

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. PKB/AO- 157/2010]**

**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 Respect Of
Shri Ashok Phoolchand Jain
(PAN: ADMPJ5720H)**

**In The Matter of
Tripex Overseas Ltd.**

BRIEF FACTS OF THE CASE

1. SEBI conducted investigation in the scrip of Tripex Overseas Limited (hereinafter referred to as "TOL/the company"). It has been observed that during the period of investigation (i.e. from 01.04.06 to 16.05.07) the price of the scrip increased from Rs.92.50 to Rs.216.90.
2. It has been observed from the shareholding pattern for the quarter ending March 2005 that the promoters (Mr. Saurin Shah, Mr. Jayesh Mehta and Mrs. Chaula Shah) had sold their entire share holding in the company to Mr. Maninder Singh Jolly, Mr. Ashok P. Jain (hereinafter referred to as 'the noticee') acting in concert with Lakhani Marketing Private Limited ('LMPL') and Surbhi Capital & Finance Private Limited ('SCFPL'). They (the noticee and Mr. M. S. Jolly) acquired the shares under share purchase agreement and made an open offer as per the provisions of SEBI (SAST) Regulations 1997. The management of the company was taken over by the noticee and Mr. M. S. Jolly. It has been observed that the noticee was the CMD of the company and Mr. Kiritbhai Patel, Mr. Gunvant Padshala, Mr. Laxminarayan Patel, Mr. M. S. Jolly and Mr. Arvind Patel were the directors. However, it has been observed that the noticee and Mr. Jolly in their

statement to SEBI had denied entering into any Share Purchase agreement with the erstwhile promoters of the company.

3. The shareholding in the promoters' category prior to investigation period was 12.44%, which increased to 14.40% on 31.12.06 and further to 14.91% on 31.03.07. Shareholding of corporate bodies in the non-promoters' category prior to investigation period was 27.95% on 31.03.06, which has increased to 38.86% on 31.03.07. Similarly, individual shareholdings in the non-promoter category prior to the investigation were 59.61% on 31.03.06, which has come down to 44.95% on 31.03.07.
4. It has been observed that the shareholding in the promoters' category as on 31.03.05 was Nil. The entire shareholding of 51,00,000 was in the non-promoters category since the promoters' had exited by transferring the entire holding of 10,01,400 (19.61%) shares to the noticee, Mr. M. S. Jolly, Lakhani Marketing Pvt. Ltd. and Surbhi Capital Finance Pvt. Ltd. under shareholders agreement. The new promoters of the company M/s. SCFPL, LMPL, the noticee and Mr. M. S. Jolly had come out with an open offer to buy 20% of the total equity capital of the company in March 2005. However, from the share holding patterns for the subsequent periods, it has been observed that no additional shares were purchased in the open offer since the shareholdings did not increase and the same was corroborated in the statements of the noticee and M. S. Jolly recorded by SEBI.
5. It has been observed that a number of announcements were made by the company in the aftermath of the change in control and these announcements proved to be false and misleading. It has been alleged that these contradictory documents and information, submitted, reflects gross negligence on part of the management of the company and amounts to furnishing of wrong and incorrect documents and reports/information.
6. The noticee was there alleged to have violated the provisions of Regulations 7(1), 8(2), 11(1) and 12 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and Regulation 3(d), 4(2)(f) and 4(2)(r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 read with 12A of SEBI Act, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

7. The undersigned was appointed as Adjudicating Officer ('AO') vide order dated September 9, 2009 under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred as 'Rules') to enquire into and adjudge upon the alleged violations committed by the noticee under section 15H and 15 HA of the SEBI Act, 1992.

SHOW CAUSE NOTICE, HEARING AND REPLY

8. A show cause notice ('SCN') dated December 22, 2009, was issued to the noticee asking him to show cause as to why an inquiry should not be held against him for the alleged violations of law committed by him. The noticee, vide letter dated January 7, 2010, requested an extension of three weeks to file reply to the SCN. Thereafter, the noticee, vide letter dated January 30, 2010, filed his submissions which read as below:

At the outset it is submitted that I do not accept or admit anything stated in the said Notice except where the same is expressly admitted by me in this reply. Nothing stated therein shall be deemed to be admitted by me merely on account of non-traverse and unless the same is specifically admitted by me herein.

In response to the aforesaid Notice I had vide my letter dated ...07/01/2010..... inter alia requested you to grant me extension of time for filing the reply in the matter.

It is denied that I have violated the provisions of Regulations 7(1), 8(2), 11(1) and 12 of Takeovers Regulations or the provisions of Regulation 3(d), 4(2)(f) and 4(2)(r) of FUTP Regulations read with 12A of the Act as alleged. The charges in the Notice are sweeping, exceedingly vague, ambiguous and lack specificity and therefore legally untenable. Further, the charges are based on surmises and conjectures and are devoid of any basis.

In the said notice the charges have been alleged against me based on the assumption that I was involved in day to day affairs of Tripex Overseas Limited ("TOL/the company") and was involved in the issuance of corporate announcements by the company. The said assumption is completely contrary to factual position available on record. It is submitted that it was Mr Tejas Shah who was the directing mind and

will of the company at the relevant time and was solely running and managing the affairs of the company . I have been roped in just because my name appears as one of the directors of the company.

