BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref No.: Order/AP/VS/2020-21/8750]

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) RULES, 1995.

In respect of:

Mr. Sorabh Rakesh Jain
(PAN: AHUPJ0555C)
A-701/702, Building No. 63/64,
Yogi Paradise CHSL, Yogi Nagar,
Borivali West, Opposite Datta Mandir,
Mumbai-400091

In the matter of **SRK Industries Limited**

1. SRK Industries Limited (hereinafter referred to as 'SRK'), is a company listed on Bombay Stock Exchange Limited (BSE). Securities and Exchange Board of India ('SEBI') had conducted an investigation in the matter of trading in the scrip of the SRK by its promoter Mr. Sorabh Rakesh Jain (hereinafter referred to as 'the Noticee'), to ascertain whether there was any violation of the provisions of SEBI (Prohibition of Insider Trading) Regulation, 1992 (hereinafter referred to as 'the PIT Regulations) during the period March 01, 2010 to December 31, 2014 (hereinafter referred to as 'investigation period'). SEBI has observed that:
   a) Pursuant to a scheme of arrangement approved by Hon'ble High Court of Bombay and Hon'ble High Court of Madras for merger of Transcend Commerce Limited with SRK, on March 22, 2013 the shareholding of existing promoters such as the Noticee increased by 9,01,320 shares (2.30%) from 13,700 shares (0.03%) to 9,15,020 shares (2.33%). The Noticee was required to make requisite disclosures under regulation 13(4A) read with 13(5) of the PIT Regulations to SRK and BSE, since change in shareholding of the Noticee exceeded 1% of the total shareholding.

   b) On July 12, 2013 the Noticee had sold 4,200 shares of SRK. It is noted that the transaction value of 4,200 share based on closing price on the date of traction is calculated as ₹14,43,430/-. The Noticee was required to make requisite disclosure to SRK and to BSE under section 13(4A) of the PIT Regulations, since the value of transaction of the Noticee exceeded ₹5,00,000/-.

2. SRK vide its email dated October 10, 2019 provided the list of promoters/ promoter group, shareholding of the Promoters for the period from March 2010 to March 2014 and requisite disclosures made by them to SRK and BSE.

3. BSE vide email dated August 30, 2019 provided the list of all disclosures received and made by the promoters under PIT Regulations to SRK and then subsequently by SRK to BSE.

4. The aforesaid change in shareholding of the Noticee pursuant to share transferred/reclassification as promoter during the investigation period are shown as follows:

Sr. No.	Transaction Date	No of shares held-pre Acquisition/ disposal	% of shareholding and pre-acquisition / disposal	No of share s Acquired/ disposed off/ reclassified	No of shares Acquired / (disposed off) as a % of paid up capital	Value of transaction (₹.)	No. of shares held post acquisition / disposal	%of shareholding held – post acquisition / disposal	Mode	Date of Disclosure to company	Date of disclosure to stock exchange	Violation of PIT Regulations 1992 read with regulation 12 of PIT Regulations 2015
a	22-3-13	13,700	0.03%	9,01,320	2.30%	0	9,15,020	2.33%	Allotment as per Scheme	17-7-19	17-7-19	13(4A) r/w 13(5)
b	12-7-13	9,15,020	2.33%	-4,200	-0.01%	14,43,430	9,10,820	2.32%	On Market	15-7-13	20-7-13	13(4A) r/w 13(5)

5. In view of the above, SEBI felt satisfied that there are sufficient grounds to inquire and adjudicate upon the aforesaid violation of provisions of the PIT Regulations 1992, read with regulation 12 of PIT Regulations, 2015 by the Noticee. By a *communication-order* dated February 04, 2020, the undersigned has been appointed as Adjudicating Officer to inquire into and adjudge under section 15A (b) of the SEBI Act for the alleged violations of aforesaid PIT Regulations, by the Noticee. The relevant provisions of the PIT Regulations charged in this case against the Noticee are reproduced as follows:

PIT Regulation, 1992

Continual disclosure.

13 (4A) Any person who is a promoter or part of promoter group 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 from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds ₹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), (4) and (4A) 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.

PIT Regulation, 2015

Repeal and Savings.

12. (1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.

(2) Notwithstanding such repeal,—

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and

(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(3) After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

6. After the receipt of records, the notice to show cause no. EAD-2/AP/VS/6504/3/2020 dated February 18, 2020 (SCN) was issued to the Noticee in terms of rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudication Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') read with section 15I of the SEBI Act. By the SCN, the Noticee was called upon to show cause as to why an inquiry should not be held against him in terms of rule 4 of the Adjudication Rules and penalty be not imposed under Section 15A (b) of the SEBI Act for the aforesaid alleged violations. The SCN was duly served upon the Noticee. The Noticee vide its email dated June 19, 2020 submitted its reply *inter alia* as follows:

   a) <u>With regard to allegation as allege din para 1(a):</u>

      i. The Noticee submit that a company by the name and style of TCL, which was under the same management and in the same industry as SRK, got merged with SRK and

the capital was also reduced to set off the accumulated losses vide Scheme of arrangement approved by Hon'ble High Court of Judicature at Bombay and Hon'ble High Court of Judicature at Chennai effective from March 12, 2013.

