

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

**[ADJUDICATION ORDER NO. EAD-2/DSR/RG/PU/565/2016]**

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**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**

**Ms. Chandana Ghosh  
[PAN: AABPG1077A]**

**In the matter of  
ITC Limited**

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1. The Hon'ble Securities Appellate Tribunal vide order dated October 09, 2015, had set aside the adjudication order dated July 07, 2014 and restored the matter to the file of the Adjudication Officer for passing fresh order on merits and in accordance with law within six months from the date of the said order , after giving an opportunity of hearing to the Noticee.

**Notice, Reply and Personal Hearing**

2. Accordingly, an opportunity of personal hearing was granted to the Noticee on February 03, 2016 .However, vide email dated January 27, 2016, the Noticee requested for an adjournment of the scheduled hearing . The request for adjournment of the scheduled hearing was partially acceded to and accordingly, an opportunity of personal hearing was granted on February 12, 2016. The Authorized Representative (AR) attended the said hearing on the scheduled date and made oral

submissions. Further, the AR requested for time to file additional submissions in the matter. Accordingly, the AR was advised to file the same on or before February 22, 2016. Vide letter dated February 23, 2016, the Noticee submitted additional reply in the matter.

### **Consideration of Issues, Evidence and Findings**

3. I have carefully perused the charges levelled against the Noticee as mentioned in the Show Cause Notice dated November 29, 2013 (SCN), written/oral submissions and all the documents available on record. In the instant matter, the following issues arise for consideration and determination:

- a) **Whether the Noticee has violated the provisions of Regulation 13 (4) read with Regulation 13 (5) of the PIT Regulations?**
  - b) **Whether the Noticee is liable for monetary penalty under Section 15 A(b) of the SEBI Act?**
  - c) **If so, what should be the quantum of monetary penalty?**
4. Before moving forward, it will be appropriate to refer to the relevant provisions of the PIT Regulations, which read as under:

#### **PIT Regulations**

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

.....  
"(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 defined 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.*

*(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."*

5. It is observed that ITCL is listed on both the Bombay Stock Exchange (BSE) as well as the National Stock Exchange (NSE). It has been alleged in the SCN that the Noticee had sold 10,000 shares worth ₹ 35,37,078/- on July 11, 2013. The Noticee being an 'officer' of the company was under an obligation to disclose the change in shareholding that exceeded the value of ₹ 5,00,000/- to the company and the stock exchange, as required under Regulation 13 (4) read with 13 (5) of the PIT Regulations. Since, the Noticee failed to make the required disclosures, it was alleged that she has violated the provisions of law as prescribed under the PIT Regulations.
6. The Noticee vide her reply dated December 12, 2013, submitted that she was holding the position of a 'manager' in the Human resources function of the Trade Marketing and Distribution vertical of the Tobacco Division of ITCL. She also enclosed a copy of Form D (also dated December 12, 2013), addressed to both NSE and BSE, along with her reply to the SCN. Further, the Noticee stated that she was never in possession of any unpublished price sensitive information about ITCL and also that she is neither a director nor an officer of the company within the meaning of Regulation 13 (4) of the PIT Regulations.

7. In addition to her earlier submissions, vide letter dated May 12, 2014, the Noticee contended that, she is an employee in the Human Resources function of the Trade Marketing and Distribution vertical of the India Tobacco division of ITCL. The Noticee has quoted the definition of an 'Officer' as per Regulation 2 (g) of the PIT Regulations read with Section 2 (30) of the Companies Act, 1956, along with the definition of 'Manager' under Section 2(24) of the Companies Act, 1956, the definition of 'Secretary' as per Section 2 (45) of the Companies Act, 1956 and has contended that there is no possibility of her falling under any of the above mentioned definitions. Further, she submitted that ITCL is a multi-business conglomerate, with 11 divisions, spreading across Fast-Moving Consumer Goods (FMCG), paperboards and packaging, lifestyle retailing, hotels etc., including the 'Indian Tobacco Division'. The Board of Directors at the apex, as trustee of the shareholders, carry the responsibility for the strategic supervision of the Company. The strategic management of the company rests with the Corporate Management Committee (CMC) comprising the whole time directors and members drawn from the senior management. The executive management of each division is vested with the Divisional Management Committee (DMC), headed by the Chief Executive Officer for the said division. The structure of the company has been set out in a flowchart and the relevant pages of the Annual Report of ITCL for 2012 -2013, containing the Report on Corporate Governance depicts the governance structure of the company along with the roles of various entities and the nature of functions being carried out by each level thereof, was submitted as a part of the reply to the SCN, by the Noticee.

The same does not make any reference to the Noticee or even any other person at her level in the structure of the Company.

