

SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. ORDER/AO/GR/KG/2019-20/4924]

**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) RULES, 1995**

**In respect of Sumer Chand Tayal
(PAN No: AAAPT0601Q)**

In the matter of Vikas ecoTech limited

FACTS OF THE CASE IN BRIEF

1. The Securities and Exchange Board of India (hereinafter, “**SEBI**”) had received complaints alleging price manipulation in various scrips, including Vikas Ecotech Limited (hereinafter referred to as “**VEL**”/”**Company**”). Subsequently, SEBI had advised BSE and NSE to carry out an analysis in the said scrip. Hence a preliminary examination (hereinafter referred to as **PE**) was carried out by the exchanges in VEL for the period January 1, 2016 to June 15, 2017. The PE had *inter alia* recommended VEL to examine the trades of Shri Sumer Chand Tayal (hereinafter referred to as “**Noticee**”), who was an independent Director of VEL with respect to compliance with Clause 4 and 10 of Schedule B read with Regulation 9(1) and (2) of Securities and Exchange Board of India (Prohibition of Insider trading) Regulations, 2015 (hereinafter referred to as “**PIT Regulations**”) and to submit an Action Taken Report (hereinafter referred to as “**ATR**”) to SEBI.
2. It is alleged that the Noticee being a ‘designated person’, had executed trades in the scrip of VEL on some of the dates when the trading window was closed and had bought 2300 shares and sold 5500 shares amounting to gross trade value of Rs. 1,39,280/- during the said period which have contravened Clause 4 of Schedule B read with Regulation 9(1) and (2) of the PIT Regulations. 6. It is also alleged that during the period of examination, the Noticee had bought 24,450 shares and sold 89,118 shares of VEL, which have been

considered as *contra trades* (opposite transactions) and are in contravention of Clause 10 of Schedule B read with Regulation 9(1) & (2) of SEBI (PIT) Regulations, 2015

APPOINTMENT OF ADJUDICATION OFFICER

3. The undersigned was appointed as the AO vide order dated April 30, 2019, conveyed vide communique dated May 9, 2019 under section 19 read with section 15-I of Securities and Exchange Board of India Act, 1992, (hereinafter, **SEBI Act**) and under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter, **Rules**) to enquire into and adjudge under section 15HB of the SEBI Act, for the alleged violation of Clause 4 and 10 of Schedule B read with Regulation 9(1) and (2) of Securities and Exchange Board of India (Prohibition of Insider trading) Regulations, 2015 (hereinafter referred to as “PIT Regulations”).

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice dated August 27, 2019 (hereinafter, **SCN**) was issued by the Adjudicating Officer to the Notice under Rule 4 of the Rules, calling it to show cause as to why an inquiry should not be held against it in terms of Rule 4 of the Rules, read with section 15-I of SEBI Act and penalty be not imposed on it under Section 15HB of the SEBI Act for allegedly trading in the shares of VEL during the period when the trading window was closed for designated persons and for entering into contra trades when it was not permissible for such designated persons to do so.
5. The Noticee replied vide email dated September 15, 2019, where it had *inter alia* submitted as follows:
 - a. The Noticee does not trade in shares for business or profit and its exposure to capital market has been limited and it had executed only small transactions. Further, the Noticee has already resigned as an independent director from VEL in the board meeting held on 14th August 2019 and that the resignation is likely to be accepted in next board meeting.

- b. The Noticee was neither aware nor could understand the extant provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015 and of the VEL's Code of Conduct laid under these regulations and the trades executed by the Noticee in equity shares of VEL were done unknowingly and without any malafide intention.
- c. That the Noticee has already been adequately penalised for his "inadvertent mistake" and all the profits made under the transactions executed by the Noticee aggregating to a sum of Rs. 44,192.55/- has already been deposited with the Investor Education and Protection fund. The Noticee had never been involved in any non-compliance pertaining to securities market nor any other statutory laws and this being a matter of inadvertent negligence any more penalisation shall be completely unjustified for the Noticee.
- d. The Noticee has not committed any price manipulation in scrips of listed companies, including VEL.
- e. On the basis of the proceedings initiated by SEBI, a Show Cause Notice was issued to the Noticee by VEL vide their letter dated November 20, 2018 and accordingly a reply to the said notice was submitted by the Noticee on November 26, 2018 which is reiterated.
- f. That being an Independent Director of VEL, the Noticee was neither involved in day to day operations of VEL nor have been in possession of any unpublished price sensitive information ('UPSI') as most of such information is placed before the Board / respective Committees at its meetings only and are generally not circulated in advance by VEL.
- g. All the trades executed by the Noticee were in small quantities having no impact on market and were based on information available in public domain. That the timing of the trades were neither planned nor was with a knowledge of any UPSI except it being an inadvertent mistake of unknowingly trading during the period of closure of trading window.

