

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. PG/AO-77/2011]**

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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**

In respect of

**Jord Engineers India Ltd. (PAN. AAACJ2871P)**

In the matter of

Jord Engineers India Ltd.

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**FACTS OF THE CASE IN BRIEF**

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation in respect of buying, selling and dealing in the shares of M/s Jord Engineers India Ltd. (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. (hereinafter referred to as “**ICICI**”), one of the major shareholders of the Company, sold its stake to two entities, namely Mr. Bharat Kantilal Jain and M/s 3A Capital Services Ltd. (hereinafter referred to as “**3A**”) as under :

Counterparty / purchaser	No. of shares sold	Payment Received	% of share capital
3A Capital Services Limited	40,00,000	72,00,000.00	14.51%
Bharat Kantilal Jain	31,66,251	56,99,251.80	11.49%

During the investigation, the Company was asked whether it received any disclosures in accordance with SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT Regulations**”) in respect of these transactions. The Company in its reply mentioned that it did not receive any disclosures in accordance with regulation 13(1) and/or regulation 13(3) of PIT Regulations from any shareholder.

3. On the other hand, ICICI submitted confirmation of delivery of disclosure dated September 14, 2010 under Regulation 13(3) of PIT Regulations to JEIL. 3A also submitted Speed Post receipts regarding disclosures made to the Company under regulation 13(1)/13(3) of PIT Regulations. While clarifying the above, the Company mentioned that that the correspondences received from 3A via speed post were not disclosures as required to be filed under Regulation 13 of the PIT Regulations. The Company also mentioned that it was unable to trace any disclosures filed by ICICI. under Regulation 13 of the PIT Regulations.
  
4. It was alleged that the Company had failed to make proper disclosures under regulation 13 (6) of PIT Regulations regarding the change in shareholding of the Company, which were reportedly disclosed to it by ICICI and 3A. These disclosures were required to be made to the stock exchanges where the shares of the Company were listed viz. Bombay Stock Exchange, Ahmedabad Stock Exchange and Delhi Stock Exchange. Therefore the above is an alleged violation of regulation 13 (6) of the PIT Regulations which is liable to be penalized under section 15 A(b) of the Securities and

Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”).

### **APPOINTMENT OF ADJUDICATING OFFICER**

5. The undersigned has been appointed as the Adjudicating Officer, vide order dated January 07, 2011 under Section 15 I of Securities and Exchange Board of India Act, 1992 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, the alleged violation of the provisions of PIT Regulations, as observed during the investigations conducted by SEBI into the trading / dealings in the scrip of the Company.

### **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 section 15A (b) of SEBI Act for the alleged violations specified in the said SCN.
7. Subsequently vide notice dated March 07, 2011, an opportunity of hearing was granted to the Noticee in the above matter on March 17, 2011. Vide its letter dated March 10, 2011, the Noticee requested for an inspection and certified copies of the documents replied upon to form the charge against it. Vide its e-mail dated March 15, 2011, the Noticee sought adjournment of the aforesaid hearing scheduled to be held on March 17, 2011. Thereafter vide notice dated March 25, 2011, another opportunity of hearing was provided to the Noticee on April 07, 2011. Through the said notice,

noticee was also granted an opportunity of inspecting the relevant documents on March 30, 2011. The noticee availed the said opportunity to inspect the relevant documents. Thereafter vide letter dated April 05, 2011, the Noticee sought copies of certain documents that it took inspection of, along with a request to further reschedule the date of hearing. Vide notice dated April 08, 2011, the Noticee was provided another opportunity of hearing on April 21, 2011. The Noticee, vide its e-mail dated April 20, 2011, expressed its difficulty to attend the said hearing due to personal difficulties and sought for a short adjournment of the same. Hence vide notice dated April 21, 2011, a final opportunity of hearing was granted to the Noticee on April 27, 2011. The noticee availed of the said opportunity of personal hearing and submitted that it had made submissions vide its reply dated April 26, 2011 to the SCN.

