

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AA/KL/2019-20/5799]

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), 1995.

In respect of

Sudha Gupta

(PAN : AADPG5038M)

In the matter of

Kamanwala Housing Constructions Limited.

FACTS OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received a reference letter dated May 04, 2018 from the Bombay Stock Exchange (BSE) w.r.t the disclosure violation in the scrip of Kamanwala Housing Constructions Limited (hereinafter referred to as '**Company/KHCL**') for the period between December 18, 2017 to February 21, 2018 (hereinafter referred to as '**Examination Period**'). It was noted from the letter that Ms. Sudha Gupta (hereinafter referred to as '**Noticee**'), who is one of the promoters of the company, has sold her shares in the company during the examination period, but failed to make disclosures to the company as required under the relevant provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations**').

APPOINTMENT OF ADJUDICATING OFFICER

2. Dr. Anitha Anoop was appointed as the Adjudicating Officer, vide order dated July 31, 2019 under Section 19 of the Securities and Exchange Board of India Act, 1992

(hereinafter referred to as 'SEBI Act') read with Sub-section 1 of Section 15-I of the SEBI Act and rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) rules, 1995 (hereinafter referred to as '**AO rules**') to inquire into and adjudge under Section 15 A (b) of the SEBI Act, the alleged violation of the abovementioned regulations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice with reference number EAD-1/AA/KL/28422/2019 dated October 25, 2019 (hereinafter referred to as "**SCN**") was issued to the Noticee under Rule 4 (1) of the AO Rules read with section 15-I of the SEBI Act to show cause as to why an inquiry should not be held against it and why penalty should not be imposed under Section 15A(b) of the SEBI Act for the violations alleged to have been committed by the Noticee. The Noticee was given 15 days' time to make its submissions in respect of the allegations made in the SCN.

4. The SCN has alleged that the Noticee, who is one of the promoters of the company has sold shares of the company during the examination period and such transactions have triggered disclosure requirements in terms of PIT regulations. The transactions which gave rise to the alleged violation/non-compliance are given in the following table:

Table 1 – Transactions of the Noticee

Date	Gr Buy Vol	Gr Sell Vol	Gr Buy Value (Rs.)	Gr Sell Value (Rs.)	Cumulative Value (Rs.)
24/11/2017	0	581	0.00	8192.10	543499.40
28/11/2017	0	1000	0.00	14505.00	
29/11/2017	0	110	0.00	1809.50	
12/12/2017	0	100	0.00	1485.00	
13/12/2017	0	1000	0.00	15000.00	
14/12/2017	0	500	0.00	7250.00	
15/12/2017	0	500	0.00	7150.00	

19/12/2017	0	2850	0.00	39627.50	
20/12/2017	0	3000	0.00	43550.00	
26/12/2017	0	2100	0.00	31800.00	
27/12/2017	0	200	0.00	2960.00	
28/12/2017	0	15943	0.00	239224.30	
29/12/2017	0	8552	0.00	130946.00	
01/01/2018	0	7481	0.00	114971.50	1073968.00
02/01/2018	0	1400	0.00	21450.00	
03/01/2018	0	4004	0.00	60095.40	
04/01/2018	0	21500	0.00	329695.00	
05/01/2018	0	2000	0.00	31100.00	
08/01/2018	0	11155	0.00	172173.50	
09/01/2018	0	1000	0.00	15730.00	
10/01/2018	0	19614	0.00	328752.60	
11/01/2018	0	23500	0.00	426695.00	
12/01/2018	0	3173	0.00	63908.00	586433.20
12/02/2018	0	1589	0.00	27771.90	
22/02/2018	0	500	0.00	7075.00	
23/02/2018	0	500	0.00	7400.00	
26/02/2018	0	500	0.00	7600.00	
27/02/2018	0	500	0.00	7975.00	
05/03/2018	0	500	0.00	7080.00	
08/03/2018	0	1050	0.00	14617.50	
09/03/2018	0	300	0.00	4185.00	
13/03/2018	0	500	0.00	6925.00	
16/03/2018	0	394	0.00	5200.80	

