provisions of Rule 4 of Adjudication Rules read with Section 15I of SEBI Act, 1992 was issued on January 11, 2018 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. Records show that the aforesaid SCN were delivered to the Noticees. Mr. Hitesh Thakkar, director of the company vide email January 25, 2018 submitted that the Noticees have submitted the disclosures to company through hand delivery on March 07, 2014 and sent the same to Bombay Stock Exchange through courier/ post on the same day and provided copy of disclosure made to the company under Regulation 29(2) of SEBI (SAST) Regulations, 2011 and disclosure made under Regulation 13(4A) read with 13(5) of PIT Regulations, 1992.

5. An opportunity of personal hearing was granted to the Noticees on February 14, 2018 vide hearing notice dated February 01, 2018. Mr. Hitesh Thakkar vide email dated February 08, 2018 submitted that they are in search of the documents required and requested 25-30 days time to submit the same. The said requests were acceded to. Another opportunity of personal hearing was granted to the Noticees on March 01, 2018 vide hearing notice dated February 14, 2018. Mr. Hitesh Thakkar vide email dated February 21, 2018 requested 1 more extension of 30 days to submit appropriate evidences. The said request of the Noticees were acceded to. Third opportunity of personal hearing was granted to the Noticees on March 22, 2018 vide hearing notice dated March 05, 2018. Mr. Hitesh Thakkar vide email dated March 15, 2018 submitted that the suitable reply will be filed within a week. However, the Noticees failed to avail the opportunity of personal hearing granted on March 22, 2018. Final opportunity of personal hearing was granted to the Noticee on April 02, 2018 vide hearing notice dated March 03, 2018. However, the Noticees failed to avail the opportunity of personal hearing granted on April 02, 2018.
6. Given the above, it is now considered appropriate to proceed further based on the material available on records as despite the enough opportunities granted at the terms and conditions of the entities, they have failed to file detailed written reply pursuant to the hearing as well as failed to avail the opportunity of subsequent hearing.

#### **ISSUES FOR CONSIDERATION**

7. After perusal of the material available on record, the following issues arise for consideration,
  - I. ***Whether the Noticee T J R Finance Limited had violated of the provisions of the Regulations 13(4A) read with 13(5) of PIT Regulations, 1992 for sale/ transfer of 2,00,000 shares on March 05,, 2014 and for sale/ transfer of 32,900 shares on March 06, 2014 to TJR Sons Limited?***
  - II. ***Whether the Noticee T J R Sons Limited had violated of the provisions of the Regulations 13(4A) read with 13(5) of PIT Regulations, 1992 for acquiring/ purchase of 2,00,000 shares on March 05, 2014 and for acquiring/ purchase of 32,900 shares on March 06, 2014 from T J R Finance Limited?***
  - III. ***Does the violation, if any, on the part of the Noticees attract monetary penalty under Section 15A(b) of the SEBI Act, 1992?***
  - IV. ***If so, what quantum of monetary penalty should be imposed on the Noticee considering the factors stated in section 15J of SEBI Act, 1992?***

#### **FINDINGS**

8. On perusal of the material available on record and considering the facts and circumstances of the case and submissions of the Noticees, the findings with respect to the issues as hereunder.

**ISSUE I: Whether the Noticee T J R Finance Limited had violated of the provisions of the Regulations 13(4A) read with 13(5) of PIT Regulations, 1992 for sale/ transfer of 2,00,000 shares on March 05,, 2014 and for sale/ transfer of 32,900 shares on March 06, 2014 to TJR Sons Limited?**

9. It is noted that the Noticee T J R Finance Limited has submitted that they had made the required disclosure on the same day i.e. on March 05, 2014 for sale of 2,00,000 share to TJR Sons Limited and on March 06, 2014 for sale of 32,900 shares to the company and to the exchange (**BSE**). The Noticee provided the copy of disclosures made to the company for transactions dated March 05, 2014 and March 06, 2014. However the Noticee did not provide the copies of disclosure made to BSE. On perusal of BSE website under the head Disclosures, it is noted that the disclosure in respect of sale of 2,00,000 shares is appearing, however the disclosure in respect of sale of 32,900 shares is not appearing.
10. In terms of Regulation 13(4A) of PIT Regulations, "*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**.*"
11. There was change in the shareholding of the Noticee T J R Finance Limited and the change exceeded 25,000 shares (sale of 2,00,000 and 32,900 shares of the company) as provided in the Regulation 13(4A) of PIT Regulation, 1992. The Noticee was required to disclose the said change in the shareholding to the company and to the stock exchange where the securities were listed in Form D as prescribed in the PIT Regulations, 1992. It is observed that the Noticee T J R Finance Limited had made the required disclosure to the Company and BSE for the sale of 2,00,000 shares. However the Noticee has not provided any evidence of it having made the requisite disclosure to the stock exchange - BSE for the sale on March 06, 2014 for 32,900 shares.
12. On perusal of BSE website under the head Disclosures, it is noted that the disclosure in respect of sale of 2,00,000 shares is available, however the disclosure in respect of 32,900 shares is not available. The same was presented to the Noticee in the SCN, however there is no reply of the entity in this respect other than a statement without any evidential documents to prove that the disclosure had indeed been made.
13. After considering the arguments put forth by the Noticee, for the reasons stated above, there is material on records to conclude that disclosure have not been made by the Noticee T J R Finance Limited and thus violated the provisions of the Regulations 13(4A) read with 13(5) of PIT Regulations, 1992.

