

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: AO/EAD/SG-SKS/156/2018)**

UNDER SECTION 15 - I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of:

J Kumar Infraprojects Ltd.
(PAN- AAACJ9161C)
16-A, Andheri Industrial Estate,
Veera Desai Road,
Andheri (West),
Mumbai-400053.

BACKGROUND

1. A department of SEBI (hereinafter referred to as 'ISD') during examination of trading in the scrip of J Kumar Infraprojects Ltd. (hereinafter referred to as 'Noticee') for the period from 01.05.2014 to 31.07.2014 (hereinafter referred to as 'Period of Examination') observed that J Kumar Minerals and Mines India Private Ltd., one of the promoters of the Noticee (hereinafter referred to as 'JKMM') acquired 2,52,160(0.91%) shares of the Noticee on 08.01.2013. Pursuant to the said acquisition, shareholding of JKMM in the scrip of the Noticee increased from 4.48% to 5.39% which triggered disclosure requirements under Regulations 13(1) and 13(4A) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations').
2. With respect to aforesaid transactions, upon a query by ISD, the Noticee *vide* its letter dated 04.09.2014 had informed that it had received disclosures under PIT Regulations from JKMM. From the copies of disclosures enclosed by the Noticee, it was observed by ISD that JKMM had made timely disclosures under Regulation 13(3) and 13(4) PIT Regulations to the Noticee. However, it was observed that the Noticee had not made applicable disclosures under Regulations 13(6) of PIT Regulations to the Stock Exchanges viz. BSE and NSE.

3. In view of the aforesaid, it was alleged that the Noticee had violated the provisions of Regulations 13(6) of PIT Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as Adjudicating Officer vide order dated 19.12.2016 under Section 15-I(1) and (2) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') to inquire into and adjudge the alleged violation of provisions of Regulations 13(6) of PIT Regulations by the Noticee under Section 15A(b) of SEBI Act. The proceedings appointing the undersigned as the Adjudicating Officer were communicated vide *communique* dated 11.01.2017 and clarifications from ISD in response to a reference made on 18.01.2017 by the undersigned were received on 20.11.2017.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice dated 09.02.2018 (hereinafter referred to as 'SCN') was issued by the undersigned to the Noticee under the provisions of Rule 4 of the Adjudication Rules read with Section 15-I(1) and (2) of SEBI Act calling upon the Noticee to show cause as to why an inquiry should not be held against it for the aforesaid alleged violations of the provisions of Regulation 13(6) of PIT Regulations and why penalty, if any, should not be imposed on it under the provisions of section 15A (b) of the SEBI Act. The SCN was sent to the Noticee via Speed Post with Acknowledgement Due and the proof of delivery bearing the stamp of the Noticee is on record.
6. In response to the aforesaid SCN, the Noticee vide email dated 26.02.2018 requested a time of 3 weeks to submit its reply. The undersigned granted additional time of 2 weeks to submit the reply vide e-mail dated 27.02.2018.

Subsequent to the above, the Noticee submitted its reply vide letters dated 19.03.2018 and 24.03.2018. The submissions of the Noticee, *inter-alia*, read as under:

“

.....in terms of PIT regulation JKMM was required to make disclosure in terms of clause 13(1) and clause 13(4A) for its acquisition of 0.91% shares of JKIL on 08.01.2013 to us. However JKMM did not furnish the required disclosure to us under clause 13(3) and clause 13(4) of PIT regulations.

Since in terms of regulation clause 13(6), we were required to make disclosure to exchange within 2 days of receipt of disclosure under clause 13(1) and clause 13(4A) from JKMM, which we did not receive, there was no requirement on our part to file such disclosure to stock exchanges. Consequently, there is no violation as alleged against us.

Further it is respectfully submitted that in view of the submission made it is humbly prayed that the Notice be set aside and the charges labelled against us Notice be dropped. With this clarification, we feel that hearing may not be required.

.....”

7. Considering the facts and circumstances of the case, I am of the opinion that no prejudice would be caused to the Noticee in the given matter if opportunity of hearing is not granted to it and I deem it appropriate to decide the matter on the basis of facts/material available on record.

ISSUES FOR CONSIDERATION

8. After perusal of the material available on record, I have the following issues for consideration, viz.,
- I. Whether the Noticee has violated the provisions of Regulation 13(6) of PIT Regulations?
 - II. If the answer to issue at I is in affirmative, then whether the Noticee is liable for monetary penalty under section 15A (b) of the SEBI Act?
 - III. If the answer to issue at II is in affirmative, then what quantum of monetary penalty should be imposed on the Noticee?