- h. With respect to the allegation of execution of contra trades, the Noticee has submitted that he has already remitted a sum of Rs. 44,192.55/- which was computed to be the profit earned by the Noticee from such contra trades to Investor Protection and Education Fund.
6. The Noticee was provided an opportunity of hearing on September 24, 2019 vide notice dated September 17, 2019. The Copy of the said notice was sent by post as well as by email to the Noticee. The Noticee vide email dated September 24, 2019 informed that the said notice was received by him on that date only and it shall not be possible for him to attend the hearing. Thereafter, vide letter dated September 25, 2019 the Noticee while reiterating the submissions already made vide email dated September 15, 2019, submitted that:
- “If you still feel personal hearing is needed, please organize it through video conferencing at your local office because at this age of 75 years it is not possible for me to travel to Mumbai”.*

CONSIDERATION OF ISSUES AND FINDINGS

7. It is noted from the submissions of the Noticee as detailed above, that he has already admitted the fact that he had undertaken the trades in the shares of VEL during the period when the trading window was closed for the ‘designated persons’ to do so. Further, he does not dispute the number of trades undertaken during the said period as alleged in the SCN. Therefore, none of the facts pertaining to trading in the shares of VEL during February 2016 to June 2017 by the Noticee, as alleged in the SCN have not been controverted by the Noticee. Further, the Noticee in his email dated September 15, 2019, has stated that:

“Coming from a totally different background, I was neither aware nor could understand the extant provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015 and of the Vikas EcoTech Limited’s (‘the Company’) code of Conduct laid under these regulations, the trades executed by me in equity shares of the Company were done unknowingly and without any malafide intention.

I further wish to submit that, even at that I have already been adequately penalised for my inadvertent mistake and all the profits made under the petty transactions executed by me aggregating to a sum of Rs.

44,192.55/- has already been deposited with the Investor Education and Protection fund of the Government of India.” [emphasis supplied]

The only defense sought to be taken by the Noticee is that the trades in question were undertaken without adequate understanding of extant laws/ regulations on the subject and were without any *mala fide*. Further, the fact that the Noticee has accepted the instruction of VEL and has already remitted the aforesaid sum of money (quantified to be the ill-gotten gains from the contra trades as alleged in the SCN) to the IPEF without any challenge, also shows that the Noticee admits to the allegations levelled in the SCN.

8. The Noticee has further sought to submit that it had not traded while being in possession of any Unpublished Price Sensitive Information nor has committed any price manipulation in the scrip of VEL or any other company. In this regard, I note that such charges have not even been levelled against the Noticee in the SCN and is therefore not necessary to be considered in the instant proceedings.
9. I therefore hold that providing an opportunity of personal hearing to the Noticee shall be only an empty formality when the Noticee has already admitted the allegations levelled in the SCN. In this regard, the principle laid down by the Hon’ble Supreme Court on the point of admission in *Nagindas Ramdas v. Dalpatram Ichharam alias Brijram* [1974 SCR (2) 544] is reproduced herein below:

“Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under s. 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties.” [Emphasis supplied]

The Noticee has further expressed his difficulties in attending a hearing.

10. Therefore, the admission of the Noticee as to the execution of the trades in question in binding on him with respect to the allegations contained in the SCN.

11. Given the aforesaid, I proceed in the matter on the basis of the material available on records and the issues that arise for consideration in the present case are:
- a. Whether the Noticee had bought 2300 shares and sold 5500 shares of VEL during a period when the trading window was closed for the '*designated persons*', thereby violating Clause 4 of Schedule B read with Regulations 9(1) and (2) of the PIT Regulations?
 - b. Whether the Noticee had not held his investment for a period of 6 months and has executed contra trades in the shares of VEL within a period of less than six months, thereby violating Clause 10 of Schedule B read with Regulations 9(1) and (2) of the PIT Regulations?
 - c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15 J of the SEBI Act?
12. The provisions of Clause 4 and Clause 10 of Schedule B and Regulations 9(1) and (2) of the PIT Regulations is reproduced herein below:

Code of Conduct.

