

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO.: ORDER/VV/HS/2019-20/6833-6836]**

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ORDER UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995, IN RESPECT OF:

Noticee No.	Name of the Noticee	PAN of the Noticee
1.	M/s. J Kumar Infraprojects Limited	[PAN: AAACJ9161C]
2.	Mr. Jagdish Kumar Gupta	[PAN: AACPG2753N]
3.	Mr. Kamal J Gupta	[PAN: AAEPG9892N]
4.	Mr. Nalin J Gupta	[PAN: AAEPG9920B]

IN THE MATTER OF PREFERENTIAL ISSUE OF WARRANTS BY J KUMAR INFRAPROJECTS LIMITED.

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**BACKGROUND**

1. The Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) had conducted an Investigation pertaining to alleged irregularities in the preferential issue of convertible warrants by M/s. J Kumar Infraprojects Limited (hereinafter referred to as “**Company**” / “**JKIL/Noticee no. 1**”) for the period April 01, 2009 to March 31, 2010. The scrip of JKIL is listed on BSE Limited (hereinafter referred to as “**BSE**”) and National Stock Exchange of India Limited (hereinafter referred to as “**NSE**”).
2. Pursuant to the Investigation SEBI, initiated adjudication proceedings under Section 15A(b) and 15HA of the Securities and Exchange Board of India Act,

1992 (hereinafter referred to as “**SEBI Act**”) against the Company M/s. J Kumar Infraprojects Limited (Noticee No. 1) and its promoter director viz. Mr. Jagdish Kumar Gupta (Noticee No. 2), Mr. Kamal J Gupta (Noticee No. 3) and Mr. Nalin J Gupta (Noticee No. 4) (hereinafter collectively referred to as “**Noticees**”) for the alleged disclosure violations under SEBI (Prohibition of Insider Trading) Regulation, 1992 and violations of provisions of SEBI Act and SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 as detailed hereunder:-

- 2.1. The alleged violation of Regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulation, 1992 (hereinafter referred to as “**PIT Regulations, 1992**”) read with Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulation, 2015 (hereinafter referred to as “**PIT Regulations, 2015**”) by Noticee No. 1.
- 2.2. The alleged violation of Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015 by Noticee Nos. 2 to 4.
- 2.3. The alleged violation of Section 12A(a), (b) and (c) of SEBI Act read with Regulation 3(a), (b), (c), (d), 4(2)(f) and (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”) by all the Noticees.

### **APPOINTMENT OF ADJUDICATING OFFICER**

3. Shri Sahil Malik was appointed as the Adjudicating Officer (**AO**) by SEBI, under Section 19 of the SEBI Act read with Section 15-I of the SEBI Act and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995

(hereinafter referred to as “**Adjudication Rules**”) to conduct adjudication proceedings *inter-alia* in respect of the Noticees, in the manner specified under Rule 4 of the Adjudication Rules read with Section 15-I (1) and (2) of the SEBI Act, and if satisfied that penalty is liable, to impose such penalty deemed fit in terms of Rule 5 of the Adjudication Rules and in terms of Section 15A(b) and 15HA of the SEBI Act. Subsequently, in the matter the undersigned has been appointed as AO by SEBI, on August 13, 2019, in the place of Shri Sahil Malik to inquire into and adjudge, the violation of the provisions of PIT Regulations, SEBI Act and PFUTP Regulations alleged to have been committed by the Noticees.

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

4. A common Show Cause Notice dated December 07, 2017 (hereinafter referred to as “**SCN**”) was issued to the Noticees in terms of Rule 4 (1) of the Adjudication Rules read with Section 15-I of the SEBI Act, to show cause as to why an inquiry should not be initiated and penalty should not be imposed under Section 15A(b) and 15HA of the SEBI Act, on the Noticees for the violation of the provisions of PIT Regulations 1992, SEBI Act and PFUTP Regulations alleged to have been committed by the Noticees.

#### **In the SCN following allegations have been made against the Noticees.**

##### **(A) Disclosure Violations**

5. The Board of Directors of JKIL in its Extraordinary General Meeting (EGM) dated May 20, 2009, approved the issuance of 40 lakh convertible warrants of Rs. 10 each at a conversion price of Rs. 60 on preferential basis to 22 entities who are the suspected entities in this investigation. The details of the allottees and the shares allotted are given as under:

S. No	Name	Status	Holding in JKIL prior to conversion of warrants	% of share Capital	No. of warrants issued	Holding in JKIL after the conversion of warrants	% of Share Capital	Change in holding
1	Jagdish Kumar Gupta	Promoter	5093980	24.58%	200000	5293980	21.41%	-3.17%
2	Kamal J Gupta	Promoter	1222500	5.90%	100000	1322500	5.35%	-0.55%
3	Nalin J Gupta	Promoter	1207000	5.82%	100000	1307000	5.29%	-0.54%

