

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER: EAD-2/SS/SK/2018-19/1481-1483]**

**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:**

<b>Peeyoosh Pankaj Dubey</b> (PA No. ABDPD4475C) Plot No. 4 & 5, P & T Colony, Ratlam – 457001.	<b>Sandip Gulabrao Chavan</b> (PA No. AEFPC2252R) Building No. 106, Vivekanda Nagar, Satara – 415002.	<b>Paresh Ashok Velguenkar</b> (PA No. AFUPV6236L) Opp. Sai Temple, Canca Parra, North Goa – 403510.
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**In the matter of Marksans Pharma Limited**

1. During examination in the scrip of Marksans Pharma Limited (hereinafter referred to as 'MPL'), SEBI observed that Mr. Peeyoosh Pankaj Dubey, Sandip Gulabrao Chavan and Paresh Ashok Velguenkar (hereinafter referred to as 'Noticee No. 1 to 3' respectively or collectively referred to as 'the Noticees') had traded in the scrip of MPL during the period of trading window closure from January 01, 2015 to December 31, 2016. MPL had informed that the Noticees were a 'designated person' (employee) of the company. The details of trading activities of the Noticees in the scrip of MPL during the said period of trading window closure are tabulated as under:

Client Name	Date	Broker Name	Client PAN	Gr Buy Vol	Gr Sell Vol	Gr Buy Value (Rs.)	Gr Sell Value (Rs.)	Remarks
Noticee No. 1	02/11/2015	Bonanza Portfolio Ltd.	ABDPD4475C	20000	0	1935496.50	0.00	Financial results announced on November 10, 2015. Trading window was closed between November 02, 2015 to November 11, 2015.
	03/11/2015	Bonanza Portfolio Ltd.	ABDPD4475C	35000	0	3449868.95	0.00	
	04/11/2015	Bonanza Portfolio Ltd.	ABDPD4475C	2000	4270	204000.00	438583.00	
	05/11/2015	Bonanza Portfolio Ltd.	ABDPD4475C	2000	0	199800.00	0.00	
	06/11/2015	Bonanza Portfolio Ltd.	ABDPD4475C	5000	0	468447.40	0.00	
	09/11/2015	Bonanza Portfolio Ltd.	ABDPD4475C	0	5000	0.00	494057.15	
	03/02/2016	Bonanza Portfolio Ltd.	ABDPD4475C	0	35000	0.00	2102743.40	Financial results announced on February

Client Name	Date	Broker Name	Client PAN	Gr Buy Vol	Gr Sell Vol	Gr Buy Value (Rs.)	Gr Sell Value (Rs.)	Remarks
	08/02/2016	Bonanza Portfolio Ltd.	ABDPD4475C	10000	0	573899.65	0.00	12, 2016. Trading window was closed between January 30, 2016 to February 13, 2016
	11/02/2016	Bonanza Portfolio Ltd.	ABDPD4475C	10000	0	520848.35	0.00	

Client Name	Date	Broker Name	Client PAN	Gr Buy Vol	Gr Sell Vol	Gr Buy Value (Rs.)	Gr Sell Value (Rs.)	Remarks
Noticee No. 2	04/02/2016	Hdfc Securities Ltd.	AEFPC2252R	300	0	17625.00	0.00	Financial results announced on February 12, 2016. Trading window was closed between January 30, 2016 to February 13, 2016
	04/11/2016	Hdfc Securities Ltd.	AEFPC2252R	1000	0	46500.00	0.00	

Client Name	Date	Broker Name	Client PAN	Gr Buy Vol	Gr Sell Vol	Gr Buy Value (Rs.)	Gr Sell Value (Rs.)	Remarks
Noticee No. 3	01/02/2016	Sharekhan Ltd.	AFUPV6236L	30	0	2038.50	0.00	Financial results announced on February 12, 2016. Trading window was closed between January 30, 2016 to February 13, 2016
	11/02/2016	Sharekhan Ltd.	AFUPV6236L	50	0	2500.00	0.00	
	31/05/2016	Sharekhan Ltd.	AFUPV6236L	30	0	1332.00	0.00	
	09/08/2016	Sharekhan Ltd.	AFUPV6236L	50	0	2377.50	0.00	Financial results announced on August 13, 2016. Trading window was closed between August 05, 2016 to August 14, 2016
	10/08/2016	Sharekhan Ltd.	AFUPV6236L	40	0	1866.00	0.00	
	11/08/2016	Sharekhan Ltd.	AFUPV6236L	0	40	0.00	1854.00	
	12/08/2016	Sharekhan Ltd.	AFUPV6236L	50	40	2300.00	1862.00	
	04/11/2016	Sharekhan Ltd.	AFUPV6236L	0	500	0.00	23275	Financial results announced on November 12, 2016. Trading window was closed between November 04, 2016 to November 14, 2016.
	10/11/2016	Sharekhan Ltd.	AFUPV6236L	100	0	4950.00	0.00	

