

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO.SP/AO/02/2018]**

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 Alokam Prabhakara Rao (PAN ADDPA1386P)

In the matter of
**Covidh Technologies Limited
(Formerly – Aptus Industries Limited)**

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed that there has been a change in shareholding of the promoters of Covidh Technology Limited (formerly Aptus Industries Limited), a company listed on BSE, for the quarter ending March 2013, June 2013 and September 2013. It was observed that the shareholding of promoter and director, **Shri Alokam Prabhakara Rao** (hereinafter referred to as '**Noticee**'), changed by 370,000 shares (3.49% of the paid up capital of the company) from June 2013 quarter to September 2013 quarter. However, these changes were allegedly not disclosed to the stock exchange as required under Regulations 13(4) and 13(4A) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**').

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer on December 09, 2014 under section 15-I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**SEBI Rules**') to inquire into and adjudge under Section 15A (b) of the SEBI Act for the alleged violation of Regulations 13(4) and 13(4A) read with 13(5) of the PIT Regulations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. SEBI observed that there has been a change in the shareholding of the company, the promoter failed to make disclosures under Regulations 13(4), 13(4A) read with 13(5) of PIT Regulations.
4. Accordingly, following Show Cause Notice (hereinafter referred to as '**SCN**') Ref. No. SEBI-HLO/SP/DT/8112/2015 dated March 17, 2015, was issued to the aforesaid Noticee under Rule 4 of SEBI Rules communicating the alleged violations of PIT Regulations.
5. The Noticee was called upon to show cause within 14 days from the date of receipt of the SCN as to why an inquiry should not be initiated against him and penalty be not imposed under Section 15A (b) of the SEBI Act for the alleged violation of PIT Regulations.
6. The Noticee, vide letter and e-mail dated April 02, 2015, requested 10 days extension of time to reply/ appear in person in response to the SCN dated March 17, 2015.
7. The Noticee, vide letter and e-mail dated April 10, 2015, submitted his reply to the SCN dated March 17, 2015. Vide the aforesaid letter and e-mail, the Noticee has, *inter alia*, submitted as under:
 - a. *That the statement given by SEBI is true and the disclosure was not submitted within the prescribed time.*
 - b. *That all the said shares were kept under pledge and obtained funds and invested the same in the company as working capital.*
 - c. *That the loan could not be repaid and as a result the said pledged shares were sold without intimation to him.*
 - d. *That the shareholding was sent to the exchanges as per Clause 35 (shareholding pattern) of the Listing Agreement of every quarter and also in the yearly disclosure in terms of Regulation 30(2) of SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011.*

- e. *That, after the non-disclosures pertained to August 2013 as mentioned in the notice, he has promptly submitted the applicable disclosures under Regulation 13(4) and (4A) of PIT Regulations and Regulations 29(1), 29(2), 30(2) of SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011 as and when required without any failure as he has due regards for laws of land.*
 - f. *That the non-disclosure was never the intention nor was any undue advantage or gain was made out of the non-disclosure or caused any loss or damage to the interest of the investors.*
 - g. *That SEBI is requested to kindly pardon him for this time and take a lenient view on the same and that he assures SEBI that henceforth they will comply with the regulatory provisions without fail.*
8. In the interest of natural justice and in terms of Rule 4(3) of the SEBI Rules, the Noticee was granted an opportunity of hearing on July 24, 2015 vide hearing notice dated July 07, 2015.
9. On the scheduled date viz. July 24, 2015, Shri P. Venkateshwar Reddy, the Authorized Representative (AR) of the Noticee, appeared on his behalf and reiterated the submissions made by the Noticee vide letters dated April 10, 2015. The AR stated that additional written submissions will be filed by August 07, 2015.
10. Subsequently, the Noticee, vide letter dated August 12, 2015, submitted that he would opt for settlement under consent proceeding in terms of SEBI (Settlement of Administration and Civil Proceedings) Regulations, 2013. It is observed that while the Noticee submitted settlement application dated December 29, 2015, under SEBI (Settlement of Administration and Civil Proceedings) Regulations, 2013, he failed to pay the settlement charges in spite of repeated reminders. Accordingly, the settlement application of the Noticee was rejected by SEBI, vide intimation dated June 05, 2017.
11. In view of the same, the adjudication proceedings against the Noticee was re-commenced and a fresh notice of hearing was issued to the Noticee, vide letter dated June 22, 2017, advising him to make additional submissions including availing opportunity of hearing, if any, by July 10, 2017.