6. Noticee 2, 3 and 4 are directors of JKIL. After the conversion of warrants into equity shares on Aug 19, 2009 (Wednesday), the individual shareholding of Noticees 2, 3 and 4 (as observed from the above table) increased by more than 25,000 shares and the value of their individual shareholding of JKIL increased by more than Rs. 5 lakh on the same day. Therefore, they were required to disclose their change in shareholding to JKIL, BSE and NSE under Regulation 13(4) read with Regulation 13 (5) of PIT Regulations, 1992 within 2 working days of the acquisition of the shares i.e. within August 21, 2009 (Friday). The Noticees had disclosed the same to JKIL on August 20, 2009. However, they failed to disclose the change of shareholding to BSE and NSE. Thus, it was alleged that Noticee Nos. 2 to 4 violated Regulation 13(4) read with Regulation 13 (5) of PIT Regulations, 1992.
7. JKIL in turn had to disclose the submissions received from Noticees 2, 3 and 4 to BSE and NSE within 2 working days of receipt of the submissions under Regulation 13(6) of PIT Regulations, 1992. Though JKIL had received the intimation from the Noticees 2, 3 and 4 on August 20, 2009 (Thursday), JKIL disclosed the same to BSE and NSE only on August 28, 2009 (Friday) i.e. 5 working days after the receipt of disclosures. Thus, it was alleged that JKIL violated Regulation 13(6) of PIT Regulations, 1992 by delayed disclosure of submissions received from the promoters cum directors to BSE and NSE.

### **(B) Violations of PFUTP Regulations**

8. The Board of Directors of JKIL in its EGM dated May 20, 2009, approved the issuance of 40 lakh convertible warrants of Rs. 10 each at a conversion price of

Rs. 60 on preferential basis to 22 entities. As per the scheme of arrangement, the preferential allottees had to pay 25% of the share application money within 15 days from the date of allotment i.e. May 20, 2015 and the rest had to be paid on the exercising the option to convert the warrants into equity shares.

9. The details of share application money received by JKIL with respect to the preferential allotment are given below:

S. No	Name	No. of warrants proposed to be issued	25% of share application money (in Rs Lakhs)	Date - 25% share application money Paid	75% of share application money (in Rs Lakhs)	Date - 75% share application money Paid
1	Jagdish Kumar Gupta	200000	30	02/06/09	90	12/08/09
2	Kamal J Gupta	100000	15	02/06/09	45	12/08/09
3	Nalin J Gupta	100000	15	02/06/09	45	12/08/09
4	Kusum Gupta	200000	30	02/06/09	90	12/08/09
5	Sonal Gupta	100000	15	02/06/09	45	12/08/09
6	Shalini Gupta	100000	15	02/06/09	45	12/08/09
7	J Kumar Software Systems	800000	120	02/06/09	360	12/08/09
8	J Kumar Minerals and Mines	800000	120	02/06/09	360	12/08/09
9	Rajkumar Rajgarhia HUF	75000	11.25	05/06/09	33.75	14/07/09
10	Nandkishore Rajgarhia HUF	75000	11.25	05/06/09	33.75	14/07/09
11	Ramkishore Rajgarhia HUF	75000	11.25	05/06/09	33.75	14/07/09
12	Aparna Rajgarhia	75000	11.25	05/06/09	33.75	16/07/09
13	Vanita Rajgarhia	75000	11.25	05/06/09	33.75	16/07/09
14	Hemant Pasari HUF	75000	11.25	05/06/09	33.75	18/07/09
15	Kamalkant Pasari	75000	11.25	11/06/09	33.75	18/07/09
16	Manisha Pasari	75000	11.25	05/06/09	33.75	21/07/09
17	Longife Realtors	350000	52.5	05/06/09,11/06/09	157.5	12/08/09,13/08/09
18	Kishore Kumar Kedia	75000	11.25	05/06/09	33.75	25/07/09
19	Shantilal Kedia	75000	11.25	05/06/09	33.75	25/07/09
20	Uttam Kedia	75000	11.25	05/06/09	33.75	16/07/09
21	Akash Kedia	75000	11.25	05/06/09	33.75	29/07/09
22	Saiprasad Estate Ltd	350000	52.5	05/06/09,11/06/09	157.5	12/08/09,13/08/09
	<b>Total</b>	<b>4000000</b>	<b>600</b>		<b>1800</b>	

10. The actual payment received by JKIL towards preferential allotment to promoter group entities is as follows:

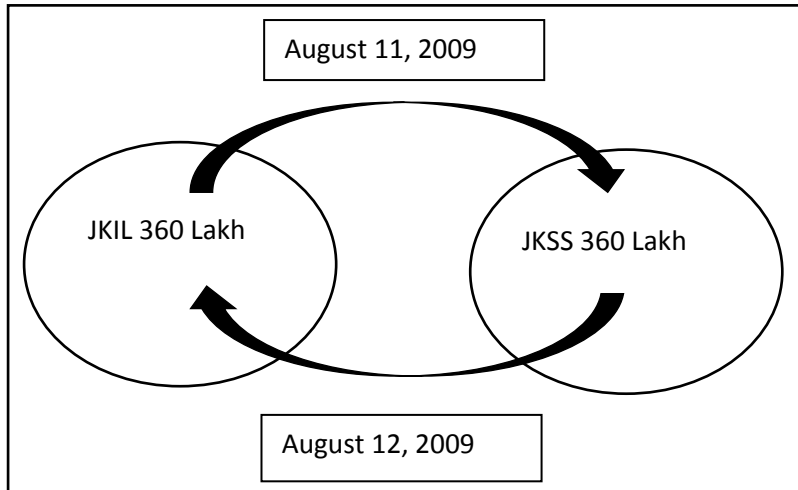
Group (No. of Entities)	25% of share application		75% of share application		Allegations
	Payment received in bank a/c of JKIL (in Rs. crore)	Actual amount received by JKIL (in Rs. crore)	Payment received in bank a/c of JKIL (in Rs. crore)	Actual amount received by JKIL (in Rs. crore)	
Promoters (8)	3.6	3.6	10.8	0	Rs. 10.8 crore was funded by JKIL to promoter preferential allottees
Total	3.6	3.6	10.8	0	

