

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

**[ADJUDICATION ORDER NO. EAD-2/DSR/RG/892-893/2017]**

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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.**

**In respect of:**

- 1. Shri Digambar Patil (PAN: AAGCA0999K)**
- 2. Ms. Jyotsna Patil (PAN: AGZPP9804C)**

**In the matter of**

**JAYANT MERCANTILE COMPANY LIMITED**

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1. Securities and Exchange Board of India (hereinafter referred to as the 'SEBI') had examined trading in the scrip of Jayant Mercantile Company Limited (hereinafter referred to as 'the Company / JMCL') and into the possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act, 1992') and various Rules and Regulations made there under during the period from August 01, 2013 to March 31, 2014.
2. Upon examination, it was observed that as on October 01, 2013, Shri Digambar Patil and Ms. Jyotsna Patil (hereinafter individually referred to as 'Noticee No. 1 and 2', respectively and collectively referred to as the 'Noticees') were holding 62,50,000 shares constituting 10.57% of the share capital of JMCL. From the trading report of the said Noticees, it was observed that Noticee No. 1 and 2 had traded in the shares of JMCL and thus, were under an obligation to make necessary disclosures under Regulation 29(2) read with Regulation 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as the 'SAST Regulations') and Regulation 13(3) read with Regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'PIT Regulations'). However, it was observed that the Noticees had failed to make the said disclosures.

3. SEBI, therefore, has initiated adjudication proceedings against the Noticees for the alleged violation of the said provisions of law.

#### **Appointment of Adjudicating Officer**

4. I have been appointed as the Adjudicating Officer, vide order dated November 08, 2017, under Section 15-I of the SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992, the alleged violation of the provisions of law by the Noticees.

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

5. Accordingly, a common show cause notice bearing no. EAD-2/DSR/RG/28576/1 & 2/2017 dated November 17, 2017 (hereinafter referred to as the 'SCN') was issued to Noticee Nos. 1 and 2 in terms of Rule 4 of the Adjudication Rules requiring them to show cause as to why an inquiry should not be held against them for the alleged violation of provisions of law. The said SCN was duly delivered to the Noticees and the proof thereof is available on record. However, it is noted that no reply was submitted by the Noticees in the matter.
6. Therefore, in the interest of natural justice and in order to conduct an inquiry as per Rule 4(3) of the Adjudication Rules, vide hearing notices dated December 06, 2017, an opportunity of personal hearing was granted to the Noticees on December 18, 2017 in the matter. The said hearing notices were duly delivered to the Noticees and the proof thereof is available on record. However, the Noticees did not avail of the said opportunity of personal hearing on the scheduled date.
7. I find that as the Noticees have not submitted any reply to the SCN and have also not availed the opportunity of personal hearing granted to them, it is presumed that the Noticees have admitted the violations of the said provisions of law. I find that it is a settled principle of law that if the charges are not disputed by the Noticee, then, it is presumed that the same are admitted by the Noticee. Here, I note that *the Hon'ble Securities Appellate Tribunal (SAT) in Appeal No. 68 of 2003 in the matter of Classic Credit Ltd. Vs. SEBI (decided on December 08, 2006), inter alia, held*

that – “the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them”.

### **Consideration of Issues, Evidence and Findings**

8. I have carefully perused the charges levelled against the Noticees as per the SCN and the material as available on record. The issues that arise for consideration in the present case are:

- (a) Whether the Noticees have violated the provisions of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations and Regulation 13(3) read with Regulation 13(5) of the PIT Regulations?**
- (b) Do the violations, if any, on the part of the Noticees attract any penalty under Section 15A (b) of the SEBI Act, 1992?**
- (c) If yes, what should be the quantum of penalty?**

9. Before proceeding further, it will be appropriate to refer to the relevant provisions of law which read as under:

#### **Relevant provisions of the SAST Regulations:**

##### ***Disclosure of acquisition and disposal***

**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 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 address.

**Relevant provisions of PIT Regulations:**

***Disclosure of interest or holding in listed companies by certain persons – Continual Disclosure.***

**13(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 holding 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.