12. The Noticee, vide reply dated June 30, 2017, inter alia, submitted that, vide letter dated June 13, 2017, he had requested for re-consideration of his settlement application and decision of the committee was still awaited. The Noticee also requested for an opportunity of hearing to present his case.
13. Accordingly, vide letter dated August 01, 2017, an opportunity of personal hearing was scheduled for the Noticee on August 14, 2017. The hearing notice was also communicated to the Noticee through e-mail at: prabhakar_alokam@yahoo.com.
14. The Noticee, vide e-mail dated August 13, 2017, intimated that the notice dated August 01, 2017 was served to him only on August 12, 2017 and requested to reschedule the hearing. In view of the same, vide e-mail dated August 14, 2017, the Noticee was intimated that the date of hearing had been rescheduled to August 28, 2017. The Noticee, vide e-mail dated August 23, 2017, confirmed that his AR would attend the hearing on August 28, 2017.
15. On the scheduled date, Shri P. Venkateshwar Reddy, AR of the Noticee, appeared for the hearing and submitted that the Noticee would prefer settlement proceedings in response to SEBI letter no. SEBI/HO/EFD2/CSD/OW/P/2017/00000018249/1 dated August 02, 2017 and sought time till September 08, 2017 for the same. Since, no formal application in this regard was received by September 08, 2017, a letter dated September 20, 2017 was issued to the Noticee advising him to submit the settlement application latest by September 27, 2017, failing which it would be presumed that he no longer wishes to initiate the settlement proceedings and the adjudication proceedings would be re-commenced on the basis of material available on record.
16. However, as demand drafts submitted by the Noticee along with the settlement application earlier had lapsed and the Noticee failed to submit re-validated demand draft in spite of reminders, a communication to re-commence the adjudication proceedings was sent to the Noticee, vide letter dated June 11, 2018. Further, the Noticee was informed that personal hearing had been scheduled on June 25, 2018. However, the Noticee failed to appear for the

personal hearing. Subsequently, the Settlement Division (EFD-2) of SEBI, vide e-mail dated June 27, 2018 informed that they are in receipt of settlement application from the Noticee. Meanwhile, vide letter dated June 29, 2018, the Noticee was informed that another opportunity of personal hearing had been scheduled on July 19, 2018.

17. The Noticee, vide reply dated July 18, 2018, inter alia, made the following submissions:
 - a. *That, vide letter dated June 12, 2018, he had requested the Settlement Division, SEBI, to re-consider his settlement application. Response from the Settlement Division was awaited.*
 - b. *That the adjudication proceeding against him be dropped and allow him to proceed with settlement application.*
 - c. *That his AR, Shri Parne Venkateshwar Reddy would attend the hearing fixed on July 19, 2018.*
18. During the hearing the AR, inter alia, indicated that the Noticee would prefer settlement proceeding in the matter and requested to drop the adjudication proceeding. He also handed over a copy of the written submission made by the Noticee, vide letter dated July 18, 2018.
19. Subsequently, vide letter dated August 10, 2018, addressed to the Settlement Division, SEBI, the Noticee informed that consequent to the Internal Committee (IC) meeting, with respect to the settlement application of the Noticee, held on August 01, 2018, he preferred to withdraw the settlement application and requested to direct the matter for adjudication.
20. In view of the above, vide letter dated August 21, 2018, the Noticee was granted a fresh date of hearing on September 06, 2018. During the hearing, the AR, Shri Parne Venkateshwar Reddy, appeared on behalf of the Noticee. He submitted that a written submission would be submitted by September 10, 2018. The Noticee, vide e-mail dated September 10, 2018, had, inter alia, made the following submissions:

- a. *That he had made required disclosures in the prescribed formats under SEBI (SAST) Regulations, 2011 to the Company and the stock exchanges. Also, he had made required disclosures as per regulation 13(4A) of SEBI (PIT) Regulations 1992 to the Company for the above transaction and inadvertently missed sending disclosures to Stock Exchanges*
- b. *That he had properly intimated about the transactions to stock exchange under SEBI (SAST) Regulations, 2011 for dissemination to public and it was not my intention to avoid or delay filing of information to the stock exchange under SEBI (PIT) regulations, 2011*
- c. *Owing to his financial conditions, it is very difficult for me to pay penalty for not submitting disclosures to stock exchange as per SEBI (PIT) Regulations, 1992. Hence, requested to take lenient view of default committed in the matter.*

CONSIDERATION OF ISSUES AND FINDINGS

21. I have examined the SCNs and the supplementary SCNs issued to the Noticee, the submissions made by the Noticee in their replies and during the personal hearing and the documents available on record. I observe that the allegation against the Noticee is that he failed to make the relevant disclosures under Regulations 13(4), 13(4A) read with 13(5) of the PIT Regulations.
22. The issues that, therefore, arise for consideration in the present case are:
 - a. Whether the Noticee - Shri Alokam Prabhakara Rao failed to make the relevant disclosures under Regulation 13(4), 13(4A) read with 13(5) of the PIT Regulations?
 - b. Do the violations, if any, attract monetary penalty under Section 15 A (b) of SEBI Act?
 - c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?
23. Before moving forward, it is pertinent to refer to the relevant provisions of the PIT Regulations, which read as under:

“Regulation 13 - Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure

(1)...

(2)...

(3) ...

(4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as de fined by the company) from the last disclosure made under sub-regulation (2) or under this sub regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(4A) Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within [two] working days of: (a) the receipts of intimation of allotment of shares, or (b) the acquisition or sale of shares or voting rights, as the case may be.”

24. It is observed that the Noticee was a promoter and director of the company. In the month of July 2013, on five occasions the Noticee had sold 25,000 or more shares. The transaction details are provided below:

Sl. No.	Transaction Date	No. of Shares	Buy/ Sell	Due Date of Compliance	Regulation Violated
1	4/7/2013	1,00,000*	Sell	07/7/2013	13(4) & 13(4A) PIT Regulations
2	5/7/2013	1,00,000*	Sell	07/7/2013	13(4) & 13(4A) PIT Regulations
3	6/7/2013	50,000*	Sell	07/7/2013	13(4) & 13(4A) PIT Regulations
4	8/7/2013	25,000*	Sell	10/7/2013	13(4) & 13(4A) PIT Regulations
5	9/7/2013	35,000*	Sell	10/7/2013	13(4) & 13(4A) PIT Regulations
6	Total Sell	3,10,000			

Note:

* indicated to be pledged by the Noticee

25. I note from the submissions made that the Noticee has transacted in shares of Covidh Technologies Ltd. during the period March 2013 – September 2013. The Noticee altogether sold 3,10,000 shares of the company. There were 5 individual transactions as tabulated above, which were required to be disclosed by the Noticee to the company and the exchange(s) within two working days from the date of transaction.
26. It is seen from available record that while the required disclosures were made to the company, no disclosures were made to the stock exchange by the Noticee as required under regulation 13(4) and 13(4A) read with regulation 13(5) of the PIT Regulations. The Noticee, vide letter and e-mail dated April 10, 2015, admitted that the disclosures were not submitted to the stock exchange. He has, however, added that all the said shares were kept under pledge and obtained funds were invested in the company as working capital. As he could not repay the loans, the said pledged shares were sold without intimation to him. The shareholding was sent to the exchanges as per Clause 35 (shareholding pattern) of the Listing Agreement of every quarter and also in the yearly disclosure in terms of Regulation 30(2) of SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011. The non-disclosure was never the intention nor was any undue advantage or gain made out of the non-disclosure or caused any loss or damage to the interest of the investors. Also, after he became aware about such non-disclosure, he had promptly submitted the applicable disclosures under Regulation 13(4) and (4A) of PIT Regulations and Regulations 29(1), 29(2), 30(2) of SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011 as and when required without any failure.
27. The Noticee had indicated that the transactions were in the nature of pledge. However, in the instant case, the pledge has not been done in accordance with the provisions of Depositories Act, 1996, SEBI (Depositories and Participants) Regulations, 1996 and the Bye-laws and business rules of the depositories. Pledge or hypothecation under the depository laws does not involve any transfer of shares from the pledgor to the pledgee, as observed in the instant case, only an entry is recorded in respect of the securities so pledged or hypothecated. Further, NSDL and CDSL, vide e-mail dated January 03, 2014

and January 07, 2014, respectively, have also confirmed that no details are available with them with respect to pledging of shares by the Noticee. Hence it cannot be construed as pledge as disclosed to BSE under Regulations 31 (1) and 31 (2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. Since, the Noticee had transferred shares off-market and these shares had been credited in the account of beneficiaries, the Noticee was required to disclose their change in holding as required under PIT Regulations.