9. (1) *The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.*

NOTE: It is intended that every company whose securities are listed on stock exchanges and every market intermediary registered with SEBI is mandatorily required to formulate a code of conduct governing trading by its employees. The standards set out in the schedule are required to be addressed by such code of conduct.

(2) *Every other person who is required to handle unpublished price sensitive information in the course of business operations shall formulate a code of conduct to regulate, monitor and report trading by employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.*

NOTE: This provision is intended to mandate persons other than listed companies and market intermediaries that are required to handle unpublished price sensitive information to formulate a code of conduct governing trading in securities by their employees. These entities include professional firms such as auditors, accountancy firms, law firms, analysts, consultants etc., assisting or advising listed companies, market intermediaries and other capital market participants. Even entities that normally operate outside the capital market may handle unpublished price sensitive information. This provision would mandate all of them to formulate a code of conduct.

Clause 4 of the Code of conduct

Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.

Clause 10 of the Code of conduct

“The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act”.

13. The trading window in the scrip of VEL was closed on several dates for the designated persons during the period of examination. I note from the corporate announcements of various dates made by VEL to the stock exchanges that the trading window in the shares of the company was closed on several dates for ‘designated persons’. The dates on which the trading window was closed and the trades executed by the Noticee on such dates are tabulated herein below:

Trades executed during window closure period

Date	Gross Buy Volume	Gross Sell Volume	Net Volume	Value of Trades
05/02/2016	0	500	-500	10650.00
18/05/2016	600	0	600	10800.00
03/08/2016	0	1000	-1000	14750.00
05/08/2016	0	1000	-1000	15500.00
10/08/2016	1000	0	1000	13250.00
25/10/2016	0	1000	-1000	21350.00
08/02/2017	0	200	-2000	36500.00
19/05/2017	500	0	500	11800.00
30/05/2017	200	0	200	4680.00
Total	2300	5500	-3200	139280

14. The Noticee has not controverted the said dates and figures in its written submissions. It is therefore held that the Noticee had bought 2300 shares and sold 5500 shares amounting to gross trade value of Rs. 1,39,280/- during the said period which have contravened Clause 4 of Schedule B read with Regulation 9(1) and (2) of the PTT Regulations.

15. From the trading details of the Noticee during the period of examination, I also note that during the period of examination, the Noticee had bought 24,450 shares and sold 89,118 shares, out of which the following have been considered as contra trades (opposite transactions):

Sl.No.	Buy date	Sell Date	Quantity	Buy Rate	Sell rate
1.	04- May-16	05-Jan-16	500	17.40	21.00
2.	18-May-16	05-Jan-16	600	18.00	21.00
3.	27-jun-16	05-Jan-16	200	12.25	21.00
4.	29-Jun-16	05-Jan-16	700	13.05	21.00

5.	29-Jun-16	06-Jan-16	300	13.05	20.77
6.	05-Jul-16	06-Jan-16	500	13.45	20.77
7.	26-Jul-16	05-Feb-16	500	15.50	21.30
8.	26-Jul-16	08-Mar-16	500	15.50	15.20
9.	10-Aug-16	08-Mar-16	500	13.25	15.20
10.	10-Aug-16	01-Apr-16	500	13.25	16.55
11.	16-Aug-16	04-Apr-16	500	12.90	17.60
12.	30-Aug-16	04-Apr-16	500	14.35	17.60
13.	08-Sep-16	06-Apr-16	500	12.55	18.75
14.	27-Sep-16	06-Apr-16	500	14.15	18.75
15.	30-Sep-16	08-Apr-16	500	13.20	20.00
16.	17-Nov-16	07-Jun-16	400	15.39	14.35
17.	17-Nov-16	30-Jun-16	100	15.39	13.70
18.	21-Dec-16	30-Jun-16	100	17.45	13.70
19.	21-Dec-16	01-Jul-16	400	17.45	14.60
20.	30-Jan-17	03-Aug-16	500	14.75	14.75
21.	09-Mar-17	16-Sep-16	1000	21.35	14.23
22.	09-Mar-17	20-Sep-16	500	21.35	14.20
23.	09-Mar-17	21-Sep-16	500	21.35	14.60
24.	09-Mar-17	22-Sep-16	500	21.35	15.00
25.	09-Mar-17	03-Oct-16	500	21.35	14.55
26.	09-Mar-17	04-Oct-16	500	21.35	14.60
27.	09-Mar-17	05-Oct-16	500	21.35	15.40
28.	10-Mar-17	05-Oct-16	500	21.15	15.40
29.	10-Mar-17	06-Oct-16	500	21.15	16.20

