

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PB/AO- 16/2011]

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

MR. NEERAJ JAIN

(Pan No.: ADUPJ4023F)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted examination in the trading in the scrip of M/s Albright and Wilson Chemicals India Ltd. (hereinafter referred to as Company/AWCIL) for the period from January 01, 2008 to April 02, 2008 (hereinafter referred to as “**Investigation period**”).
2. The findings of the examination led to the allegation that Mr. Neeraj Jain (hereinafter referred to as 'Noticee') had violated regulation 3(i) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT Regulations**”) and consequently, liable for monetary penalty under section 15G (ii) of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned has been appointed as Adjudicating Officer vide order dated March 23, 2010 under section 15 I of the SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Rules**') to inquire into and adjudge under section 15G (ii) of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice No. EAD-7/PB/RG/21693/2010 dated September 30, 2010 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15G (ii) of the SEBI Act for the violation as alleged in the SCN.
5. It was alleged in the SCN that the Noticee had violated regulation 3(i) of the PIT Regulations by dealing in shares, while in possession of unpublished price sensitive information.
6. The aforesaid SCN was sent through Hand Delivery. The said notice was received and acknowledged by the Noticee on October 12, 2010. Vide letter dated October 22, 2010 the Noticee requested to keep the proceedings in abeyance till March 2011 as he was out of the country. The Noticee vide letter dated January 25, 2011 authorized Mr. Naval Choudhary (hereinafter referred to as "Authorized Representative") (AR) on his behalf to appear for hearing.
7. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity

of personal hearing on February 21, 2011 vide notice dated February 04, 2011.

8. The AR appeared for the hearing. During the course of the hearing, the AR denied the allegations made against the Noticee. The AR *inter-alia* stated that:

1) *"The annual results of December 2006 were published in May 2007 the following information came in public domain:*

(a) Several cost-cutting measures to be introduced in the STTP plant of the company and the appropriate measures to be taken in the best interests of the Company.

(b) Four –fold expansion of its capacity for the manufacture of surfactants at Roha

2) *The quarterly results of September 2007 were published the following day, in which it was mentioned that the Company has entered into a business purchase agreement for sale of its Phosphate Business located at Ambernath.*

3) *On January 29, 2008 the Board was informed that there were additional debits to the extent of ₹ 120 lac on account of provisions to be made and write-off irrecoverable accounts. Board noted that without these additional debits, the operations showed a turnaround.*

The shares were purchased by me after January 29, 2008 when the entire information was in public domain. Therefore, the information was published."

CONSIDERATION OF ISSUES AND FINDINGS

9. The issues that arise for consideration in the present case are :

- a. Whether there is any violation of regulation 3(i) of the PIT Regulations by the Noticee?
- b. Does the violation, if any, attract monetary penalty under section 15G (ii) of the SEBI Act?

- c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

10. Before moving forward, it would be pertinent to refer to the provisions of regulations 2(c), 2(e), 2(ha), 2(h)(viii), 2(k) and 3(i) of the PIT Regulations and section 6(c) of the Companies Act, 1956 which reads as under:-

Regulation 2

(c) “connected person” means any person who—

(i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act or

(ii) occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company;

Explanation:—For the purpose of clause (c), the words “connected person” shall mean any person who is a connected person six months prior to an act of insider trading.

Regulation 2 (e)

“insider” means any person who, is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of company, or who has received or has had access to such unpublished price sensitive information.

Regulation 2(ha)

“price sensitive information” means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.

Explanation.—The following shall be deemed to be price sensitive information:—

- (i) periodical financial results of the company;
- (ii) intended declaration of dividends (both interim and final);
- (iii) issue of securities or buy-back of securities;
- (iv) any major expansion plans or execution of new projects.
- (v) amalgamation, mergers or takeovers;
- (vi) disposal of the whole or substantial part of the undertaking;
- (vii) and significant changes in policies, plans or operations of the company

Regulation 2

.....

- (h) “person is deemed to be a connected person”, if such person—
(viii) relatives of the connected person;

Regulation 2(k)

“unpublished” means information which is not published by the company or its agents and is not specific in nature.

Explanation.—Speculative reports in print or electronic media shall not be considered as published information.

;

Prohibition on dealing, communicating or counselling on matters relating to insider trading.

3. No insider shall—

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; OR

(ii)

Provided that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law.

Meaning of "relative"

Section 6. Meaning of "relative".-

A person shall be deemed to be a relative of another if, and only if,-

(a)

(b)

(c) the one is related to the other in the manner indicated in Schedule IA.]

11. The issue for examination in this case is whether there is any violation of regulation 3(i) of the PIT Regulations by the Noticee.

12. Regulation 3(i) of PIT Regulations states that no insider as defined under regulation 2(e) of PIT Regulations shall on his own behalf or on behalf of any other person deal in securities of a company listed on any stock exchange when in possession of unpublished price sensitive information as defined under regulation 2(k) and regulation 2(ha) of PIT Regulations.

