

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/AO/98/2012]**

**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.**

Against

Shri. Sanjeev Reddy Chilumala

[PAN – AFNPC7708P]

In the matter of

Innovative Tech Pack Ltd.

Background

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted a preliminary investigation into the dealing in the shares of Innovative Tech Pack Ltd. (hereinafter referred to as 'ITPL') and into the possible violations of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "Act") and various Rules and Regulations made there under for the period from March 31, 2010 to July 30, 2010. It was revealed that Shri. Sanjeev Reddy Chilumala (hereinafter referred to as the 'Noticee') was holding 6.91% capital of ITPL as on April 01, 2010 which got reduced to 2.21% as on June 11, 2010, and he did not make disclosures as required under Regulation 13 (3) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'PIT Regulations').

Appointment of Adjudicating Officer

2. In view of the above, SEBI vide order dated March 22, 2012 initiated adjudication proceedings under Section 19 read with section 15I of the Act and rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudicating Rules') and appointed Shri Satya Ranjan Prasad as the Adjudicating Officer (AO) to inquire into and adjudge under Section 15 A (b) of the Act for the alleged violation of the Noticee as mentioned above. Thereafter, SEBI vide order dated May 22, 2012 appointed the undersigned as the AO in the instant matter.

Show cause Notice, Reply and Personal Hearing

3. The AO issued a Show Cause Notice dated April 10, 2012 (SCN) under rule 4 of the Adjudicating Rules to the Noticee to show cause as to why an inquiry should not be held against him and penalty be not imposed under Sections 15 A (b) of the Act, for the alleged violation of Regulation 13 (3) of the PIT Regulations. The Noticee vide letter dated June 14, 2012 submitted his reply to the SCN
4. After considering the reply submitted by the Noticee, I decided to conduct an inquiry in the matter and accordingly granted an opportunity of personal hearing on September 18, 2012 vide hearing notice dated September 04, 2012. The Noticee vide his letter dated September 11, 2012 informed that due to his prior commitments, he would not be able to present himself for the hearing and therefore relinquish his right of personal hearing in the matter.

5. The Noticee inter alia submitted that he is a small time businessman residing in Hyderabad and enjoys impeccable reputation in the society. This is the first time he is part of any inquiry or action. He executed trades in the normal course, without any malafide intentions. He made investments out of his hard earned savings on the basis of his wisdom and limited knowledge of the stock market. The shares of ITPL were bought with the long term objective of earning profits. There was an undue long period of suspension of the shares of ITPL resulting in liquidity issues in his business. The Noticee found a platform to sell his shares when the suspension was revoked trading resumed in 2010. He inadvertently violated SEBI Regulations in his desperation to offload his shares. He submitted that the violation was unintentional and had no motive. He is a lay person and is totally unaware of the SEBI Law/Rules/Regulations.
6. The Noticee further submitted that he is a very law abiding citizen and would have definitely complied with the Law/Rules/Regulations if he was aware of them. He admits that the said lapse on his part is only due to his ignorance of the SEBI Regulation. The Noticee requests for the case to be considered leniently and states that imposition of any monetary penalty would cause additional hardship to him as he has already suffered liquidity crunch due to the suspension of the scrip. The Noticee is willing to comply with the law to make good his wrong. His non-compliance was only out of sheer ignorance and had no malafide intention.

7. In view of the above, I am proceeding with the inquiry taking into account the submissions made by the Noticee, documents and material as available on record.

Consideration of Issues, Evidence and Findings

8. I have carefully perused the charges made against the Noticee as mentioned in the SCN and the documents available on record. In the instant matter the following issues arise for consideration and determination:

- a. **Whether the Noticee has violated Regulation 13 (3) of the PIT Regulations?**
- b. **Whether the Noticee is liable for monetary penalty prescribed under Section 15 A (b) of the SEBI Act for the aforesaid violation?**
- c. **If, yes what should be the quantum of monetary penalty?**

9. Before proceeding, I would like to refer to the relevant provisions of the PIT Regulations which reads as under:

Insider Trading Regulations

13. Disclosure of interest or holding by directors and officers and substantial shareholders in listed companies - Initial Disclosure.

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Continual disclosure.

