
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

M/s. Le Waterina Resorts and Hotels Ltd. (PAN: AAACH2823H)
Mr. Sanjay Jalan (PAN: AAWPJ2893G)
Ms. Anila Jalan (PAN: AAIPA6667P)
Ms. Rinku Jalan (PAN: AGBPJ8319E)
Mr. R.K. Jalan (PAN: AAWPJ2892H)
Mr. Kamlesh Shantilal Jain (PAN: AAFPJ2745J)

In the matter of

Le Waterina Resorts & Hotels
(PAN No. AAACH2823H)

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India ("SEBI") conducted investigation in the scrip of M/s Le Waterina Hotels and resorts Ltd. (herein after referred as Le Waterina/ the company), a company listed at Bombay Stock Exchange Limited ('BSE'). During the period from October 01, 2010 to March 05, 2012 (hereinafter referred to as 'investigation period'), it was observed that M/s. Le Waterina Resorts and Hotels Ltd., Mr. Sanjay Jalan, Ms. Anila Jalan, Ms. Rinku Jalan, Mr. R.K. Jalan and Mr. Kamlesh Shantilal Jain (hereinafter referred to as Noticees) had made disclosure violations under SEBI (Substantial Acquisition Of Shares And Takeovers) Regulations, 1997 (hereinafter referred to as SAST 1997), SEBI Substantial Acquisition Of Shares And Takeovers) Regulations, 2011 (hereinafter referred to as SAST 2011), SEBI (Prohibition Of Insider Trading) Regulations, 1992 (hereinafter referred to as PIT 1992) and SEBI (Prohibition Of Insider Trading) Regulations, 2015 (hereinafter referred to as PIT 2015), for which current adjudication proceedings have been initiated.

APPOINTMENT OF ADJUDICATING OFFICER

2. An Adjudicating Officer was appointed vide order dated February 07, 2017 under Section 19 read with section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act, 1992') and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rule, 1995 (hereinafter referred to as 'Adjudication Rules'), to inquire into and adjudge under Sections 15HA of the SEBI Act, 1992.
3. Consequent to transfer of AO, the proceedings were continued vide Office Order dated May 18, 2017, to inquire into and adjudge under Section 15A (b) of the Securities and Exchange Board of India Act, 1992 (SEBI Act) for the aforementioned alleged violations against the Noticees.

SHOW CAUSE NOTICE, WRITTEN SUBMISSIONS, PERSONAL HEARING

4. A common Show Cause Notice (SCN) dated September 28, 2017 was issued to nine entities under Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (AO Rules) in the matter under current proceedings to show cause as to why an inquiry should not be held against the Noticees under Rule 4 of the Adjudication Rules and penalty be not imposed for the alleged violations of PIT and SAST Regulations. Out of the nine Noticee, for three Noticees proceedings have been concluded vide Adjudication Order dated June 15, 2018. Thus, the remainder of the six Noticees viz. M/s. Le Waterina Resorts and Hotels Ltd., Mr. Sanjay Jalan, Ms. Anila Jalan, Ms. Rinku

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Jalan, Mr. R.K.Jalan and Mr. Kamlesh Shantilal Jain are being dealt with in this order for the violations mentioned below:-

S.No.	Name of the Noticee	Alleged Violations
1.	M/s. Le Waterina Resorts and Hotels Ltd. (PAN: AAACH2823H) (Noticee no. 1)	Regulation 13(6) of SEBI Prohibition on Insider Trading) Regulations 1992, (PIT 1992) r/w Regulation 12(2) of SEBI (Prohibition on Insider Trading) Regulations 2015 (PIT 2015)
2.	Mr. Sanjay Jalan (PAN: AAWPJ2893G) (Noticee no. 2)	Regulation 7(1A) r/w Regulation 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997 (SAST 1997) r/w Regulation 35 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011(SAST 2011), Regulation 13(4) r/w 13(5) of PIT 1992 r/w Regulation 12(2) of PIT 2015.
3.	Ms. Anila Jalan (PAN: AAIPA6667P) (Noticee no. 3)	Regulation Reg. 7(1A) r/w Regulation 7(2) of SAST 1997 r/w Regulation 35 of SAST 2011, Regulation 13(3) of PIT 1992 r/w Regulation 12(2) of SEBI PIT 2015.
4.	Ms. Rinku Jalan (PAN: AGBPJ8319E) (Noticee no. 4)	Regulation 7(1A) r/w Regulation 7(2) of SAST 1997 r/w Regulation 35 of SAST 2011 and Regulation 13(1) and Regulation 13(3) of PIT 1992 r/w Regulation 12(2) of PIT 2015.
5.	Mr. R.K.Jalan	Regulation 7(1) r/w Regulation 7(2) SAST 1997 r/w Regulation 35 of SAST 2011 and Regulation 13(3) of SEBI PIT 1992 r/w Regulation 12(2) of PIT 2015.
6.	Mr. Kamlesh Shantilal Jain (PAN: AAFPJ2745J) (Noticee no. 5)	Regulation 7(1) r/w Regulation 7(2) SAST 1997 r/w Regulation 35 of SAST 2011 and Regulation 13(1) of SEBI PIT 1992 r/w Regulation 12(2) of PIT 2015

