

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2//DSR/ VVK/ 76 /2014]**

**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
Jupiter Enterprises Limited
(presently known as India Nivesh Capitals Limited.)**

Facts of the Case :

Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") observed from the shareholding pattern of IndiaNivesh Capitals Limited (hereinafter referred to as "**INL**") for the quarter ended March, 2012 that Jupiter Enterprises Limited (hereinafter referred to as "**JEL**"), one of the promoters of INL was holding 4.76% in INL and was shown under "Public Category" for the same quarter. In the shareholding pattern of INL for the quarter ended June-2012, the JEL's shareholding was included in the 'Promoter category'. After reclassification of JEL from "Public Category" to "Promoter and Promoter Group", its shareholding in INL was added in the Promoter and Promoter Group of INL resulting into increase in Promoter's shareholding from 49.17% to 53.93% (an increase of 4.76%) for the quarter ended June, 2012. The shares of the INL are listed at The Bombay Stock Exchange Limited (hereinafter referred to as "**BSE**"). In the instant case, JEL became part of the promoter Group of INL on May 14, 2012 pursuant to acquisition of control by INL. It is alleged that JEL violated the provisions of regulation 13(2A) of the SEBI (Prohibition of Insider Trading) Regulations,1992 (hereinafter referred to as "**PIT Regulations,1992**").

2. SEBI , therefore, initiated adjudication proceedings under the Act against the JEL to inquire into and adjudge the alleged violations of the provisions mentioned under Regulation 13(2A) of the PIT Regulations,1992.

Appointment of Adjudicating Officer:

3. In view of the above, SEBI vide order dated the 31st December,2013 appointed the undersigned as the Adjudicating Officer to inquire into and adjudge under Section 15-I of the Securities and Exchange Board of India Act,1992 (hereinafter referred to as the '**SEBI Act,1992**') read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules,1995 (hereinafter referred to as "**the Rules**") the violation of the provisions of the PIT Regulations,1992 alleged to have been committed by JEL.

Notice, Reply & Personal Hearing:

4. Accordingly, a Show Cause Notice dated the 17th January, 2014 (hereinafter referred to as the '**SCN**') was issued to the Noticee in terms of Rule 4 of the Adjudication Rules requiring it to show cause as to why an inquiry should not be held for the alleged violations. The Noticee vide letter dated January 17, 2014 replied to the said SCN, the contents whereof, *inter alia*, are reproduced as below:-

" - the reclassification by the Promoter / Promoter Group did not result in any undue benefit being caused to JEL nor did the non-compliance resulted in any loss or damage being cause to Investor community or anyone else.

- JEL had vide its letter dated September 23,2013 made disclosure under regulation 13(2A) of the PIT Regulations,1992.

- We shall inculcate appropriate systems in place to avoid any lapse in compliance."

5. In the interest of natural justice and in order to conduct an inquiry as per Rule 4(3) of the Adjudication Rules, an opportunity of personal hearing was granted to the Noticee on 12th March, 2014. The Noticee attended the said hearing through his Authorized Representative viz. Mr. Jinesh Rohitkumar Doshi and reiterated the submissions already made vide letter dated January 17, 2014.

Consideration of Issues, Evidence and Findings

6. I have carefully perused the charges against the Noticee as per the SCN, written submissions and the facts of the case and the other documents available on record.

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

(a) Whether the Noticee has violated the provision of Regulation 13(2A) of the PIT Regulations, 1992?

(b) Does the violation, if any, on the part of the Noticee attract any penalty under Sections 15A(b) of the SEBI Act, 1992?

(c) If yes, what should be the quantum of penalty?

7. Before moving forward, it will be appropriate to refer to the relevant provisions of PIT Regulations, 1992 which read as under :-

Relevant provisions of PIT Regulations, 1992 :-

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure

" **13(2A)** Any person who is a promoter or part of promoter group of a listed company shall disclose to the company in Form B the number of shares or voting rights held by

such person, within two working days of becoming such promoter or person belonging to promoter group."

Disclosure by Company to Stock Exchanges.

13(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.*

8. I find that the Noticee is one of the promoters of INL. It was observed from the shareholding pattern of INL for the quarter ended March, 2012 that the noticee was holding 4.76% in INL and that he was shown under "Public Category" for the same quarter. In the shareholding pattern of INL for the quarter ended June - 2012, the Noticee's shareholding was included in the 'Promoter category'. After the Noticee's reclassification from "Public Category" to "Promoter and Promoter Group", the Noticee's shareholding in INL was added in the Promoter and Promoter Group of INL resulting into increase in Promoter's shareholding from 49.17% to 53.93% (an increase of 4.76%) for the quarter ended June,2012. Therefore, the Noticee became part of the promoter Group of INL on May 14,2012 pursuant to acquisition of control by INL.