**13(5)** The disclosure mentioned under sub-regulations (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.

10. I find from the SCN that JMCPL was incorporated in the year 1985 and registered with Reserve Bank of India as a non-banking financial company. The income is generated from investments in shares and debentures, immovable property, consultancy fees, interest from loans and advances. The share capital of the company is 5,91,20,000 equity shares of ₹ 1 each. The promoter holding of the company was NIL during the examination period.

11. Upon perusal of the trading done by the Noticees, it was observed that as on October 01, 2013, the Noticee Nos. 1 and 2 were holding 62,50,000 shares constituting 10.57% of the share capital of JMCL. From the trading report of the said Noticees, it was observed that Noticee No. 1 and 2 were under an obligation to make disclosures under Regulation 29(2) of the SAST Regulations and Regulation 13(3) of the PIT Regulations. Details of their trading are as under:

**Summary of Trading by Digambar Patil:**

Date	Opening Balance	Quantity Sold	closing Balance	% to Share Capital	Violation
1-Oct-13	6250000		6250000	10.57	NA
4-Oct-13	6250000	70000	6180000	10.45	NA
7-Oct-13	6180000	153000	6027000	10.19	NA
9-Oct-13	6027000	59010	5967990	10.09	NA
10-Oct-13	5967990	48500	5919490	10.01	NA
11-Oct-13	5919490	55000	5864490	9.92	NA
14-Oct-13	5864490	20000	5844490	9.89	NA
15-Oct-13	5844490	42203	5802287	9.81	NA
17-Oct-13	5802287	40810	5761477	9.75	NA
18-Oct-13	5761477	13856	5747621	9.72	NA

21-Oct-13	5747621	56300	5691321	9.63	NA
22-Oct-13	5691321	77500	5613821	9.5	NA
23-Oct-13	5613821	60000	5553821	9.39	NA
24-Oct-13	5553821	118000	5435821	9.19	NA
25-Oct-13	5435821	124293	5311528	8.98	NA
28-Oct-13	5311528	181395	5130133	8.68	NA
29-Oct-13	5130133	97016	5033117	8.51	Violation*
30-Oct-13	5033117	100000	4933117	8.34	NA
31-Oct-13	4933117	115473	4817644	8.15	NA
1-Nov-13	4817644	50000	4767644	8.06	NA
3-Nov-13	4767644	2100	4765544	8.06	NA
5-Nov-13	4765544	26000	4739544	8.02	NA
6-Nov-13	4739544	38502	4701042	7.95	NA
7-Nov-13	4701042	30000	4671042	7.9	NA
8-Nov-13	4671042	14982	4656060	7.88	NA
11-Nov-13	4656060	40000	4616060	7.81	NA
12-Nov-13	4616060	30000	4586060	7.76	NA
13-Nov-13	4586060	50000	4536060	7.67	NA
14-Nov-13	4536060	41000	4495060	7.6	NA
18-Nov-13	4495060	20400	4474660	7.57	NA
20-Nov-13	4474660	15000	4459660	7.54	NA
25-Nov-13	4459660	25000	4434660	7.5	NA
26-Nov-13	4434660	43164	4391496	7.43	NA
27-Nov-13	4391496	15000	4376496	7.4	NA
28-Nov-13	4376496	15000	4361496	7.38	NA
2-Dec-13	4361496	30000	4331496	7.33	NA
3-Dec-13	4331496	16000	4315496	7.3	NA
6-Dec-13	4315496	24759	4290737	7.26	NA
9-Dec-13	4290737	35000	4255737	7.2	NA
10-Dec-13	4255737	12500	4243237	7.18	NA
11-Dec-13	4243237	25000	4218237	7.14	NA
12-Dec-13	4218237	50000	4168237	7.05	NA
13-Dec-13	4168237	50000	4118237	6.97	NA
16-Dec-13	4118237	21000	4097237	6.93	NA
17-Dec-13	4097237	18726	4078511	6.9	NA
18-Dec-13	4078511	39473	4039038	6.83	NA
24-Dec-13	4039038	25000	4014038	6.79	NA
30-Dec-13	4014038	5148	4008890	6.78	NA
1-Jan-14	4008890	2510	4006380	6.78	NA
6-Jan-14	4006380	31604	3974776	6.72	NA
21-Jan-14	3974776	38000	3936776	6.66	NA
22-Jan-14	3936776	49367	3887409	6.58	NA
29-Jan-14	3887409	23629	3863780	6.54	NA
30-Jan-14	3863780	25000	3838780	6.49	Violation*

