**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. EAD/SR/SJ/AO/59/2018-2019]**

---

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

**In respect of**

**Deepakkumar Shantilal Jain**

**In the matter of Initial Public Offer (IPO) Irregularities – Dealings by Mr. Deepakkumar Shantilal Jain in the IPO of Infrastructure Development Finance Company Limited**

---

## BACKGROUND

1. The Whole Time Member (**WTM**) of Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') passed an order dated December 31, 2008 in the matter of Initial Public Offer (**IPO**) Irregularities – Dealings by Mr. Deepakkumar Shantilal Jain (hereinafter referred to as '**Noticee**') in the IPO of Infrastructure Development Finance Company Limited (hereinafter referred to as '**IDFC**') under sections 11, 11B and 11(4)(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**the SEBI Act, 1992'**) and directed, the Noticee that he shall disgorge the unlawful gain of Rs.54,76,653/- and interest thereon at the rate of 10% per annum from the date of listing of IPO of IDFC i.e. August 12, 2005 till the date of payment. He was directed to disgorge the amount within 45 days from the date of the said order by way of crossed demand draft drawn in favour of SEBI and payable at Mumbai. The WTM, SEBI also passed a direction that in case the said amount is not disgorged within the specified time period then the Noticee shall be restrained from buying, selling or dealing in securities market in any

manner whatsoever or accessing the securities market directly or indirectly for a further period of 10 years without prejudice to the SEBI's right to enforce disgorgement. It was further stated in the said order that the said order shall come into force with immediate effect.

2. A department of SEBI observed that the Noticee failed to disgorge Rs.54,76,653/- and interest thereon at the rate of 10% per annum from the date of listing (August 12, 2005) of IPO of IDFC till the date of payment and therefore, failed to comply with the directions issued by WTM, SEBI vide order dated December 31, 2008 and therefore liable for monetary penalty under Section 15HB of the SEBI Act, 1992.

## APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer under Section 15-I of the SEBI Act, 1992 read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rule, 1995 (hereinafter referred to as '**Adjudication Rules**'), to inquire into and adjudge under Section 15HB of the SEBI Act, 1992, the alleged failure on the part of the Noticee to comply with the directions issued by WTM of SEBI vide Order dated December 31, 2008.

## SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice dated April 23, 2018 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4(1) of Adjudication Rules to show cause as to why an inquiry should not be held against him for his alleged failure to comply with the directions issued by the WTM of SEBI vide Order dated December 31, 2008, which reads as follows:
    a. WTM, SEBI vide Order dated December 31, 2008 in the matter of IPO Irregularities – Dealings by the Noticee in the IPO of IDFC had inter-alia directed the Noticee that he shall disgorge the unlawful gain of Rs.54,76,653/- and interest thereon at the rate of 10% per annum from the date of listing of IPO of IDFC i.e. August 12, 2005 till the date of payment. He was directed to disgorge the amount within 45 days from the date of the said order by way of crossed demand draft drawn in favour of SEBI and payable at Mumbai. The WTM,

SEBI also passed a direction that in case the said amount is not disgorged within the specified time period then the Noticee shall be restrained from buying, selling or dealing in securities market in any manner whatsoever or accessing the securities market directly or indirectly for a further period of 10 years without prejudice to the SEBI's right to enforce disgorgement.

b. Against the said order of WTM, SEBI, the Noticee preferred an appeal before Securities and Appellate Tribunal (**SAT**) and SAT vide order dated December 30, 2009 set aside the said Order of WTM, SEBI. SEBI then preferred an appeal before the Hon'ble Supreme Court against the said order of SAT. The Hon'ble Supreme Court vide order dated July 11, 2016 quashed the said SAT order so as to give effect to the order passed by the WTM, SEBI i.e. Hon'ble Supreme Court set aside the said SAT order and upheld the said order of WTM, SEBI. The Noticee was directed by the Hon'ble Supreme Court to make compliance of SEBI order dated December 31, 2008 within two months from July 11, 2016 - the day when Hon'ble Supreme Court upheld the Order dated December 31, 2008 of WTM, SEBI.

c. As the said order of WTM, SEBI was confirmed by the Hon'ble Supreme Court, the Noticee was under a lawful obligation to make compliance of aforesaid directions issued by WTM, SEBI within two months of July 11, 2016. It is alleged that the Noticee failed to disgorge Rs.54,76,653/- and interest thereon at the rate of 10% per annum from the date of listing (August 12, 2005) of IPO of IDFC till the date of payment and therefore, failed to comply with the directions issued by WTM, SEBI vide order dated December 31, 2008 and therefore liable for monetary penalty under Section 15HB of SEBI Act.