8. The Noticee vide its letter dated April 26, 2011, made certain submissions to the SCN. An extract of the same is given below:

- a) *That the Company denies the said factual contention of ICICI Bank and 3A Capital Services Limited that the disclosures under regulation 13(1) and 13(3) of the PIT Regulations were actually made by ICICI and 3A as they have not been able to provide with any conclusive evidence of the fact that the said disclosures were actually delivered to the Company by post or otherwise.*
- b) *That 3A has not provided SEBI with any covering letters addressed to the Company through which it should have enclosed the alleged disclosures under regulations 13(1) and 13(3), as the said disclosures were never sent to the Company by 3A.*

- c) *That the Company has filed a petition under section 111A of the Companies Act before the Company Law Board (CLB), wherein the it has made specific statement/ averment that 3A (Respondent No.1 therein), Mr. Bharat Kantilal Jain (Respondent No.2 therein) and ICICI Bank Limited (Respondent No.3 therein) have not made any disclosures to the Company as required under Regulation 13 of the Insider Trading Regulation. In response to this petition, 3A has filed an Affidavit-in-reply in which it has neither denied, specifically or generally, that they have not made the disclosures as required under Regulation 13, to the Company nor was there even a suggestion made in the Affidavit-in-reply that the disclosures, as required under Regulation 13, were made by 3A Capital Services Limited to the Company.*
- d) *That the three alleged postal receipts provided by 3A as proof of delivery of the relevant disclosures were dated 25.06.2010, 25.06.2010 and 06.07.2010 respectively. The Company submitted that all these postal receipts were for documents or letters other than the disclosures required under Regulation 13 of the Insider Trading Regulation.*
- e) *The letter of “confirmation of delivery” provided by ICICI Bank Limited does not by itself demonstrate that the disclosures in the format, as provided under regulations 13 (1) or 13 (3) of PIT Regulations, were made by ICICI Bank Limited and were received by the Company.*
- f) *That the Form C, making the disclosures under regulation 13 of the PIT Regulations, provided by ICICI Bank Limited shows the date of intimation of the disclosure to the Company as 14.09.2010. However, the ‘Confirmation of delivery letter’,*

*provided by ICICI Bank Limited, shows that the document was sent only on 16.09.2010.*

*g) That without prejudice to the contention that the Company has not violated any provisions of the Insider Trading Regulations, the Company also submitted that it had not made any disproportionate gain or unfair advantage as a result of any default and that there has been no loss caused to an investor as a result of any default. The Company also submitted that it had never in the past been found guilty of any violations of the provisions of PIT Regulations.*

## **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(6) of PIT Regulations and if so, whether complied or not?
  - b. Does the non-compliance, if any, attract monetary penalty under section 15A (b) of SEBI Act?
  - 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 (6) OF PIT REGULATIONS:**

The relevant regulations 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.*
- (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 under 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.*

***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), (3) and (4) in the respective formats specified in Schedule III.”*

Regulation 13(6) of PIT Regulations states that any listed company has to make disclosures of the change in shareholding pattern in the company to all the stock exchanges where it is listed, within two working days of receipt of such information regarding such change of shareholding when:

- i) an entity's shareholding becomes in excess of 5% of the shares or voting rights in the listed company.
- ii) shareholding of an entity holding more than 5 % of the shares or voting rights changes by 2 % or more from the time the last disclosure was made even if the aggregate shareholding falls below 5%.

11. The allegation against the Company is that it has not made the relevant disclosures under regulation 13(6) of PIT Regulations inspite of the concerned shareholders, ICICI & 3A, intimating the company regarding change in their shareholding in the Company. The Company has disputed the claims of ICICI & 3A that they had made submissions under regulation 13 of PIT Regulations



regarding their shareholding to it. It has not been disputed by the Company, ICICI or 3A that 40,00,000 shares amounting to 14.51% of the share capital of the Company were sold by ICICI to 3A on June 23, 2010. Another 31,66,251 shares amounting to 11.49 % of share capital were also sold to by ICICI to Bharat Kantilal Jain who subsequently sold them to 3A on July 06, 2010. The sale of above quantum of shares made it incumbent on both ICICI and 3A to make their disclosures to the Company . It also made the Company liable to disclose the same under regulation 13(6) of the PIT Regulations to the Stock Exchanges where it was listed. The Company has claimed that both ICICI and 3A had never made their disclosures in the first place and hence the liability to disclose, in turn, to the Stock Exchanges does not arise.

## **12. Disclosure by 3A**

As per records, it is observed that 3A has submitted that it had made the requisite disclosures vide its statements dated June 24, 2010 & July 06, 2010 which were despatched to JEIL through speed post vide receipts dated June 25, 2010 and July 06, 2010. The copies of correspondence available on record indicate that during that period 3A was corresponding with JEIL on various other issues such as seeking details of shareholders to make open offer, factory visit, and appointment of its nominees on JEIL board etc.