5. The aforesaid SCNs were delivered to all the Noticees. Thereafter, Noticee no. 1 & 2 namely; Le Waterina Resorts and Hotels Ltd. and Sanjay Jalan vide their letters dated October 12, 2017 and Noticee no. 3, 4 and 5 namely; Anila Jalan, Rinku Jalan and R.K.Jalan vide their letters dated October 10, 2017, acknowledged the receipt of SCN and sought extension of time to their replies in the matter. However, no reply was received from Kamlesh Shantilal Jain. Thereafter, Hearing Notices (HNs) dated November 01, 2017, were issued to all the Noticees, affording them opportunity of personal hearing on November 17, 2017. Records show that the HN was also successfully delivered to all the Noticees. Thereafter, Noticee no. 1 to 5 vide their letters dated November 08, 2017 submitted replies to the SCN and also requested for grant of personal hearing at Chennai Regional office of SEBI. However, the Noticee; Kamlesh Shantilal Jain, neither submitted reply to the SCN nor availed opportunity of personal hearing on the scheduled date.
6. Thereafter, vide Hearing Notices dated January 05, 2018, Noticee no. 1 to 5 were granted hearing at Chennai Regional office of SEBI and Noticee no. 6 namely Kamlesh Shantilal Jain, was granted personal hearing at Mumbai, on February 02, 2018. On the scheduled date of hearing Authorized Representatives (ARs) of the Noticees no.2-5, appeared for hearing at Chennai Regional office of SEBI and submitted that the Noticee no. 2-5 would be filing consent application under SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014, for the alleged disclosure violations. The ARs also reiterated earlier submissions of the Noticee no. 2-5 made vide letters dated November 08, 2017. Further, ARs of the Noticee no.1 also appeared for hearing on the scheduled date and reiterated earlier submissions of the Noticee no. 1 made vide letter dated November 08, 2017. However, this time also, Noticee; Kamlesh Shantilal Jain, did not appear for the hearing on the scheduled date.

7. Thereafter, Noticee; Kamlesh Shantilal Jain, vide HN dated June 08, 2018 and October 03, 2018, was granted third and fourth opportunity of personal hearing. Although, all the Notices were duly served upon the Noticee, nevertheless, the Noticee did not appear on any of the aforesaid scheduled dates of personal hearing in the matter.
8. During the instant proceedings, despite giving ample opportunity to the Noticee; Kamlesh Shantilal Jain, to file reply to the SCN and to appear for personal hearing on several occasions. As per records Noticee, till date has neither submitted replies to the SCN nor appeared for hearing.
9. At this juncture, it is relevant to refer to the observation of the Hon'ble SAT in the matter of Dave Harihar Kiritbhai v. Securities and Exchange Board of India (Appeal No. 181 of 2014 dated December 19, 2014), wherein, it was observed that, *"...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/ letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim no receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal..."*

In view of the same, the matter is being proceeded ex-parte in terms of Rule 4(7) of AO Rules 1995 against Noticee; Kamlesh Shantilal Jain.

10. As regards the other five entities Operational Department of SEBI, vide note dated November 02, 2018 informed that the five entities namely; M/s. Le Waterina Resorts and Hotels Ltd., Mr. Sanjay Jalan, Ms. Anila Jalan, Ms. Rinku Jalan and Mr. R.K. Jalan, had filed settlement application under SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 and advised that the instant proceedings be kept on hold till the completion of settlement proceedings.
11. Subsequently, vide note dated January 01, 2019, it was informed by the Operational Department of SEBI that vide e-mails dated December 04, 2018, December 14, 2018 and December 18, 2018, the applicants were advised to submit disclosures with regard to PIT and SAST regulations as alleged in the SCN. However, the same was not complied with despite granting sufficient opportunities. As no disclosure were made, the matter was placed before the competent authority. Upon consideration, the competent authority has rejected the aforesaid settlement application in terms of regulation 20(1)(b) of the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014. In view of above, the current proceedings are continued from the stage, where they were kept on hold, against all the aforementioned six Noticees. Thus, these proceedings are resumed.