5. The said SCN has been received by the Noticee and the proof of delivery of the same is available on record. The Noticee was granted 15 days (reckoned from the receipt of the said SCN by the Noticee) to file reply to the said SCN. The Noticee vide letter dated May 07, 2018 replied to the said SCN. In the interest of justice an opportunity of personal hearing was granted to the Noticee vide hearing notice dated May 11, 2018 for hearing scheduled on May 30, 2018. However, the Noticee requested for an adjournment of the said hearing. Therefore, another opportunity of personal hearing was granted to the Noticee vide hearing notice dated May 28, 2018 for the hearing scheduled on June 18,

2018. The authorized representatives of the Noticee appeared on the said date and they sought time till August 10, 2018 to file additional written submissions. The Noticee vide letter dated August 13, 2018 filed another written submissions. The summary of the replies dated May 07, 2018 and August 13, 2018 of the Noticee are as follows:

a. The WTM, SEBI vide order dated December 31, 2008 directed him to disgorge the unlawful gain of Rs.54,76,653/- and after appeal the Hon'ble Supreme Court vide order dated July 11, 2016 quashed SAT Order so as to give effect to the order passed by WTM, SEBI within two months from July 11, 2016.
b. Against the said order of Supreme Court the Noticee preferred a review petition. The said review petition was also dismissed by the Hon'ble Supreme Court. Against the said order of Supreme Court, the Noticee preferred a Curative Petition. The said Curative petition was also disposed off by the Hon'ble Supreme Court on August 10, 2017.
c. After the dismissal of the Curative Petition, the Noticee approached his family and friends to borrow money to pay the disgorgement amount of Rs.54,76,653/- as directed by WTM, SEBI.
d. His financial condition is not good and he is presently doing job with very average salary. His family consists of three members who all are dependent on him.
e. Thereafter, a notice from recovery officer was also received by him and on receipt of the same, he vide letter dated January 09, 2018 intimated to Recovery Officer that he is ready to pay the disgorgement amount of Rs.54,76,653/- in monthly installments without any interest under protest.
f. Thereafter, vide different letters he deposited the following amount with SEBI through pay order as monthly installments towards disgorgement amount.

| **Date** | **Demand Draft Number** | **Bank** | **Amount** |
|---|---|---|---|
| 09/1/2018 | Debited from account | YES Bank | Rs. 7,40,000/- |
| 05/2/2018 | 921041 | RBL Bank | Rs. 4,00,000/- |

| | | | |
|---|---|---|---|
| 09/3/2018 | 982727 | RBL Bank | Rs. 4,00,000/- |
| 10/4/2018 | 503667 | YES Bank | Rs. 4,00,000/- |
| 08/5/2018 | 775438 | PNB Bank | Rs.3,00,000/- |
| 08/5/2018 | 982926 | RBL Bank | Rs. 1,00,000/- |
| 07/6/2018 | 015668 | HDFC Bank | Rs.4,00,000/- |
| 11/7/2018 | 582438 | YES Bank | Rs. 4,00,000/- |
| 08/8/2018 | 582484 | YES Bank | Rs. 4,00,000/- |
| **Total Disgorged money Paid** | | | **35,40,000** |

g. The details of the payment made by the Noticee before the appointment of Adjudicating Officer (AO) has not been provided to the AO as even before the appointment of AO i.e. April 19, 2018 and issue of SCN dated April 23, 2018, the Noticee started making the aforesaid payments. In the said SCN, nowhere the AO has mentioned the amount which is already paid by the Noticee towards the disgorgement amount and on the basis of such incomplete information and erroneous data, AO issued an erroneous SCN.

