

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PG/AO-17/2011]

**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. Bharat Kantilal Jain (PAN. - AKVPJ0406E)

In the matter of

Jord Engineers India Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation into the trading in the scrip of M/s Jord Engineers India Limited (hereinafter referred to as “**JEIL/the Company/scrip**”), during the period from June 23, 2010 to July 26, 2010 (hereinafter referred to as “**investigation period**”).
2. ICICI Bank Ltd., one of the major shareholders of the Company, sold its stake to two entities namely Mr. Bharat Kantilal Jain (hereinafter referred to as “**Mr Jain/ noticee**”) and M/s 3A Capital Services Ltd (hereinafter referred to as “**3A**”). During the investigation, information was sought from Mr. Jain as to his connection/relation with JEIL or its promoters/directors or subsidiaries, rationale for investing in JEIL, list of directorships held by him, details of his transactions in the scrip of JEIL,

counterparties, all the disclosures filed under the various SEBI Regulations etc.

3. Mr. Jain vide letter dated 05.10.2010 informed that he had purchased the shares of JEIL for investment purpose. It is seen from the said letter that Mr. Jain purchased 31,66,251 shares of JEIL (which was 11.49% of the equity capital of the Company) from ICICI Bank Ltd. on 23.06.2010 and sold the 31,66,251 shares of JEIL to 3A Capital Services Ltd. on 06.07.2010.
4. The noticee was under obligation to make disclosures of his shareholding to the Company under Regulation 13(1) and 13(3) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations/Insider Trading Regulations**"). However no details regarding disclosures to the Company under regulations 13(1) and 13(3) of PIT Regulations have been mentioned in his letter dated October 05, 2010 to SEBI clarifying the acquisition of shares of JEIL and subsequent disposal of the same. The Company had also stated that it has not received any disclosure under PIT Regulations from the noticee. Further, the noticee also mentioned that he had also not received the consideration for the sale of the said shares of JEIL from 3A. The letter from 3A mentioned that even on 30.08.2010, the consideration for the shares was not paid to the noticee. This was alleged to be in violation of Section 13 and 18(1) read with Section 2(i) (a) of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SCRA**").

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as the Adjudicating Officer, vide order dated January 07, 2011 under Section 15 I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the “**Act**”) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the “**Rules**”) to enquire into and adjudge under Section 15 A(b) of the Act and section 23H of SCRA, for the alleged violation of the provisions of PIT Regulations and SCRA as observed during the investigations conducted by SEBI into the trading in the scrip of JEIL.

SHOW CAUSE NOTICE, HEARING AND REPLY

6. A Show Cause Notice dated February 17, 2011 (hereinafter referred to as “**SCN**”) was issued to the noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be held against the noticee and penalty be not imposed under sections 15A (b) of SEBI Act and Section 23 H of the SCRA for the alleged violations specified in the said SCN.
7. In the interest of natural justice and in order to conduct an inquiry as per rule 4(3) of the Rules, the noticee was granted an opportunity of personal hearing on March 17, 2011 vide Notice dated March 07, 2011. The noticee appeared for the same through his Authorized Representative, Mr. Yeshwant Shenoy, advocate, and made oral submissions.

8. In the interim reply to the SCN dated March 03, 2011, the noticee sought for an extension of two weeks to prepare the submissions to the SCN. Thereafter, vide letter dated March 16, 2011, he submitted a detailed reply to the SCN. Again a third letter dated March 24, 2011 making certain submissions was also sent by him to substantiate his stance in the matter. The main submissions of the noticee are as follows:
- i) The noticee had, vide its letter dated October 05, 2010, submitted the details of purchase of the said shares of JEIL, to SEBI.
 - ii) The noticee has mentioned that he was under the impression that since the trading in the shares of JEIL on the stock exchange was suspended for a long time, his obligation to disclose his transactions in the shares of JEIL was not there and hence there was an inadvertent delay in disclosure of the said transactions which was purely unintentional/ non-deliberate.
 - iii) The shares purchased by the noticee were free from all encumbrances and not prohibited from transaction by either SEBI or the Stock Exchanges.
 - iv) The noticee has not made any unfair gains by selling the shares of JEIL.
 - v) The noticee has not prejudiced JEIL or investors at large or affected the Stock Market by any means by dealing in the shares of JEIL in question in the above matter with no intention to take over JEIL or its management.

vi) The noticee was not in possession of any unpublished price sensitive information of JEIL and hence is not an 'insider' and has therefore not violated the provisions of PIT Regulations.

vii) The noticee has received the outstanding payment being price/consideration of 11.48% equity shares of JEIL sold to 3A on July 06, 2010 with interest calculated upto March 21, 2011.