11. From the table above, the Investigation observed that JKIL actually received only Rs. 3.6 crore as receipts from preferential allotment as opposed to the receipt of Rs. 14.4 crore. The balance of Rs. 10.8 crore was funded by JKIL itself. JKIL engaged in a scheme to create an appearance of receipt of funds for preferential allotment.
12. JKIL accounted for Rs. 14.4 crores (Rs. 2.4 crores in share capital and Rs. 12 crores in securities premium) in its books of accounts as receipts from preferential allotment of warrants from promoter group entities. However, from the above table it was observed that JKIL received only Rs. 3.6 crores as actual payment towards preferential allotment from the promoter group preferential allottees. The rest of the funds were provided by JKIL itself to show the purported receipt of funds by JKIL without receiving any actual amount its accounts i.e. JKIL funded its promoter group entities for the payment of the preferential issue of JKIL.
13. The summary of the transactions between JKIL and its promoter group entities namely, J Kumar Software Systems (India) Pvt. Ltd (**JKSS**) and J Kumar Minerals and Mines (India) Pvt. Ltd. (**JKMM**) are as follows:-

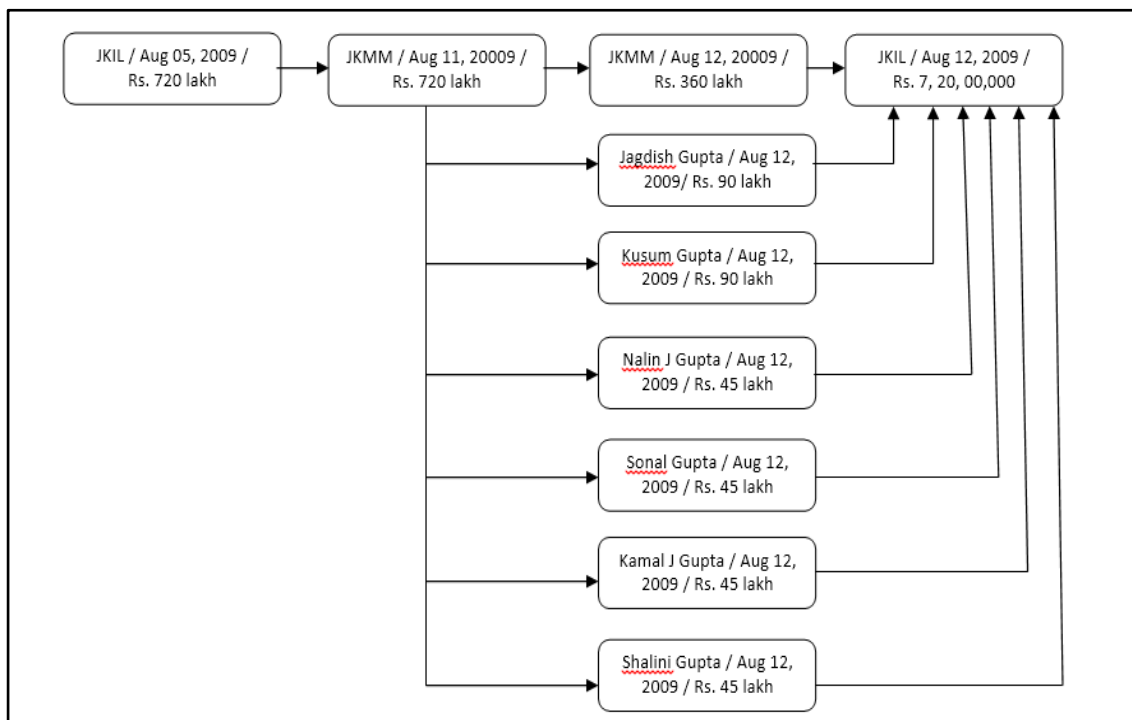
S. No.	Date of Transaction	Transferor	Receiver	Amount in Rs.
1	11-August-2009	JKIL	JKSS	3,60,00,000
2	12-August-2009	JKSS	JKIL	3,60,00,000
3	05-August-2009	JKIL	JKMM	7,20,00,000
4	12-August-2009	JKMM	JKIL	3,60,00,000

14. The analysis of the payments made by the promoter entities towards preferential allotment is given as under:

**Fund transfer between JKIL and JKSS**



**Fund transfer between JKIL and Promoter Group entities (other than JKSS)**



15. Therefore, it was alleged that the figures of paid-up share capital and securities premium as given in books of accounts during the investigation period is a false

and misleading information. These false and misleading books of accounts were disclosed to exchanges which was disseminated to the public.

16. Thus, it was alleged that JKIL (Noticee No. 1) along with its promoter director (Noticees 2, 3 and 4) engaged in the fraudulent scheme which resulted in false and misleading books of accounts. By disseminating the false and misleading books of accounts to BSE and NSE based on such fraudulent transactions, JKIL and its non-independent directors namely, Jagdish Kumar Gupta, Kamal J Gupta and Nalin J Gupta misled the investors by not providing a true and fair view of its financials. Hence, it was alleged that the dissemination of false and misleading information to the investors was in violation of section 12A (a),(b),(c) of SEBI Act read with Regulation 3 (a), (b), (c), (d), Regulation 4 (2) (f) and (r) of PFUTP Regulations.
17. Subsequent to my appointment as the Adjudicating Officer in the matter, vide Hearing Notice dated December 23, 2019 the Noticees were provided an opportunity of personal hearing on January 07, 2020. On request of the Authorised Representative ('AR') of the Noticees the Hearing was rescheduled on January 21, 2020. AR of the Noticees were appeared for personal Hearing on January 21, 2020 and filed written submissions (separately for all the Noticees) each dated January 20, 2020 on behalf the Noticees. Further, as regard to Disclosure violations by the Noticees, AR made reference of Adjudication Order dated August 31, 2018 in the matter of Sameer Patil.
18. I have carefully gone through the aforesaid written submissions dated January 20, 2020 made by the Noticees and summarize their contentions/submissions hereunder, as follows:-