5. It is observed that the aggregate value of the securities traded by the Noticee in the quarter ending March 2018, has exceeded Ten lakh rupees. The total value of such securities traded as on Jan 10, 2018, was Rs. 10.74 lakhs and it has triggered the disclosure requirement within two trading days of such transaction under Regulation 7(2) (a) of PIT Regulations. However, it is observed that the Noticee had made

disclosures w.r.t the above transaction to the company on February 22, 2019 i.e after a delay of more than one year. Further, vide letter dated Feb 19, 2019, the Noticee informed SEBI that she has transferred 1,49,487 shares to her daughter viz Tulika Gupta, on Jan 19, 2018. It is observed that the aggregate value of 1,49,487 shares as on Jan 19, 2018 was Rs. 35.13 lakhs (closing price of the scrip as on Jan 19, 2018 was Rs. 23.50/-) and therefore the aforesaid transaction was also required to be disclosed within two trading days of such transaction under Regulation 7(2)(a) of PIT Regulations. However, it is alleged in the SCN that the Noticee had made disclosures to the company on February 26, 2019 i.e after a delay of more than one year. Thus the Noticee is alleged to have violated the relevant regulations w.r.t the transactions in the abovementioned instances.

6. The SCN was served on the Noticee on October 01, 2019. The Noticee, vide its reply letter dated October 20, 2019 made the following submissions.

- I. This has a reference to your notice dated October 01, 2019 wherein you have asked me to show cause as to why an inquiry should not be held in terms of Rule 4 of SEBI {Procedure for Holding Inquiry and Imposing Penalties} Rules, 1995 read with Section 15-1 (1) and (2) of the SEBI Act and why penalty, if any, should not be imposed under the Provisions of Section 15A(b) of the SEBI Act*
- II. At the outset, I request you to consider below facts and circumstances before commencing any inquiry under the aforementioned SEBI Act and provide an opportunity to settle and dispose of proceeding in this matter and I respectfully submit the following, in response to the show cause notice under reference:*
- III. I am the wife of Late Mr. Murarilal Gupta, the Founder, Promoter and ex-Managing Director of the Company - Kamanwala Housing Constructions Limited {"the Company"}. Other promoters of the company are Mr. Atul Jain and his family members who were not on good terms with my late husband, Mr. Murarilal Gupta.*
- IV. My husband Mr. Murarilal Gupta passed away on February 20, 2017 due to cardiac arrest. And after his demise the management of the company was taken over by the Jain family. Subsequently they also removed all the senior management employees of the company who had cordial relationship with Late Mr. Murarilal Gupta. The*

management which was then run by the Jain family cut off all the ties and communications with me. They even harassed and abused me on few occasions and did not give me access to the office premises.

Unilateral Act of the Company's management of wrongly classifying me under the Promoter Category, after the demise of my husband:

- V. Being the wife of the Promoter, I was earlier classified under the Promoter Group. However, after the demise of my husband I no longer belong to the promoter group as I am not a relative of any of the existing promoters of the Company. Further as per Regulation 2(zb)(ii) of the SEBI (ICDR) Regulations, 2009 & Regulation 2(pp)(ii) of the SEBI (ICDR) Regulations, 2018, promoter group includes an immediate relative of the promoter (i.e. any spouse of that person, or any parent, brother, sister or child of the person or of the spouse). Hence it was wrong on the part of the management to show my name in the promoter category. The management should have removed my name from the promoter category and should have reclassified me under the public category which they have failed to do. Further, I had also informed the Company about demise of my husband and subsequently, company had filed form DIR 12 (with Registrar of Companies) to remove his name as director and/or signatory. However, they continued disclosing my name under the Promoter Category in all the disclosures/ returns filed under SEBI regulations/Companies Act and failed to inform the same to me. This unilateral act of the management, of wrongly classifying me under the promoter category has led to this unintended violation of disclosure norms under SEBI (Prohibition of Insider Trading) Regulations, 2015.

Disposal of shares to repay debt and minimize financial obligation

- VI. Further, I am 68-year-old senior citizen and a housewife with no knowledge whatsoever of business and/or commercial/ securities laws. My husband passed away leaving me in huge debts and financial crisis, approximately in debt of Rs. 1,38,44,054 Crore. The alleged scrips/shares of Kamanwala Housing Constructions United were sold by me for the repayment of these debts. Apart from these alleged shares, I also had to sell other investments to pay off these debts which my husband had incurred during his lifetime. Further the alleged transfer of shares to my daughter was also done for obtaining financial aid from my son-in-law to repay the debt.

Lack of knowledge of company's affairs and related rules/regulations

VII. Moreover, I am just primary educated person with inadequate knowledge about company's affairs and related laws and all the transactions were taken care by my husband, late Mr. Murarilal Gupta. However, after demise of my husband and absence of any guidance and lack of support from the current management of the Company, on the compliance formalities, I remained unaware of the disclosure requirements under the SEBI (Prohibition of Insider Trading) Regulations, 2015, until I received the notice from SEBI. Upon receiving the notice and with the help of an external consultant, I have immediately made good, the alleged non-compliance by making disclosures as required under the law.