9. As regards the requirement of disclosure of the Noticee's change in shareholding is concerned, regulation 13(2A) of the PIT Regulations,1992 casts an obligation on the Noticee to disclose the number of shares or voting rights held by them within two working days of they becoming a part of Promoter and Promoter Group. Since the Noticee allegedly failed to file disclosures to the Company and the Stock Exchange as required under regulation 13(2A) read with regulation 13(6) of the PIT Regulations,1992 within the specified days respectively, the same is alleged to be in violation of regulation 13(2A) read with regulation 13(6) of the said PIT Regulations,1992. A copy of the

shareholding pattern of INL demonstrating the Noticee's shareholding for the quarters ending March, 2012 and June, 2012 as per *BSE website* is relied upon.

10. I note that the Noticee made disclosures to the stock Exchange viz. BSE and the company viz. JEL under the said provision of Regulation 13(2A) read with 13(6) of the PIT Regulations, 1992 on 23rd September, 2013 with a delay of 16 months and 6 days . The Noticee was required to make disclosure within two working days from the date of May 14, 2012 when the Noticee became part of the promoter and promoter Group of INL pursuant to the acquisition of control by INL. In view of this, the noticee should have disclosed on or before 16th May, 2012. However, the Noticee made disclosures to the Company i.e. JEL and the BSE vide their letter dated the 23rd September, 2013. Admittedly, there was a delay of 16 months and 6 days in making disclosures to the company and the stock exchange.

11. In view of the above, I conclude that the Noticee by not making the necessary disclosures within the specified period, has violated the provisions of Regulation 13(2A) read with 13(6) of the PIT Regulations, 1992 thus warranting monetary penalty under Section 15A(b) of the SEBI Act, 1992.

12. Section 15A(b) of the SEBI Act, 1992 reads as under :-

15A. Penalty for failure to furnish information, return, etc. If any person who is required under this Act or any rules or regulations made there under:-

(a).....

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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.

13. The Hon'ble Supreme Court of India in the matter of **SEBI vs. Shriram Mutual Funds** [2006] 68 SCL (216) SC held that " *once a violation of statutory regulation is established, imposition of penalty becomes sine qua non of violation and the intention of the parties committing such violation becomes totally irrelevant. Once the contravention is established then penalty is to follow*".

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*."

The Hon'ble Securities Appellate Tribunal in the matter of **Milan Mahindra Securities Private Limited vs SEBI** (Order dated November 15, 2006 Appeal No. 66 of 2003) 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.

14. I note that the Noticee vide their letter dated March 3,2014 submitted that the name of the noticee has been changed from "Jupiter Enterprises Limited" to " IndiaNivesh Capitals Limited " w.e.f. February 18, 2014 consequent to the issue of fresh certificate of incorporation by the Registrar of Companies, Kolkata, enclosing therewith a copy of the said certificate which has been taken on record.

15. 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 15-J 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.*

16. It is difficult, as per the material available on record, to quantify any gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default of the Noticee. The disclosure under Regulation 13(2A) read with regulation 13(6) of the PIT Regulations, 1992 by a company is made public only through Stock Exchange. It is with this end in view that the Regulations require the making of disclosures so that investing public is not deprived of any vital information. The disclosures made by companies listed on the stock exchanges are the means to attain such end and therefore, dissemination of true and complete information is required. However, the Noticee has neglected its duty of making the disclosures in compliance with Regulation 13(2A) read with regulation 13(6) of the PIT Regulations, 1992 within the specified period, thereby demonstrating the casual and unbecoming attitude on the part of the Noticee in fulfilling the statutory obligations. The said default is not repetitive in nature.

ORDER

17. 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 said Rules, I hereby impose a penalty of ₹7,00,000/- (Rupees seven lakh only) on Jupiter Enterprises Limited (now known as India Nivesh Capitals Limited.) under Section 15A(b) of the SEBI Act,1992. In my view, the penalty is commensurate with the default committed by the Noticee.

18. The penalty amount as mentioned above shall be paid by the Noticee through a Demand Draft drawn in favour of “SEBI – Penalties Remittable to Government of India” and payable at Mumbai, within 45 (forty five) days of receipt of this order. The said Demand Draft should be forwarded to the Division Chief, Integrated Surveillance Department (ISD), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 - A, ‘G’ Block, Bandra-Kurla Complex, Bandra (E), Mumbai – 400 051.

19. In terms of Rule 6 of the said Rules, copies of this order are sent to the Noticee and also to Securities and Exchange Board of India.

Date : March 20, 2014
Place: Mumbai

D.SURA REDDY
ADJUDICATING OFFICER