BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER No. EAD-5/BS/AO/07/2018-19]

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 THE ADJUDICATION PROCEEDINGS INITIATED IN RESPECT OF M/S JM INFOCOM AND PROPERTY INVESTMENT PRIVATE LIMITED [PAN – AAACP5073F] IN THE MATTER OF HORIZON INFRASTRUCTURE LIMITED (NOW KNOWN AS SKIL INFRASTRUCTURE LIMITED).

BACKGROUND

1. Securities and Exchange Board of India *(hereinafter referred to as* ***"SEBI")*** conducted investigation in respect of dealings in the shares of Horizon Infrastructure Limited (now known as SKIL Infrastructure Limited) *(hereinafter referred to as* ***"HIL/Company")*** during the period from January 25, 2008 to May 05, 2008 *(hereinafter referred to as "****Investigation Period"****)*.

2. It was observed that trading of the shares of HIL was suspended from March 08, 2000 to January 24, 2008 for non-compliance with the listing agreement. The scrip of the Company was recommenced trading on National Stock Exchange **(NSE)** from January 25, 2008 at Rs.82.30 per share (20% over the base price of Rs.68.55). The price of the scrip thereafter rose steadily, with brief intermediate price declines, to reach Rs.1,951.65 per share at the end of the investigation period. It was *prima-facie* observed that activities of certain entities were suspicious in nature, aimed for creation of artificial market for the scrip during initial

period of relisting and providing a platform for promoters and major shareholders to sell their shares in the market.

3. It is observed that M/s JM Infocom and Property Investment Private Limited *(hereinafter referred to as **"Noticee"**)* alleged to be a connected entity had traded in the shares of HIL during the investigation period. It is alleged that the Noticee in connivance with other connected entities aided and abetted in creation of artificial demand and a false appearance of trading in the scrip of HIL. It is also alleged that Noticee's dealing in the scrip of HIL has led to creation of artificial volume in the scrip of HIL. Therefore, the Noticee is alleged to have violated the provisions of Regulations 3 (a) to (d) and 4 (1), 4 (2) (a) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 *(hereinafter referred to as **"PFUTP Regulations"**)* read with Section 12A(a), (b), (c) of the Securities and Exchange Board of India Act, 1992, *(hereinafter referred to as **"SEBI Act"**)*.

APPOINTMENT OF ADJUDICATING OFFICER

4. Initially SEBI appointed Shri Piyoosh Gupta as the Adjudicating Officer **(AO)** vide order dated 17.04.2013. Subsequently, the undersigned has been appointed as the Adjudicating Officer in the present matter vide order dated September 15, 2017 to inquire into and adjudge under Section 15HA of SEBI Act, 1992, the violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Show Cause Notice dated June 06, 2014 *(hereinafter referred to as "**SCN**")* was issued to the Noticee in terms of Rule 4 of the SEBI (Procedure for Holding Inquiry

and Imposing Penalties by Adjudicating Officer) Rules, 1995 *(hereinafter referred to as the '**Adjudication Rules**')* read with Section 15-I of SEBI Act, 1992, to show cause as to why an inquiry should not be initiated and penalty should not be imposed under Section 15HA of SEBI Act,1992, for the alleged contraventions.

6. Vide letter dated 11.07.2014, Noticee requested for extension of time till 30.09.2014 to file the reply to the SCN. However, the Noticee failed to file any reply to the SCN.

7. In the interest of natural justice, vide hearing notice dated July 23, 2015, the Noticee was granted an opportunity of personal hearing on August 13, 2015. The said notice of hearing served on the Noticee through speed post /AD on 27.07.2015. Due acknowledgement for the same is available on record. However, the Noticee failed to attend the personal hearing on August 13, 2015.

8. Vide hearing notice dated September 02, 2015, Noticee was granted another opportunity of personal hearing to appear on September 10, 2015. Subsequently, the hearing was rescheduled to September 21, 2015. However, again the Noticee failed to appear for the personal hearing on September 21, 2015.