It is submitted that during 1994-95, I used to work for Tejas Shah as a Manager in the company called M/s Lawa Coated Papers Ltd , a company based in Ankleshwar , Gujarat. In the year 1998 M/s Lawa Coated Papers Ltd closed down and I left the company and joined another company called M/s RRJ Dyes and Intermediates Ltd as Manager . M/s RRJ Dyes and Intermediates Ltd belonged to Mr Maninder Singh Jolly . Through my hard work over the years I became partner in Mr Maninder Singh Jolly 's companies and started looking after his other companies based in Ankleshwar .Sometime around 2005, when I met Tejas Shah after 1998, I had introduced Mr. Tejas Shah to Mr Maninder Jolly. At the relevant time Tejas Shah floated the proposal of merging our respective businesses. Consequently, Mr. Tejas Shah appointed me as a director in TOL and had transferred 3 lacs shares in my name by way book entry. Subsequently, since the proposal for the merging of our respective businesses did not takeoff I severed my ties with Tejas Shah . It may be noted that though the said shares were transferred in my name , but the consideration amount for the said shares was paid by Tejas Shah. Further in the year.....2007..... the said shares were transferred back to him as per his instructions. Further the dividends received in respect of the said shares was also withdrawn by him from my bank account on the strength of blank cheques .

At the outset, I categorically submit that :

I had become director of TOL on the insistence of Tejas Shah in good faith without being aware about his sinister designs . I was merely a namesake director of TOL on paper only . I had nothing to do with the operations or management of the company .

Till date I have not attended even a single board meeting or the AGM of the company . In fact I am not aware also if any Board meeting or AGM has been held also .

I have not signed even a single document (including letters/ announcements to regulatory authorities , cheque books etc) on behalf of the company . I have also not seen the company's account books etc .

I am neither aware nor had any role in issuance of the announcements to the stock exchanges by the company .

I have not traded in the shares of TOL , whether on market or off market during the relevant period .

In this regard , you are kindly requested to call upon the company/ Tejas Shah to bring on record the documents evidencing convening of Board meetings, Attendance Register of Directors for the Board meetings , the details of bank accounts opened by the company and operated during the relevant period , details of persons who have operated the bank accounts , the details of persons who have issued the cheques and withdrawn the funds , the names of persons who have signed the communications with the stock exchanges with regard to the announcements made during the relevant period . The aforesaid information/ documents can be called for by exercising the powers available to you under Rule 6 of the Adjudication Rules in the interests of justice . I may highlight that the said information is crucial information for the proper adjudication of the matter. The aforesaid details will shed light on the intimate and deep involvement of Tejas Shah in the entire affair and also bring to the fore my non involvement .

Admittedly , it is even the case of SEBI that it was Tejas Shah who was actually controlling the company and was responsible for the running of day to day affairs of the company . The following statements of Tejas Shah as recorded in the Notice(Para 16) itself (which were given on oath before the Income Tax Department and have subsequently been contradicted) will bear out the same and fortify and strengthen my contention that Tejas Shah was the master mind behind the activities of the company :

".. he was having controlling interest in the company through various associated entities and was controlling the affairs of the company" .

" He accepted that he controlled about 56.28% (on the date of his statement i.e. 14/02/2007) of the share capital of the company directly or indirectly" .

"He agreed to pay the tax liability of the company and furnished post dated cheques for Rs. 5.20 Crores of which cheques for Rs. 25 Lacs were honoured and rest were dishonoured and were not paid" .

"He accepted that the books of accounts, which were not found at the Registered Office of the company, were maintained under his control and supervision at Mumbai".

"he accepted that he was holding 1.25 Lacs shares, which constituted about 1.5% of the share capital of the Company.

"he accepted to be controlling about 56% of share capital of the company (TOL)".

"He has accepted his association with Natraj Financial & Services Limited. Natraj is a Public Ltd. company in which he holds about 21.25 % directly and 21.19% indirectly through Sandesh Finvest Private Limited, a closely held Private Ltd. company"

"he has accepted his control over these companies (viz. Exode Construction Pvt. Ltd., Green River Properties Pvt. Ltd. and Sadguru Corporate services Pvt. Ltd) in his statement to the IT Department".

He "has accepted to be controlling directly and indirectly approximately 56% of the share capital of the company".

He "has accepted to be holding approximately 35% of the share capital of the company through friends and relative and another 21.28% through connected undertaking."