- i) The Noticees have submitted that the Hon'ble Whole Time Member has passed Order dated December 17, 2019 bearing no. WTM/SM/IVD/ID9/6143/2019-20*



*(hereinafter referred to as the “Order”) on the same set of facts and issues which are under consideration in the present SCN qua JKIL, the non-independent directors of the company viz. Mr. Jagdishkumar Gupta, Mr. Kamal Gupta and Mr. Nalin Gupta along with and other promoter group entities of JKIL.*

- ii) However, upon the perusal of the submissions made by the Noticees therein including us, the Hon’ble Whole Time Member vide his Order concluded that the materials available on record are not sufficient to hold that the financial transactions between us, our non-independent directors and our promoter group entities can be conclusively held to be that of we funded for the subscription of our own preferential allotment of shares through our Promoters/Promoter entities. Accordingly, the Order concluded that the charges levelled against us, non-independent directors and promoter group entities in the Show Cause Notice do not stand established and accordingly disposed of the proceedings against us, non-independent directors and our promoter group entities without any direction.*
- iii) From the perusal of the aforesaid Order of the Hon’ble Whole Time Member against us and our non-independent directors and other promoter group entities, it is submitted that the allegation of concocting a fraudulent scheme of issuing warrants on a preferential basis, providing the funds to the promoter entities to enable them to subscribe to the preferential allotment and thereby concluding the allotment without receipt of actual consideration from these promoter allottees does not survive. Further, the allegation of dissemination of information in the books of accounts to the exchange on the basis of the very fraudulent transaction cannot be sustained and accordingly the present Notice should be quashed qua the violations of the provisions of the PFUTP regulations.*
- iv) It is further submitted that all the transactions entered into by us were genuine transactions in the normal course of business. It is humbly submitted before your goodself that both JKMM and JKSS are companies, which are largely under the*

*same management as that of JKIL. Some of the Directors are common with JKIL Directors and both JKMM and JKSS are holding shares of our Company.*

- v) *With regard to the transaction with JKMM, it is submitted that JKIL had taken temporary business advances from JKMM, a private limited company, and refunded the said business advances taken by JKIL, as and when demanded back by JKMM. Accordingly, from time to time, during the period 08.04.2009 to 11.08.2009, JKMM had extended a business advance totaling to Rs. 14.86 crores to JKIL and out of the said amount JKMM had demanded back amounts totaling to Rs. 9.65 crores from JKIL during the said period. However, out of the total transactions, the SCN has taken into account the financial transactions only for a 'limited period of time'. i.e. the SCN has considered the alleged funding of Rs 7.2 crores by JKIL to JKMM by considering 3 dates i.e. August 5, 2009, August 11, 2009 and August 12, 2009. We submit that these observations and consequential allegations have arose because the SCN has taken into account, the financial transactions only for a 'limited period of time' by ignoring the financial transactions for the period preceding such 'limited period of time'. Accordingly, in order to have a true, fair and complete picture of these financial transactions, it would therefore be important to consider the financial transactions for both the periods i.e. from the actual date of the first transaction up to the dates of alleged transactions. The transaction can be verified from the audited annual accounts for the FY 2008 – 2009.*
- vi) *It is further submitted that the said transactions as detailed from our bank statements has duly been recorded in the ledger of JKMM in our books of account. The relevant extract of the Ledger accounts of JKMM in the books of JKIL for the period April 01, 2009 to August 12, 2009 as supplemented by the transactions as illustrated in the bank statements is provided filed by the Noticees.*

- vii) Furthermore, a certificate from Independent Chartered Accountants M/s Ramprasad Sharma & Associates, CA confirming payment of Rs. 14.86 crore by JKMM, a private limited company, to JKIL on various dates during the period 08.04.2009 to 07.07.2009 towards business advance is enclosed is filed. Out of this amount of business advance given by JKMM to JKIL, a sum of Rs 9.65 crore was repaid by JKIL to JKMM on various dates during the period 28.05.2009 to 11.08.2009. This repayment amount includes a sum of Rs. 7.20 crore alleged to have been funded by JKIL to JKMM on 11.08.2009.
- viii) Thus, from the perusal of the our aforesaid annual accounts for the FY 2008 - 2009 evidencing 'NIL' funding by JKIL to JKMM as at 31.03.2009 followed by the receipt of business advances by JKIL from JKMM and refund of the same from time to time during the financial year 2009-2010 (up to the date of allegation) supported by JKIL bank account statements, the ledgers of JKMM in JKIL books of accounts and the certificate from an independent chartered accountant unequivocally demonstrate that the allegation that JKIL had funded Rs 7.20 crores to JKMM and 6 others towards the preferential allotment is factually incorrect and the same is owing to refund of business advance to JKMM by JKIL.
- ix) Similarly, as regards JKIL transactions with JKSS, we submit that JKIL used to take temporary business advances from JKSS, a private limited company, and refund the said business advances taken by us, as and when demanded back by JKSS. Accordingly, from time to time, during the period 23.05.2009 to 11.08.2009, JKSS had extended a business advance totalling to Rs. 4.60 crore to JKIL and out of the said amount JKSS had demanded back amounts totalling to Rs. 4.37 crore from JKIL during the said period. However, out of the total transactions, the SCN has taken into account the financial transactions only for a 'limited period of time'. i.e. the SCN has considered the alleged funding of Rs 3.6 crores by JKIL to JKSS by considering 2 dates i.e. August 11, 2009 and August 12, 2009. We submit that these observations and consequential allegations have arose because the SCN has

