BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. EAD-7/BJD/NJMR/2018-19/2396

UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACT REGULATION (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of

Focus Industrial Resources Ltd.,
(PAN: AAACF1838N)
Registered Office
104, Mukand House
Commercial Complex, Azadpur
Delhi – 110033.

In the matter of Focus Industrial Resources Ltd.,

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted an investigation in the scrip of Focus Industrial Resources Ltd., inter-alia to ascertain any possible violation of the provisions of SEBI Act, 1992, SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 and disclosure related violations by promoters of the Company under SEBI (Prohibition of Insider Trading) Regulations, 1992 and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011during the period February 1, 2013 to July 30, 2013 *(hereinafter referred to as **"Investigation Period" / "IP"***).

2. During the course of investigation, it was inter-alia observed by SEBI that for the quarter ended September 30, 2013, as per the demat statements of all the promoters, the shareholding of promoter group in the scrip of Focus Industrial Resources Ltd., was 78,91,730 shares, which constituted 64.72% of the total share capital of the company. However, from the quarterly shareholding pattern for the quarter ended September 2013 filed by Focus Industrial Resources Ltd., *(hereinafter referred to as "Company" / "FIRL" / "Noticee")* with the Bombay Stock Exchange (BSE), where its shares were listed, it was observed that the

Noticee submitted shareholding of promoter group as 62,08,730 shares which was 50.92% of the total share capital of the company. Thus, it is observed that the Noticee had failed to disclose the correct shareholding pattern of its promoter group, which was 78,91,730 shares constituting 64.72% of the total share capital of the company, in its quarterly filing to BSE for the quarter ended September 2013. Therefore, it is alleged that the Noticee by filing wrong shareholding pattern of its promoter group to BSE, had violated the provisions of Clause 35 (b) of Listing Agreement read with Section 21 of SCRA.

APPOINTMENT OF ADJUDICATING OFFICER

3. Pursuant to investigation, SEBI initiated Adjudication Proceedings against the Noticee and appointed the undersigned as Adjudication Officer vide Order dated May 12, 2017 under Section 23I of Securities Contracts (Regulation) Act, 1956 *(hereinafter referred to as "SCRA)* read with Rule 3 of Securities Contract Regulation (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as *"SCR Adjudication Rules"*) to inquire into and adjudicate the alleged violation of the provisions of Clause 35 (b) of the Listing Agreement read with Section 21 of SCRA, committed by the Noticee, under Section 23H of SCRA.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice (hereinafter referred to as *"SCN*") bearing ref. no. EAD/BJD/NJMR/1746/2019 dated January 16, 2019 was served upon the Noticee under Rule 4 of SCR Adjudication Rules to show cause as to why an inquiry be not held against it in terms of Rule 4 of the SCR Adjudication Rules and penalty be not imposed under Section 23H of SCRA for the violation alleged to have been committed by it. The Noticee vide email dated February 5, 2019 sought extension of 15 days and undertook to submit the reply to the charges alleged in the SCN by February 15, 2019. Vide email dated February 7, 2019, the Noticee was informed of granting extension of time till February 15, 2019. Vide the aforesaid email, the Noticee was also informed that if no reply is received from it, the matter shall be dealt based on the facts and documents made available to me. However, I note that the Noticee failed to furnish its reply

by February 15, 2019. Therefore, in the interest of natural justice and in terms of Rule 4 (3) of SCR Adjudication Rules, an opportunity of personal hearing was granted to the Noticee on March 7, 2019, which was communicated vide notice of hearing dated February 21, 2019.

5. On behalf of the Noticee an email was received from R V Legal, Advocates on March 4, 2019 stating to be Authorized Representative for the Noticee. I note from the email that the Noticee vide letter dated March 4, 2019 had authorized R V Legal to represent on its behalf before me. Vide the aforesaid email, the Authorized Representative submitted that due to certain difficulties they cannot attend the hearing on the scheduled date i.e., March 7, 2019 and a reply to the SCN will be filed.

6. I note that it has been more than 10 days from the undertaking furnished by the Authorized Representative that it will file a reply, yet no reply has been filed either by the Authorized Representative or by the Noticee.