2. In view of the above, it has been alleged that the Noticees have violated the provisions of clause 4 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders specified in Schedule B read with Regulation 9(1) and (2) of SEBI (Prohibition of Insider

Trading) Regulations, 2015 (hereinafter referred to as 'the PIT Regulations'). The said provisions of PIT Regulations read as under:

### **PIT Regulations**

#### ***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.*

### ***SCHEDULE B***

#### ***[See sub-regulation (1) and sub-regulation (2) of regulation 9]***

#### ***Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders***

1. ....
4. *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.*
3. Vide a communication-order dated June 21, 2018, it has been informed that the competent authority in SEBI is satisfied that there are sufficient grounds to inquire into the affairs and adjudicate upon the alleged violation by the Noticees as aforesaid and has appointed the undersigned as Adjudicating Officer under section 15I(1) of the SEBI Act and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995

(hereinafter referred to as ‘the Adjudication Rules’) to inquire into and adjudge the aforesaid alleged violation.

4. Accordingly, after receipt of records of the proceedings on August 02, 2018, a notice to show cause no. EAD/SS-SKS/OW/21931/2018 dated August 06, 2018 (hereinafter referred to as ‘the SCN’) was issued to the Noticees in terms of Rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act and terms of reference as above, calling upon them to show cause as to why an inquiry should not be held against them in terms of rule 4 of the Adjudication Rules and penalty be not imposed under Section 15HB of the SEBI Act for the aforesaid alleged violation which reads as under:

***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.*

5. As replies from the Noticees were not forthcoming, in order to conclude the inquiry in terms of Rule 4 (3) of the Adjudication Rules, the Noticees were granted an opportunity of personal hearing on September 14, 2018 vide hearing notice dated August 30, 2018. The said hearing notice was served upon the Noticee through speed post. In the meantime, the Noticee No. 1, 2 and 3 filed their reply to the SCN vide letter dated September 06, 2018, August 31, 2018 and September 05, 2018. While making written replies, the Noticee No.1 has requested to exempt himself from the opportunity of personal hearing granted and to decide the matter based on his submissions made in his letter dated September 06, 2018. In case of Noticee No. 2 and 3, the opportunity of personal hearing granted to them was rescheduled in the interest of principles of natural justice on various dates based on their request. Subsequent to the same, on September 26, 2018, Mr, Pradeep Gulabrao Chavan, Authorised representative (‘AR’), represented on behalf of Noticee No. 2 and 3 and reiterated the submissions made vide by the Noticees vide their respective letters. The replies/submissions of the Noticee are *inter alia* as under, Noticee wise:

**Noticee No. 1:**

- a) He was employed in the factory of MPL at Goa and was not connected with decision making of financial results nor had any access to the financial decisions or financial results of MPL at all as it was all done at Head Office, Mumbai.
- b) Management of MPL has purposely hidden the fact that they have not care or bothered to inform / direct him about SEBI rules. Management has failed in its duty to inform him that what is trading window closure, what are the consequences of violation of PIT regulations and when they are going to announce the Financial Results.

- c) The management of MPL has not fulfilled its duty of informing him about trading window closure and MPL has violated SEBI rules by keeping him in dark about the trading window closure. MPL has not bothered to inform him that he cannot do trading and what are SEBI rules applicable on him during trading window closure. He had unintentionally traded in MPL shares. Therefore, requested to pardon me him for an unintentional mistake.
- d) He has suffered heavy losses in trading during the period as mentioned in the SCN and he not made any profit and whatever trading was done was due to unawareness of trading window closure.