h. The Noticee's request for inspection of documents was rejected stating that all the required documents were already provided to the Noticee as Annexures to the said SCN. In the interest of Natural Justice, the Noticee should have been provided with proper inspection of all the documents / evidences used by SEBI for issuing SCN.

i. The consequences in case of non-payment of disgorgement money were made very clear in the form of additional debarment of 10 years vide said WTM, SEBI order. So there is no logic in imposing monetary penalty over and above additional debarment already provided by the WTM, SEBI.

j. Section 15HB of SEBI Act, 1992 can be exercised only where there is no specific remedy available. As per the said WTM, SEBI Order, additional debarment of 10 years is already available with SEBI. For the same matter, the proceedings in the office of WTM were already going on and the order has been duly complied with and still the AO issued the said SCN and therefore, there is duplication of allegations under the same matter which has led to multiple proceedings against the Noticee.

k. Details of payment already made by the Noticee and yet to be paid were provided by the Noticee as follows:

| **Order details** | **Amount as per Demand Notice dated December 26, 2017** | **Amount Paid** | **Amount Due** |
|---|---|---|---|
| Disgorgement Order dated December 31, 2008 | Rs.54,76,653/- (Principal) + Rs.19,23581/- (Interest) + Rs. 78,73,038/- (Interest) + Rs.1000/- (Recovery Cost)<br>Rs. 1,52,74,271/- | Rs. 35,40,000/- paid in monthly installments | Rs.1,17,34,271/- (Willing to pay the amount in monthly installments) |

l. The fact that the above amount has been paid by him shows that he has no intention to disobey or delay the recovery proceedings.

m. The SCN fails to mention about the review petition and the curative petition filed by the Noticee and their disposals. SCN takes July 11, 2016 as the date of order passed by the Hon'ble Supreme Court as the date from which the interest calculation is initiated whereas the curative final order passed on August 10, 2017 should be the actual date of interest calculation. Hence, the amount to be paid by the Noticee should have been the disgorgement amount plus the percentage of interest calculation starting from August 10, 2017 plus 60 days.

n. SCN did not mention about the recovery proceedings and the details of the payment made. The Noticee requested the AO that the said SCN be quashed and set aside, remove his name from the list of defaulters and the directions taken against him should be set aside by SEBI.

6. After taking into account, the allegations levelled in the SCN, replies of the Noticee and other evidences / materials available on record, I hereby, proceed to decide the case on merit.

## CONSIDERATION OF ISSUES

7. The issues that arise for consideration in the present case are:
   - **(a) Whether the Noticee has failed in complying with the directions issued by the WTM of SEBI vide order dated December 31, 2008?**
   - **(b) Do the violations, if any, on the part of the Noticee attract any monetary penalty under Section 15HB of the SEBI Act, 1992?**
   - **(c) If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules?**

## EVIDENCES AND FINDINGS:

8. On perusal of the materials available on record and giving regard to the facts and circumstances of the case, I record my findings as under:

***Issue a: Whether the Noticee has failed in complying with the directions issued by the WTM of SEBI vide order dated December 31, 2008?***

a. I find that the Noticee made request for inspection of documents vide letter dated Vide letter dated June 14, 2018. The said request for inspection was rejected by me vide letter dated July 13, 2018 citing reason that he was provided with all the documents that the undersigned has relied on while issuing the said SCN. I find that the said request for inspection of documents has been made by the Noticee (a) after filing of his reply wherein he submitted regarding paying the disgorgement amount in monthly installments and (b) after the issuance of hearing notice dated May 11, 2018 for the hearing scheduled on May 30, 2018. I therefore, note that the Noticee is using delay tactics.

b. The WTM of SEBI vide order dated December 31, 2008 issued directions against the Noticee - “the Noticee shall disgorge the above unlawful gain of Rs.54,76,653/- and interest thereon at the rate of 10% per annum from the date of listing of IPO of IDFC, i.e. August 12, 2005 till the date of payment. He shall disgorge the amount within 45 days from the date of this order by way of crossed demand draft drawn in favour of SEBI and payable at Mumbai. In case the aforesaid amount is not disgorged within the specified time, he shall be restrained from buying, selling or dealing in securities market in any manner whatsoever or accessing the securities market, directly or indirectly, for a further period of ten years without prejudice to the SEBI’s right to enforce disgorgement”.

