

## **ADJUDICATION ORDER NO. AO/JS/VRP/ 75/2018**

**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:** Jagdish T Jain  
PAN No. AAFPJ8045D

**In the matter of Refex Industries Limited**

### **BACKGROUND**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed that during the period of July 1, 2015 to July 23, 2015 (**relevant period**) Shri Jagdish T Jain (**Jagdish Jain**) director and promoter of the Refex Industries Limited (**The Company**) alleged to have violated the provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015 ('**PIT Regulation, 2015**').
2. The Jagdish Jain sold shares of the Company during the relevant period, the details are as under:

Date	Sell Volume	Sell value (Rs lacs)	Transactions disclosed under 7 (2)(a) of PIT (Y=Yes and N=No)	Date on which 7(2)(a) triggered	Trading window Closed? Y=Yes and N=No)
A	B	C	D	E	F
30-Jun-15	90,000	16.29	Y		N
01-Jul-15	19,497	3.54	Y		N
02-Jul-15	1,25,000	23.81	Y		N
<b>08-Jul-15</b>	<b>50,000</b>	<b>10.33</b>	<b>N</b>	<b>10-Jul-15</b>	<b>Y</b>
09-Jul-15	5,003	0.98	N.A.		Y
23-Jul-15	50,000	7.28	Y		N

3. The transactions of July 08, 2015 exceeded Rs 10 lac in value, thus it was alleged that the Jagdish Jain had violated Regulation 7(2)(a) of SEBI (PIT) Regulations, 2015 for not disclosing to the company the sale transactions in excess of Rs 10 lac in value.
4. Further, it was alleged that Jagdish Jain had traded during the closure of trading window thus, was alleged that Jagdish Jain had violated Clause 4 of Schedule B Code of Conduct, read with Regulation 9(1) of PIT Regulation, 2015 by trading during trading window closure that is on July 08, 2015 and July 9, 2015.

### **APPOINTMENT OF ADJUDICATING OFFICER**

5. 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 15 A(b) and 15HB of SEBI Act, 1992, as applicable. These proceedings are thus being carried forward.

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

6. A Show Cause Notice Ref. No. EAD-8/JS/VRP/OW/25961/2017 (**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 Jagdish Jain calling upon 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. The said SCN was duly delivered to Jagdish Jain.

7. The 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 Jagdish Jain was advised to file the response by December 07, 2017.

8. Jagdish Jain filed a response dated December 08, 2017 and December 19, 2017, and hearing in the matter was held on December 21, 2017. An Authorized Representative appeared during the hearing and reiterated the written submissions made earlier 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.*

*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 Jagdish Jain made further/ additional submission vide letter dated January 8, 2018:-

*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 .....*"

## **ISSUES FOR CONSIDERATION**

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

- I. Whether Jagdish T Jain has violated Regulation 7(2)(a) of SEBI (PIT) Regulations, 2015 by not disclosing to the company the sale transactions in excess of Rs 10 lac in value?*
- II. Whether Jagdish T Jain has violated Clause 4 of Schedule B Code of Conduct read with Regulation 9(1) of PIT Regulation, 2015 by trading during trading window closure that is on July 08, 2015 and July 9, 2015?*
- III. Does the violation, if any, on the part of attract monetary penalty under Section 15 A(b) and 15HB of the SEBI Act, 1992?*
- IV. If so, what quantum of monetary penalty should be imposed on Jagdish Jain considering the factors stated in section 15J of SEBI Act, 1992?*

## **FINDINGS**

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

### **ISSUE I: Whether the Jagdish T Jain has violated Regulation 7(2)(a) of SEBI (PIT) Regulations, 2015 by not disclosing to the company the sell transactions in excess of Rs 10 lac in value?**

11. The provisions of the Reg Regulation 7(2)(a) of PIT Regulations 2015 are as follows :-

*"7 Disclosures by certain persons.*

*(2) Continual Disclosures.*

*(a). Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified; "*

12. It is alleged in the show cause notice that Jagdish Jain had sold 50, 000 shares of the company on July 08, 2015 and the sell value was 10.33 lacs. It is noted that Jagdish Jain in his replies has while admitting the transaction has submitted that the non-disclosure has been consequential and not deliberate.

13. Further Jagdish Jain has submitted that his intention to sell the shares of Refex Industries Limited was to provide funds to his Company which is into the business of steel trading and due to urgent fund requirement he had sold the shares in good faith to support for financial requirements in his business and also repay the certain outstanding loans taken by him.
14. After considering the above admissions made by Jagdish Jain for the reasons stated above, it is clear that the Jagdish Jain has violated Regulation 7(2)(a) of SEBI (PIT) Regulations, 2015 for not disclosing to the company the sell transactions in excess of Rs 10 lac in value.

***ISSUE II: Whether the Jagdish Jain has violated Clause 4 of Schedule B Code of Conduct read with Regulation 9(1) of PIT Regulation, 2015 by trading during trading window closure that is on July 08, 2015 and July 9, 2015?***

15. It is also alleged in the SCN that the Noticee viz Jagdish Jain violated Clause 4 of Schedule B Code of Conduct read with Regulation 9(1) of PIT Regulation, 2015 by trading during trading window closure that is on July 08, 2015 and July 9, 2015.