30.	15-Mar-17	06-Oct-16	500	21.00	16.20
31.	15-Mar-17	07-Oct-16	500	21.00	16.55
32.	17-Mar-17	17-Oct-16	500	20.50	16.80
33.	20-Mar-17	21-Oct-16	500	20.10	17.00
34.	31-Mar-17	21-Oct-16	500	21.30	17.00
35.	19-Apr-17	24-Oct-16	500	21.20	19.00
36.	21-Apr-17	24-Oct-16	500	21.05	19.00
37.	26-Apr-17	30-Nov-16	500	21.00	18.40
38.	27-Apr-17	16-Dec-16	150	20.80	18.00
39.	19-May-17	16-Dec-16	350	23.60	18.00
40.	19-May-17	23-Jan-17	150	23.60	17.45
41.	30-May-17	23-Jan-17	200	23.40	17.45
42.	05-Jun-17	23-Jan-17	300	23.00	17.45
43.	07-Jun-17	23-Jan-17	350	22.30	17.45
44.	07-Jun-17	08-Feb-17	150	22.30	18.25
Below are intraday contra trades					
45.	11-Apr-16	11-Apr-16	500	19.00	20.00
46.	28-Apr-16	28-Apr-16	1000	18.70	19.98
47.	29-Apr-16	29-Apr-16	500	18.55	19.10
48.	28-Jul-16	28-Jul-16	1000	14.85	15.15
49.	12-Sep-16	12-Sep-16	500	12.40	13.15
50.	03-Apr-17	03-Apr-17	500	20.05	21.30
51.	24-Oct-16	24-Oct-16	1000	19.30	19.00

16. The said dates and figures too have not been controverted by the Noticee and has been expressly admitted. Thus, I hold that the Noticee being a *designated person* had executed

contra trades within period of less than six months from executing the first leg of the transaction in contravention of Clause 10 of Schedule B read read with Regulation 9(1) & (2) of SEBI (PIT) Regulations, 2015.

17. The Noticee has *inter alia* submitted that the trades in question (trades during the period of closure of trading window for designated persons and the contra trades executed within a period of less than six months) were executed without adequate understanding of the extant legal provisions. He has further submitted that the amount of gains made from the contra trades has already been remitted to the IPEF and in view of this, he may be let off without any further penalty. At this juncture, reliance is placed upon the Order of the Hon'ble Supreme Court in the matter of *Chairman, SEBI Vs Shriram Mutual Fund* {[2006] 5 SCC 361} where the Hon'ble Supreme Court of India 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....."

18. The aforesaid violation of PIT Regulations by the Noticee attract monetary penalty under Section 15HB of the SEBI Act, which, reads as follows:

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be [liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.]*

19. While determining the quantum of penalty under Section 15 HB of SEBI Act as aforesaid, provisions of Section 15 J of SEBI Act would be applicable, which read as under:-

[Factors to be taken into account while adjudging quantum of penalty.]

15J. *While adjudging quantum of penalty under [15-I or section 11 or section 11B, the Board or 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 [...] 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.]

20. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that the disproportionate gain made by the Noticee through contra trades was quantified at Rs.44,192.55 which has already been remitted to IPEF. As regards the repetitive nature of the default, as already observed, the Noticee had executed the aforesaid trades in violation of Clauses 4 and 10 of Schedule B read with Regulations 9(1) and 9(2) of PIT Regulations from February 2016 to June 2017. It is also noted that the Noticee has already admitted his non-compliance of the relevant laws which needs to be considered as a mitigating factor while determining the quantum of penalty.

ORDER

21. After taking into consideration all the facts and circumstances of the case, I impose a penalty of **Rs. 1,00,000/-** (Rupees One Lakh only) under Section 15 HB of the SEBI Act against Shri Sumer Chand Tayal, which will be commensurate with his non-compliances.
22. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link.

ENFORCEMENT → Orders → Orders of AO → PAY NOW

23. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

- a) Name and PAN of the entity (Noticee)
- b) Name of the case / matter
- c) Purpose of Payment – Payment of penalty under AO proceedings
- d) Bank Name and Account Number
- e) Transaction Number

24. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties

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

Date: October 14, 2019

G. Ramar

Place: Mumbai

ADJUDICATING OFFICER