" he is maintaining the books as accepted before the IT Department"

From the aforesaid statements , given by Tejas Shah it is crystal clear that he was deeply involved in the affairs of the company . The fact that a person , who is not even a director or direct shareholder of the company wielded so much influence over the company is indicative of the extent of cleverly orchestrated fraud perpetrated by him by hiding his identity . On papers , others (including me) were supposedly owning/ controlling and running the company , but in reality , if the corporate veil is lifted it will be clear that it was Tejas Shah who was actually owning/ controlling and running the company through a intricate subterfuge. Further , the fact that he agreed to pay the tax liability of the company and furnished post dated cheques for Rs. 5.20 Crores itself speaks eloquently about his interest and involvement in the company. It may be appreciated that despite the fact that I was being shown as director on the papers, Income Tax Department have not pursued the matter with me after recording my statement , since as per them also Tejas Shah is the person who was owning and controlling the company and was handling its books of accounts, operating its bank accounts and managing its entire affairs . Further the inconsistent statements given by Tejas Shah before SEBI , as pointed out in the

Notice , are nothing but a clever attempt on his part to wriggle out of the entire affair and saddle , others like me with the burden of the alleged violations .

With regard to allowing the alleged bank transactions with Tejas Shah , it is submitted that at the relevant time , Tejas Shah had requested me to give certain blank cheques for carrying out the financial transactions in respect of the shares of TOL transferred to me. At the relevant time I had given blank cheques in good faith pursuant to the request of Tejas Shah .

With regard to non providing of evidence to prove that I was not involved in the public announcements or any other activities of the company , it is submitted that as stated hereinbefore , I have not attended even a single board meeting or the AGM of the company , in fact I am not aware also if any Board meeting or AGM has been held also , I have not signed even a single document (including letters/ announcements to regulatory authorities , cheque books etc) on behalf of the company . I have also not seen the company's account books etc , I am neither aware nor had any role in issuance of the announcements to the stock exchanges by the company . Further , in his statements as stated in the Notice , Tejas Shah himself has accepted that he was the person who was managing the entire affairs of TOL and was controlling the shareholding and management of the company . Further it is denied that there was any willingness or interest in letting the things go on as alleged .

With regard to retaining of dividend , it is submitted that I had returned the dividend received in respect of the shares to Tejas Shah . It is submitted that the monies which were received in Bank Account No 00682560000104 with HDFC Bank were immediately taken away by Tejas Shah either through the blank cheques given to him by me earlier or by instructing me to withdraw the same and hand it over to him. The amount pertaining to dividend appears to be Rs 225,900/(on 20/2/06) & Rs 451,800/-(on 15/11/06) which you will notice from the enclosed bank statement was immediately transferred on the same day/ next day to Tejas Shah .

It is denied that I was a willing party to the fraud and manipulations done by Tejas Shah as alleged . It is reiterated that I have unsuspectingly & unwittingly been embroiled in this matter by Tejas Shah. My only fault being I trusted Tejas Shah

without realizing his oblique motives and sinister intent at the relevant time . It may again be highlighted that I have not traded in even a single share whether on market or off market . Sole beneficiary of the alleged violations has been Tejas Shah . I may point out that 3 lac shares which were supposedly acquired by me were all along lying with Tejas Shah in physical form . For the said shares I had not made any payment . The entire consideration amount in respect of the said shares was paid by Tejas Shah. Further , somewhere around ...2007, pursuant to the request of Tejas Shah , the said shares were returned to him without any financial consideration . Thus I have not made any gain by holding the shares of the company or by being its namesake director .

It may be appreciated that I have not made any disproportionate gain or unfair advantage ,as a result of alleged violation of provisions of Takeover Regulations and FUTP Regulations which were , as facts will amply bear out were committed by Tejas Shah alone , dehors my involvement .

In order to further bring out my non involvement and innocence in the entire matter , I request that I be given an opportunity to cross examine Tejas Shah in consonance with the principles of natural justice .

I reserve my right to modify and add additional grounds in my reply.

It is respectfully submitted that the allegations in the Notice do not flow out of the factual position and therefore cannot be legally sustained. In the facts and circumstances any imposition of penalty on me would be unjustified and unwarranted. In the circumstances , it is prayed that the charges in the notice be dropped and no penalty be imposed . In case, if you are not satisfied with my reply, I request you, to give me an opportunity of personal hearing before any decision is taken by you in the matter.

9. The noticee was granted an opportunity to be heard before the undersigned on July 29, 2010. The hearing was attended by the noticee wherein he was asked to submit documentary evidence in support of the assertions made vide reply dated January 30, 2010.

10. The noticee, vide letter dated August 17, 2010, requested an extension of time for submitting further documentary evidence. The noticee filed an additional reply dated September 18, 2010, wherein he elaborated upon the contentions made vide letter dated February 3, 2010 and provided certain documents in order to substantiate the same.

11. Vide letter dated September 18, 2010, the noticee submitted as follows:

At the outset, I thank you for the patient hearing given to me and my representative on July 29, 2010 in the captioned matter.

During the course of hearing I had reiterated that I was not at all involved in day to day affairs of Tripex Overseas Limited ("TOL/the company") and was also not involved in the issuance of corporate announcements by the company, that it was Mr Tejas Shah who was the directing mind and will of the company at the relevant time and was solely running and managing the affairs of the company, that I have been roped in just because my name appears as one of the directors of the company. Further, during the course of hearing you had permitted me to file my Written Submissions in the matter and provide documents in support of the submissions made by me . Vide my letter dated August 17, 2010 I had sought further extension of time for filing the submission in the matter .

I am setting out herein below my submissions and the supporting documents. Needless to state that these submissions are in addition to and in continuation of my earlier reply dated February 3, 2010.