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

***"Code of Conduct.***

*9. (1) The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.*

*Schedule B*

***Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders***

*4. Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed."*

17. It is noted from the submissions of Jagdish Jain that he has submitted he was a non-executive Director in Refex Industries Limited until March 23, 2015 on the same day he resigned from the directorship of the Company and ceased all his relationship with the Company.
18. Further Jagdish Jain submitted that necessary ROC formalities had also been completed by the Company and he was not having any pecuniary relationship with the Company since he ceased to be the Whole Time Director of the Company. He ceased to be the Whole Time Director w.e.f. January 01, 2014 after which he continued only as non-executive non independent Director till March 20, 2015.

19. In support of his contention Jagdish Jain provided Form DIR-12 obtained from the Registrar of the Companies to show that on January 01, 2014 the Noticee had changed his designation from Director to a non –executive director.
20. Jagdish Jain had provided another Form DIR-12 to show that he was not associated with the company with effect from March 20, 2015 as a director. Further Jagdish Jain submitted a copy of annual report 2014-2015 wherein it was stated that Jagdish Jain had resigned from the Board of Director on March 20, 2015.
21. It is clear that the compliance with regulation 9(1) code of conduct is required by employee and connected person. While Jagdish Jain has claimed he is not having any relationship with the company, however he is liable to be “connected person”. Regulation 2 (d) (i) defines connected person as  
*any person who is or has during the **six months prior to the concerned act** been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by **being a director**, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.*  
Emphasis supplied
22. While Jagdish Jain has resigned as a director on March 20, 2015, he continues to be a connected person until September 2015. In fact Jagdish Jain himself has been taking pre-clearance of this trades from the Compliance Officer of the Company.
23. It is clear from the annexure-7 to the Show Cause Notice Ref. No. EAD-8/JS/VRP/OW/26364/2017 dated October 27, 2017 that Jagdish Jain was designated employee of the company and had made applications to the Compliance Officer (**CO**) of the company. Jagdish Jain vide application dated June 24, 2015 requested to deal in 1,00,000 equity shares of the company the same was approved by the company with a condition that Jagdish Jain must completed the transaction on or before July 02, 2015.
24. Vide another application dated July 20, 2015 Jagdish Jain requested to deal in 51,000 equity shares of the company the same was approved by the company with a condition that Jagdish Jain must completed the transaction on or before July 02, 2015.
25. Similarly, Jagdish Jain vide application dated June 29, 2015 requested to deal in 1,45,000 equity shares of the company, the same was approved by the company with a condition that Jagdish Jain must complete the transaction on or before July 02, 2015 The said facts are not disputed by the Jagdish Jain.

26. It is noted that the Jagdish Jain submitted that he ceased all his relationship with the company however as per records he was the designated employee of the company and thus he has been requesting the company to grant him permission to deal in the shares of the company by his letters dated June 24, 2015, June 29, 2015 and July 20, 2015, except for the transaction dated July 08, 2015 which were also granted.

27. After considering the above admissions made by the Jagdish Jain for the reasons stated above, it is held that the Jagdish Jain has violated Clause 4 of Schedule B Code of Conduct read with Regulation 9(1) of PIT Regulation, 2015.

***ISSUE III: Does the violation, if any, on the part of the Noticee viz, Jagdish T Jain attract monetary penalty under Section 15A(b) and 15HB of the SEBI Act, 1992?***

28. The violations referred at para 14 on the part of the Jagdish T Jain attract monetary penalty under Section 15A(b) of the SEBI Act.

29. The text of the said provisions are 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 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).....*

30. The violations referred at para 27 on the part of the Jagdish T Jain attract monetary penalty under Section 15HB of the SEBI Act.

***Penalty for contravention where no separate penalty has been provided.***

***15HB.*** *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees*

31. Noticee has mentioned that he has not benefited from the transactions and further that the violations were not intentional. It is to be mentioned that in respect of the violations, it attracts the penalty provisions of the said section. Intention of the noticee is not a consideration for determining whether the penalty provisions are attracted.

32. In this regards the Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) has held that

*"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the 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 Jagdish Jain considering the factors stated in section 15J of SEBI Act, 1992?**

33. Under Section 15-I of the SEBI Act, the adjudicating officer is required to give due regard to certain factors as mentioned in 15 J of the 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) 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>1</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.]

34. Records do not show that the acts of Jagdish Jain are repetitive in nature.

35. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Jagdish Jain in not disclosing the transactions beyond Rs 10 lakhs.

36. Bank of the envelope calculation suggests that the scrip had a low of Rs 10 on June 15, 2015 and reached a high of Rs 21.35 on July 09, 2015 – i.e. the day Jagdish Jain sold 5000 shares. Further post this the low price was Rs 9.65 on August 14, 2015. Thus it can be held that the entity has benefited by trading during the window closure period. It is to be mentioned that this aspect is being dealt with in a separate proceeding.

37. As regards the contention of Jagdish Jain that the act has not caused any loss to the investors it would be appropriate to rely on the order of the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Komal Nahata Vs. SEBI dated January 27, 2014 where it held that: “Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure.”

38. Given the above, a justifiable penalty needs to be imposed on Jagdish Jain.

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<sup>1</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**

39. 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 2,00,000/- (Rupees Two Lakhs only) under Section 15 A(b) and a penalty of Rs 5,00,000 (Rupees Five Lakhs only) under section 15HB is imposed on Jagdish Jain which will be commensurate with the violations committed by Jagdish Jain.

40. The Jagdish Jain 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

41. 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)

42. 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**