ISSUES FOR CONSIDERATION

- I. Whether the Noticees have violated provisions of SAST 1997, SAST 2011, PIT and PIT 2015?
- II. Does the violation, if any, on the part of the 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 Noticee considering the factors stated in section 15J of SEBI Act, 1992?

FINDINGS

12. Before Proceeding further, the provisions as applicable, are reproduced as under:

Chapter II of SAST Regulations, 1997

DISCLOSURES OF SHAREHOLDING AND CONTROL IN A LISTED COMPANY

Acquisition of 5 per cent and more shares or voting rights of a company.

7. (1) *Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent] shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.*

(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, or under second proviso to sub-regulation (2) of regulation 11 shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.

Explanation.—For the purposes of sub-regulations (1) and (1A), the term acquirer‘ shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.

(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within 4 [two days] of,—

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

Regulation 29 (2) of SAST Regulation, 2011

Disclosure of acquisition and disposal.

29.(1) *Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.*

(2) Any acquirer, 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 every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.

(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.

Regulation 35 of SAST Regulation, 2011

Repeal and Savings.

35.(1) *The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, stand repealed from the date on which these regulations come into force.*

(2) Notwithstanding such repeal,—

(a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations has never been repealed;

(c) any open offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations.

(3) After the repeal of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

Regulation 13 of PIT Regulation, 1992

1[Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure]

13. (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of :—

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

(2) Any person who is a director or officer of a listed company shall disclose to the company in Form B the number of shares or voting rights held and positions taken in derivatives by such person and his dependents (as defined by the company), within two working days of becoming a director or officer of the company.

(2A) Any person who is a promoter or part of promoter group of a listed company shall disclose to the company in Form B the number of shares or voting rights held by such person, within two working days of becoming such promoter or person belonging to promoter group.

Continual disclosure.

(3) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, 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 2% of total shareholding or voting rights in the company.

(4) Any person who is a director or officer 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 and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) 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.

(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.

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

(a) the receipt of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

Disclosure by company to stock exchanges.

(6) Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations 3[(1), (2), (2A), (3), (4) and (4A)] in the respective formats specified in Schedule III.

Regulation 12 of PIT Regulations, 2015

Repeal and Savings.

12. (1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.

(2) Notwithstanding such repeal,—

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and

¹ Substituted for the words “Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure.” by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011 w.e.f. 16-08-2011.

² Substituted for the symbols, numbers and word “(3) and (4)” by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011 w.e.f. 16-08-2011.

³ Substituted for the symbols, numbers and word “(1), (2), (3) and (4)” by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011 w.e.f. 16-08-2011.

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(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(3) After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

13. On perusal of the material available on record and giving regard to the facts and circumstances of the case, the findings are as under:

Issue No. I: Whether the Noticee has violated Regulation 7(1) r/w Regulation 7(2) SAST 1997 r/w Regulation 35 of SAST 2011 and Regulation 13(1) of SEBI PIT 1992 r/w Regulation 12(2) of PIT 2015?

14. From available records, details of promoters shareholding is given below:

Name of promoter	Quarter ended Sep-10		Quarters ended Dec-10 to Jun -11		Quarters ended Sep -11 to Mar-12	
	No of shares	% of shareholding	No of shares	% of shareholding	No of shares	% of shareholding
Mr. Sanjay Jalan	12,23,600	18.36	29,45,545	44.21	2,94,55,450	44.21
Mr. R K Jalan	17,21,945	25.84	-	-	-	-
Total Promoter Holding	29,45,545	44.21	29,45,545	44.21	2,94,55,450	44.21
Total no. of shares	66,62,840	100.00	66,62,840	100.00	6,66,28,400	100.00

15. From above, it is observed that Mr. R K Jalan (father of Mr. Sanjay Jalan), transferred 17,21,945 shares on December 13, 2010 to Mr. Sanjay Jalan, due to which holding of Mr. Sanjay Jalan went up from 18.36 % to 44.21%.

16. In this regard it is noted that regulation 7(1A) of SAST 1997, reads as “Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, 1[or under second proviso to sub-regulation (2) of regulation 11] shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.]”