9. Subsequent to my appointment as the Adjudicating Officer, vide hearing notice dated December 18, 2017, Noticee was provided another opportunity of personal hearing to appear before me on January 11, 2018. However, the Noticee failed to attend the hearing.

10. I note that Noticee has been provided with ample opportunities for personal hearing. However, till date, the Noticee neither availed the opportunities for personal hearing granted to the Noticee nor filed any reply to the SCN. Therefore,

I am inclined to proceed with the matter on the basis of the material available on record.

ISSUES FOR CONSIDERATION & FINDINGS

11. I have carefully perused the SCN and the documents available on record. The issues that arise for consideration in the present case are:

   1) Whether Noticee violated the provisions of Regulations 3 (a) to (d) and 4 (1), 4 (2) (a) and (g) of SEBI PFUTP Regulations, 2003 read with Section 12A (a), (b), (c) of the SEBI Act, 1992?

   2) Whether the Noticee is liable for monetary penalty under Section 15HA of SEBI Act, 1992?

   3) If yes, then what should be the quantum of monetary penalty?

12. It is pertinent to mention here the relevant provisions of Regulations 3 (a) to (d) and 4 (1), 4 (2) (a) and (g) of SEBI PFUTP Regulations, 2003 and Section 12A (a), (b), (c) of the SEBI Act, 1992, allegedly violated by the Noticee:-

Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations. 2003.

Regulation 3: Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock

exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

Regulation 4: Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

…………..

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

<u>Securities and Exchange Board of India Act, 1992</u>

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

(a) *use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

(b) *employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*

(c) *engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

13. I note that the allegation levelled against the Noticee in the SCN is that the Noticee in connivance with other connected entities traded in the scrip of HIL during the investigation period and abetted in creation of artificial demand/volume in the scrip of HIL and thereby violated provisions of Regulations 3 (a) to (d) and 4 (1), 4 (2) (a) and (g) of SEBI PFUTP Regulations, 2003 read with Section 12A (a), (b), (c) of SEBI Act, 1992.

14. It was observed that shareholding of HIL promoter group increased by 2.8% from quarter ended **(QE)** December 31, 2007 to QE March 31, 2008 to reach 55.34%. The shareholding reduced in the next quarter to reach its previous level of around

52% and remained relatively constant thereafter. Shareholding pattern of HIL before / during / post-investigation period was as follows:

Category of Shareholder	Shareholding for QE -							
	31-Dec-2007		31-Mar-2008		30-Jun-2008		30-Sep-2012	
	Number	%	Number	%	Number	%	Number	%
Promoter Group	56,42,000	52.54	59,43,509	55.34	56,30,039	52.42	56,23,589	52.36
Public	50,98,000	47.46	47,96,491	44.66	51,09,961	47.58	51,16,411	47.64
Total	**1,07,40,000**	**100.00**	**1,07,40,000**	**100.00**	**1,07,40,000**	**100.00**	**1,07,40,000**	**100.00**

15. It is also observed that HIL market volume post- investigation period decreased vis-a-vis its market volume during investigation period. Average daily traded volume post-investigation period also decreased to 1,215 shares vis-a-vis average daily traded volume of 5,283 shares during investigation period.

16. HIL scrip's price volume movement was as under:

(Face value Rs.10/- per share)

Period	**Open Price** (Rs.)	**High Price** (Rs.)	**Low Price** (Rs.)	**Close Price** (Rs.)	**Traded volume (Trdd. vol.) of shares**		
					Total	**EQ & BE segment**	**BL segment**
Pre-investigation period	N.A. (HIL suspended for trading from March 8, 2000 to January 24, 2008)						
Investigation period	82.30	1962.35	82.30	1,951.65	13,28,702	3,48,702	9,80,000
Post-investigation period (May 6 - December 31, 2008)	1,950.00	2,040.00	354.65	374.00	2,30,465	1,83,465	47,000
Price as on February 27, 2013	140.55	175.00	139.05	139.05	39,910		

17. The scrip of HIL was suspended for trading from March 8, 2000 to January 24, 2008 for non-compliance with the listing agreement. The scrip of the Company recommenced trading on NSE from January 25, 2008 at Rs.82.30 per share (20% over the base price of Rs.68.55). The price of the scrip thereafter rose steadily, with brief intermediate price declines, to reach at Rs.1,951.65 per share at end of the investigation period. The scrip registered circuit filter hits on most of the days of investigation period.