ii. The Noticee submitted that the said scheme of arrangement was approved by the Shareholders during the court convened meeting held on October 19, 2012. One of the enclosures to the notice dated September 19, 2012 of the court convened meeting also included Explanatory statement pursuant to Section 393 of The Companies Act, 1956 which inter-alia included background of both the companies, the fact that both the companies are under same management, shareholding pattern prior to and after merger with clear distinction between promoter and non-promoter holding etc.. The said explanatory statement clearly stated that promoter holding prior to merger would be 15% and after merger would be 48.77%.

iii. The required information that the promoters shareholding would increase was in the public domain.

iv. The above shareholding was not acquired as an active acquirer but as a result of scheme of arrangement approved by Hon'ble High Courts which was duly disclosed and there was no non-disclosure on his part with malafide intention.

v. The Noticee admit that he has not filed the disclosures under the respective regulations in respective format but there has been no non-disclosure on his part.

b) <u>With regard to allegation as alleged in paras 1(b):</u>

The Noticee submitted that SEBI vide letter number SEBI/HO/IVD/ID5/OW/P/2019/33396/1 dated December 13, 2019 advised Noticee to that the said transactions carried out on July 12, 2013 was duly disclosed to the stock exchanges with a minor delay of 3 working days, he should be careful in future to avoid recurrence of the instances failing which action may be initiated.

c) The Noticee also placed reliance upon the following judgements passed by Hon'ble Courts/Hon'ble SAT/ Ld. WTM of SEBI which conclude that if the breach is merely technical and unintentional, penalty may not be levied.

i. Adjudication Order dated May 11, 2017 passed by Ld. Adjudicating Officer in the case of Jindal Cotex Limited
ii. SEBI order dated February 02, 2017 in the case of Refex Industries Limited
iii. Reliance Industries Ltd. v SEBI (SAT Appeal No. 39/2002)
iv. Akbar Badrudin Badrudin Jiwani V. Collector of Customs, Bombay (AIR 1990 SC 1579)
v. Hindustan Steel Ltd., v State of Orissa, (1970) 1 SCR 753; (AIR 1970 SC 2563)

7. I have perused the allegations levelled against the Noticee in the SCN, his written representation dated June 19, 2020 and materials relied upon by SEBI and proceeded to examine the facts and circumstances and the material available on record.

8. The Noticee has contended that the vide scheme of arrangement approved by Hon'ble High Court of Judicature at Bombay and Hon'ble High Court of Judicature at Chennai effective from March 12, 2013, TCL was merged with SRK. The said scheme of arrangement was approved by the shareholders during the court convened meeting held on October 19, 2012. The Noticee contended that one of the enclosures to the notice dated September 19, 2012 of the court convened meeting also included Explanatory statement pursuant to Section 393 of The Companies Act, 1956 which inter-alia included background of both the companies, the fact that both the companies are under same management, shareholding pattern prior to and after merger with clear distinction between promoter and non-promoter holding etc.. The said explanatory statement clearly stated that promoter holding prior to merger would be 15% and after merger would be 48.77%. In this regard I note that the disclosure mandated in this case was to be made to the company and the exchange.

9. The Noticee has provided the shareholding pattern along with promoter shareholding filed under Clause 35 of the Listing Agreement for quarter ended March 2013, submitted by the SRK to BSE. The Noticee has placed reliance upon the above disclosures and under listing Agreement filed by SRK to BSE and contended that the adequate disclosures were made by him to the SRK which were duly disseminated to the BSE to warrant any allegation of non-discourse. It is also noted that the information required in Form D specified in regulation 13 (4) and 13 (4A) is wider than information required in Clause 35 of the Listing Agreement. In this case, the material disclosure with regard to number and % age of pre and post-acquisition shareholding was not disclosed while making disclosure's on different dates as claimed. I note that the main factor which distinguish between above mentioned two disclosures is the

disclosure of *"Number and % of share / voting rights post acquisition /sale/ Date of receipt of allotment / Date of intimation to company / Mode of acquisition / Buy quantity / Buy value / Sale quantity / Sale Value"*. In my view, this is a crucial information required in Form D and is material to enable the investor to take informed decision and regulators to monitors the consolidation of holding by promoters / acquirers. Further, the clause 35 of the Listing Agreement mandates the Company to file the information with exchange in the specified format on a quarterly basis, within 21 days from the end of the quarter, whereas regulation 13(5) of the PIT Regulations mandates to disclose the information with in two day after *the receipts of intimation of allotment of shares, or on the acquisition or sale of shares or voting rights, as the case may be*. Therefore, the importance of the disclosures under regulation 13(5) can be assessed from the fact that time prescribed for such disclosures in just 2 days of the happening of the event. Even though disclosures under clause 35 of Listing Agreement is made by SRK cannot absolve the liability under regulation 13(4A) read with regulation 13(5) of the PIT Regulations. It is also admitted by the Noticee that he has not filed the required disclosures under the required respective regulations in requisite format.