**Noticee No. 2:**

- a) He is working in MPL as Deputy General Manager for the last around 3.5 Years in Warehouse department in Goa plant. The department that he is working in and the position that he holds do not have any access to Unpublished Price Sensitive Information ('UPSI') and the trades were inadvertently done without knowledge of closure of trading window.
- b) He had only bought a total of 300 shares on 04/02/2016 and 1000 shares on 04/11/2016 when the trading window was closed and this was the only transaction in the entire examination period and had not gained any benefits out of this transaction. The act of his buying the shares was in close proximity to the declaration of results which establishes that there was no *mens rea* involved.
- c) His volume of 1300 shares is very miniscule i.e. 0.09% of the total market volume, hence, the act of his buying such a miniscule quantity will never impact the volume and/ or price in the scrip.
- d) He do not possess shares of MPL with him in his HDFC Securities demat account from the last transaction performed by him on May 11, 2017 and provided transaction details in shares of MPL from his date of joining in MPL till May 11, 2017.
- e) His violation, if any, is technical and venial in nature, same is unintentional. Due to not filing of relevant disclosures no gain or advantage has occurred to him and no loss or harm been caused to any investors. The same was only a procedural lapse/unawareness of the window closing time, and devoid of any malafide intention. He has further undertaken that such kind of violation will not be repeated in future.

**Noticee No. 3:**

- a) He is working in MPL for the last around 3 years 8 months Quality Control Department in Goa plant as Manager. The department that he is working in and the position that he holds do not have any access to UPSI and the trades were inadvertently done without knowledge of closure of trading window.
- b) He is drawing a total annual salary of about ₹ 12,80,000/- and has three personal loans and one home with a full family to support. Hence, he does not have any corpus to pay penalty, if any levied by SEBI.

- c) He had only bought a total of 350 shares and sold 580 shares from 01/02/2016 to 10/11/2016 and had not earned any benefit out of it considering the brokerage of share broker and the same was done unintentionally.
  - d) His volume of 500 shares (maximum from the list) is very miniscule i.e only 0.04% of the total market volume, hence, the act of his buying such a miniscule quantity will never impact the volume and / or price in the scrip. All the other transactions done were well below 0.04% of the total market volume.
  - e) His violation, if any, is technical and venial in nature, same is unintentional. Due to not filing of relevant disclosures no gain or advantage has occurred to him and no loss or harm been caused to any investors. The same was only a procedural lapse/unawareness of the window closing time, and devoid of any malafide intention. He has further undertaken that such kind of violation will not be repeated in future.
6. The allegation that the Noticees were 'designated employees' is based on the information provided by MPL and the Noticee No.1, in particular, has claimed that he was not aware of code of conduct. The Noticees herein also claimed that they were not aware of the closures of trading window at the relevant time. Therefore, for the purpose of the inquiry it was considered relevant to seek further information from MPL. Therefore, in terms of Rule 4(6) of the Adjudication Rules read with section 15I (2) of the SEBI Act further information in the above regard was sought from MPL vide Notice dated October 09, 2018 and it was also asked to depute a person acquainted with facts of the case to be present with relevant documents/ records on October 15, 2018. By this Notice, following information relevant to the inquiry were sought from MPL:
- a) Copy of Code of Conduct laid down, if any, by it to regulate, monitor and report trading by insiders in compliance with Regulation 9 of the PIT Regulations.
  - b) Whether the employees were, at the relevant times, the designated person based upon his functional role in MPL in terms of the code of conduct.
  - c) Functional Role and Designation of the employees of MPL during the time of their respective trades as well as their present designation and role.
7. On October 15, 2018, Mr. Harshavardhan Panigrahi, Company Secretary of MPL, Authorised Representative ('AR'), appeared on behalf of MPL and provided the information along with letter dated October 13, 2018 and explained the content thereof. Relying upon the said letter, he explained that MPL had intimated its employees about closure of trading window from time to time through e-mail(s) and notice board. In its letter dated October 13, 2018, MPL has confirmed the following:-
- a) It has in place a Code of Conduct to regulate, monitor and report trading in securities in compliance with Regulation 9 of the PIT Regulations. The same was approved by its Board of

Directors on May 30, 2015. Subsequently, MPL circulated a revised Code of Conduct approved by the Board of Directors on August 11, 2017. It also provided copies of its Code of Conduct and has confirmed that the Code of Conduct is informed to all the employees through e-mails and notice board and has also been uploaded in the Company's website [www.marksanspharma.com](http://www.marksanspharma.com).