7. In this regard, I would like to refer to the observations of the Hon’ble Securities Appellate Tribunal (SAT) in the matter of Dave Harihar Kirtibhai Vs SEBI (Appeal No. 181 of 214 dated December 19, 2014), wherein the Hon’ble SAT observed as under:

   “...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal...”

8. I note that sufficient opportunities were provided to the Noticee to furnish its reply, yet the Noticee chooses not to reply and also failed to attend the personal

hearing. Therefore, in line with the observations made by the Hon'ble SAT, I deem it appropriate to proceed against the Noticee ex-parte, based on the material available on record.

CONSIDERATION OF ISSUES

9. I have taken into consideration the facts and material available on record. I observe that the allegation levelled against the Noticee is that it had filed wrong disclosures to BSE as regards the shareholding pattern of its promoter group for the quarter ended September 2013 and thereby violated the provisions of Clause 35 (b) of Listing Agreement read with Section 21 of SCRA. After perusal of the material available on record, I have the following issues for consideration, viz.,

   a. *Whether the Noticee has violated the provisions of Clause 35 (b) of Listing Agreement read with Section 21 of SCRA?*

   b. *Does the violation, if any, attract monetary penalty under Section 23H of SCRA?*

   c. *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 23J of SCRA?*

ISSUE-1: Whether the Noticee has violated the relevant provisions of Clause 35 of Listing Agreement?

10. Before moving forward, it is pertinent to refer to the relevant provisions of Clause 35 of Listing Agreement, alleged to have been violated by the Noticee, which reads as under:

Clause 35 of Listing Agreement

"The Company agrees to file with the exchange the following details, separately for each class of equity shares / security in the formats specified in this clause, in compliance with the following timelines, namely:-

a) ……….

b) *On a quarterly basis, within 21 days from the end of each quarter;*
c) *……….*

11. The category-wise shareholding pattern of FIRL for the quarter ended December 2012 to September 2013 as disclosed to BSE is furnished hereunder.

Particular	Quarter ended December 2012			Quarter ended March 2013			Quarter ended June 2013		
	No. of share holders	No. Of shares	%	No. of share holders	No. Of shares	%	No. of share holders	No. Of shares	%
Promoter Holding	12	71,23,565	58.42	13	62,05,748	50.89	13	62,10,030	50.92
Non Promoter Holding	593	50,70,634	41.58	601	59,88,451	49.11	547	59,85,469	49.08
Total	**605**	**1,21,94,199**	**100.00**	**614**	**1,21,94,199**	**100.00**	**560**	**1,21,94,199**	**100.00**

Particular	Quarter ended September 2013		
	No. of share holders	No. Of shares	%
Promoter Holding	11	62,08,730	50.92
Non Promoter Holding	547	59,85,469	49.08
Total	**558**	**1,21,94,199**	**100.00**

It is observed from the above table that the promoter holding during the quarter from December 2012 to September 2013 had decreased from 58.42% to 50.89%.

12. The Promoter-wise shareholding of FIRL as disclosed on BSE website for the quarter ended December 31, 2012 and September 30, 2013 is tabulated herein below:

Sl. No.	PAN	Name of the Promoter	31/12/2012		31/03/2013		30/06/2013		30/09/2013	
			No of Shares	% of Holding	No of Shares	% of Holding	No of Shares	% of Holding	No of Shares	% of Holding
1	AIHPJ4158R	Aanchal Jindal	2,940	0.02	2,940	0.02	2,36,321	1.94	6,00,000	4.92
2	AAYPJ3951B	Anand Kumar Jain	9,97,500	8.18	6,96,607	5.71	6,82,807	5.6	6,82,807	5.60
3	AGNPJ5775G	Archit Jindal	Not shown as promoter		4,282	0.04	5,04,282	4.14	6,04,282	4.96
4	AEQPJ5780G	Chetan Jain	5,85,000	4.8	5,85,000	4.8	3,00,000	2.46	Not shown as promoter	
5	CPGPK3235J	Kanika	Not shown as promoters						1,20,000	0.98
6	AIDPS0821N	Laxman Singh Satyapal							4,52,227	3.71
7	AEEPJ6955K	Mamta Jindal	10,689	0.09	39,439	0.32	2,20,810	1.81	5,36,104	4.4
8	AJBPM5839R	Meera Mishra	Not shown as promoter						3,30,500	2.71
9	AAIPJ8526A	Pradeep Kumar Jindal	7,496	0.06	5,496	0.05	5,496	0.05	5,496	0.05