I may point out that I became aware about the fraud and manipulation perpetrated by Tejas Shah only on February 14, 2007 & February 15, 2007.i.e. when the Income Tax Department conducted the Survey of Tripex at my factory premises .Immediately thereafter I resigned from the Board of Directors of the company on APRIL 10, 2007 . Certified True Copy of the certificate issued by the Company Secretary in this regard is enclosed as Annexure "A" Subsequently , in consultation with my advocates and after seeking their legal advice I have also initiated criminal proceedings against Tejas Shah for offences committed by Tejas Shah under sec 406, 420,463,464,465,467,468,469,471 of IPC 1860. As on date the matter is sub- judice. Hon'ble Court vide its order dated January 27, 2010 inter alia to conduct

investigations under section 202 of Cr PC. Copy of Criminal Complaint bearing NO 5/2010 filled by me before the Hon'ble Chief Judicial Magistrate, at BHARUCH (Distt: Bharuch, Gujarat) and the Order passed is enclosed as Annexure "B"

I may also point out that in order to demonstrate my innocence in the entire matter and specifically the fact that I had not attended any of the purported Board meetings of Tripex or signed on any of the announcements which were made by the Company, I have vide my letter dated August 3, 2010 requested BSE to provide me the copies the letters received by BSE from Tripex with regard to the announcements. Copy of the letter written by me to BSE is enclosed as Annexure "C" In response to the same, BSE has vide its letter dated September 3, 2010 inter alia given the copies of the letters sent on behalf of the company to BSE. It may be noted that non of the letters has been signed by me and I had no role/ involvement in the making of the announcements by the company. Copy of the letter dated September 3, 2010 received from BSE is enclosed as Annexure "D"

The fact that I was not involved in the affairs of the company at all and that it was Tejas Shah alone who was running the company at the relevant time and was indulging in fraudulent and manipulative practices is further reinforced by the fact that post my resigning also the similar announcements have continued from the company. For instance on April 30, 2007 the company made an announcement regarding bonus issue. Similarly on June 19, 2007 the company made an announcement regarding setting up of Pharma SEZ unit. Copy of the said Announcement is enclosed as Annexure "E"

Admittedly, it is even the case of SEBI that it was Tejas Shah who was actually controlling the company and was responsible for the running of day to day affairs of the company. The following statements of Tejas Shah as recorded in the Notice(Para 16) itself (which were given on oath before the Income Tax Department and have subsequently been contradicted) will bear out the same and fortify and strengthen my contention that Tejas Shah was the master mind behind the activities of the company :

".. he was having controlling interest in the company through various associated entities and was controlling the affairs of the company" .

“ He accepted that he controlled about 56.28% (on the date of his statement i.e. 14/02/2007) of the share capital of the company directly or indirectly” .

“He agreed to pay the tax liability of the company and furnished post dated cheques for Rs. 5.20 Crores of which cheques for Rs. 25 Lacs were honoured and rest were dishonoured and were not paid” .

“He accepted that the books of accounts, which were not found at the Registered Office of the company, were maintained under his control and supervision at Mumbai”.

“he accepted that he was holding 1.25 Lacs shares, which constituted about 1.5% of the share capital of the Company.

“he accepted to be controlling about 56% of share capital of the company (TOL)”.

“He has accepted his association with Natraj Financial & Services Limited. Natraj is a Public Ltd. company in which he holds about 21.25 % directly and 21.19% indirectly through Sandesh Finvest Private Limited, a closely held Private Ltd. company”

“he has accepted his control over these companies (viz. Exode Construction Pvt. Ltd., Green River Properties Pvt. Ltd. and Sadguru Corporate services Pvt. Ltd) in his statement to the IT Department”.

He “has accepted to be controlling directly and indirectly approximately 56% of the share capital of the company”.

He “has accepted to be holding approximately 35% of the share capital of the company through friends and relative and another 21.28% through connected undertaking.”

“ he is maintaining the books as accepted before the IT Department”

In this regard I am also enclosing the copy of letter dated March 15, 2007 (Annexure “F”)issued by Income Tax Department to Tejas Shah along with the copy of summons dated March 15, 2007 issued by Income Tax Department to Tejas Shah directing him to produce the Books of accounts of Tripex and the details of all the bank accounts is enclosed as Annexure “F”, inter alia stating that :

“Sub :Furnishing of books of accounts in respect of Tripex Overseas Ltd. for the current financial year till the date of survey conducted on 14/15 February 2007 and payment of tax regarding –

Please refer to the above.