18. It was *prima-facie* observed that activities of certain entities were for the purpose of creation of market during initial period of-re-listing and providing a platform for promoters and major shareholders to sell their shares in the market. Trading pattern of connected entities during investigation period was as under:

Sr. No.	Name of CE	Gross buy vol	Gross buy vol as % of mkt buy vol	Goss sell vol	Gross sell vol as % of mkt sell vol	Net trdd qty	No. of days trdd
1.	Rupali Gandhi	-	0.00%	92,000	26.38%	-92,000	1
2.	Neha Gandhi	-	0.00%	91,335	26.19%	-91,335	1
3.	Awaita	-	0.00%	18,179	5.21%	-18,179	13
4.	Hiten Kantilal Mehta	34,590	9.92%	300	0.09%	34,290	7
5.	Priti Hiten Mehta	48,830	14.00%	-	0.00%	48,830	1
6.	Bharti Rupesh Shah	33,335	9.56%	-	0.00%	33,335	1
7.	Jyoti Hitesh Shah	41,670	11.95%	-	0.00%	41,670	2
8.	Hitesh Rasiklal Shah	400	0.11%	-	0.00%	400	2
9.	Jelly Rajesh Tolia	1,700	0.49%	-	0.00%	1,700	2
10.	Dipti Viresh Tolia	1,650	0.47%	-	0.00%	1,650	2
11.	Shefali Shailesh Tolia	1,650	0.47%	-	0.00%	1,650	2
12.	Shreni Rajesh Tolia	250	0.07%	-	0.00%	250	1
13.	Krutika Shailesh Tolia	250	0.07%	-	0.00%	250	1
14.	Ishani Viresh Tolia	250	0.07%	-	0.00%	250	2
15.	Jayesh Kantilal Sheth	8,530	2.45%	-	0.00%	8,530	2
16.	Vinod M. Bengali HUF	50,000	14.34%	48,236	13.83%	1,764	1
17.	Nainesh Vinod Bengali	1,725	0.49%	-	0.00%	1,725	1
18.	J M Infocom	5,235	1.50%	-	0.00%	5,235	1
19.	Ashita Kantilal Sheth	3,250	0.93%	-	0.00%	3,250	1
20.	Nirmala Kantilal Sheth	900	0.26%	-	0.00%	900	2
21.	Rupal Jayesh Sheth	1,000	0.29%	-	0.00%	1,000	1
22.	Kasumba Family Trust	1,625	0.47%	-	0.00%	1,625	5
23.	Sonal Kantilal Sheth	500	0.14%	-	0.00%	500	2
24.	N. Ravichandran	-	0.00%	50	0.01%	-50	1
25.	Krishna Veljibhai Shah	78	0.02%	20	0.01%	58	4
26.	Nilesh Krishnakant Mehta	1,000	0.29%	-	0.00%	1,000	1
27.	Krosslink	1,543	0.44%	47,928	13.74%	-46,385	25
28.	Anita Ravichandran	-	0.00%	50	0.01%	-50	1
29.	Sanjay Khatau Asher	2,000	0.57%	100	0.03%	1,900	4
	Total - CE	**2,41,961**	**69.37%**	**2,98,198**	**85.50%**	**-56,237**	**41**
	Mkt	**3,48,702**	**100%**	**3,48,702**	**100%**	**0**	**66**
	Non-CE	**1,06,741**	**30.63%**	**50,504**	**14.50%**	**56,237**	**66**

19. It was alleged that 29 out of total 34 connected entities traded on-market during investigation period. These 29 entities traded on 41 days (62.12% of total trading days) and contributed to 69.37% of market buy volume and 85.5% of market sell volume. On the other hand, non-connected entities (582 in total) traded on all 66 trading days of investigation period, and contributed to 30.63% of market buy volume and 14.5% of market sell volume. It was observed that out of 29, 27 connected entities (i.e., all connected entities except Mr. N. Ravichandran and Ms. Anita Ravichandran) traded among themselves during investigation period. Their buy and sell volume was 2,40,418 shares (68.95% of market volume) and 2, 97,618 shares (85.37% of market volume) respectively. The trading volume as compared to market volume during investigation period points out to the artificial volume creation by these 27 entities.