<table>
<tr><th rowspan="2">Sl. No.</th><th rowspan="2">PAN</th><th rowspan="2">Name of the Promoter</th><th colspan="2">31/12/2012</th><th colspan="2">31/03/2013</th><th colspan="2">30/06/2013</th><th colspan="2">30/09/2013</th></tr>
<tr><th>No of Shares</th><th>% of Holding</th><th>No of Shares</th><th>% of Holding</th><th>No of Shares</th><th>% of Holding</th><th>No of Shares</th><th>% of Holding</th></tr>
<tr><td>10</td><td>AFNPJ7112E</td><td>Renu Jain</td><td>9,97,500</td><td>8.18</td><td>9,97,500</td><td>8.18</td><td>9,97,500</td><td>8.18</td><td>9,97,500</td><td>8.18</td></tr>
<tr><td>11</td><td>ACSPJ6904A</td><td>S K Jain</td><td>16,93,440</td><td>13.89</td><td>14,03,484</td><td>11.51</td><td>12,91,814</td><td>10.59</td><td>12,91,814</td><td>10.59</td></tr>
<tr><td>12</td><td>AAHPJ8609H</td><td>Satender Kumar Jain</td><td>5,85,000</td><td>4.80</td><td>5,00,000</td><td>4.10</td><td>3,00,000</td><td>2.46</td><td colspan="2" rowspan="4">Not shown as promoter</td></tr>
<tr><td>13</td><td>AANHS9519P</td><td>Satender Kumar Jain and Sons HUF</td><td>5,88,000</td><td>4.82</td><td>5,00,000</td><td>4.10</td><td>3,00,000</td><td>2.46</td></tr>
<tr><td>14</td><td>ADEPJ5110B</td><td>Satish Jain</td><td>4,83,000</td><td>3.96</td><td>4,83,000</td><td>3.96</td><td>4,83,000</td><td>3.96</td></tr>
<tr><td>15</td><td>AAGPJ6737K</td><td>Shobha Jain</td><td>5,85,000</td><td>4.8</td><td>4,00,000</td><td>3.28</td><td>3,00,000</td><td>2.46</td></tr>
<tr><td>16</td><td>AAMPJ2164N</td><td>Trishla Jain</td><td>5,88,000</td><td>4.82</td><td>5,88,000</td><td>4.82</td><td>5,88,000</td><td>4.82</td><td>5,88,000</td><td>4.82</td></tr>
<tr><td></td><td></td><td>Total</td><td>71,23,565</td><td>58.42</td><td>62,05,748</td><td>50.89</td><td>62,10,030</td><td>50.92</td><td>62,08,730</td><td>50.92</td></tr>
</table>

13. From the above table, I note that the disclosure of promoter holdings as available on public domain for the quarter ended September 2013 is different to the actual holdings of the said promoters. Upon verification of the demat transaction statements of the promoters available on record, it is noted that cumulative shareholding of promoter group for the quarter ended September 30, 2013, was holding 78,91,730 shares constituting 64.72% to the total share capital of the company. However, the Company in its quarterly shareholding filed with BSE, for the quarter ended September, 2013, disclosed promoter group holding as 62,08,730 shares constituting 50.92%. Thus, I note that there was under reporting of promoter holding by 16,83,000 shares constituting 13.80% of share capital.