As you are aware, during the course of survey, u/s. 133A of the Income tax Act, conducted at the business premises of Tripex Overseas Ltd., you had in your statement recorded on oath admitted of unaccounted income of Rs. 15.31 crores and promise to make the payment of tax of Rs. 5.20 crores. You had issued cheques for the said payments. Later on in response to the summons u/s. 131 of the I.T. Act, you attended the office of undersigned on 22.2.2007 and made a request for easy installments for making payment of the tax liability on the admitted income. In view of the request made by you for the easy installments, the schedule for making the payment was re-arranged for which you agreed to make the tax payment as under:

<u>Date</u>	<u>Amount of tax payable</u>
23-02-2007	Rs. 25 lacs
28-02-2007	Rs. 25 lacs
02-03-2007	Rs. 25 lacs
09-03-2007	Rs. 25 lacs
16-03-2007	Rs. 50 lacs
25-03-2007	Rs. 50 lacs
31-03-2007	Rs. 25 lacs
15-04-2007	Rs. 25 lacs
30-04-2007	Rs. 25 lacs
15-05-2007	Rs. 25 lacs
31-05-2007	Rs. 25 lacs
15-06-2007	Rs. 50 lacs
30-06-2007	Rs. 50 lacs
15-07-2007	Rs. 50 lacs
31-07-2007	Rs. 45 lacs

Out of the above cheques, the first cheque was deposited along with the challan on 24-2-2007. A copy of challan of the said payment is enclosed herewith for your reference. The second cheque was deposited on 8-3-2007. This cheque was deposited after informing you in advance so that you could have arranged the funds. However, the said cheque is dishonored. You were informed telephonically by the undersigned personally to you regarding the dishonored cheque. You were again and again asked on telephone to arrange the fund for the tax payment for which you had given the cheques. However, you have not informed as to why you have filed to make the

payment of the tax liability for which you had submitted the cheques. Once again, you are requested to make the payments of tax liability. Till date, the cheques of aggregate amount of Rs. 1.25 crores are required to be paid. You are required to make the payments immediately, failing which actions as per the various provisions of the income tax Act will be initiated for the recovery of the tax liability of the company including the tax on the admitted income during the course of survey.

Vide summon issued u/s. 131 of the I.T Act, you were required to produce the books of accounts of Tripex Overseas Ltd. of A.Y. 2006-07 and current F.Y. on 22-2-2007, in your statement recorded on oath you had promised to furnish books of accounts of the said company for the current financial year within a week's time. However, till date, you have not produced the same. You are required to produce the books of account for the current F.Y. on 23-3-2007 at 11-00 a.m. in the office of undersigned at the above given address. A separate summon for the purpose is issued.

(B.D. MANSURI)

Income-tax Officer, Wd.8(1)

Ahmedabad."

From the aforesaid letter it is clear that it was Tejas Shah who was actually owning/controlling and running the company through a intricate subterfuge. Further , the fact that :

he agreed to pay the tax liability of the company and furnished post dated cheques for Rs. 5.20 Crores (despite not being either the promoter/ director/ officer or shareholder of the company) ;

he went to Income Tax Department and requested for easy installments;

he accepted that he will produce the books of the accounts another relevant documents regarding company

the fact that the Income Tax Department is following the matter with him only and has under sec 131 of Income Tax Act 1961 issued summons to him and no one else (including me) ;

itself speaks eloquently about Tejas Shah's intimate/deep involvement in the matter and his own interest in saving his own company. Nobody will take upon himself to pay off the huge financial liability of income tax without any vested interest in the Company.

I may also point out that I have recently come to know from the Income Tax Department that Tripex is maintaining a bank account no 210112940 with Karur Vysya Bank , Fort Branch Mumbai . Since I apprehend that my name would have been used for opening the bank account on the basis of forged signatures , I have through my advocate issued letter dated June 11, 2010 (Annexure “G”) to the Bank for making available to me the copies of the documents available with the bank with regard to the opening of the bank account . Since no response was received my advocate had sent one reminder on July 26, 2010(Annexure “H”) . After persistent follow up with the Bank officials , I have been in a position to obtain Bank Account opening Form alongwith annexures , by hand delivery , from the bank on September 2, 2010 . Copy of the same is enclosed as Annexure “I” From the perusal of the said form , it would be clear that my signatures in the form have been forged at various places . Same will be evident to the naked eye based on the comparison of signatures as appearing in the Form with the signatures as appearing on the PAN Card (same has been enlarged for the sake of convenience). Copy of the enlarged PAN card is annexed as Annexure “J” Further, I may also point out that the documents viz. Copy of PAN Card, photographs etc were already lying with Tejas Shah, which were given to him initially in 2004, for the purpose of formalities for directorship in the company. Based on the said documents and forging of signatures, Tejas Shah had opened bank account in the name of the company at Mumbai.

In the interests of justice, you are kindly requested to call upon the company/ Tejas Shah to bring on record the documents evidencing convening of Board meetings, Attendance Register of Directors for the Board meetings , Minute Book of Board Meetings (maintained in compliance with sec 193 of the Companies Act 1956) , the details of bank accounts opened by the company and operated during the relevant period , details of persons who have operated the bank accounts , the details of persons who have issued the cheques and withdrawn the funds , the names of persons who have signed the communications with the stock exchanges with regard to the announcements made during the relevant period , by exercising the powers available to you under Rule 6 of the Adjudication Rules . All the aforesaid documents will demonstrate my non involvement. Further, I may also point out that if at all any signatures are there on any of the documents they would be forged. Same can be easily found out by comparing my signatures on the PAN card submitted by me with you and the signatures on any of the documents.