20. It was observed that trading volume of these 27 entities from trades among themselves constituted 67.39% of market volume (2, 35,005 shares). It was further observed that buy volume of these entities from trades amongst themselves constituted 97.75% of their total buy volume during the investigation period. Likewise, sell volume of these entities from trades amongst themselves constituted 78.95% of their total sell volume during investigation period, details of which are as under:

Buyer name	Seller name					Shares bought from other Susp. Entities		
	Neha Gandhi	Rupali Gandhi	Vinod M. Bengali HUF	Krosslink	Awaita	Total	% of mkt buy vol	% of total buy vol of CE
Vinod M. Bengali HUF	29,150	20,250		100		**49,500**	14.20%	99.00%
Priti Mehta	27,000	21,580				**48,580**	13.93%	99.49%
Jyoti Shah			41,410	70		**41,480**	11.90%	99.54%
Hiten Mehta		32,435		600	205	**33,240**	9.53%	96.10%
Bharti Shah	26,981	5,404				**32,385**	9.29%	97.15%
Jayesh Sheth				8,530		**8,530**	2.45%	100.00%
J M Infocom				5,235		**5,235**	1.50%	100.00%
Ashita Sheth			3,199			**3,199**	0.92%	98.43%

Buyer name		Seller name					Shares bought from other Susp. Entities		
		Neha Gandhi	Rupali Gandhi	Vinod M. Bengali HUF	Krosslink	Awaita	**Total**	**% of mkt buy vol**	**% of total buy vol of CE**
Nainesh Bengali				1,725			**1,725**	0.49%	100.00%
Jelly Tolia					1,700		**1,700**	0.49%	100.00%
Shefali Tolia					1,650		**1,650**	0.47%	100.00%
Dipti Tolia					1,650		**1,650**	0.47%	100.00%
Sanjay Asher			1,000		450		**1,450**	0.42%	72.50%
Rupal Sheth				1,000			**1,000**	0.29%	100.00%
Nilesh Mehta			1,000				**1,000**	0.29%	100.00%
Kasumba Family Trust					700		**700**	0.20%	43.08%
Sonal Sheth				500			**500**	0.14%	100.00%
Nirmala Sheth				400			**400**	0.11%	44.44%
Hitesh Shah					300		**300**	0.09%	75.00%
Krutika Tolia					250		**250**	0.07%	100.00%
Shreni Tolia					250		**250**	0.07%	100.00%
Ishani Tolia					244		**244**	0.07%	97.60%
Krishna Shah						37	**37**	0.01%	47.44%
Shares sold to other CE	**Total**	**83,131**	**81,669**	**48,234**	**21,729**	**242**	**2,35,005**	**67.39%**	**97.75%**
	% of mkt sell vol	23.84%	23.42%	13.83%	6.23%	0.07%	**67.39%**		
	% of total sell vol of CE	91.02%	88.77%	100.00%	45.34%	1.33%	**78.95%**		

21. As regard the trading of the Noticee in the scrip of HIL it is observed that Noticee had bought 5,235 shares (forming 1.50% of total market buy volume) during the investigation period. Further, it is observed that the name of the Noticee is seen at 10th position under top 10 buy client during the investigation period. Noticee has bought the aforesaid 5,235 shares from Krosslink Infrastructure Limited which is a major shareholder of HIL and also a connected entity.

