

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. EAD-2/AO/ 145 /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 Dhrenendra Shah**

**[PAN: AAFPS7919B]**

**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 Dhrenendra 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 and director 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 sold / transferred 1,10,000 shares of VEIL on September 11, 2009 and 80,000 shares on October 21, 2009. The Noticee was required to make certain disclosures to VEIL and the stock exchange (BSE) as prescribed under Regulation 13(4) read with Regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the PIT Regulations), 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(4) 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 August 28, 2012 granted an opportunity of personal hearing to the Noticee on September 13, 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 company -***

#### **Continual disclosure**

***(3) .....***

***(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) 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(4) read with 13(5) of the PIT Regulations are twofold, i.e., disclosure to the company and to the Stock Exchange by any person who is a director or officer of a listed company, 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 which exceeds ₹ 5 lakhs in value or 25000 shares or 1% of total shareholding or voting rights, whichever is lower; and such disclosure has to be made within two 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 director of VEIL. He had demat accounts as "ordinary" with OBC, a Depository Participant and as "HUF" with ABL, another Depository Participant. During the period under examination, the Noticee on September 11, 2009 and October 21, 2009 sold / transferred 1,10,000 shares and 50,000 shares, respectively, from the demat account held with OBC thereby reducing his balance holding to 5,000 shares in the said account. Further, the Noticee on October 21, 2009 also sold / transferred 30,000 shares from the demat account held with ABL as "HUF" out of the total opening balance of 37,290 shares thereby reducing the shareholding to 7,290 shares in that account. Thus the Noticee sold/transferred 1,10,000 shares on September 11, 2009 and 80,000 shares on October 21, 2009 respectively. Since the transactions on both these days exceeded 25000 shares in volume, the Noticee was required to file disclosure to the company and to the stock exchanges under Regulation 13(4) read with Regulation 13(5) of the PIT Regulations.
11. The Noticee in his reply dated July 23, 2012 submitted that on September 11, 2009 to October 21, 2009 he had 16,000 original shares in his personal account held with OBC. Further, he submits that on October 21, 2009 he had 3000 original shares of VEIL in his "HUF" account held with ABL. Therefore, the Noticee had sold / transferred only 16000 and 3000 shares on the said

two occasions which did not exceed the 25000 shares limit as prescribed under Regulation 13(4) of the PIT Regulations and so the Noticee was not required to make the disclosures under the PIT Regulations. However, I do not concede with the submissions made by the Noticee. I note that there was an increase in the share capital of VEIL from 33,60,000 shares as on June 2009 to 5,04,00,000 shares as on September 2009 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). Therefore, pursuant to the bonus issue and the stock split the shareholdings had automatically increased and the sale /transfer he made after September 07, 2009 exceeded 25,000 shares.

12. From the foregoing, after considering the allegations as per the SCN, submissions made and the material available on record I conclude that, it is established beyond doubt that the Noticee has violated Regulation 13(4) read with Regulation 13(5) of the PIT Regulations, 1992 warranting imposition of monetary penalty under Section 15A(b) of the Act.

13. 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.*

14. 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”.*

15. 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.*

16. 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**

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 read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹ 1,00,000/- (Rupees One Lakh Only) on Shri Dhrenendra Shah under Section 15A(b) of the SEBI Act. 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 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.
19. 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**