28. As the violation of the statutory obligation under Regulations 13(4) and 13(4A) read with 13(5) of PIT Regulations has been established, I hold that the Noticee is liable for monetary penalty under section 15A (b) of SEBI Act, which reads 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 there under,-

(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”

29. While determining the quantum of penalty under sections 15A (b), 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.

[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.]”

30. Thus, I find that in the extant case, as per Section 15A(b) of the SEBI Act, the Noticee is liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Further, under Section 15-J of the SEBI Act, the Adjudicating Officer has to give due regard to certain factors which have been stated as above while adjudging the quantum of penalty. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticee. Further, from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticee. However, I note that the ***Hon'ble Securities Appellate Tribunal (SAT) in the matter of Komal Nahata Vs. SEBI (Date of judgment-January 27, 2014)*** has also observed that -

“Argument that no investor has suffered on account of non-disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non-compliance of...and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non-disclosure.”

31. In this regard, I also note that in ***Appeal No. 78 of 2014 of Akriti Global Traders Ltd. Vs. SEBI, the Hon'ble Securities Appellate Tribunal (SAT) vide Order dated September 30, 2014*** had observed that -

“...Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay.”

¹ Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Part II Section 1 dated March 31, 2017, wef April 26, 2017

32. In view of the aforesaid judgments of SAT, the argument put forth by the Noticee that delay in reporting has not caused any loss to investors nor has the Noticee made any gain from delay in reporting is not relevant for the given case.
33. Obligation to make disclosures under PIT Regulations arises as soon as the transactions (buy / sell) is executed. The argument advanced by the Noticee that the disclosures were not made inadvertently cannot be accepted.
34. In the instant matter, there were, in all, 5 individual transactions that were required to be disclosed to the exchange in a time bound manner by the Noticee i.e. within 2 working days of the sale of shares. Thus, it is felt that, since there is failure on various occasions on the part of the Noticee to make disclosure to the exchange, the same has to be considered as repetitive. However, it is noted here that disclosures are seen to have been made by the Noticee to the company.
35. It is important to point out that securities market operates on a disclosure based regime and hence true and timely disclosure of information, as prescribed under the statute, is an important regulatory tool intended not only to enable regulator to effectively monitor transactions in the market but also helps investors to take well-informed decision. The Noticee, by his failure to make requisite disclosure under PIT Regulations has prevented dissemination of valuable information to investors at the relevant point of time.

ORDER

36. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee (both oral and written), as aforesaid, I, in exercise of the powers conferred upon me under Section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a **penalty of Rs.4,00,000/- (Rupees Four Lakh)** on **Shri Alokam Prabhakara Rao** under the provisions of Section 15A(b) of the SEBI Act for the failure on the part of the Noticee to make timely disclosures under Regulations

13(4) and 13(4A) read with 13(5) PIT Regulations. I am of the view that the said penalty is commensurate with the default committed by the Noticee.

37. 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 e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

38. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the General Manager (Enforcement Department- 1), Division of Regulatory Action- 1 (DRA-1), Securities and Exchange Board of India, “G” - Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051.
39. The format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular no. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID: tad@sebi.gov.in

Date	
Department of SEBI	
Name of Intermediary /other Entity	
Type of Intermediary	
SEBI registration no (if any)	
PAN	
Amount in Rupees	
Purpose of payment	

Bank Name and Account Number from which payment is remitted	
UTR No.	

40. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, a copy of this order is being sent to the Noticee namely, Shri Alokam Prabhakara Rao and also to Securities and Exchange Board of India, Mumbai.

Date: November 29, 2018
Place: Mumbai

Sanjay C. Purao
Adjudicating Officer