13. The term insider is defined in the PIT Regulations as any person who is or was or is deemed to be connected with the company and who is reasonably expected to have or has received or has had access to such unpublished price sensitive information in respect of securities of a company. The word "person" is a generic term and it may take in its ambit, when construed in common parlance, not only individuals but also firms, associations or bodies corporate. Section 3(42) of the General Clauses Act, 1987 gives an inclusive definition of this word, according to which, "person" shall include any company or association or body of individuals, whether incorporated or not". The definition of insider under regulation 2(e) of PIT Regulations has three elements: (i)

the person should be a natural person or legal entity; (ii) he should be connected person or a deemed connected person and (iii) acquisition of the unpublished price sensitive information should be by virtue of such connection.

The term “connected person” has been defined in regulation 2(c) of the PIT Regulations and includes any person who is a “director” of a company, as defined in clause (13) of section 2 of the Companies Act, 1956 or is an officer or employee of the company or holds position involving a professional or business relationship between himself and the company and who has reasonable access to the unpublished price sensitive information of the company. As per section 2(13) of the Companies Act 1956, a “Director” includes any person occupying the position of director, by whatever name called. As per section 307(10) of Companies Act, 1956, any person in accordance with whose directions or instructions the Board of Directors of a company is accustomed to act, shall be deemed to be a director of the company and a director of a company shall be deemed to hold or to have an interest or a right in or over them, and either- (i) that body corporate or its Board of Directors is accustomed to act in accordance with his directions or instructions or (ii) he is entitled to exercise at any general meeting of that body corporate.

Before proceeding with the issue, let us consider the definition of price sensitive information provided in the PIT Regulations. Thus, price sensitive information means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company. The information relating to periodical financial results, intended declaration of dividend, issuance and buy-back of securities, major expansion plan or execution of new project, amalgamation, merger and takeovers, disposal of whole and

substantial part of undertaking or any significant change in policies, plans or operations of the company is generally considered as “price sensitive information” till the time the same is made public. These factors directly affect the market price of the share. Further, the list given in the explanation is an inclusive list and not an exhaustive one. So any other information, which has a material implication on the price of the scrip, is price sensitive information.

Information can be regarded as price sensitive information, if the following conditions are fulfilled:

- i. It relates to the company in whose securities insider trading has been allegedly indulged in.
- ii. It is not generally known or published by the company for general information.
- iii. It is, if published or known, likely to affect materially the price of securities of the company.

“Unpublished” means information which is not published by the company or its agents or which is not made public in print or electronic media and is not specific in nature. The information published by a company or its agent in any newspaper or any print or electronic media as prescribed which is specific in nature with an objective to make it known to the investing public, would be a published information or otherwise “unpublished”. An insider, being in possession of any unpublished price sensitive information, shall not deal in the securities of a company listed on any stock exchange, either on his own behalf or on behalf of any person.

Regulation 2(h) of the PIT Regulations specifies the list of “deemed to be connected person”. Regulation 2(h) (viii) states that the relatives of the connected person are deemed to be connected person. Schedule

I-A of Section 6(c) of Companies Act, 1956 specifies the list of relatives.

14. The Noticee purchased 2,641 shares of AWCIL through Kotak Securities Ltd., details of which are tabulated below-

Name of the person	Date	Period	Purchase qty (shares)	Purchase rate (₹)	% of market volume	Closing price of the scrip on April 01, 2008 i.e. next date of announcement of financial results and 10% dividend
Neeraj Jain	04/02/2008	Purchased shares after Board meeting dated 29/01/2008, wherein the board noted turnaround in the company performance and announcement of dividend on March 31, 2008.	500	136.90	23.75 %	
Neeraj Jain & Priyanka Choudhary	12/02/2008		163	125.02	20.89 %	
Neeraj Jain	13/02/2008		816	125.37	83.18 %	
Neeraj Jain	26/02/2008		25	120.36	19 %	
Neeraj Jain	28/03/2008		360	104.40	8.8 %	
Neeraj Jain	31/03/2008		777	114.00	74 %	120.00
Total			2,641			

From the above, it is clear that the Noticee and his wife Mrs. Priyanka Choudhary have purchased of 2,641 shares of AWCIL over a period of two months (February and March, 2008) but the Noticee purchased 1,137 shares at an average rate of ₹110.96 per share on the date of announcement of financial results and 10% dividend, for the year ended 31st December, 2007 and on previous trading day.

15. Upon perusal of the documents available on record, submissions of the Noticee and charges leveled thereof, I find that the information of turnaround in operations of AWCIL during the quarter ended December 2007 was known only to the attendees to the Board meeting held on January 29, 2008. AWCIL reported a loss of ₹1.45 crore during the quarter ended June 2007 and loss of ₹ 1.92 crore during the quarter ended September 2007. However, during the quarter ended December 2007 the loss was reduced to ₹ 9 lakh, whereas, it reported a profit of ₹ 12 lakh during the quarter ended March 2008. This fact of turnaround in the company became unpublished price sensitive information which was known to the managing director Mr. Naval Choudhary. On January 29, 2008, the company informed BSE that it shall be publishing its annual audited financial results before the end of March 31, 2008. Moreover, on March 24, 2008, the agenda for board meeting to be held on March 31, 2008 and the background papers relating to the board meeting were circulated to the board of directors including the managing director. I find that the agenda of the board meeting was circulated to the managing director, i.e. Mr. Naval Choudhary on March 24, 2008. Noticee is the son-in-law of Mr. Naval Choudhary, managing director of the company. The information of turnaround in the company was communicated by the managing director Mr. Naval Choudhary to his son in law i.e. the Noticee.