Summary of Trading by Jyotsna Patil:

Date	Opening Balance	Quantity Sold	closing Balance	% to Share Capital	Violation
1-Oct-13	6250000		6250000	10.57	NA
4-Oct-13	6250000	75000	6175000	10.44	NA
9-Oct-13	6175000	38700	6136300	10.38	NA
11-Oct-13	6136300	81000	6055300	10.24	NA
14-Oct-13	6055300	39055	6016245	10.18	NA
15-Oct-13	6016245	37500	5978745	10.11	NA
17-Oct-13	5978745	30000	5948745	10.06	NA
21-Oct-13	5948745	10800	5937945	10.04	NA

23-Oct-13	5937945	35000	5902945	9.98	NA
24-Oct-13	5902945	58018	5844927	9.89	NA
25-Oct-13	5844927	60000	5784927	9.79	NA
28-Oct-13	5784927	40500	5744427	9.72	NA
29-Oct-13	5744427	145462	5598965	9.47	NA
30-Oct-13	5598965	70003	5528962	9.35	NA
31-Oct-13	5528962	114712	5414250	9.16	NA
1-Nov-13	5414250	73308	5340942	9.03	NA
3-Nov-13	5340942	5000	5335942	9.03	NA
5-Nov-13	5335942	39000	5296942	8.96	NA
6-Nov-13	5296942	18005	5278937	8.93	NA
11-Nov-13	5278937	10000	5268937	8.91	NA
12-Nov-13	5268937	15000	5253937	8.89	NA
13-Nov-13	5253937	25020	5228917	8.84	NA
14-Nov-13	5228917	21003	5207914	8.81	NA
20-Nov-13	5207914	7183	5200731	8.8	NA
5-Dec-13	5200731	36858	5163873	8.73	NA
6-Dec-13	5163873	10000	5153873	8.72	NA
9-Dec-13	5153873	48500	5105373	8.64	NA
10-Dec-13	5105373	40000	5065373	8.57	Violation*

*\*Violation under Regulation 29(2) of the SAST Regulations and Regulation 13(3) of the PIT Regulations.*

**12.** I further find that to examine whether the Noticees have made the said disclosures or not, vide email dated October 10, 2014, BSE was asked to provide the disclosures made by Noticee Nos. 1 and 2 under the SAST Regulations and PIT Regulations during the period from October 01, 2013 to October 09, 2014. BSE, vide email dated October 13, 2014, had submitted that no disclosures were filed by the said Noticees during the relevant period. Further, vide letter dated October 16, 2014, JMCL was also asked to submit whether any disclosures were made by the Noticees under the SAST Regulations and PIT Regulations during the period from October 01, 2013 to October 09, 2014. Vide letter dated January 09, 2015, JMCL had replied to said letter and submitted that it had not received any disclosures from the Noticees during the relevant period.

**13.** In view of the above, it was alleged in the SCN that by failing to make necessary disclosures as required under Regulation 29(2) read with Regulation 29(3) of the SAST Regulations (to the company and the stock exchange) and under Regulation 13(3) read with Regulation 13(5) of the PIT Regulations (to the company), the Noticees have violated the said provisions of law.

14. Upon perusal of the transactions entered into by the Noticees as per the table at para 11 above, I find that upon sale of shares on October 29, 2013, the shareholding of Noticee No. 1 had witnessed a change exceeding 2% of in his total shareholding i.e. the shareholding of Noticee No. 1 had decreased from 10.57% (as on October 01, 2013) to 8.51% (on October 29, 2013). Further, I find that on January 30, 2014, the Noticee No. 1 had again sold 25000 shares which further decreased his shareholding from 8.51% (on October 29, 2013) to 6.49% (on January 30, 2014) which constituted for more than 2% change in his shareholding. Upon the said change in shareholding on two occasions, the Noticee No. 1 was under an obligation to make the necessary disclosures under Regulation 29(2) read with Regulation 29(3) of the SAST Regulations and Regulation 13(3) read with Regulation 13(5) of the PIT Regulations on both the occasions. Similarly, I find that the Noticee No. 2 had sold 40000 shares of JMCL on December 10, 2013 which resulted in fall in her shareholding exceeding 2% i.e. from 10.57% (as on October 01, 2013) to 8.57% (on December 10, 2013). Upon the said change in shareholding, Noticee No. 2 was also under an obligation to make the necessary disclosures under Regulation 29(2) read with Regulation 29(3) of the SAST Regulations and Regulation 13(3) read with Regulation 13(5) of the PIT Regulations.