*taken into account, the financial transactions only for a 'limited period of time' by ignoring the financial transactions for the period preceding such 'limited period of time', although we had furnished bank statements and other documents to SEBI investigation for complete period i.e. both the periods. Accordingly, in order to have a true, fair and complete picture of these financial transactions, it would therefore be important to consider the financial transactions for both the periods i.e. from the actual date of the first transaction up to the dates of alleged transactions. The transaction can be verified from the audited annual accounts for the FY 2008 – 2009.*

- x) It is further submitted that the said transactions as detailed from JKIL bank statements has duly been recorded in the ledger of JKSS in JKIL books of account. The relevant extract of the Ledger accounts of JKSS in the books of JKIL for the period April 01, 2009 to August 12, 2009 as supplemented by the transactions as illustrated in the bank statements filed by the Noticees.*
- xi) Furthermore, a certificate from Independent Chartered Accountants M/s Ramprasad Sharma & Associates, CA confirming payment of Rs 4.60 crore by JKSS to JKIL on various dates during the period 23.05.2009 to 05.08.2009 towards business advance is filed. Out of this amount of business advance given by JKSS to JKIL, a sum of Rs. 4.37 Crore was repaid by JKIL to JKSS on various dates during the period 27.05.2009 to 11.08.2009. This repayment amount includes a sum of Rs. 360 lakh alleged to have been paid by JKIL to JKSS on 11.08.2009.*
- xii) It may be pointed out here that such types of transactions among companies under the same management are common. A company on and often to make the best use of its resources lends and repays money to other company under the same management. The exercise is done to save the interest and other costs incurred when similar funding is taken from any outside entity/financial institution or Bank. It may further be pointed out that in any event no illegality with these fund transfers*

*can be attributed. The payment was made by us to JKSS and JKMM upon their demand and since they wanted to use the money in applying in preferential issue. We had all the more reasons of paying the loan taken from JKSS and JKMM, since we knew that the money would eventually be received by us and we will not have to pay it back. Thus the entire exercise of these transactions was for the benefit of the company and has led to benefit of the public shareholders.*

- xiii) *Noticees have relied on various judgements passed by Hon'ble Supreme viz:- **Union of India Chaturbhai M. Patel, AIR 1976 SC 712 and SAT orders, viz:- Parsoli Corporation v. SEBI (Appeal no. 146/2011, dated August 12, 2011) and Sterlite Industries v. SEBI (Appeal no. 20/2001 dated October 22, 2001)** to support their contentions that serious allegations of provisions of PFUTP Regulations cannot be alleged on mere surmises and that SCN is based on low preponderance of probabilities.*
- xiv) *With regard to the allegation pertaining to the disclosures made under the provisions of PIT Regulations, 1992, it is humbly submitted that Section 13 Sub-section 4 of the PIT Regulations, 1992 mandates the disclosure by the Director and the Officer of a listed company about the prescribed change in the shareholding. However, Section 13 Sub-section 6 of the PIT Regulations, 1992 mandates the company to file the disclosure to the stock exchange which it has received under Section 13 Sub-section 4 of the PIT Regulations, 1992.*
- xv) *It is submitted that the Directors i.e. Noticee Nos 2 to 4 has interpreted the provision as if they were obliged only to disclose the company about their change in holding and when the company discloses about the same to the stock exchanges as per Section 13 sub-section 6 of the PIT Regulations, 1992, the disclosure will be automatically made on their behalf to the Stock Exchanges as well as the general public.*

- xvi) *It is submitted that there was no intention to violate the provisions of the PIT Regulations and the delay on the part of Company (Noticee No. 1), if any in the disclosure was not intentional but due to some circumstances which were beyond our control and accordingly no penalty should be levied against us.*
- xvii) *Here it is also important to point out that though there was a delay in filing the disclosure, the information of allotment of share warrants to the promoter and the subsequent conversion of the warrants into equity shares on August 09, 2009 was duly informed to the shareholders of the company through various corporate announcements and hence the shareholders were at all times aware about the change in the shareholding of the promoters. The same can be verified from the various public announcements made by us with regard to the preferential allotment of share warrants. Furthermore it is submitted that the relevant information with regard to the shareholding of promoter was already available to the public shareholders.*
- xviii) *It is not the first instance, wherein such mistake has taken place. There are several case laws on the similar line of facts as that of this case, wherein it can be observed that the corresponding authorities took a liberal approach although the parties committed an unintentional error.*
- xix) *For instance in the case of **Reliance Industries Ltd. v. SEBI**, Appeal No. 39/2002, wherein the company failed to make relevant disclosure in time under Regulation 7(1) of Takeover Regulations, then Hon'ble Securities Appellate Tribunal observed the following:-*
- Para 11: "We also do not think that the appellant had deliberately suppressed the information with ulterior motive. The appellant can, at best, be held to have made a **technical lapse**. In such circumstances, the role of a regulator is to rehabilitate and bring to an end litigation, which may not cast a stigma on the appellant, who otherwise, admittedly, has maintained a good track record. The*