10. With regard to the violation at para 1(b), I note that SEBI has already given Advisory to the Noticee vide letter no. SEBI/HO/IVD/ID5/OW/P/2019/33396/1, dated December 13, 2019 saying that *"…You are advised o be careful in future to avoid recurrence of such instances, failing which action may be initiated in accordance with the provisions of SEBI Act, 1992 and Rules and Regulations framed there under."* Therefore, I am of the view that a lenient view may be considered and hence, no penalty need to be imposed with reference to the allegation at para 1(b) for the delayed disclosures pertaining to transactions carried out on July 12, 2013.

11. In view of the above, I hold that the Noticee had failed to make complete disclosures required under 13 (4) and 13 (4A) of PIT Regulations, to BSE for increase of his shareholding of SRK by 9,01,320 shares (2.30%) from 13,700 shares (0.03%) to 9,15,020 shares (2.33%) on March 22, 2013 due to scheme of arrangement approved by Hon'ble High Court of Bombay and Hon'ble High Court of Madras for merger of TCL with SRK. The said disclosure was to be made in 2 days from the occurrence of the event. It is relevant to mention that in the matter of **Appeal No. 66 of 2003 -Milan Mahendra Securities Pvt. Ltd. vs. SEBI**–the Hon'ble SAT, vide its order dated April 15, 2005 held 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."* In this case, the Noticee being promoter and managing director of the company had been failed to provide complete and timely information to public and regulators. In the facts and

circumstances of this case, I am of the view that such defaults attract the liability to pay penalty as prescribed under Section 15A(b) of the SEBI Act which provides as follows:

Penalties and Adjudication

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 or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

12. For the purpose of adjudication of penalty it is relevant to mention that under section 15I of the SEBI Act imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "*he may impose such penalty*" are of considerable significance, especially in view of the guidelines provided by the legislature in section 15J of the SEBI Act. Further, while adjudging the quantum of penalty the adjudicating officer has discretion and such discretion should be exercised having due regard to the factors specified in section 15J. The factors stipulated in Section 15J, which reads as follows:-

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 investor/+s as a result of the default;

(c) the repetitive nature of the default.

Explanation-

For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

13. Having regard to the factors listed in section 15J, it is noted from the material available on record, that with regard to the change in shareholding of the Noticee on March 22, 2013, SRK had made the disclosures under clause 35 of the Listing Agreement to BSE, though it was not in line with the disclosures to be made under regulation 13(4A) of the PIT Regulations. The violation is not repetitive in nature. I also note that the violations pertain to a period which is more than 7 years old i.e., of 2013. As such these facts could be mitigating factors. From the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default in this case cannot be computed. I further note that the Noticee has provided the copy of merger application dated March 10, 2012, received by BSE on March 12, 2012, which established that the information regarding the merger was available with BSE beforehand the merger of TCL with SRK. The Noticee has also furnished the Merger Orders of TCL with SRK, passed by the Hon'ble Bombay High Court and Hon'ble Madras High Court, which also suggest that the change in shareholding of the Noticee is not the act of commission but it is driven by the process of law, i.e., by the order of the Hon'ble High Courts. However, at the same time I consider that timely disclosures to the company and the stock exchange as required under the PIT Regulations, are of significant importance from the point of view of the investors and regulators. Therefore, I am inclined to take a lenient view while considering the quantum of penalty to be imposed in the matter.

14. This facts suggest that the information was available on public domain, which could be a mitigating factor, however, it was not available in stipulated format as prescribed by the regulations. From the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default in this case cannot be computed. However, timely disclosures to the company and the stock exchange as required under the PIT Regulations, are of significant importance from the point of view of the investors and regulators. The alleged failure as found in this case, had clearly defeated the purposes of regulations.

15. Taking into consideration all the facts and circumstances of the case including the aforesaid 15J factors and exercising the powers conferred upon me under section 15I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose, a monetary penalty of ₹1,00,000/- (Rupees One Lakh only) upon Noticee viz. Mr. Soarabh Rakesh Jain under section 15A(b) of the SEBI Act. In my view, the said penalty is commensurate with the violation committed by the Noticee in this case.

16. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order in either of the way of demand draft in favour of "*SEBI - Penalties Remittable to Government of India*", payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticees may contact the support at portalhelp@sebi.gov.in

17. The Demand Draft or details and confirmation of e-payment made in the format as given in table below shall be sent to *"The Division Chief, EFD-DRA-4, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051."* and also to e-mail id:- tad@sebi.gov.in

1	Case Name	
2	Name of the 'Payer/Noticee'	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

18. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia,* by attachment and sale of movable and immovable properties.

19. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: August 26, 2020 **Amit Pradhan**

Place: Mumbai **Adjudicating Officer**