Not in possession of Price Sensitive Information when trading was done

VIII. It is also to be noted that the SEBI (Prohibition of Insider Trading) Regulations, 2015 and its disclosure requirements were enacted with the intent of curbing the menace of 'Insider Trading' (which is trading based on price sensitive information available with the Insiders/ senior management personnel's of the company). I have no such price sensitive information and the shares were sold by me not with the intent of earning profit/gains but with the sole purpose of repayment of debts. In view of the above background, I humbly request to take a lenient view and the said violation of disclosure norms should be pardoned considering the spirit and intent of law.

IX. Other factors

An inquiry against me should not be held considering the following additional facts:

- a) No loss/harm was caused to the large number of investors and integrity of the market was not affected.
- b) There weren't any disproportionate gains or unfair advantage.
- c) There were no such lapses/delays in making disclosures by me during the lifetime of my husband.
- d) After the demise of my husband, I am no longer belonging to the promoter group hence the provision of making disclosure is not applicable to me.
- e) Absence of mens-rea and mala-fide intention.

X. In the circumstances as stated above and in the interest of justice you are requested not to hold any inquiry in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 read with Section 15-1 (1) and (2) of the SEBI Act and

penalty, if any, should not be imposed under the Provisions of Section 15A(b) of the SEBI Act. Further, I desire a personal hearing to be granted in the matter to justify my averments made above and request you to allow my authorized representative to attend this hearing along with me.

7. Further, the Noticee has availed opportunity of personal hearing on the scheduled date i.e on November 19, 2019. The Noticee had reiterated the contents of her earlier reply and requested to take a lenient view in the matter. The Noticee was also granted time till November 26, 2019 to make further submissions in the matter, if any. However, as the Noticee has not made any further submission, I proceed in the matter with the material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the SCN, submissions made by the Noticee and all the documents/ evidence available on record. The issues that arise for consideration in the present case are:
- I. Whether the Noticee violated the provisions of the Regulation 7 (2) (a) of PIT Regulations?
 - II. Does the violation, if any, attract monetary penalty under Section 15A(b) of the SEBI Act?
 - III. If yes, what should be the quantum of penalty?
9. In this regard, it is pertinent to refer to the relevant provisions of the PIT Regulations which read as under

DISCLOSURES OF TRADING BY INSIDERS

7 (2) Continual Disclosures

(a) Every promoter [member of the promoter group], [designated person] and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of

transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified

ISSUE I: Whether the Noticee violated the provisions of the Regulation 7 (2) (a) of PIT Regulations?

10. The first issue for consideration is whether the Noticee has violated the provisions of Regulation 7 (2) (a) of PIT Regulations w.r.t the transactions done by her in the securities of the company. From the available records, I find that the Noticee, who was one of the members of the promoter group of the company at the relevant time, has traded in the securities of the company during the quarter ending March 2018 and the aggregate value of such transactions has exceeded Rs. 10 lakh. Also, I find that the Noticee has transferred 1,49,487 shares of the company to her daughter viz. Tulika Gupta on January 19, 2018 and the aggregate value of this transaction is noted to be Rs. 35.13 Lakhs. A plain reading of Regulation 7 (2) (a) of PIT Regulations says that every promoter or member of the promoter group or designated person or director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified. In this regard, I note that the Noticee has also not disputed the transactions mentioned in the SCN. As the value of the transactions made by the Noticee in the abovementioned instance exceeded the limit of Rs. 10 lakh, the Noticee was required to make disclosures in terms of Regulation 7 (2) (a) of PIT Regulations.
11. The Noticee has not denied making the transactions on the said two occasions. Further, I note that that the Noticee had made disclosures w.r.t the above transactions to the company after a delay of more than one year. The Noticee has also mentioned relevant provisions of Regulation 2(zb)(ii) of the SEBI (ICDR) Regulations, 2009 & Regulation 2(pp)(ii) of the SEBI (ICDR) Regulations, 2018 wherein it is stated that the

promoter group includes an immediate relative of the promoter (i.e. any spouse of that person, or any parent, brother, sister or child of the person or of the spouse). The Noticee has stated that being the wife of the erstwhile promoter of the company (Mr. Murarilal Gupta), she is said to be shown as a member of the promoter group. However, the Noticee has contended that after the death of her husband on February 20, 2017, she ceases to be the member of the promoter group and it is wrong on the part of the management of the company to show her name as a part of the promoter group. Further, the Noticee also stated that she had filed form DIR 12 (with Registrar of Companies) to remove the name of Murarilal Gupta as director and/or signatory from the company but the company continued disclosing her name under promoter category. The Noticee submitted that such unilateral act of the management of the company of wrongly classifying her under the promoter category has led to the unintended disclosure violations of the provisions of Regulation 7 (2) (a) of PIT regulations.