c. The Noticee in this regard submitted that he started paying the disgorgement amount in monthly installments and till the date of reply dated August 13, 2018 he paid in total Rs.35,40,000/-towards disgorgement amount. The Noticee also submitted that the SCN is based on incomplete information as it did not mention about the review and curative petitions filed by the Noticee and the amount paid by the Noticee till the appointment of AO and issuance of the said SCN. In this regard, I note that in the said Order of WTM, SEBI, the Noticee was given specific timeline for payment and the order did not mention about payment in monthly installments. Further, the Hon’ble Supreme Court vide order dated July 11, 2016 directed the Noticee to comply the said order of WTM, SEBI within two months from the said date i.e. July 11, 2016. The Hon’ble Supreme Court’s order did not mention for the Noticee to pay the disgorgement amount along with interest thereon in installments and the Noticee was specifically directed to comply with the said order of WTM, SEBI within two months of July 11, 2016. I further observe that as per the submissions of the Noticee that a review petition and the curative petition were filed by him and the same do not form part of the said SCN, I find that it is as per his submissions that said petitions were dismissed by the Hon’ble Supreme Court. As per his submission, the said Curative petition was dismissed on August 10, 2017 and the Noticee was therefore, under legal obligation to comply with the said Order of WTM, SEBI within two months of August 10, 2017. Further, the Noticee’s dispute with regard to calculation of interest from August 10, 2017 plus 60 days instead of July 11, 2016, I note that the directions of WTM, SEBI are that the Noticee had to pay interest thereon at the rate of 10% from the day of listing of IPO of IDFC i.e. from August 12, 2005 to till the date of payment. Therefore, I find no ambiguity about the date from which the Noticee is to pay the interest on the disgorgement amount. The interest calculation on disgorgement amount shall be from August 12, 2005 the day when the IPO of IDFC got listed.

d. To confirm whether the Noticee paid Rs.35,40,000/- towards disgorgement amount an e-mail dated August 24, 2018 was sent to Recovery Officer, SEBI. Vide e-mail dated August 29, 2018, it was confirmed that the Noticee paid the said amount towards disgorgement money. I note that part disgorgement amount of Rs. 19,36,653/- along with the interest of 10% on the disgorgement amount from the day of listing of IPO of IDFC i.e. from August 12, 2005 to till the date of payment is yet to be paid by the Noticee. The Noticee’s submision that if he fails to pay the disgorgement amount then he shall not be liable for monetary penalty u/s 15HB of SEBI Act, 1992 as WTM stated in the said order that the consequences in case of non-payment of disgorgement money were made very clear in form of additional debarment of 10 years is not at all acceptable to me for the reason that the said debarment for 10 years if the amount is not disgorged was an additional constraint on the Noticee under sections 11, 11B of SEBI Act, whereas the present adjudication proceedings is for non-compliance of WTM Order leading into monetary penalty and thus both the proceedings i.e. proceedings under Sections 11 and 11B of SEBI Act and Adjudication Proceedings under the provisions of SEBI Act, 1992 are different. Further, the nature of penalty is also different under the said 11B proceedings and Adjudication Proceedings. Moreover, the recovery proceedings has been initiated against the Noticee itself shows that the Noticee failed to comply with the said Order of WTM, SEBI.

e. I do not accept the contention of the Noticee that the said SCN is faulty as the fact with regard to his filing of review and curative petitions and part payment made by him to SEBI were not mentioned. In this regard, I am of the view that the Noticee was directed by

Hon’ble Supreme Court to comply the said order of WTM, SEBI within two months from July 11, 2016. Even though for the sake of arguments, I accept the Noticee’s contention that he filed review and curative petitions before the Hon’ble Supreme Court (though no supporting documentary evidence was provided) but it is also clear from his submissions that both the petitions got dismissed. As per the submissions of the Noticee his curative petition got dismissed on August 10, 2017 and till date the Noticee did not fully disgorge Rs.54,76,653/- along with interest thereon at the rate of 10% per annum from the date of listing of IPO of IDFC i.e. August 12, 2005 to till the date of payment.

f. In view of aforesaid observations and undisputed fact that the Noticee has not paid the disgorgement amount along with interest thereon at the rate of 10% per annum from August 12, 2005 till the date of payment, I conclude that the Noticee has failed to comply with the directions issued by WTM of SEBI vide Order dated December 31, 2008. Therefore, allegations leveled in the said SCN against the Noticee regarding non-compliance of the directions issued by WTM of SEBI vide order dated December 31, 2008 stand established.