17. Further, a combined reading of regulation 13(4) read with 13(5), says that any person who is a director or officer 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 within two days, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure 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.

18. Therefore, in view of above, by virtue of acquisition of 17,21,945 shares, Mr. Sanjay Jalan was required to disclose the change in shareholding under regulation 7(1A) and 7(2) of SAST 1997 and under regulation 13(4) read with 13(5) of PIT Regulations to the company and stock exchange.

19. Moreover, it is noted that by virtue of transfer of 17,21,945 shares on December 13, 2010 to Mr. Sanjay Jalan, there was change in the shareholding Mr. R.K. Jalan and thus, Mr. R.K. Jalan was also required to disclose the change in shareholding under regulation 7(1A) read with regulation 7(2) of SAST 1997 to the company and stock exchange and under regulation 13(3) read with 13(5) of PIT 1992 to the company.

20. Further, there is nothing on record to establish that Mr. R K Jalan had filed any disclosure under PIT regulations to the company and SAST regulations to the company and stock exchanges. Also, as per the information submitted by the company vide e-mail dated December 25, 2015 and BSE vide e-mail dated February 11, 2015, it is clear that Mr. Sanjay Jalan had not filed relevant disclosures under PIT and SAST regulations, to the stock exchange and R K Jalan had not filed relevant disclosures under PIT 1992 to the company and under SAST 1997, to the stock exchange and the company, as was required under regulations.

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21. Also, the Operational Department of SEBI, vide note dated January 01, 2019, informed that the settlement applications of the five noticees were rejected since they did not file the requisite disclosures under PIT and SAST regulations as alleged in the SCN. Therefore, it is clear that that Mr. Sanjay Jalan has violated regulation 13(4) read with 13(5) along with regulation 7(1A) and 7(2) of SAST 1997 and Mr. R.K. Jalan has violated regulation 13(3) read with 13(5) of PIT 1992 and regulation 7(1A) and 7(2) of SAST 1997, by not making the required disclosures for the relevant period.
22. As per the information available on record, it is noted that Mr. Sanjay Jalan had made relevant disclosures to the company for the proposed acquisition of 17,21,945 shares on December 06, 2010, which indicates Mr. Sanjay Jalan had made disclosure to the company prior to the date of acquisition. However, there is nothing on record to establish that Mr. Sanjay Jalan had made requisite disclosures in this regard to the stock exchanges.
23. Moreover, it is observed that by virtue of regulation 13(6) of PIT 1992, every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (3) and (4). Also, by virtue of regulation 7(3) of SAST 1997, Every company, whose shares are acquired in a manner referred to in sub-regulations (1) and (1A), shall disclose to all the stock exchanges on which the shares of the said company are listed the aggregate number of shares held by each of such persons referred above within seven days of receipt of information under sub-regulations (1) and (1A).
24. Therefore, in light of above, it is clear that the Noticee; M/s. Le Waterina Resorts and Hotels Ltd., was required to make requisite disclosure under PIT and SAST regulations to the stock exchange under regulation 13(6) of PIT 1992 and regulation 7(3) of SAST 1997 for the disclosure made by Mr Sanjay Jalan.
25. While in response to SCN, the company has submitted the copy of form allegedly submitted to the stock exchange under regulation 7(3) of SAST 1997. However, the same is not duly acknowledged by the exchange i.e. BSE. In the first place it is to mention that there is no disclosure on the website of the BSE, moreover, BSE vide e-mail dated February 11, 2015 and Operational Department of SEBI, vide note dated January 01, 2019 have also confirmed that no disclosures have been made by the Noticees till date.
26. Thus, by not making the requisite disclosures under regulation PIT 1992 and SAST 1997, Noticee; M/s. Le Waterina Resorts and Hotels Ltd., has violated provisions of regulation 13(6) of PIT 1992 and regulation 7(3) of SAST 1997.
27. It was further observed that Anila Jalan was holding 12,35,855 shares (i.e. 18.55% of total no. of shares) as on October 01, 2010. It is observed that Anila Jalan had transferred shares during the investigation period. Following are the list of transactions where Anila Jalan had failed to comply with disclosure requirement under Takeover regulations and PIT regulations:

Date	No of shares held - pre Acquisition/ disposal	% of shareholding held - pre Acquisition/ disposal	No of shares Acquired/ (disposed off)	No of shares held - post Acquisition/ disposal	% of shareholding held - post Acquisition/ disposal	Change in shareholding from previous disclosure as % of paid up capital	Mode	Date of disclosure to company	Date of disclosure to stock exchange	Disclosure by Company to stock exchange	Violation of Regulation(s)	
											SAST	PIT
19/10/2010	12,35,855	18.55	(4,60,000)	7,75,855	11.64	6.91	Off market	Notmade	Notmade	Notmade	7(1A)	13(3)
10/05/2011	7,75,855	11.64	(2,00,000)	5,75,855	8.64	3.00	Off market	Notmade	NA	NA	-	13(3)
21/07/2011	57,58,550	8.64	(30,00,000)	27,58,550	4.14	4.50	Off market	Notmade	NA	NA	-	13(3)
06/08/2011	23,58,550	3.54	(12,00,000)	11,58,550	1.74	2.40	Off market	Notmade	NA	NA	-	13(3)

28. It was further observed that Rinku Jalan, a non-promoter entity was holding 6,04,000 shares (i.e. 9.07% of total no. of shares) as on October 01, 2010. It is observed that Rinku Jalan had acquired and sold shares during the Investigation period. Following are the list of transactions where Rinku Jalan had failed to comply with disclosure requirement under Takeover regulations and PIT regulations:

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Date	No of shares held - pre Acquisition/ disposal	% of shareholding held - pre Acquisition/ disposal	No of shares Acquired/ (disposed off)	No of shares held - post Acquisition/ disposal	% of shareholding held - post Acquisition/ disposal	Change in shareholding from previous disclosure as % of paid up capital	Mode of transfer	Date of disclosure to company	Date of disclosure to stock exchange	Disclosure by Company to stock exchange	Violation of Regulation(s)	
											SAST	PIT
08/10/2010	5,53,795	8.31	(2,00,000)	3,53,795	5.31	(3.00)	off market	Notmade	NA	NA	-	13(3)
19/10/2010	2,58,795	3.88	4,50,000	7,08,795	10.64	5.33	off market	Notmade	Notmade	NA	7(1)	13(3)
08/12/2010	5,58,795	8.39	(63,000)	4,95,795	7.44	(3.20)	off market	Notmade	NA	NA	-	13(3)
16/12/2010	4,95,795	7.44	(2,00,000)	2,95,795	4.44	3.00	off market	Notmade	NA	NA	-	13(3)
24/08/2011	7,10,450	1.07	31,58,550	38,69,000	5.81	1.37	off market	Notmade	Notmade	NA	7(1)	13(1)
21/09/2011	38,35,998	5.76	(27,00,000)	11,35,998	1.70	4.10	off market	Notmade	NA	NA	-	13(3)

29. It is also noted that Kamlesh Shantilal Jain (Kamlesh), a non-promoter entity had acquired shares from Ms. Anila Jalan and Ms. Rinku Jalan in off-market, during the Investigation period. Following are the list of transactions where Kamlesh had failed to comply with disclosure requirement under Takeover regulations and PIT regulations:

Date	No of shares held - pre Acquisition/ disposal	% of shareholding held - pre Acquisition	No of shares Acquired/ (disposed off)	No of shares held - post Acquisition	% of shareholding held - post Acquisition	Mode of transfer	Date of disclosure to company	Date of disclosure to stock exchange	Disclosure by Company to stock exchange	Violation of Regulation(s)	
										SAST	PIT
21/07/2011	0	0.00	30,00,000	30,00,000	4.50	off market	NA	NA	NA	-	-
21/07/2011	0	0.00	20,00,000	50,00,000	7.50	off market	Notmade	Notmade	Notmade	7(1)	13(1)

30. From the transaction statement of Anila Jalan which was provided to the Noticee, it is observed that on July 21, 2011, there was a debit transaction of 30,00,000 shares between Anila Jalan and the Noticee, which clearly indicates that Anila Jalan had sold 30,00,000 shares to the Noticee on July 21, 2011 in off-market.
31. From the transaction statement of Rinku Jalan which was provide to the Noticee, it is observed that on July 21, 2011, there was a debit transaction of 20,00,000 shares between Rinku Jalan and the Noticee through NSDL, which clearly indicates that Rinku Jalan had sold 20,00,000 shares to the Noticee on July 21, 2011 in off-market. Thus on July 21, 2011 the Noticee had acquired in total 50 lakhs shares accounting for 7.50% of the total shares of the company and thus having acquired more than five percent of the shareholding triggered the obligation to make adequate disclosures.
32. A combined reading of regulation 7(1) and 7(2) says that any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose within two days of the receipt of intimation of allotment of shares or the acquisition of shares or voting rights, as the case may be, at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.
33. Further, regulation 13(1) of PIT 1992, says that any person who holds more than five percent shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of the receipt of intimation of allotment of shares or the acquisition of shares or voting rights, as the case may be.
34. Also, as per 13(3), any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, 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 2% of total shareholding or voting rights in the company.
35. In light of above provisions, it is clear that Noticee; Kamlesh was required to make requisite disclosures under regulation 7(1) read with 7(2) of SAST 1997 to the company & stock exchange and under regulation 13(1) and 13(3) of PIT 1992 to the Noticee. Further, Noticees Anila Jalan and Rinku Jalan were required to make disclosures under regulation 7(1A) read with 7(2) of SAST 1997 to company and