12. As regards the contention of the Noticee that she ceased to be part of the promoter group of the company after the demise of her husband, I am of the view that the Noticee should have taken steps to get her name removed from the list of the promoter group. However, the Noticee has not produced any documents before me which suggests that she has taken necessary steps. I also find from the website of the Bombay Stock Exchange that the name of Murarilal Gupta has been removed from the list of promoter group of the company from the quarter ending June, 2017 i.e after his demise, while the name of the Noticee i.e Sudha Gupta, is shown as a promoter in the promoter group list during the examination period. In this regard, I note that the Noticee was holding shares of the company as part of the promoter group and she continued to hold the shares even after demise of her husband. Hence, I am of the view that the Regulation 7 (2) (a) PIT Regulations, imposes an obligation on the part of the Noticee to comply with the disclosure requirements w.r.t the relevant transactions, whereas the Noticee has failed to do so. In this regard, I observe that the Hon'ble SAT has consistently held that the obligation to make disclosures within the stipulated time is a mandatory obligation and the penalty is imposed for the non-

compliance with the mandatory obligation. The Hon'ble SAT in its order dated September 30, 2014, in the matter of Akriti Global Traders Ltd. Vs. SEBI had observed that "*Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is an acquisition of shares by a person in excess of the limits prescribed under the respective regulations if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations*".

13. In addition to this, the Noticee has also mentioned that she has inadequate knowledge of company affairs and related laws and is also unaware of disclosure requirements of the provisions of PIT Regulations. The Noticee has also contended that she doesn't hold any price sensitive information while transacting, that she has not made any gains or unfair advantage by not making the purported disclosures and that no loss was caused to the investors. Further, she stated that she didn't have any malafide intention to hide the information. In this regard, I note that the Hon'ble SAT through various judgments, has consistently observed that these factors are not valid grounds for not complying with the mandatory disclosure obligations under the PIT Regulations. In the matter of *Virendrakumar Jayantilal Patel vs. SEBI* (Appeal No. 299 of 2014 order dated October 14, 2014), the Hon'ble SAT observed that "*..... obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly, argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures.*" Hence, in this context, I find that the importance of disclosure obligations cannot be undermined by saying that they are merely technical in nature. Such obligations are mandated under respective regulations by SEBI in order to enable investors to take informed investment decisions.

14. Therefore, in view of the above facts and observations, I find that the allegation of the violation of Regulation 7 (2) (a) of PIT Regulations by the Noticee stands established.

ISSUE 2: Does the violation, if any, attract monetary penalty under Section 15A(b) of the SEBI Act?

15. In this regard I note that the Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) 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..."*. Accordingly, the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act which is read as under:

15A Penalty for failure to furnish information, return, etc.-

If any person, who is required under this Act or any rules or regulations made thereunder,

(a).....

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

ISSUE 3: If yes, what should be the quantum of penalty?

16. While imposing monetary penalty it is important to consider the factors stipulated in Section 15J of the Act, which are read as under:

15J. 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.”

17. In view of the facts and circumstances of the case and the charges being established, the quantum of penalty would depend on the factors referred in Section 15-J of the SEBI Act stated as above. No quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss, if any, to the investors on account of default by the Noticee.

ORDER

18. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee and also the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the AO Rules, I hereby impose a penalty of Rs 1,00,000 (Rupees One Lakh only) on the Noticee viz. Sudha Gupta under the provisions of Sections 15A(b) of the SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.
19. The Noticee shall remit / pay the said total amount of penalty within 45 days of receipt of this order in either of the way, such as by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html> In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

20. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD1-DRA-IV, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of 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)	

21. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.
22. In terms of the provisions of Rule 6 of the AO Rules, a copy of this order is being sent to the Noticee viz Sudha Gupta and also to the Securities and Exchange Board of India.

Date: November 29, 2019

Place: Mumbai

**Dr. ANITHA ANOOP
ADJUDICATING OFFICER**