***Issue b: Do the violations, if any, on the part of the Noticee attract any monetary penalty under Section 15HB of the SEBI Act, 1992?***

9. After taking into account the aforesaid entire facts / circumstance of the case, submissions of the Noticee, I am of the view that the said failure on the part of the Noticee to comply with the directions issued by WTM of SEBI vide order dated December 31, 2008 attracts the imposition of monetary penalty under Section 15HB of SEBI Act, 1992 which is reproduced below:

> ***Penalties and Adjudication***
> ***Penalty for contravention where no separate penalty has been provided.***
> *15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate*

*penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

***Issue c - What would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 read with rule 5 (2) of the Adjudication Rules?***

10. While determining the quantum of penalty under section 15J of SEBI Act, it is important to consider the factors stipulated in section 15J of the SEBI Act, 1992 read with Rule 5 (2) of the Adjudication Rules, which reads as under:-

    ***SEBI Act, 1992***

    *15J "Factors to be taken into account by the adjudicating officer-*

    *While adjudging quantum of penalty under section 23 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."*

11. I observe, that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors due to such failure on the part of the Noticee to comply with the directions issued by WTM of SEBI vide order dated December 31, 2008. From the documents available on record, it is noted that till date the Noticee paid Rs. 35,40,000/- towards disgorgement amount and balance amount of Rs. 19,36,653/- towards disgorgement amount along with the interest of 10% on the disgorgement amount from the day of listing of IPO of IDFC i.e. from August 12, 2005 to till the date of payment is yet to be paid by the Noticee. Further, it would be appropriate to refer to the observations made by the

Hon'ble SAT in the matter of Akriti Global Traders Ltd. Vs. SEBI (Appeal No. 78 of 2014) decided on September 30, 2014:-

> *"…penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay."*

12. Therefore, taking into consideration the facts / circumstance of the case, I am of the view that the Noticee is liable for monetary penalty for his failure to comply with the directions discussed above and issued by WTM of SEBI vide order dated December 31, 2008. However, in this regard I am inclined to take a lenient view in the light of his part payment of disgorgement amount and his intention to pay the remaining disgorgement amount and the interest thereon.

**ORDER**

13. In exercise of the powers conferred under section 15-I of the SEBI Act, 1992 and Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 5,00,000/- (Rupees Five Lakh only) on the Noticee viz. Mr. Deepakkumar Shantilal Jain under section 15HB of the SEBI Act, 1992. I am of the view that the said penalty is commensurate with the defaults committed by the Noticee.

14. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI – Penalties Remittable to Government of India", payable at Mumbai, or through e-payment facility into Bank Account the details of which are given below:

| **Account No. for remittance of penalties levied by Adjudication Officer** | |
|---|---|
| Bank Name | State Bank of India |
| Branch | Bandra-Kurla Complex |
| RTGS Code | SBIN0004380 |
| Beneficiary Name | SEBI – Penalties Remittable To Government of India |
| Beneficiary A/c No. | 31465271959 |

15. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI. The Format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID : tad@sebi.gov.in

| Date | Department of SEBI | Name of Intermediary/ Other Entities | Type of Intermediary | SEBI Registration Number (if any) | PAN | Amount (in Rs.) | Purpose of Payment (including the period for which payment was made e.g. quarterly, annually) | Bank name and Account number from which payment is remitted | UTR No |
|---|---|---|---|---|---|---|---|---|---|

16. In terms of the Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

**Date: August 30, 2018** **SANGEETA RATHOD**

**Place: Mumbai** **ADJUDICATING OFFICER**