22. I note that the connection of the Noticee with the other connected entities as stated in the SCN is that Shri Jayesh Kantilal Sheth and Shri Hitesh Rasiklal Shah are the witnesses in the KYC form of Noticee with Money Matters Securities Pvt. Ltd. **(MMSPL)** the broker of the Noticee. Shri Hitesh Rasiklal shah is a person

connected to relatives of promoter group of HIL and Shri Jayesh Kantilal Sheth is friend of Shri Hitesh Rasiklal Shah.

23. I note that Noticee apart from letter dated 11.07.2014 seeking extension of time to file the reply to the SCN, has not come forward to defend its case. Whereas Noticee has been provided sufficient opportunity to file reply to the SCN and to appear for the personal hearing in the matter.

24. It is noted that Noticee brought 5,235 shares of HIL from a connected entity in the present matter, however Noticee has not stated any reasons for the purchase. Absence of any reply from the Noticee, despite being granted sufficient opportunities to do so, strengthen the presumption against it that the aforesaid purchase of 5,235 shares were executed in connivance with other connected entities for creation of artificial volume in the scrip of HIL as stated in the SCN.

25. This presumption against the Noticee should be see in the background of connection alleged in the SCN i.e. persons connected to the promoters have signed in KYC documents of the Noticee. Further this also pertinent to mention at this juncture that the promoters as well as connected entities whose signature is seen on the KYC documents of the Noticee have settled their case with SEBI. SEBI vide order dated May 17, 2017 has settled the case as against the promoters of HIL.

26. In this context, the silence on the part of the Noticee clearly indicate that it does not want to answer any inquiry in respect of alleged violation stated in the SCN.

27. Hence, on the basis of facts and circumstances of the case the only conclusion that can be drawn in the matter is that the Noticee bought 5,235 shares as a part of collective effort alongwith other connected entities to create artificial volume in

scrip of HIL during the initial period of relisting of shares of HIL so as to provide a platform for promoters and major shareholders to sell their shares in the market. Therefore in view of the above, I hold that Noticee has violated the provisions of Regulations 3 (a) to (d) and 4 (1), 4 (2) (a) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 read with Section 12A(a), (b), (c) of the SEBI Act, 1992.

28. The said violations attract penalty under Section 15HA of the SEBI Act which provides that:-

Section 15HA: *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

29. While determining the quantum of penalty under Section 15HA, 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

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."*

30. Hon'ble Supreme Court of India in the matter of *Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361}* held that *"In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. ………. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."*

31. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that the disproportionate gain or unfair advantage made by the Noticee or loss caused to the investors as a result of the violations committed by the Noticee are not available on record. Further, it may also be added that it is difficult to quantify the unfair advantage made by the Noticee or the loss caused to the investors in a default of this nature. It is pertinent to mention that Noticee had bought 5,235 shares (forming 1.50% of total market buy volume) of HIL and is at 10th position under top 10 buy client during the investigation period. Noticee has bought the shares from Krosslink Infrastructure Limited which is a major shareholder of HIL.

32. On the account of the same, considering the totality of the case I am of the view that the violation committed by the Noticee warrants imposition of monetary penalty under Section 15HA of the SEBI Act, 1992.

ORDER

33. Taking into consideration the aforesaid facts and circumstances of the case, in exercise of the powers conferred upon me under Section 15-I of SEBI Act, 1992, read with Rule 5 of the SEBI Adjudication Rules, 1995, I, hereby impose a penalty of Rs.1,00,000/- (Rupees One Lakh Only) on the Noticee viz. M/s JM Infocom and

Property Investment Private Limited in terms of Section 15HA of the SEBI Act, 1992, for the violation of the provisions of Regulations 3 (a) to (d) and 4 (1), 4 (2) (a) and (g) of SEBI PFUTP Regulations, 2003 read with Section 12A(a), (b), (c) of the SEBI Act, 1992.

34. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department-DRA-II), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 – A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051."

1. Case Name :	
2. Name of Payee :	
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)	

35. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Date : April 27, 2018 **Biju. S**
Place : Mumbai **Adjudicating Officer**