Charges in the Notice against me are driven by status of my being a director of the company. In this context, I may highlight that save and except sometime in June 2005, I have not attended even a single board meeting of the company. In terms of section 205 of the Companies Act 1956, every public company is required to hold at least four board meeting in a year . Further , in terms of section 283(g) of the Companies Act 1956 , if a director absents himself from three consecutive board meetings of the board of directors , then his office ipso facto becomes vacant . By virtue of non attending board meetings for a period of around 2 years, I had already attracted statutory disqualification and ceased to be a director long time back.

It is reiterated that I had no role/involvement in the alleged fraud orchestrated by Tejas Shah and charges cannot be alleged against me based merely on my designation as a director , ignoring the actual non involvement in the alleged fraud . I submit that I have unsuspectingly & unwittingly been embroiled in this matter by Tejas Shah. My only fault being I trusted Tejas Shah without realizing his oblique motives and sinister intent at the relevant time . I may point out that I have not traded in even a single share whether on market or off market .I have not made any gain or caused any loss to any investor in the securities market .As on date as a result of multiple proceedings , I have already suffered enormous harassment and emotional trauma for the acts of Tejas Shah. In the circumstances, I earnestly request you, in light of my submissions, to drop the charges levelled against me in the captioned Notice.

I also request you, in the interests of justice , to grant me another opportunity of hearing in order to personally explain the documents annexed to the reply .

12. In accordance with the noticee's request, another opportunity of hearing was granted to the noticee on November 18, 2010. The hearing was attended by the noticee, who submitted as below:

"I was involved in the open offer process and signed the relevant documents. However, we had dispute by May/June 2006 and were not involved in any decision making. We have not gained any thing financially."

CONSIDERATION OF ISSUES

13. On perusal of the Show Cause Notice and other material available on record, I have the following issues for consideration, viz,

1. Whether the noticee has violated the provisions of Regulation 3(d), 4(2) (f) and 4(2) (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 read with 12A of SEBI Act, 1992.
2. Whether the noticee has violated the provisions of Regulations 7(1), 8(2), 11(1) and 12 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.
3. Whether the noticee is liable for monetary penalty under sections 15 H and 15 HA of the Act?
4. What quantum of monetary penalty should be imposed on the noticee, taking into consideration the factors mentioned in section 15J of SEBI Act?

FINDINGS

ISSUE 1: Whether the noticee has violated the provisions of Regulation 3(d), 4(2) (f) and 4(2) (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 read with 12A of SEBI Act, 1992.

14. I have examined the show cause notice, replies of the noticee and the material available on record. The provisions of law alleged to have been violated by the noticee read as follows:

SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003

Prohibition of certain dealings in securities

3. No person shall directly or indirectly –

(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 thereunder.

4. Prohibition of manipulative, fraudulent and unfair trade practices.

(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 : –

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(r) planting false or misleading news which may induce sale or purchase of securities

Securities and Exchange Board of India Act, 1992

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

Section 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 recognised 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;

(d) engage in insider trading;

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognised stock exchange in contravention of the regulations made under this Act.]

15. It has been observed that the noticee and Mr. M. S. Jolly became directors of the company in March 2005. The Company had come out with a number of corporate announcements during the investigation period. On examining the same it has been observed that –

- Announcement dated 03/04/06 regarding proposal of amalgamating three private companies to be discussed in the Board meeting to be held on 14/04/2006 did not materialize since there was no mention of the same in the outcome (positive / negative) of the board meeting.
- The announcement dated 27/04/06, which said that the Board had considered the amalgamation of RRJ Dyes & Intermediates Pvt. Ltd., Prolife Bio Chemical Industries Pvt. Ltd. and Solvochem Intermediate Pvt. Ltd. and decided the fair swap ratio seems to be false since the noticee and Mr. Jolly, the promoters of these three companies denied of any such proposals.
- The announcement dated 21/09/06 to acquire an export undertaking and funding the acquisition by issuing shares on preferential basis never materialized since the preferential issue never came up.
- Similarly, the announcement dated 25/09/06 that the Directors in the Board Meeting (03/10/06) would discuss acquisition of a chemical manufacturing unit, which shall be funded by issue of 1500000 equity shares by increasing the authorized share capital of the company. This announcement also did not materialize since there was no increase in the authorized capital and hence no issue of shares and no acquisition.
- Again, announcement dated 09/02/07 regarding stock split / sub-division of shares never materialized.

16. It is observed that the noticee and Mr. M. S. Jolly, the then CMD and Director of the company respectively, accepted in their statements before SEBI and IT Department that they did not attend even a single Board meeting and that all these announcements were false. In fact, they said that the company did not hold even a single Board Meeting during the entire period.