CONSIDERATION OF ISSUES AND FINDINGS

9. The issues that arise for consideration in the present case are :
- a. Whether the noticee attracted the disclosure requirements under regulations 13(1) and 13(3) of PIT Regulations and Section 13 and 18(1) read with Section 2(i) (a) of SCRA and if so, whether complied or not?
 - b. Does the non-compliance, if any, attract monetary penalty under section 15A (b) of SEBI Act and section 23H of the SCRA?
 - 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. **ALLEGED VIOLATION OF REGULATION 13(1) & 13 (3) OF PIT REGULATIONS AND SCRA :**

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

INSIDER TRADING REGULATIONS

“Disclosure of interest or holding by directors and officers and substantial shareholders in listed companies – Initial Disclosure.

13. (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) Any person who is a director or officer of a listed company shall disclose to the company in Form B the number of shares or voting rights held and positions taken in derivatives by such person and his dependents (as defined by the company), within two working days of becoming a director or officer of the company.

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 total shareholding or voting rights in the company.”

SECURITIES CONTRACTS (REGULATION) ACT, 1956

“2. (i) “spot delivery contract” means a contract which provides for,—

(a) actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

Contracts in notified areas illegal in certain circumstances.

13. If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or States or area that it is necessary so to do, it may, by notification in the Official Gazette, declared this section to apply to such State or States or area, and thereupon every contract in such State or States or area which is entered into after the date of the notification otherwise than between the members of a recognised stock exchange or recognised stock exchanges in such State or States or area or through or with such member shall be illegal:

Provided that any contract entered into between members of two or more recognized stock exchanges in such State or States or area, shall—

- (i) be subject to such terms and conditions as may be stipulated by the respective stock exchanges with prior approval of Securities and Exchange Board of India;*
- (ii) require prior permission from the respective stock exchanges if so stipulated by the stock exchanges with prior approval of Securities and Exchange Board of India.*

Exclusion of spot delivery contracts from sections 13, 14, 15 and 17.

18. (1) Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.”

11. Upon careful perusal of the documents available on record including the basis of allegations made and the replies submitted by the noticee in the above matter, I observe that while the noticee claims to have made disclosures to the Stock Exchange, Company and to ICICI Bank Ltd. but submitted a copy of only the disclosure made to the Bombay Stock Exchange (BSE) received by BSE on June 24, 2010. There is no evidence of the noticee making any disclosures regarding the acquisition and disposal of the said

shares of JEIL to the Company, JEIL. In fact the noticee in his reply dated 16.03.2011 states as under :

“I have to say that since the trading of the shares of the company viz. JEIL has been suspended for long and I was of the impression that I am not required to inform the same to JEIL. However, after few days said shares were sold to 3A Capital Company and consequently it has been disclosed by 3A to JEIL. I say that the irregularity in as much as of non-compliance on my part is purely unintentional and non-deliberate. The same may be condoned and that I may be pardoned, since I have not caused any harm to any individual investor or institution. I say that such inadvertent non-compliance has not resulted in any loss directly or indirectly to the investors/JEIL/3A or SE/SEBI. There was no hidden agenda of not making the required disclosures under the SEBI (insider trading) Regulations.”

The noticee has clearly admitted the fact of non disclosure and thus the violation of regulations 13 (1) and 13(3) of PIT Regulations is established.

12. Under regulation 13(1) of PIT Regulations, any person holding more than 5% of the shares or voting rights in a listed company has to disclose his shareholding or voting right in the Company, to the same, in the prescribed format (Form A) within 2 working days of:

- a. Intimation of allotment of shares, or
- b. Acquisition of voting rights/shares in the company

In terms of regulation 13(3) of PIT Regulations, any person who holds more than 5% of shares or voting rights in a listed company is required to disclose to the company the number of shares or voting

rights held and change in shareholding or voting rights under the circumstances as mentioned below:

- If such change results in shareholding falling below 5%:
- If there has been change in such holdings from the last disclosure made under regulation 13(1) and such change exceeds 2% of total shareholding or voting rights in the company.