*High Court in Cabot's case has pronounced that if a breach was merely technical and unintentional, it does not merit penal consequence. It ultimately depends on the facts of each case. In this case, the breach was bona fide and the appellant was under the impression since it had already made a disclosure earlier it was not necessary to make a fresh disclosure once again. **This, in our view, is an error of judgment and, at best, an error of understanding the law. Ignorance of the law is no excuse but an erroneous interpretation is a mitigating factor especially if such interpretation is honest and bona fide to the knowledge of the appellant.** Following the judgment in Cabot International and for the reasons stated herein, we hold that the **breach cannot be called as deliberate and the non-disclosure was due to lack of understanding of the law.** In that view of the matter, the impugned order is set aside.” (Emphasis Supplied)*

- xx) *In the instant case however, it is not the case that we have failed to make any disclosure, in our case there was merely a delay of 5 working days in making the disclosure and therefore the breach in our case was far from deliberate.*
- xxi) *In a case with similar situation to ours, the Ld. Adjudication Officer in the **order dated august 31, 2018 bearing Adjudication Order No. EAD/PM-AB/AO/27/2018-19 of Multi Commodity Exchange of India Limited in respect of Mr. Sameer Patil**, has taken a lenient view with regard to the inadvertent delay in making disclosure with any mala-fide intention to delay and no loss has been caused to the investors. The relevant extract of the order is reiterated herewith:*
- “12. In the given facts and circumstances, it appears that the delay in disclosure was inadvertent and has not caused any harm to investors. Thus, the said delay doesn't warrant any imposition of penalty on the Noticee.”***
- xxii) *The above instance of the breach done by us clearly suggest that the delay in disclosure is only a technical breach and no undue gain or undue advantage was*

*taken by us and it has not caused any undue loss to the investors as well. Therefore, the imposition of any penalty on account of such delay in disclosure shall be harsh and not in consonance with equity, justice and good conscience. Here it is once again reiterated that true and fair information pertaining to the preferential allotment of share warrants and the independent transactions with the promoter group companies of JKIL were duly informed to our public shareholders. The same can be verified from our Annual report for the FY 2009 – 2010.*

### **ISSUES FOR CONSIDERATION AND FINDINGS**

19. I have carefully perused the SCN, the documents / material available on record and submissions/documents filed by the Noticees. The issues that arise for consideration in the present case are:
- I. Whether the Noticee No. 1 violated the provisions of Regulation 13(6) of PIT Regulations, 1992 read with Regulation 12(2) of SEBI PIT Regulations, 2015 and the Noticee Nos. 2 to 4 violated the provisions of Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015.
  - II. Whether the Noticee Nos. 1 to 4 violated the provisions of Section 12A(a), (b) and (c) of SEBI Act read with Regulation 3(a), (b), (c), (d), 4(2)(f) and (r) of PFUTP Regulations.
  - III. Whether the Noticees are liable for imposition of monetary penalty under Section 15A (b) and 15HA of the SEBI Act?
  - IV. If yes, then what should be the quantum of monetary penalty?



20. It is pertinent to mention here the relevant provisions of PIT Regulations, SEBI Act and PFUTP Regulations, allegedly violated by the Noticees:-

**Relevant provisions of PIT Regulations, 1992:**

***“Continual disclosure.***

*13. (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.*

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

- (a) the receipts 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 (1), (2), (2A), (3), (4) and (4A).*

**Relevant provisions of PIT Regulations, 2015:**

***Repeal and Savings.***

*12. (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*

*(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;*

**Relevant provisions of SEBI Act, 1992**

***Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.***

***12A. No person shall directly or indirectly—***

*(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

*(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*

*(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

**Relevant provisions of PFUTP Regulation:**

**3. Prohibition of certain dealings in securities**

*No person shall directly or indirectly—*

*(a) buy, sell or otherwise deal in securities in a fraudulent manner;*

*(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*

*(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*

*(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

**4. Prohibition of manipulative, fraudulent and unfair trade practices**

*(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—*

*(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities*

*(r) planting false or misleading news which may induce sale or purchase of securities.*

**Issue – I:- Whether the Noticee No. 1 violated the provisions of Regulation 13(6) of PIT Regulations, 1992 read with Regulation 12(2) of SEBI PIT Regulations, 2015 and the Noticee Nos. 2 to 4 violated the provisions of Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015.**

21. It is noted that allegation on the part of the Noticee Nos. 2 to 4 is that they failed to file the disclosures of their change in shareholding pursuant to conversion of warrants of JKIL into equity shares to BSE and NSE under Regulation 13(4) read with regulation 13(5) of PIT Regulations, 1992 within 2 working days of the acquisition of the shares. However, the said Noticees have made disclosures to JKIL in terms of the aforesaid PIT Regulations. Further, the allegation on the part of JKIL (Noticee No. 1) is that it has made delayed (5-days delay) disclosure to the Stock Exchanges (BSE and NSE) pertaining to the aforesaid information received from the Noticee Nos. 2 to 4, in terms of Regulation 13(6) of PIT Regulations, 1992.
22. In respect of the aforesaid violations, the Noticee Nos. 2 to 4, submitted that there was no intention to evade the procedural aspects of the PIT Regulations, 1992. It was simply a bonafide error regarding interpretation of the law on their part as they interpreted PIT Regulations incorrectly and made the disclosure only to JKIL presuming that when JKIL discloses the same to the stock exchange, the same would also amount to their disclosure to the stock exchange.
23. Further, in respect of disclosure violation on the part of the Noticee No. 1 it is submitted that there was no intention to violate the provisions of the PIT Regulations and the delay (5-days), in the disclosure was not intentional but due to some circumstances which were beyond their control. Furthermore, it is submitted that the relevant information with regard to the shareholding of promoter was already available to the public shareholders through various other disclosures.