14. I note that five entities (Chetan Jain, Satender Kumar Jain, Satender Kumar Jain and Sons HUF, Satish Jain and Shobha Jain) who were shown under promoter category for June 2013 quarter were not shown under promoter category for the quarter ended September 2013. Further, two new entities viz., Laxman Singh Satyapal and Meera Mishra were holding shares in the company and were included under promoter category for said quarter as they have shown interest in the affairs and control of the company. Pursuant to acquisition of shares by Archit Jindal, Son of Pradeep Kumar Jindal, Promoter, the former was covered under the heard promoter group with effect from February 22, 2013. Consequent upon marriage with Archit Jindal, Kanika was included in the promoter group w.e.f quarter ended September 2013.

15. The Noticee in its correspondence dated February 15 & 21, 2017 and March 10, 2017 to the Investigating Authority stated that 5 entities viz., Chetan Jain, Satender Kumar Jain, Satender Kumar Jain and Sons HUF, Satish Jain and Shobha Jain, vide their letter dated September 2, 2013 expressed their unwillingness to be part of promoter group as they did not have any interest in the management decision making/control, and wanted to exit from the promoter group. Therefore, their shareholding was not shown as a part of promoter group, for the quarter ended September 30, 2013.

16. Similarly, I note that two other promoters viz., Laxman Singh Satyapal and Meera Mishra were already holding shares in the company and were not part of the promoter group. Meera Mishra and Laxman Singh Satyapal joined hands with the management and showed their interest in the affairs and control of the Company from September 05, 2013. Therefore, their shareholding was shown as a part of promoter group for the quarter ended September 30, 2013.

17. I note from the submissions of the Noticee to the Investigating Authority that there were changes in management / control of the company affairs during relevant period. However, the details of such changes in management / control were available only with the company and was not available in public domain as there was no such disclosure made either in the quarterly shareholding or any separate disclosure made to stock exchange in this regard. In the absence of same, investors will be guided by the shareholding pattern as available in the public domain during relevant period. I note that there is substantial reduction (64.72% to 50.92% of share capital) in promoter holding from quarter ended June 2013 to quarter ended September 2013. Such a reduction of shareholding may give an impression to investors that five promoters have sold their entire shareholdings, which if seen from investors point of view will be material information for deciding on their investments in the company. I am of the view that any changes in shareholding of promoters will have an impact on the share price of the company especially when the changes are substantial (13.80% of shareholding) as noted in this case. Therefore, I am of the view that it is necessary to immediately disclose to stock exchanges all such information

which are relevant and material to investors to take informed decision, as envisaged in the provisions of Clause 36 of listing agreement.

18. I note that company did not disclose to BSE the information pertaining to the intent of 5 promoter entities not to be a part of the promoter group. I note that it would have been in the interest of investors had Noticee furnished an explanatory statement in its quarterly shareholding pattern for the quarter ended September 2013 regarding the difference of shareholding pattern of promoter group as compared to the previous quarter. However, I note that the Noticee neither furnished any such explanatory statement in its quarterly shareholding pattern filed with BSE nor disclosed to BSE of the changes in promoter holdings, consequent upon change in control / management as submitted by Noticee in its reply to the Investigating Authority, which is on record.

19. It is pertinent to note that Clause 35 of the Listing Agreement, which spells out terms and conditions to be complied by a company which seeks to get listed its shares on a Stock Exchange, to disclose to the Stock Exchange shareholding pattern of its promoters, public & Institutions. The requirement of Listing Agreement emanates from Section 21 of SCRA which requires every such company to enter into an agreement with the Stock Exchange on which the shares are sought to be listed. The purpose of making disclosures by a company is to bring about greater transparency in the functioning of the companies. It is through such disclosures that the investors take an informed decision in a given situation to either invest or exit in the scrip.

20. Therefore, it is essential for a listed company to make the disclosure which are factually correct at all times and any wrong disclosure would result in misleading appearance of the facts which would ultimately impact the interest of investors. Clause 35 of the Listing Agreement contemplates submission of factually correct disclosures only. The disclosure so made gives the information regarding the ownership and management control of/over the company. If such information is ambiguous or inadequate or erroneous, the same would

adversely affect the smooth functioning of the securities market in general, and the price discovery of the share of that company, in particular.