***ISSUE II: Whether the Noticee T J R Sons Limited had violated of the provisions of the Regulations 13(4A) read with 13(5) of PIT Regulations, 1992 for acquiring/ purchase of 2,00,000 shares on March 05, 2014 and for acquiring/ purchase of 32,900 shares on March 06, 2014 from T J R Finance Limited?***

14. It is noted that the Noticee T J R Sons Limited has submitted that they had made the required disclosure on the same day i.e. on March 05, 2014 for acquisition of 2,00,000 share from TJR Finance Limited and on March 06, 2014 for acquisition of 32,900 shares to the company and to BSE. The Noticee provided the copy of disclosures made to the company for transactions dated March 05, 2014 and March 06, 2014. However the Noticee did not provide the copies of disclosure made to BSE. On perusal of BSE website under the head Disclosures, it is noted that the disclosure in respect of acquisition of 2,00,000 shares is appearing, however the disclosure in respect of acquisition 32,900 shares is not appearing.
15. There was change in the shareholding of the Noticee T J R Sons Limited and the change exceeded 25,000 shares (sale of 2,00,000 and 32,900 shares of the company) as provided in the Regulation 13(4A) of PIT Regulation, 1992. The Noticee was required to disclose the said change in the shareholding to the company and to the stock exchange where the securities were listed in Form D as prescribed in the PIT Regulations, 1992. It is observed that the Noticee T J R Sons Limited had made the required disclosure to the Company and BSE for the acquisition of 2,00,000 shares. However the Noticee has not provided any evidence of it having made the requisite disclosure to the stock exchange - BSE for the acquisition on March 06, 2014 for 32,900 shares.
16. On perusal of BSE website under the head Disclosures, it is noted that the disclosure in respect of acquisition of 2,00,000 shares is available, however the disclosure in respect of 32,900 shares is not available. The same was presented to the Noticee in the SCN, however there is no reply of the entity in this respect other than a statement without any evidential documents to prove that the disclosure had indeed been made.
17. After considering the contentions put forth by the Noticee, for the reasons stated above, there is material on records to conclude that disclosure have not been made by the Noticee T J R Sons Limited and thus have violated the provisions of the Regulations 13(4A) read with 13(5) of PIT Regulations, 1992.

***ISSUE III: Does the violation, if any, on the part of the Noticees attract monetary penalty under Section 15A(b) of the SEBI Act, 1992?***

18. The violations referred at para 13 and 17 on the part of the Noticees TJR Finance Limited and TJR Sons Limited attract monetary penalty under Section 15A(b) of SEBI Act, 1992. The text of the said provision is as follows

19. In view of the foregoing, it is determined to be a fit case to impose monetary penalty under Section 15A(b) of the SEBI Act, 1992 which reads 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 <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) .....

20. 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...".

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

21. While determining the quantum of monetary penalty under Section 15A(b) of SEBI Act, 1992 I have considered the factors stipulated in Section 15-J of SEBI Act, which reads 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) .....

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

(c) .....

<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.]

22. There is no information on record to state that the act of the Noticee is repetitive in nature, nor has it been alleged as so.

23. There is no information on record to state that the entities have now complied with the disclosure of the change in shareholding and thus the non-compliance continues

24. Thus it is determined as a fit case for a reasonable penalty.

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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.

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

## **ORDER**

25. 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 5,00,000/- (Rupees Five Lakh only)** on Noticee viz., TJR Finance Limited and **Rs 5,00,000/- (Rupees Five Lakh only)** on Noticee viz., TJR Sons Limited under Section 15 A(b) which will commensurate with the violations committed by the Noticees for sale and/or purchase of 32, 900 shares .

26. The Noticee 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

27. 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. 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)

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

**Date: April 27, 2018**

**Place: Mumbai**

**Jeevan Sonparote**

**Adjudicating Officer**