FINDINGS

9. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

ISSUE I: Whether the Noticee has violated the provisions of Regulation 13(6) of PIT Regulations?

10. The allegation against the Noticee is that on receipt of timely disclosures from JKMM under regulation 13(3) and 13(4) of PIT Regulations, it has not made applicable disclosures under Regulations 13(6) of PIT Regulations to the Stock Exchanges viz. BSE and NSE.

11. The relevant provisions of the PIT Regulations read as under:

“13 Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure

(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)

Continual disclosure

(3)

(4)

(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).....

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 (1), (2), (2A), (3), (4) and (4A) in the respective formats specified in Schedule III.

12. The Noticee vide its reply dated 24.03.2018, has, *inter-alia*, contended that “Since in terms of regulation clause 13(6), we were required to make disclosure to exchange within 2 days of receipt of disclosure under clause 13(1) and clause 13(4A) from JKMM, which we did not receive, there was no requirement on our part to file such disclosure to stock exchanges. Consequently, there is no violation as alleged against us”.

13. Vide its Office Note dated 20.11.2017, ISD has furnished as under:

i. JKMM triggered disclosure requirements under following Regulations:

➤ Regulation 13(1) of SEBI (PIT) Regulations 1992

.....

➤ Regulation 13(4A) of SEBI (PIT) Regulations 1992

.....

ii. JKMM made timely disclosures to the Noticee and stock exchange under:

➤ Regulation 13(3) of SEBI (PIT) Regulations 1992

➤ Regulation 13(4) of SEBI (PIT) Regulations 1992

iii.It was also noted that formats under Regulation 13(1) and 13(3) of SEBI (PIT) Regulations do not differ significantly in substance. Further, Form D is used for disclosures under both Regulations 13(4) and 13(4A) of SEBI (PIT)

Regulations 1992 and only difference is that under 13(4) it is used for directors/officers and under 13(4A) it is used by promoters.

- iv. *In view of the above, administrative warning was issued to JKMM for not making disclosures under appropriate Regulations and adjudication proceedings were initiated against JKIL for not making disclosures under Regulation 13(6) of SEBI (PIT) Regulations 1992.*

.....

- v. *..... In above background, applicable Sub Regulation stipulated under Regulation 13(6) of PIT Regulations for which instant adjudication proceedings are initiated are Regulation 13(1) and 13(4A) of SEBI (PIT) Regulations 1992.*

14. Admittedly, JKMM is one of the promoters of the Noticee. The Noticee in its reply has stated that it has not received disclosures from JKMM in accordance with the provisions of Regulation 13(1) and 13(4A) of PIT Regulations. A copy of the administrative warning letter issued by ISD to JKMM bearing reference no. ISD/KR/AM/OW/14983/2015 dated 29.05.2015, *inter-alia*, stating that “JKMM made disclosures under Regulations 13(3) and 13(4) of PIT Regulations and not under Regulation 13(1) and 13(4A) of PIT Regulations” on record before me corroborates the said statement of the Noticee. I, however, note that ISD vide its Office Note dated 20.11.2017 has stated that applicable sub-regulation stipulated under Regulation 13(6) of PIT Regulations for which instant adjudication proceedings are initiated against the Noticee are Regulation 13(1) and 13(4A) of PIT Regulations.

15. From the above, I note that the pre-condition stipulated under Regulation 13(6) of PIT Regulations that “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), and (4A)” remained unfulfilled in the present matter. Since the requirement stipulated under Regulation 13(6) of PIT Regulations remained unfulfilled as aforesaid, the allegation that the Noticee has violated the provisions of Regulation 13(6) of PIT Regulations is not tenable.

ISSUE II: If the answer to issue at I is in affirmative, then whether the Noticee is liable for monetary penalty under section 15A (b) of the SEBI Act?

16. In view of the findings recorded at para 15 above, the Noticee is not liable for monetary penalty under Section 15 A (b) of the SEBI Act.

ISSUE III: If the answer to issue at II is in affirmative, then what quantum of monetary penalty should be imposed on the Noticee?

17. Since the Noticee is not liable for monetary penalty in the instant matter, this issue deserves no consideration.

ORDER

18. In view of my findings noted in the preceding paragraphs, I hereby dispose of the Adjudication Proceedings initiated against J Kumar Infraprojects Ltd *vide* Show Cause Notice dated 09.02.2018.

19. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, a copy of each of this order is being sent to J Kumar Infraprojects Ltd. Having address at 16-A, Andheri Industrial Estate, Veera Desai Road, Andheri (West), Mumbai-400053 and also to the Securities and Exchange Board of India, Mumbai.

Date: 26.03.2018
Place: Mumbai

SURESH GUPTA
ADJUDICATING OFFICER