(3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company 49[in Form C] the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

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10. It is alleged in the SCN that the Noticee did not make disclosures upon sale of his shareholdings even though it resulted in a change of more than 2% in the total shareholding of the Noticee as required under regulation 13 (3) of the PIT Regulations.
11. I find from annexure II to the SCN that the Noticee was holding 474,248 shares constituting 6.91% share capital/voting rights in ITPL as on April 01, 2010 and following various sell transactions, his shareholding decreased to 2.21% as on August 20, 2010 as detailed below:

<i>equity capital of the company</i>						<i>6,865,000</i>
<i>date</i>	<i>Opening balance</i>	<i>gross buy</i>	<i>gross sale</i>	<i>net vol</i>	<i>closing balance</i>	<i>% of equity capital</i>
1-Apr-10	474,248	0	0	0	474,248	6.91
14-May-10	474,248	0	2001	-2001	472,247	6.88
17-May-10	472,247	0	2000	-2000	470,247	6.85
18-May-10	470,247	0	2000	-2000	468,247	6.82
19-May-10	468,247	0	461	-461	467,786	6.81
20-May-10	467,786	0	5000	-5000	462,786	6.74
24-Jun-10	462,786	0	33235	-33235	429,551	6.26
29-Jun-10	429,551	0	19356	-19356	410,195	5.98
15-Jul-10	410,195	0	6865	-6865	403,330	5.88
21-Jul-10	403,330	0	41544	-41544	361,786	5.27
23-Jul-10	361,786	0	12737	-12737	349,049	5.08
26-Jul-10	349,049	0	850	-850	348,199	5.07
27-Jul-10	348,199	0	24714	-24714	323,485	4.71
28-Jul-10	323,485	0	50000	-50000	273,485	3.98
29-Jul-10	273,485	0	17908	-17908	255,577	3.72
30-Jul-10	255,577	0	28495	-28495	227,082	3.31
2-Aug-10	227,082	0	40000	-40000	187,082	2.73
3-Aug-10	187,082	0	12666	-12666	174,416	2.54
4-Aug-10	174,416	0	2612	-2612	171,804	2.50
6-Aug-10	171,804	0	4910	-4910	166,894	2.43
9-Aug-10	166,894	0	11239	-11239	155,655	2.27
16-Aug-10	155,655	0	1062	-1062	154,593	2.25
20-Aug-10	154,593	0	2635	-2635	151,958	2.21

12. According to Regulation 13 (3) of the PIT Regulations, any person who holds more than 5% shares for voting rights in any listed company is required to disclose, the number of shares or voting rights held by it or change in the voting rights to the company, even if the shareholding falls below 5% and also if there is a change in share holding from the last disclosure made by it to the company under sub-regulation (1) of Regulation 13 of the PIT Regulations when the change exceeds 2% of the total shareholding or voting rights in the company. In this case the Noticee was holding 6.91% share holding which reduced to 2.21% upon the sale of the share holding. The sale of shares by Noticee as on July 27, 2010 has resulted in a change of more than 2% in the Noticee's share holding, ie from 6.91% to 4.71%, which required the Noticee to disclose the details of such change to ITPL. It is an admitted fact that the Noticee did not make disclosure to ITPL as required under the PIT Regulations.
13. It is established beyond doubt that the Noticee failed to make disclosures to the company upon his sale of shares which resulted in a change in his shareholding of ITPL by more than 2% disposal of shares as required under the PIT Regulations and has therefore violated Regulation 13 (3) of the PIT Regulations warranting imposition of monetary penalty as per the provisions of Section 15 A (b) of the Act.
14. The Hon'ble Supreme Court of India in the matter of **SEBI v. Shri Ram Mutual Fund** [2006] 68 SCL 216(SC) *inter alia* held: ***"once the violation of statutory regulations is established,***

imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow.”

15. Section 15 A (b) of the Act reads as follows:

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,-

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(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 37[a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less];

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

“15J - Factors to be taken into account by the adjudicating officer:

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.”*

17. The available records did not indicate the amount of disproportionate gain or unfair advantage, if any, made by the Noticee or the amount of loss caused to an investor or group of investors as a result of the default or whether the default is repetitive in nature.
18. The basic purpose of disclosure requirement inherent in the PIT Regulations is to bring about transparency in the securities market and to keep the market informed about substantial acquisition or sale of share holding in a listed company. The Hon'ble SAT in the matter of ***Milan Mahindra Securities Pvt. Ltd. Vs, SEBI (Appeal No. 66 of 2003 and order dated November 15, 2006.)***, ***regarding the importance of disclosures, has observed that “the purpose of these disclosures is to bring about transparency in the transactions and assist the regulator to effectively monitor the transactions in the market”. Thus any violation of the disclosure requirements has to be view seriously.***

Order

19. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15-I (2) of the SEBI Act, 1992, I hereby impose a monetary penalty of ₹ 1,00,000/- (Rupees One Lakh Only) under Section 15 A (b) of the Act on the Noticee. I am of the view that the said penalty is commensurate with the violations committed by the Noticee.
20. The penalty shall be paid by way of demand draft drawn in favour of “SEBI – Penalties Remittable to Government of India” payable at Mumbai within 45 days of receipt of this

order. The said demand draft shall be forwarded to Division Chief, Integrated Surveillance Department (ISD), Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

21. In terms of the provisions of Rule 6 of the Adjudicating Rules the copies of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Date: November 06, 2012

Place: Mumbai

P. K. KURIACHEN

ADJUDICATING OFFICER