

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. EAD-2/AO/ 146 /2013]**

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

**Against**

**Shri Jigar Jaswantilal Shah**

**[PAN: ADAPS7037E]**

**In the matter of**

**Veer Energy Infrastructure Limited**

**Background:**

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') examined into the trading activity of Shri Jigar Jaswantilal Shah (hereinafter referred to as the Noticee) in the scrip of Veer Energy Infrastructure Limited (hereinafter referred to as VEIL), a company listed on Bombay Stock Exchange (BSE), and into possible violation of the provisions of the SEBI Act, 1992 (hereinafter referred to as the Act) and various rules and regulations made there under during the period from November 01, 2008 to January 29, 2010.
2. The examination revealed that the Noticee was the promoter of VIEL during the relevant period. VEIL had issued shares of 33,60,000 as on June 2009 and 5,04,00,000 shares as on September 2009. The increase in the share capital was on account of issue of bonus shares in the ratio of 1:2 (record

date July 31, 2009) and sub-division / stock split of Rs. 10 per share into shares of Re. 1 each (record date September 07, 2009). The Noticee was holding 3,87,677 shares as on June 30, 2009 which constituted 11.54% of the share capital (3360000 shares) of VEIL. The Noticee sold / transferred 2,00,000 shares of VEIL on September 12, 2009 which resulted in a reduction of the Noticee's shareholding to 48,04,240 shares which is 9.53% of the total share capital i.e. 5,04,00,000. The Noticee had received certain credits of shares in his demat account held with HDFC after September 12, 2009 till September 23, 2009 which resulted in an increase in the shareholding of the Noticee from 48,04,240 shares to 52,04,240 shares. On September 29, 2009 the Noticee transferred 10,00,000 shares to his another demat account held with Pravin Ratilal Share and Stock Broker (Pravin) as "ordinary" and further sold / transferred 40,00,000 shares of VEIL from the demat account held with HDFC which ultimately resulted in reduction of his shareholding to 12,04,240 shares with HDFC account, which is 2.39% of the share capital of VEIL. As the above sale / transfers resulted in change in the Noticee's shareholding exceeding 2%, he was required to make necessary disclosures to VEIL as prescribed under Regulation 13(3) read with Regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 which the Noticee allegedly failed to do.

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

3. In view of the above, SEBI vide Order dated June 18, 2012 appointed the undersigned as the Adjudicating Officer (AO) under Section 15-I of the Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') and to inquire into and adjudge under Section 15A(b) of the Act for the alleged violation of the provisions of Regulation 13(3) read with Regulation 13(5) of the PIT Regulations by the Noticee.

#### **Notice, Reply & Personal Hearing**

4. The AO issued a notice dated June 29, 2012 (hereinafter referred to as 'SCN') to the Noticee in terms of Rule 4 of the Adjudication Rules requiring to show

cause as to why an inquiry should not be held against him for the alleged violations as mentioned above.

5. The SCN was sent to the Noticee\ by Registered Post Acknowledgment Due and the same were duly delivered. The Noticee vide letter dated July 23, 2012 replied to the SCN. In the interest of natural justice and in order to conduct an inquiry as per Rule 4 (3) of the Adjudication Rules, the undersigned vide letter dated September 05, 2012 granted an opportunity of personal hearing to the Noticee on September 28, 2012. However, the Noticee did not attend the said hearing. Accordingly, another opportunity of hearing was granted to the Noticee vide letter dated September 21, 2012 on October 08, 2012. The authorized representative of the Noticee attended the said hearing and made oral submissions.
6. In view of the above, I am proceeding with the inquiry taking into account the documents and material as available on record.