16. I have gone through the submissions made by the Noticee. The Noticee in his first submission has stated that several cost-cutting measures were to be introduced in the STTP plant of the company and the appropriate measures were to be taken in the best interests of the company. Also there were plans for four-fold expansion of its capacity for the manufacture of surfactants at Roha. This information according to the Noticee came into public domain in May 2007. However, on

perusal of the minutes of board meeting held on January 29, 2008, I find that Board noted that dividend from Rhodia Chemicals had helped reduce the loss for the year 2007, which was more than what was budgeted. So, I do not find merit in the first submission made by the Noticee. In his second submission, the Noticee has stated that in the quarterly results of September 2007, it was mentioned that the company has entered into a business purchase agreement for sale of its phosphate business located at Ambarnath. However, on perusal of the minutes of the Board meeting held on January 29, 2008, I find that the phosphate business was expected to be sold during the first quarter of 2008. So, I do not find merit in the submission of the Noticee. In the third submission, the Noticee has clearly stated that the board meeting held on January 29, 2008 discussed the operational turnaround in the performance of the company. Also, the Noticee has stated that the shares were purchased by him after January 29, 2008. I find that the information of turnaround in operations of AWCIL was known to the public only on March 31, 2008, at 6:01:53 p.m. (after market hours) when the company announced its quarterly and annual results for the period ended December 2007. So, even this submission of the Noticee cannot be accepted.

On perusal of the records, I find that the Noticee started purchasing shares after the board meeting was held on January 29, 2008. From February 04, 2008, the Noticee started purchasing shares in small quantities. However, I find that the Noticee has purchased 1137 shares (360+777) on March 28, 2008 and March 31, 2008 just before the financial results for the year ended 31st December, 2007 came into public domain. The purchases made by the Noticee on March 28, 2008 and March 31, 2008 clearly indicate the fact that the Noticee was dealing in the securities while in possession of unpublished price

sensitive information i.e. the fact of turnaround in the operations of the company from the quarter ended December 2007.

17. In view of the foregoing, I find that the Noticee being the son-in-law of Mr. Naval Choudhary is a deemed to be connected person and therefore an insider. Further, the Noticee being in possession of unpublished price sensitive information has purchased 1137 shares of AWCIL. Therefore, the violation of regulation 3(i) of the PIT Regulations by the Noticee stands established.

18. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216 (SC) held that "*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*".

19. As the violation of the statutory obligation under regulation 3(i) of the PIT Regulations has been established, I hold that the Noticee is liable for monetary penalty under section 15G(ii) of the SEBI Act, which reads as under:-

15G. Penalty for insider trading. - If any insider who,-

(i).....

(ii) communicates any unpublished price- sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii).....

shall be liable to a penalty not exceeding five lakh rupees.

20. While determining the quantum of penalty under section 15G(ii) of the SEBI Act, it is important to consider the factors stipulated in section 15J of 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.”*

21. From the discussions and the reasoning provided above, it is clear that 1137 shares of AWCIL were purchased by the Noticee pursuant to unpublished price sensitive information. From the material available on record, I find that the Noticee, being a deemed to be connected person was in possession of unpublished price sensitive information. The unpublished price sensitive information was with his father-in-law, Mr. Naval Choudhary. The principles of corporate governance viz. transparency and accountability have been ignored by the Noticee as he purchased shares while being in possession of unpublished price sensitive information. The Noticee by using such information and using it for own benefit have violated the law in letter and spirit. In the present case, from the material available on record it is observed that the Noticee has purchased 1137 shares at an average cost of ₹110.96. After the disclosure of information made by AWCIL on March 31, 2008 the price of the shares touched a high of ₹120 on the next day i.e. on April 01, 2008. Thus, the real price discovery could be said to be at ₹120. If a notional profit is to be calculated based on the impact of disclosure made on March 31, 2008, it would be ₹ 10, 945. I have noted that the disclosure of information was made by AWCIL on March

31, 2008 at 6:01:53 p.m. after market hours. For calculating notional profit, I have considered the price of April 01, 2008 i.e. ₹120.

ORDER

22. After taking into consideration all the facts and circumstances of the case, I hereby impose a monetary penalty of ₹ 50,000/- (Rupees Fifty Thousand only) on the Noticee which will be commensurate with the violation committed by it.
23. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Ms. Anita Kenkare, General Manager, Investigation Department- 2, SEBI, SEBI Bhavan, Plot No. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
24. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: **February 28, 2011**
Place: **MUMBAI**

PARAG BASU
ADJUDICATING OFFICER