21. In this connection, I would like to rely on the observations of Hon'ble SAT in the case of Enterprise International Ltd., Vs. SEBI in the Appeal No. 344 of 2017(Order dated January 31, 2018), which reads as under:

> *"Admittedly, the particulars disclosed in the years in question were wrong. Fact that correct particulars were in the quarterly reports cannot be a ground for the appellant to escape penal liability for furnishing wrong information in the format prescribed under clause 35 of Listing Agreement. Very fact that mutually inconsistent particulars were furnished by the appellant clearly shows that the investors were mislead during the period in question. Fact that the company and its promoters have not been benefitted from the error committed and the fact that the investors have not suffered any financial loss cannot be a ground to escape liability for furnishing wrong information during the period from December 2010 to December 2013".*

22. In view of the foregoing findings and the ratio laid down by Hon'ble SAT as discussed above, I conclude that the Noticee by making wrong disclosure with regard to the shareholding pattern of its promoter group for the quarter ended September 2013 had violated the provisions of Clause 35 (b) of Listing Agreement read with Section 21 of SCRA.

ISSUE -2: Does the violation, if any, attract monetary penalty under Section 23H of SCRA?

23. The basic criterion on which the whole Listing Agreement based is Corporate Governance. By way of Listing Agreement inter-alia Stock Exchange ensures on behalf of SEBI that the Listed Companies are following good Corporate Governance Practice. The investors need adequate disclosure at all times to take well informed investment decisions. Any wrong disclosures by Listed Companies would hamper the interest of investors in taking an informed decision. Therefore, as the violation against the Noticee stands established, the

Noticee is liable for monetary penalty under Section 23H of SCRA, the provisions of which are reproduced hereunder:

Section 23H of SCRA - Penalty for contravention where no separate penalty has been provided.

"Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees".

24. The Hon'ble Supreme Court of India in case of The Chairman, SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) inter-alia held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant".*

25. It is relevant to mention here that the ratio of said case of Shri Ram Mutual Fund (supra) was maintained by the three Judge bench of the Hon'ble Supreme Court of India in the case of Union of India vs. Dharmendra Textile Processor 2008 (13) SCC 369 decided on September 29, 2008 on the issue related to income tax act. It was held by the Hon'ble Supreme Court *"that penalty under the provision is for breach of civil obligation and is mandatory and the mens-rea is not an essential element for imposing the penalty. The adjudicatory authority has no discretion to levy duty less than what is legally and statutorily leviable. The Hon'ble Supreme Court also specifically observed that the case of Shri Ram Mutual Fund (supra) has been analysed in the legal position and in the correct perspectives".*

ISSUE -3: *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 23J of SCRA?*

26. While determining the quantum of monetary penalty under 23H of SCRA, I have considered the factors stipulated in Section 23J of SCRA, which reads as under:

Section 23J - 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.

27. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticee's default. There is also no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticees as a result of default. It is the responsibility of Listed Company to furnish correct disclosures to Stock Exchanges which is very vital for the investors / shareholders to enable them to take an informed decision and any such failure on its part is likely to impact the interest of investors / shareholders.

28. Therefore, any lapse on the part of the Listed Company has to be dealt by SEBI seriously in order to protect the interests of investors in securities market. Therefore, I consider it appropriate for imposition of penalty on the Noticee for violation of Clause 35 (b) of Listing Agreement read with Section 21 of SCRA, under Section 23H of SCRA.

ORDER

29. Having considered all the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 23I of the SCRA read with Rule 5 of the SCR Adjudication Rules, hereby impose a penalty ₹ 10,00,000/-

(Rupees Ten Lakhs only) on the Noticee i.e., Focus Industrial Resources Ltd., under Section 23H of SCRA.

30. The said penalty imposed on the Noticee, as mentioned above, shall commensurate with the violation committed and acts as a deterrent factor for the Noticee and others in protecting the interest of investors.

31. 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

32. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the General Manager, Enforcement Department-I, DRA-II, SEBI, in the format as given in table below

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for	Penalty

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

Date: 14 March 2019 **B J DILIP**
Place: Mumbai **Adjudicating Officer**