15. As evident from the email dated October 13, 2014 received from BSE and letter dated January 09, 2015 received from JMCL, the Noticees had not made any disclosures under the SAST Regulations and the PIT Regulations to the company or to the stock exchange. In view of the same, as the said disclosures were not made by the Noticees, I am inclined to conclude that the Noticees, by failing to make the said disclosures, had indeed violated the provisions of Regulation 29(3) of the SAST Regulations and Regulation 13(3) read with Regulation 13(5) of the PIT Regulations warranting imposition of monetary penalty as prescribed under Section 15A(b) of the SEBI Act, 1992 (as existed during the relevant period) 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,--*

*(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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.*

16. In **Appeal No. 66 of 2003 -Milan Mahendra Securities Pvt. Ltd. Vs. SEBI**—the Hon'ble SAT has observed that, *“the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market.”* Further, in the matter of **Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010)**, the Hon'ble SAT had observed *“Once it is established that the mandatory provisions of Takeover Code was violated, the penalty must follow.”*

17. At this instant, it is important to quote the observations of the Hon'ble Supreme Court of India in the matter of **SEBI v. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)**, wherein, the Hon'ble Court, *inter alia*, held: *“once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow.”*

18. While determining the quantum of penalty under section 15A(b) of the SEBI Act, 1992, it is important to consider the factors stipulated in section 15J of the SEBI Act, 1992 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 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.*



19. At this juncture, I would like to quote the **Order dated September 04, 2013 passed by the Hon'ble SAT in the matter of Vitro Commodities Private Limited Vs. SEBI** wherein the Hon'ble SAT had observed that " *It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other* ".
20. In the light of the above observations of Hon'ble SAT, I am of the view that the violation of the provisions of Regulation 13(3) of the PIT Regulations and Regulation 29(2) of the SAST Regulations committed by the Noticees are not substantially different. Therefore, these violations can be considered as a single violation for the purpose of imposition of penalty on the Noticees in the matter.
21. I observe that, from the material available on record, it is not possible to ascertain any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default. I note that the default of Noticee No. 1 is repetitive in nature and that of Noticee No. 2 is not repetitive in nature. I note that correct and timely disclosures play an essential role in the proper functioning of the securities market and failure to do so results in depriving the investors from taking well informed investment decision. I, therefore, conclude that the Noticees, by failing to make the necessary disclosures as required under the SAST Regulations and PIT Regulations, are liable for monetary penalties under the SEBI Act, 1992.

## **ORDER**

22. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose the following monetary penalties on the Noticees:

Sr. No.	Name of the Noticee	Provisions of law violated	Penal Provisions	Penalty Amount (in ₹)
1.	Shri Digambar Patil	Regulation 29(2) read with Regulation 29(3) of the SAST	Section 15A(b) of the SEBI Act, 1992	2,00,000/- (Rupees Two Lakh Only)
2.	Ms Jyotsna Patil	Regulations and Regulation 13(3) read with Regulation 13(5) of the PIT Regulations		1,00,000/- (Rupees One Lakh Only)

In my view, the aforesaid penalties are commensurate with the defaults committed by the Noticees.

**23.** The amount of penalties shall be paid either by way of demand draft/s in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft/s or forwarding details and confirmation of e-payment made in the format as given in table below should be forwarded to "The Division Chief (Enforcement Department - DRA-I), Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 052."

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

**24.** In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to Securities and Exchange Board of India.

**Date: December 20, 2017**  
**Place: Mumbai**

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