stock exchanges and under regulation 13(3) of PIT 1992 by Anila Jalan and 13(1) and 13 (3) to the company by Rinku Jalan.

36. As per the website of the stock exchange, it is evident that no information is available to establish that such disclosures have been made by the Noticees namely; M/s. Le Waterina Resorts and Hotels Ltd., Mr. Sanjay Jalan, Ms. Anila Jalan, Ms. Rinku Jalan, Mr. R.K.Jalan and Mr. Kamlesh Shantilal Jain under PIT 1992 and SAST 1997, till date of this order, as was required.

Issue No. II: Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15(A)(b) of the SEBI Act, 1992?

37. Referring to the judgment in the matter of *SEBI vs. Shriram Ram Mutual Fund* 2006 SCL 216(SC), wherein Hon'ble Supreme Court held that;

"In our opinion, mens rea is not an essential ingredient for contravention of the provisions of a civil act. In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. In other words, the breach of a civil obligation which attracts penalty under the provisions of an Act would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not. We also further held that unless the language of the statute indicates the need to establish the presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not"

38. In view of the foregoing, it is concluded that the Noticees have violated the provisions of SAST 1997 and PIT 1992. Therefore, it is a fit case to impose monetary penalty under the provisions of Section 15 A (b) of the SEBI Act, which reads as under :

Penalty for failure to furnish information, return, etc.

15 A. If any person, who is required under this Act or any rules or regulations made there under-;

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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.

Issue No. 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?

39. In this regard, while determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI 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.

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."

40. It is noted that the material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss suffered by the investors as a result of the Noticees' default. However, it is also a matter of record that by virtue of aforementioned off-market acquisition of shares, Noticee was required to make disclosures, within two days, under regulation 7(1) read with 7(2) of SAST 1997 to the company & stock exchange and under regulation 13(1) of PIT 1992

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to the company, which he did not make till the date of passing of order. This non-compliance continues even as on date.

41. With regard to above, it is noted that disclosure requirements as per laws under reference serve a purpose and are not mere technical obligations. The purpose is to make investors aware of the changes in the substantial shareholding of persons enabling them to take informed investment decisions. Thus, the disclosures requirements prescribed in the provisions in question cannot be termed as non-consequential. Therefore, appropriate penalty need to be imposed on the Noticees for the alleged violations.

ORDER

42. After taking into consideration the facts and circumstances of the case and factors enumerated in section 15J of the SEBI Act, a penalty, in exercise of powers conferred under section 15I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, is imposed on the following Noticees, under Section 15 A (b) of the SEBI Act, 1992, for the alleged violations of nondisclosure, as mentioned below;

Name of the Noticees	Penalty amount (Rs.)
M/s. Le Waterina Resorts and Hotels Ltd. (PAN: AAACH2823H)	10,00,000/- (Ten Lakhs only)
Mr. Kamlesh Shantilal Jain (PAN: AAFPJ2745J)	10,00,000/- (Ten Lakhs only)

Following Noticees shall be jointly and severally liable to pay the monetary penalty, as mentioned below;

Name of the Noticees	Penalty amount (Rs.)
Mr. Sanjay Jalan(PAN: AAWPJ2893G)	10,00,000/- (Ten Lakhs only)
Ms. Anila Jalan(PAN: AAIPA6667P)	16,00,000/- (Sixteen Lakhs only)
Ms. Rinku Jalan(PAN: AGBPJ8319E)	14,00,000/- (Fourteen Lakhs only)
Mr. R.K.Jalan(PAN: AAWPJ2892H)	10,00,000/- (Ten Lakhs only)

43. The above 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

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44. The above 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-IV). 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)

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

Date: March 12, 2019

Place: Mumbai

Jeevan Sonparote
Adjudicating Officer