- b) As per the Code of Conduct approved by the Board of Directors on May 30, 2015 which remained valid during the subject period between May 2015 and December 2016, all employees of MPL comprising top tier of the management upto the Manager level and all employees in the Corporate Office at Mumbai are included in the definition of "Designated Person". Accordingly, the employees under reference are Designated Persons.
  - c) In terms of its code of conduct, all its employees were intimated about the closures of trading window from time to time through e-mail and notice board. It has provided copies of e-mail communication in support of this submission.
  - d) On receipt of information from SEBI, the matter was taken up by the Board of Directors in its meeting held on May 29, 2017 wherein it was decided to issue warning letters to the employees who made profit of less than ₹10 Lakh and to withhold promotion, salary increment, LTA and Bonus for one year of those employees who made profit of more than ₹10 Lakh and debar from trading in the shares of the Company for one year. It was further decided to recover the amount of profit from such employees for credit into the Investor Protection and Education Fund administered by SEBI.
  - e) MPL has already recovered the amount from the employees, to the extent possible, and deposited the same in 'Investor Protection and Education Fund' and also informed SEBI about the same and provided a copy of the communication sent to SEBI.
8. I have carefully considered the allegations levelled in the matter, the submissions of the Noticee and the relevant material available on record. Admittedly, this is not a case where an insider has been alleged to have traded in the shares of MPL on the basis of any UPSI. The charge in this case is that the Noticees being 'designated persons' of MPL have traded in the scrip of MPL when the trading window was closed and has thus, alleged to have violated the provisions of Clause 4 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders specified in Schedule B read with Regulation 9(1) and (2) of the PIT Regulations. In this regard, it is noted that in terms of Regulation 9(1) of the PIT Regulations, all listed companies are obligated to frame a Code of Conduct as near to the Model Code of Conduct as set out in Schedule B to the PIT Regulations. The similar obligation under Regulation 9 (2) is intended for persons other than listed companies and market intermediaries. In this case, MPL being a listed company, the allegation of non-compliance of Regulation 9 (2) does not sustain.

9. In terms Clause 3 to Schedule B of the Code of Conduct, the listed company has to designate the employees and connected persons ('designated persons') on the basis of their functional role. A bare perusal of the various provisions stipulated under the Model Code of Conduct for listed companies under Regulation 9 of the PIT Regulations will make it clear that these provisions are formulated with a view to serve as a guiding charter for all concerned persons associated with the functioning of the company and their trading in its securities. For this purpose, designated employees are to be designated on the basis of their functional role ('designated persons') and are to be governed by an internal code of conduct governing dealing in securities. It is also noted that Regulation 9 (3) of the PIT Regulations casts obligation on the listed company to designate a compliance officer to administer the code of conduct and monitor compliance. As explained in the Note appended to this regulation, the provision is intended that the designated compliance officer identified by the listed company has the responsibility to administer the code of conduct and monitor compliance. Further, in terms of Clause 12 of Schedule B to the Code of Conduct shall stipulate the sanctions and disciplinary actions including wage freeze, suspension etc., for contravention of the Code of Conduct. These actions are without prejudice to the power of the Board under the SEBI Act.
10. In this case, MPL had framed a Code of Conduct prescribing various requirements including the requirement that 'designated persons' and their immediate relatives shall not trade in securities of the Company when the trading window is closed. The Noticees were considered as 'designated persons' as per MPL's Code of Conduct, as applicable at the relevant time, which covers employees comprising top tier of the management upto the Manager level and all employees in the Corporate Office at Mumbai. The Noticee No.1 was admittedly a General Manager – HR and Admin. of MPL at Goa who joined MPL on August 21, 2015 and resigned on September 26, 2016. Similarly, Noticee No. 2 and 3 were admittedly a Deputy General Manager – Stores of MPL at Goa and Manager – Quality Control of MPL at Goa, respectively. The common similarity among the Noticees is that all of them were working at Goa plant of MPL. It is pertinent to note that while designating an employee as a 'designated person' under Clause 3 to Schedule B, due regard should be had to the access that such role and function would provide to UPSI in addition to seniority and professional designation. I am of the view that the Noticees were 'designated persons' on the basis of their position, function and designation at the relevant time.