24. In support of the aforesaid submissions the Noticees have made reference of the case ***Reliance Industries Ltd. v. SEBI, Appeal No. 39/2002***, wherein the company failed to make relevant disclosure in time under Regulation 7(1) of Takeover Regulations, then Hon'ble Securities Appellate Tribunal observed that *"breach cannot be called as deliberate and the non-disclosure was due to lack of understanding of the law"*
25. Further, the Noticees has also referred a case with similar situation, the Adjudication Officer in the order dated august 31, 2018 bearing Adjudication Order No. EAD/PM-AB/AO/27/2018-19 of Multi Commodity Exchange of India Limited in respect of Mr. Sameer Patil, has taken a lenient view with regard to the inadvertent delay in making disclosure with any *mala-fide* intention to delay and no loss has been caused to the investors.
26. In the given facts and circumstances and the aforesaid submissions of the Noticees, it appears that the delay in disclosure was inadvertent and the relevant information regarding change in shareholding of Directors (Noticee Nos. 2 to 4) pursuant to the conversion of warrants of JKIL into equity shares was available to general public through various other announcement by JKIL. I also observe that the Noticees have not made any unlawful gain in the matter. I note that the lapse in question is first time of such default by the Noticees. There is no material available on record that the alleged failure to make disclosure by the Noticees in this case had any impact on price of the shares of the company or to indicate deliberate concealment of any material information by the Noticees. Taking into consideration the aforesaid facts and the mitigating factors as pleaded by the Noticees in their respective replies, a lenient view is taken and accordingly, I note that the said failure/delay in disclosure doesn't warrant any imposition of penalty on the Noticees.

**Issue –II:- Whether the Noticee Nos. 1 to 4 violated the provisions of Section 12A(a), (b) and (c) of SEBI Act read with Regulation 3(a), (b), (c), (d), 4(2)(f) and (r) of PFUTP Regulations.**

27. With respect to the aforesaid violations, it is noted that the allegations levelled in the SCN against the Noticees are mainly to the effect that JKIL, being a listed Company has in a fraudulent manner funded directly and/or indirectly, its group companies/promoters/directors in order to enable them to make payment towards the preferential allotment of convertible warrants as allotted by JKIL to them, thereby has acted in collusion with its promoter entities in a manner to self-finance its own preferential issue of convertible warrants. Under the circumstances JKIL and its promoter/directors (The Noticees herein) are liable for acting in a fraudulent manner in violation of the relevant provisions of PFUTP Regulations and SEBI Act.
28. I note that there is no dispute on the fact that JKIL had issued convertible warrants to 22 entities. Out of the said 22 allottees, 8 allottees belonged to the promoter's entities of JKIL. In terms of the allotment of warrants, 25 % of the application money was to be paid on the date of allotment of warrants and balance 75 % was required to be paid at the time of allotment of shares pursuant to exercising the option for conversion of the warrants into equity shares.
29. The Investigation has observed that, the initial 25% application money was paid by all the allottees including the 8-promoter entities viz. Mr. Jagdish Kumar Gupta, Mr. Kamal Gupta, Mr. Nalin J Gupta, Ms. Kusum Gupta, Ms. Sonal Gupta, Ms. Shalini Gupta, JKSS and JKMM. However, the balance of 75% payment (i.e. Rs.10.80 Crore) towards the convertible warrants have allegedly been funded by the issuer Company itself i.e. JKIL. The alleged funding was supported by the funds trail and transfer of funds as observed from the Bank accounts of JKIL, JKSS and JKMM which also revealed further transfer of the said funds so received by JKSS and JKMM from JKIL to other Promoter entities.

30. The Investigation has observed that JKIL had transferred Rs.7.20 Crore to JKMM and 3.60 Crore to JKSS on August 11, 2009. JKSS used Rs.3.60 Crores to make payment against the preferential allotment of shares made to it by JKIL. JKMM used Rs.3.60 Crore (out of total Rs.7.20 Crore received from JKIL) to make payment against the preferential allotment of shares made to it by JKIL. Further, JKMM has transferred the balance amount (Rs.3.60 Crore) to the six other individual promoter entities/preferential allottees, viz- Mr. Jagdish Kumar Gupta, Mr. Kamal Gupta, Mr. Nalin J Gupta, Ms. Kusum Gupta, Ms. Sonal Gupta and Ms. Shalini Gupta who in turn, used the said transferred amount to pay for their respective balance considerations amount against the preferential allotment of convertible warrants made to them by JKIL. Therefore it was alleged that the funds amounting to Rs.10.80 Crore so transferred by JKIL were ultimately utilized by its 8-promoter entities to make payment for the convertible warrants as allotted to them.
31. It is noted that the Noticees have not disputed the aforesaid fund transfers between the Company (JKIL) and JKSS/JKMM and between JKMM and other 6-promoters entities. However, in response to the afore-stated allegations, the submissions advanced by the Noticees are that JKIL (a listed company) used to obtain business advances from JKMM and JKSS (both unlisted private group companies) on a regular basis as and when needed and the said amounts used to be refunded by JKIL as and when demanded by JKMM and JKSS. Noticees have also submitted documents in support of the explanations so advanced by them.
32. The Noticees has submitted that the transfer of funds by JKIL to JKSS and JKMM was an independent transaction in the nature of repayment of the advances taken and has nothing to do with the issue of preferential convertible warrants by JKIL. This contention has been corroborated by the fact that the transactions mentioned in the SCN were not the only transactions between JKIL and JKMM and JKSS but there were various other transactions in the nature of the advances