17. In view of the above, it is observed that the announcements made were false and baseless. It appears that they were made solely with a view to mislead the investors.
18. The noticee, in his replies, has stated that it was erroneous to assume that he had been involved in the day-to-day functioning of the company. He contended that one Mr. Tejash Shah was the directing mind and will of the company at the relevant time and that all decisions were made entirely by him and that the noticee had not been aware of the announcements made by the company. The noticee emphasised that actual control of the company was vested in Mr. Tejash Shah and that the noticee was a mere figurehead in the company. He described the beginning of his acquaintanceship with Mr. Tejash Shah and how it developed into business relations after the latter had proposed to set up a joint venture by merging their respective businesses. Mr. Tejash Shah had appointed him as CMD of TOL and had subsequently transferred 3 lakh shares in his name by way of book entry and that the consideration for the shares was paid by Mr. Tejash Shah. He said that dividends with respect to the said shares were withdrawn by Mr. Tejash Shah from his bank account on the strength of blank cheques that the noticee had issued to him. He was emphatic in denying his involvement in the decision-making process of the company and stated that not only had he not attended any of the board meetings of the company, he was not even aware that they took place.
19. To bolster his argument, the noticee referred to Mr. Tejash Shah's statement before the Income Tax Authorities in which he had admitted to having controlling interest in the company through various associated entities and that he was controlling 56.28% of the share capital of the company, directly and indirectly. Therefore, he agreed to pay the tax liability of TOL. The noticee contended that in view of the same, it was evident that the noticee had nothing to do with the flurry of false announcements that were made by the company during the investigation period.
20. The noticee has submitted documents to prove that he had resigned as CMD of the company in 2007, had filed an FIR against Tejash Shah in June 2008 and in January 2010, he had initiated criminal proceedings against Mr. Tejash Shah in

Gujarat. The noticee had furnished copies of the announcements made by the company to demonstrate his innocence in the matter, pointing out that they were signed by authorised signatories and did not contain his signature. The noticee also stated that his signature had been forged in order to open an account in the name of the company at Karur Vysya Bank, Fort, Mumbai. He attached a copy of the bank account opening form and a copy of his PAN card containing his signature, stating that the signature on the former was an obvious forgery.

21. The noticee stated that save and except sometime in June 2005, he had not attended a single board meeting of the company. He therefore argued that in accordance with the terms of Section 283(g) of the Companies Act, 1956, he had attracted statutory disqualification and had therefore ceased to be a director of the company. He also contended that his only fault was that he had trusted Mr. Tejash Shah without realizing his oblique motives and sinister intent. He also stated that he had not traded a single share in the scrip, whether on market or off-market and had not made any gain or caused any loss to any investor in the securities market.

22. I note that the noticee was the CMD of the company during the period in question. The noticee's contention that he had ceased to be a director of the company by operation of Section 283 (g) of the Companies Act, 1956, cannot be accepted. I note that the noticee has not provided any documentary evidence in support of his contention. The noticee has provided a copy of form 32 (under the Companies Act, 1956) that announces the cessation of his directorship in the company from April 10, 2007. Had he ceased to be a director of the company in 2005, he would not have resigned from the directorship of the company in 2007. The fact that he chose to do so points to the fact that he was in fact a director of the company from March 2005 to April 2007. The noticee is apparently trying to absolve himself from responsibility for the actions of the company by taking refuge under technicalities such as these and the same cannot be accepted.

23. The noticee's defence is based on the statement of Mr. Tejash Shah before the Income Tax Authorities. I am of the opinion that even if the noticee's argument that Mr. Tejash Shah was the kingpin behind the entire fraud perpetrated is accepted, the noticee cannot be absolved of his responsibility in the matter. The

fact of the matter is that the noticee was the CMD of the company at the time when misleading and patently false corporate announcements were made by the company and as such he is liable to be held responsible for them. Besides, I am of the opinion that even if Mr. Tejash Shah was involved in the perpetration of the alleged violations of law, it could not have been executed without the collusion of the noticee.

24. I note that the noticee was the CMD at the time when the company made false and misleading announcements that resulted in a steep rise in the price of the scrip of the company. It is evident that the noticee had knowledge of the affairs of the company by virtue of being a director thereof and he cannot shrug off his responsibility by stating that the announcements made on behalf of the company to BSE did not contain his signatures but those of authorised signatories. It is common practice for such documents to be signed by authorised signatories and it is not mandatory for every director to personally sign all documents on behalf of the company. The noticee has repeatedly attempted to hide behind the separate legal existence of the company by stressing on the fact that he was not personally involved or aware of the functioning of the same.

25. I also note that the noticee by his own submissions has admitted before me during the hearing before me held on November 18, 2010, that he was involved in the open offer process and signed relevant documents and dispute started only in May/June 2006 and thereafter were not involved in any decision making process. This submission also brings out very clearly that the noticee, as per his own admission, was discharging the functions of CMD till May/June 2006. I find that some of the fraudulent announcements were made prior to May/June 2006. Besides, no credible evidence has been brought on record by the noticee to substantiate his claim that he was not involved in decision making process after May/June 2006. The facts speak otherwise. The noticee resigned as CMD in 2007 only. The FIR against Mr. Tejash Shah was filed only in June 2008. From all of the above, it appears difficult to accept the contention of the noticee that he was not involved in the issuance of the fraudulent announcements made by the company.