3A has submitted that it had made the requisite disclosures under regulation 13(3) of PIT Regulations to JEIL vide statements dated June 24, 2010 and July 06, 2010 informing about acquisition of 14.51 % and 11.49 % of the share capital respectively (total 26 %). It is however observed that there are no covering letters with the said statements. It would have been in order if 3A would have sent

the statements under a covering letter addressed to the appropriate official of JEIL so that a proper cognizance could be taken of such acquisition. It is strange that statements about acquisition of such substantial stake were sent by a corporate entity without a covering letter.

On the other hand, JEIL contends that the said postal receipts pertain to different correspondence sent by 3A. It has been submitted that the cover sent to its Andheri office vide postal receipt dated June 25, 2010 was a letter dated June 24, 2010 from 3A seeking mailing list of shareholders and balance-sheet of JEIL. It has further been submitted that the cover sent to its Vadodara office vide postal receipt dated June 25, 2010 was a letter dated June 25, 2010 from 3A stating that a letter requesting for mailing list of shareholders had been sent to its Andheri office.

With regard to the postal receipt dated July 06, 2010, JEIL has contended that the said cover contained a copy of letter dated July 03, 2010 from 3A to the Board for Industrial and Financial Reconstruction (BIFR), New Delhi submitting its willingness to participate in the Debt Restructuring Scheme of JEIL.

In view of the fact that 3A has not submitted copies of covering letters and that the said postal covers could have letters pertaining to other matters also with JEIL, I would give JEIL a benefit of doubt with regard to receipt of disclosures under regulation 13(3) of PIT Regulations from 3A. Thus no violation of regulation 13(6) of PIT Regulations is made out against JEIL with regard to disclosure of acquisition of its shares by 3A.

13. **Disclosure by ICICI**

It has been submitted by ICICI that with regard to the sale of 40,00,000 JEIL shares to 3A and 31,66,251 JEIL shares to Bharat Kantilal Jain on June 23, 2010, it made the disclosure under regulation 13(3) of PIT Regulations vide its statement dated September 14, 2010. It is also submitted that the said statement was forwarded to JEIL vide letter dated September 14, 2010 which was mailed on September 16, 2010. ICICI has also submitted a confirmation dated November 16, 2010 from the postal department stating that the said letter was delivered on September 18, 2010. As per records, it is observed that ICICI was not having any other matter pending with JEIL on which any correspondence was being exchanged. JEIL has stated that it is not able to trace any correspondence from ICICI. It has not categorically denied that it has not received such statement from ICICI. In the totality of circumstances, it is clear that that ICICI did make the requisite disclosure under regulation 13 (3) of PIT Regulations to JEIL. However, JEIL has failed to make the requisite disclosure under regulation 13(6) of PIT Regulations to the stock exchanges. Hence inspite receiving the disclosures of the change in shareholding from ICICI, JEIL has failed to make its disclosures to the stock exchanges under regulation 13 (6) of the PIT Regulations and has therefore violated the said provision.

14. 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.

15. In the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68SCL216(SC)*, the Hon'ble Supreme Court of India has held that *‘penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant’*.
16. Thus, it is evident from the above that the intention of the party committing a violation of an Act/ Regulation is immaterial in terms of penalty to be imposed as long as contravention of statutory obligation as contemplated by the Act/ Regulation is established. Hence, the aforesaid violations by the Noticee make him liable for penalty under Section 15A(b) of SEBI Act, 1992 which reads as follows:

**“15A. Penalty for failure to furnish, information, return etc.**

*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 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. “*

17. While determining the quantum of penalty under section 15A(b), it is important to consider the factors stipulated in section 15J of SEBI Act, which read 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 an entity 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 and were thus impaired from taking informed investment decisions due to this lapse by the Noticee. The Noticee/JEIL failed to disclose the change in its shareholding pattern as disclosed to it by ICICI to the respective stock exchanges where it was listed, which is in violation of Regulation 13(6) of PIT Regulations. I am also aware that the shares of the Company have been suspended from trading since 2001. Therefore it would have been difficult for the shareholders to act on this information through the stock markets. Further, since there is only one instance, the said violation cannot be said to be repetitive.

## **ORDER**

19. In terms of provisions of rule 5(1) of the Rules, I impose a penalty of ₹ 1,00,000/- (Rupees One lakh only) under section 15 A(b) of SEBI Act, 1992 on the Noticee, M/s Jord Engineers India Ltd., having its registered office at 541, Ishwarpura (Asoj), Baroda Halol Highway, Baroda (Vadodara) – 391510, for the aforesaid violation of regulation 13(6) 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- ID -8, 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: <b>June 30, 2011</b>	<b>PIYOOSH GUPTA</b>
Place: <b>MUMBAI</b>	<b>ADJUDICATING OFFICER</b>