11. Now the question for determination is whether the Noticee traded at the time of closures of trading window as alleged. It is admitted fact that during the period November 02, 2015 to February 11, 2016, when the trading window was closed the Noticee No.1 had bought 84,000 shares of MPL for a total amount of ₹ 73,52,360.85 and sold 44,270 shares of MPL for ₹ 30,53,383.55 totaling 1,28,270 shares and incurred a substantial loss of ₹ 43,16,977.30. Noticee No. 2, had purchased 300 shares for ₹ 17,625/- on February 04, 2016 when the trading window of MPL was closed from January 30, 2016 to February 13, 2016 and had also purchased 300 shares for ₹ 46,500/- on November 04, 2016 when the trading window of MPL was closed from November 04, 2016 to November 14, 2016 totaling purchase of 600 shares. Noticee No. 3, had purchased a total of 350 shares for ₹ 17,364/- from seven buy transactions during the period February 2016 to November 2016. Further, Noticee No. 3 had sold a total of 580 shares on August 11, 2016, August 12, 2016 and November 04, 2016 for a total amount of ₹ 26,991/- when the trading window was closed from August 05, 2016 to August 14, 2016 and November 04, 2016 to November 14, 2016 totaling net sale of 230 shares. There is no allegation of any design that the Noticees have indulged in any market manipulation or made wrongful gain or caused any wrongful loss to other investors due to their trading in the shares of MPL during the window closure period. In fact, Noticee No. 1 had incurred substantial loss to the tune of ₹ 43,16,977.30 and Noticees No.2 and 3 have also incurred losses out of there transactions involving small quantities of shares. From the letter dated June 30, 2017 from MPL to SEBI, I note that the management of MPL had issued a warning to all its employees, including Noticee No. 2 and 3, to trade in the shares of MPL in compliance with SEBI Regulations and MPL's Code of Conduct.
12. The Noticees have not disputed their respective transactions. The Noticees have claimed that the trading was inadvertently done without knowing the fact that the trading window was closed when he traded as MPL had not informed him about trading window closures. It is noted that the Model Code of Conduct in Schedule B of PIT Regulations contemplates flow of information on 'need to know basis'. Thus, it is pertinent to determine whether the Noticees were aware of closures of trading window when they traded in the share of MPL. The allegation is based on the information provided by MPL during examination by SEBI which contains their email ids as well. As per the information provided by MPL, the email ids of Noticee No. 1 to 3 are [peeyooshpankajdubey@gmail.com](mailto:peeyooshpankajdubey@gmail.com), [sandyshinde@gmail.com](mailto:sandyshinde@gmail.com) and [pareshvelguenkar@gmail.com](mailto:pareshvelguenkar@gmail.com).

13. It is admitted fact the Noticees were working in Goa i.e. away from Mumbai where the UPSI in this case was created at relevant times. From the submission of MPL, I note that MPL had sent five e-mails dated November 02, 2015, January 30, 2016, May 20, 2016, August 05, 2016 and November 04, 2016 to its certain employees intimating about the closure of trading window till November 11, 2015, February 13, 2016, May 31, 2016, August 14, 2016 and November 16, 2016, respectively. By the said e-mails, those employees were intimated that the directors, officers and employees and other connected persons of MPL and their immediate relatives are prohibited from buying / selling or otherwise dealing in the shares of the Company during trading window closure periods.
14. It is noted that the aforesaid 5 e-mails of MPL have not been sent at the e-mail ids of the Noticees No.1, 2 and 3 as available on record. These e-mails also do not indicate names of these Noticees and it is unascertainable that these e-mails were sent at any other e-mail id so as to reach these Noticees. Considering these facts, it is unclear as to whether these Noticees were initiated about trading window closures and prohibition on trading during the relevant periods. I am, therefore, of the view that the preponderance of probability is in their favour and hence they should be given benefit of doubt.
15. Considering the above facts and circumstances of this case, I am of the view that the case does not deserve imposition of penalty on the Noticee No. 1, 2 and 3 under section 15HB of the SEBI Act. The SCN issued to them is disposed of accordingly.
16. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

**Date: October 31, 2018**  
**Place: Mumbai**

**Santosh Shukla**  
**Adjudicating Officer**