26. I am of the opinion that the noticee's association with the company appears to be beyond doubt. Therefore, in his capacity as CMD of the company, he is responsible for the fraud perpetrated upon investors by the publication of false and misleading announcements. As elaborated in paragraph 15, the announcements made by the company do not appear to be based on facts and the sole purpose behind them was to mislead investors. Therefore, I find that the noticee is guilty of violating the provisions of Regulation 3(d), 4(2) (f) and 4(2) (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 read with 12A of SEBI Act, 1992.

ISSUE 2

Whether the noticee has violated the provisions of Regulations 7(1), 8(2), 11(1) and 12 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

27. The provisions of law alleged to have been violated by the noticee read as follows:

Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997

Acquisition of 5 per cent and more shares or voting rights of a company.

Regulation 7. 1(1) – Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

Continual disclosures.

Regulation 8(2) – A promoter or every person having control over a company shall, within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that company to the company.

Consolidation of holdings.

Regulation 11. (1) – No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than [fifty five per cent (55%)] of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than [5] per cent of the voting rights, [in any financial year ending on 31st March] unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.

Acquisition of control over a company.

Regulation 12 – Irrespective of whether or not there has been any acquisition of shares or voting rights in a company, no acquirer shall acquire control over the target company, unless such person makes a public announcement to acquire shares and acquires such shares in accordance with the regulations:

Provided that nothing contained herein shall apply to any change in control which takes place in pursuance to a [special] resolution passed by the shareholders in a general meeting:

Provided further that for passing of the special resolution facility of voting through postal ballot as specified under the Companies (Passing of the Resolutions by Postal Ballot) Rules, 2001 shall also be provided.

Explanation. – For the purposes of this regulation, acquisition shall include direct or indirect acquisition of control of target company by virtue of acquisition of companies, whether listed or unlisted and whether in India or abroad.

28. I note that the SCN does not stipulate exactly how the abovementioned provisions of law were violated by the noticee. I observe that there is no material on record to substantiate the violation of the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 as alleged, and I therefore do not hold the noticee guilty of violating the provisions of Regulations 7(1), 8(2), 11(1) and 12 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

ISSUE 3

Whether the noticee is liable for monetary penalty under sections 15 H and 15 HA of the Act?

29. The violation of the provisions of Regulations 7(1), 8(2), 11(1) and 12 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 have not

been established and therefore the noticee is not liable for penalty under Section 15 H of the Act.

30. The provisions of section 15 HA of the Act reads,

SEBI ACT, 1992

Penalty for fraudulent and unfair trade practices:

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.*

31. In view of the violation of provisions of Regulation 3(d), 4(2) (f) and 4(2) (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 read with 12A of SEBI Act, 1992, I find that the noticee is indeed liable for monetary penalty under section 15HA of the Act.

ISSUE 4

What quantum of monetary penalty should be imposed on the noticee, taking into consideration the factors mentioned in section 15J of SEBI Act?

32. While deciding the quantum of penalty, the factors laid down under Section 15J of SEBI Act have to be given due regard, which are as follows –

- (i) *the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of default,*
- (ii) *the amount of loss caused to an investor or group of investors as a result of the default and*
- (iii) *the repetitive nature of default.*

33. I find that the disproportionate gain accrued by the noticee cannot be accurately quantified on the basis of the material on record. However, from the material available on record, I note that the noticee has played a role in the perpetration of fraud upon investors by publishing or causing to be published, false and misleading announcements with regard to the affairs of TOL, of which he was a CMD at the relevant time. Any act that is specifically aimed at defrauding or misleading investors cannot be treated lightly. It is of utmost importance that a

sense of fair play be maintained in the market so that innocent investors do not find themselves at the receiving end of irregular conduct by entities related to the companies. In the instant case, the noticee is the CMD of the company and as such, he had a greater obligation to adhere to the laws made to protect the interests of investors. Lapses of these sorts that compromise the integrity of the securities market should be suitably penalised. People who indulge in manipulative, fraudulent and deceptive activities, or abet the carrying out of such activities which are fraudulent and deceptive, should be suitably penalized for the said acts of omissions and commissions. In fact, nothing can be more serious than for the CMD of a company to issue fraudulent announcements for nefarious purposes. Considering the continuous effort of the noticee in this aspect where various announcements of a fabricated nature were issued over a period of time, it can safely be concluded that the nature of default was also repetitive.

34. Considering the facts and circumstances of the case and the material available on record and the violation committed by the noticee, I find that a penalty of ₹ 5,00,000/- (Rupees Five Lakhs Only) under section 15HA of the SEBI Act on Shri Ashok Phoolchand Jain would be commensurate with the violations committed by the noticee.

ORDER

35. In view of my findings mentioned hereinabove and after taking into account the facts and circumstances of the case and in exercise of the powers conferred upon me under Section 15 I (2) of the SEBI Act, 1992 read with Rule 5 of Adjudication Rules, I hereby impose a monetary penalty of ₹ 5, 00,000 /- (Rupees Five Lakhs Only) on Shri Ashok Phoolchand Jain.
36. The penalty amount should be paid through a demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Ms. Medha Sonparote, DGM, Investigation Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai-400 051.

37. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the noticee and also to the Securities and Exchange Board of India.

Date: December 6, 2010

Place: Mumbai

P. K. Bindlish

Adjudicating Officer