and its repayment between us, JKSS and JKMM. Hence it cannot be said that the transfer was to fund preferential allotment but it was actually the repayment of the advances as per the demand of JKSS and JKMM. I note that the Noticees have submitted sufficient documentary evidence in support of their claim that all the fund transfers were happened in normal course of their business and in absence of any contrary evidence which proves otherwise, benefit of doubt may be given to the Noticees.

33. It is further, noted that the Hon'ble Whole Time Member (**WTM**) of SEBI has passed Order dated December 17, 2019 on the same set of facts and issues which are under consideration in the present SCN in respect of the Noticees and other promoter group entities of JKIL. In the said Order the WTM has observed that:-

*“27. On the face of the afore discussed factual details and evidences which make it clear that JKMM and JKSS were having a running business accounts with JKIL and were providing advances to JKIL intermittently and also were receiving back their funds whenever needed by them, and when there was no prohibition on either of the parties on transferring to or receiving back funds from each other, nothing adverse can be inferred even if one or two of such fund transfers have taken place in connection with payment of balance consideration towards the preferential issue of convertible warrants. The specific instances of funds transfers which have been taken exception and referred to in SCN as an act of financing by JKIL for its own preferential issue through convertible warrants through JKMM & JKSS, are found to be part of a series of funds transfers that have taken place between JKMM/JKSS and JKIL in course of their inter se business dealings over long periods of time, hence have to be viewed in the larger context of their business operations. The fact that the entity to which the money was advanced by JKMM & JKSS from time to time, happened to be the same entity which has issued convertible warrants to which JKSS & JKMM were also subscribers and that they have demanded part of their money so advanced to JKIL for utilization of the same for payment of balance*



*considerations would not vitiate the allotment of convertible warrants to these entities solely on the ground that the money transferred to them was utilized for payment of balance consideration towards convertible warrants. It is not a case of a one-sided or one-time fund transfers from JKIL to JKSS & JKMM through certain specific transactions so as to constitute financing by JKIL for its own preferential allotment. The transactions in question are rather part of a series of transactions between JKIL and its Promoter entities throughout the year in due course of their regular business operations.*

*28. I also note that JKIL, JKMM and JKSS are closely related companies operating under the same management. Mr. Nalin Gupta, Mr. Kamal Gupta and Mr. Jagdishkumar Gupta are the common directors in JKMM as well as in JKIL. Such transactions between promoters/directors for the business needs of the company are usual, especially when such funds movement is supported by bank transactions in due course of business. In any case, the main issue in the present case is whether JKIL, a listed company has funded its own preferential allotment, on which, no adverse inference can be drawn neither qua the fund transfer between JKIL and JKMM/ JKSS, nor against the fund transfer between JKMM and other six promoter allottees, given the strong evidence emanating from the factual details and the ongoing business transactions between the entities throughout the year. I also take note of the submissions made by the Noticees that they have held on to the shares so obtained by them pursuant to exercise of option on the preferential allotment of convertible warrants despite price rise in the shares. Under the circumstances, in the facts of the matters and based on the evidences available on record, no violation of provisions of PFUTP Regulations can sustain for the alleged acts of Noticees. Further, considering the aforesaid submissions made on behalf of the six individual promoter allottees, supported by evidences produced by them along with their written replies in form of MOU and bank statements I also do not find that the charge of JKIL indirectly funding them through JKMM for the purpose of making payment to JKIL against the preferential allotment of shares made to them, stands established.”*

34. I note that in the said Order the Hon'ble WTM has *inter-alia* concluded that “..the materials available on record are not sufficient to hold that the financial transactions between JKIL and the other Noticees can be conclusively held to be JKIL funding for the subscription to its own preferential allotment of shares through its Promoters/Promoter entities. Accordingly, the charges levelled against the Noticees in the SCN do not stand established.” I have also gone through the charges levelled against the Noticees in the SCN which have arisen out of the same set of facts identical to that of in the Order of WTM under Section 11, and 11B (1) of the SEBI Act, 1992 and I do not find any reason to deviate from the view taken by the Hon'ble WTM about the overall transfer of funds among the JKIL and its promoter/director entities. Therefore, I am inclined to conclude that the violation of the provisions of Section 12A(a), (b) and (c) of SEBI Act read with Regulation 3(a), (b), (c), (d), 4(2)(f) and (r) of PFUTP Regulations against the Noticees do not stand established.
35. Under the above circumstances, the Noticees need not be visited with any penalty for the reasons as stated above. Accordingly, the present Adjudication proceedings initiated against the Noticees namely M/s. J Kumar Infraprojects Limited and its promoter director viz. Mr. Jagdish Kumar Gupta, Mr. Kamal J Gupta and Mr. Nalin J Gupta *vide* the SCN dated December 07, 2017 is disposed of without imposition of any penalty.
36. In terms of Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticees and also to the Securities and Exchange Board of India.

**Date : February 18, 2020**  
**Place : Mumbai**

**Vijayant Kumar Verma**  
**Adjudicating Officer**