13. The above regulations mention about disclosure of aggregate shareholding or voting rights of a person in a listed company in the prescribed format, in case the total shareholding or voting rights of the person in that company is above 5%, to the company, within 2 days of receipt of such allotment or acquisition of shares/voting rights. Again, on sale or purchase of shares which makes a difference of 2% or more of the equity capital holding of the person in that Company or voting rights, there has to be declaration/disclosure to the Company in the prescribed format. Therefore on acquisition / disposal of shares or voting rights in the aforementioned quantum, it becomes incumbent on the acquirer to disclose to the Company his shareholding/voting rights in the company. It is evident from a reading of the regulations that the status of trading of the said scrip at the exchange is immaterial as long as the shares/voting rights are transferred in the name of the person so acquiring.
14. It was also alleged that the noticee had violated section 13 and 18(1) read with section 2(i) (a) of SCRA by not receiving the consideration for the off market sale of 31,66,251 JEIL shares on June 23, 2010 to 3A. It has been submitted that the delivery of shares was duly made.

Through letter dated March 24, 2011, the noticee has submitted that that the payment from 3A had been received with interest calculated upto March 21, 2011.

As per section 2(i), read with sections 13 & 18(1) of the SCRA, the consideration for any spot delivery contract entered into by two parties has to be made on the same day or on the next day of completion of the contract not taking into account, the time taken for postal delivery of the securities/ consideration for the securities. In the above scenario, the noticee is the recipient of the consideration for the spot delivery contract and the onus was on 3A to make the payment in lieu of the shares so received. In my opinion, the noticee, having performed his part of the contract cannot be held liable for non receipt of consideration. Thus I do not find the noticee at fault with regard to the provisions of SCRA.

15. The basic purpose of disclosure requirement inherent in the abovementioned regulations is to bring about transparency in the securities market and to keep the market informed about substantial acquisition or sale of shareholding by any entity in a listed company. The Hon'ble SAT in the matter of ***Milan Mahendra Securities Pvt. Ltd. Vs SEBI*** (Appeal NO. 66 of 2003 and Order dated November 15, 2006), regarding the importance of disclosures, has 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”*. Thus, any violation of the said disclosure requirements has to be viewed seriously.

16. The aforesaid violations of regulations 13 (1) and 13(3) of PIT Regulations by the noticee make him liable for penalty under Section 15A(b) of SEBI Act, 1992 which reads as follows:

“Penalty for failure to furnish, information , return etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder, -

(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.”

17. 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 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.”

18. It is difficult, in cases of this nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by the noticee and the consequent losses suffered by the investors. I have noted that the investigation report also does not dwell on the extent of specific gains made by the noticee. Further it is also not possible to ascertain the loss to the investors in monetary terms. However, the investors were definitely deprived of the information on time. I also note that trading in the shares of JEIL has been suspended since 2001. Thus, even if the noticee had disclosed his transactions to JEIL and JEIL had disclosed the same to the stock exchanges, the investors would not normally have been able to act on the same. The default of the noticee can be considered to be technical in nature with no impact on the market as the scrip was suspended from trading on the stock exchange and thus liable for only nominal penalty. The noticee failed to disclose the acquisition or sale of shares of the Company on time under PIT Regulations and thus reflects default on his part on two occasions.

ORDER

19. Therefore, in terms of provisions of rule 5(1) of the Rules, I impose a penalty of ₹ 30,000/- (Rupees thirty thousand only) under section 15 A(b) of SEBI Act, 1992 on the noticee, Mr. Bharat Kantilal Jain, resident of: 1803, 18th Floor, Darshan Height, Zaoba Wadi, Thakurdwar Road, Mumbai – 400 002, for violation of regulations 13(1) and 13(3) of PIT Regulations. Considering the facts and circumstances of the case, this penalty will be commensurate with the violations committed by the noticee.

20. 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 Mr Ashish Kumar, Deputy General Manager, Investigations Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
21. 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: **March 31, 2011**
Place: **MUMBAI**

PIYOOSH GUPTA
ADJUDICATING OFFICER