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

7. I have carefully perused the charges against the Noticee mentioned in the SCN, the written & oral submissions made by him and the documents as available on record. The issues that arise for consideration in the present case are:

***(a) Whether the Noticee has violated the provisions of Regulation 13(4) read with Regulation 13(5) of the PIT Regulations?***

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

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

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

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

**Continual disclosure**

**(3)** *Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of the total shareholding or voting rights in the company.*

**(4)** *.....*

**(5)** *The disclosure mentioned in sub-regulations (3) and (4) 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.*

**9.** I note that the requirement of Regulation 13(3) read with 13(5) of the PIT Regulations are twofold, i.e., disclosure to the company by any person who is holding more than 5% shares for voting rights in any listed company, the total number of shares or voting rights held and change in shareholding or voting rights, even if there has been a change in such holdings which reducing the holdings below the prescribed 5% holdings and if such change exceeds 2% of the total shareholding or voting rights; and such disclosure has to be made within two days working days of receipt of intimation of allotment of shares or the acquisition or sale of shares or voting rights.

**10.** I find from the SCN that the Noticee was the promoter of VEIL and was holding 11.54% of the share capital as on June 30, 2009. The Noticee was having a demat accounts as "Ordinary" with HDFC and as "HUF" with Pravin. The Noticee sold / transferred 2,00,000 shares of VEIL from his demat account held with HDFC on September 12, 2009 which resulted in a reduction of the Noticee's shareholding to 48,04,240 shares which is 9.53% of the total share capital. Further, the Noticee had also received certain credits of shares in his demat account held with HDFC after September 12, 2009 till September 23, 2009 which resulted in an increase in the shareholding of the Noticee from

48,04,240 shares to 52,04,240 shares. On September 29, 2009, the Noticee transferred 10,00,000 shares to his another demat account held with Pravin Ratilal Share and Stock Broker (Pravin) as "ordinary" and further sold / transferred 40,00,000 shares of VEIL from the demat account held with HDFC which ultimately resulted in reduction of his shareholding to 12,04,240 shares with HDFC account, which is 2.39% of the share capital of VEIL. As the above sale / transfers resulted in change in the Noticee's shareholding exceeding 2% on two occasions, he was to make the disclosures in Form C to the company within two days of the said sales / transfers which he failed to make on both the occasions.

11. The Noticee in his reply dated July 23, 2012 admitted that he was holding 581515 shares of VEIL constituting 11.54% of the total paid capital as on August 01, 2009. He sold 23541 shares during August 12, 2009 to September 08, 2009 which reduced his share holding to 11.07%. Then he sold 3,75,500 shares post split during the period from September 08, 2009 to September 11, 2009 which reduced his shareholding to 10.33%. Then on September 12, 2009 due to some misunderstanding with his accountant he had sold 40000 shares in the market which was immediately rectified and the same shares were acquired within a week with around the same price. Afterwards, he had sold 30000 shares on September 28, 2009 which resulted in change in his shareholding to 9.73%. Then, on the same day he had done some internal family transactions which resulted in reduction of his shareholding to 2.39%. I find from the facts as available on records and the submissions made by the Noticee as above that the shareholding of the Noticee decreased from 11.54% as on June 30, 2009 to 2.39% as on September 28, 2009 through as series of transactions. The shareholding of the Noticee changed more than 2% of the paid up capital of the company consequent to such transactions. The Noticee did not make the necessary disclosures as were required upon change in his shareholdings by more than 2% and it is amply clear that he has failed to adhere by the statutory requirements under the law. Therefore, I conclude that the Noticee has violated the provisions of Regulation 13(3) read with Regulation 13(5) of the PIT Regulations warranting monetary penalty under Section 15A(b) of the Act.

12. Section 15A (b) of the Act, 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 therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.*

13. The Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram 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*".

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

15. I observe that from the material available on record it is difficult 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 or to ascertain whether the defaults are repetitive in nature.

### **Order**

16. 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 read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹ 1,00,000/- (Rupees One lakh only) on Shri Jigar Jaswantilal Shah under Section 15A(b) of the SEBI Act. In my view, the penalty is commensurate with the default committed by the Noticee.
17. The penalty amount as mentioned above shall be paid by the Noticee through a duly crossed demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to the Division Chief, ISD, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
18. In terms of the Rule 6 of the Adjudication Rules, copies of this order is sent to the Noticee and also to Securities and Exchange Board of India.

**Date: February 20 , 2013**

**Place: Mumbai**

**P K KURIACHEN  
ADJUDICATING OFFICER**