8. Furthermore, the Indian tobacco division itself is one of the 11 business divisions of the Company, which is further divided into 'Cigarette Brands and Supply Chain' and 'Trade Marketing & Distribution', along with all the other divisions and departments, has its own human resource department. Notably, each of the business divisions of ITCL has a separate human resources department, headed by a 'Head' of Human Resources, in addition to which there is a Corporate Human Resources department, the head of which is a member of the CMC. The Noticee is the head of the 'Competency Development and Human Resource' function of the 'Trade Marketing and Distribution' vertical of the Indian Tobacco Division' of the Company.
9. The Noticee further submitted that she had inadvertently referred to her position in the company as a Manager in her letter dated December 12, 2013. Even the Company's letter dated September 02, 2013 evinces the fact that the Noticee's designation is not that of a manager. In fact, persons internally given the nomenclature or label of manager are subordinate to the Noticee in hierarchy. The Noticee's responsibilities are that of implementing decisions taken above her level, by helping in the recruitment of new employees, developing training modules, conducting training programs for the field personnel and new joiners as per business requirements communicated to her by the chief operating officer of the Trade Marketing and Distribution division. She submits that there are about 65 personnel in the company who are at the same level as the

Noticee, and there are 42 personnel in the company who are above the Noticee in the hierarchy. The Noticee has relied upon the judgment of the Hon'ble Securities Appellate Tribunal in the matter of Shri Mahendra Pandey Maitri (dated December 17, 2013), which has clarified the scope of the definition of the term 'officer' in the context of Regulation 13 (4) of the PIT Regulations. She also submits that she was under the bonafide belief that she was not an 'officer' of the company and was not required to make any such disclosures and additionally she did not get any disproportionate gain or unfair advantage on account of the purported contraventions of Regulation 13 (4) and 13 (5) of the PIT Regulations.

10. Further vide letter dated February 23, 2016, the Noticee in addition to the submissions made by her in her previous replies dated May 12, 2014 and December 12, 2013, stated that the Hon'ble SAT had set aside the Adjudication order dated July 07, 2014 and had directed the Adjudicating officer to reconsider the matter in view of the facts laid down in another order dated February 26, 2015, against one Mr. A. K. Chowdhury who was the 'Head-Operations, Education and Stationery products business, ITC', where the Adjudicating officer had held that the employee was not an 'officer' of the company and that the present case relates to a 'Head-Human Resources & Competency Development' of the Trade Marketing and Distribution vertical of the Company. The Noticee also stated that the Hon'ble SAT has in effect, confirmed the test applied while passing the Adjudication Order dated February 26, 2015. The Noticee submitted that the structure of the company as set out in the flow chart and the relevant pages of the Annual report of the company for the year 2012 -2013 which are enclosed to the reply, depicts the Governance Structure of ITC Ltd.

and the roles of various entities and the nature of functions being carried out by each level thereof at ITC Ltd. However, the same has no reference to the Noticee or even to any person at her level in the structure of the Company. Further, it is evident from the list of Key Management Persons disclosed in the Annual Report as mentioned above that the Noticee is not one such person.

11. The Noticee further submitted that reference to herself as a 'manager' in her letter dated December 12, 2013 was merely with reference to the internal nomenclature assigned to the employees by the Company de hors the legal meaning and implication of the said term. Further, the fact that the Noticee is not a manager of the company is also borne out from the Company's letter dated September 02, 2013 addressed to the Noticee. The same letter was Annexure - 2 to the SCN. The Noticee, further submitted that it is trite law that mere reliance on the nomenclature without evaluation of the substance of the role is not tenable, as held by the Hon'ble Supreme Court of India in S.K. Verma v. Mahesh Chandra Pandey (1983) 4 SCC 214. Therefore, reliance cannot be placed on the mere nomenclature of the Noticee's job title. The Noticee also referred to the law laid down by the Hon'ble Supreme Court of India in Commissioner of Income Tax, Kerala v. M/s. Alagappa textile (Cochin) Ltd. (1980) 1 SCC 214 to reiterate the fact that the Noticee cannot be considered to be a 'manager' within the meaning and the scope of Section 2 (24) of the Companies Act, 1956, as she was not in the management of the whole, or substantially the whole, of the affairs of the company. Further, the Noticee submitted that upon consideration of the scope and nature of the Noticee's functions in the company, 'Head' of the said HR function, as a position it

is situated even below the half-way point in the corporate structure of the Company and also there were about sixty five personnel in the Company who were at the very same level as the Noticee, and there were forty two personnel in the Company who were above the Noticee in the hierarchy. Furthermore, the Noticee stated that she is one level below Mr Chowdhury, albeit in a different business division. In view of the same, it is the case of the Noticee that she cannot be said to be an 'officer' of the Company, especially when Mr Chowdhury has been held not to be an 'officer' by SEBI.

12. The Noticee drew reference to the explanatory circulars of the Department of Corporate Affairs, such as Department's Letter No. 8/65/2/30/63-PR, dated October 07, 1963 which states that, any person, occupying a position of responsibility as regards to a particular duty imposed by the Act, will be an officer in relation to that duty and submitted that the Noticee is not a person who is in occupation of a position whereby she is responsible for the compliance of any particular duty that has been cast upon the company under the Companies Act, 1956. The Noticee also drew reference to Department's letter No. 8/17/2(30)/76-CL-V, dated August 23, 1976, which states that the term 'officer', as defined under Section 2 (30) of the Companies Act, 1956 includes an employee if he has been vested with powers of financial control over one or more fields of operation of the company, and therefore, such an employee should be deemed to be falling under the category of the term 'officer', and submitted that the Noticee has no powers vested in her whereby she has any financial control over the trade marketing & distribution vertical of the company.



13. In so far as the judgment of the Hon'ble SAT in Sundaram Finance Ltd. v. SEBI [2010] SAT 286, which states that 'Officer' means a person holding an appointment to an office which carries with it an authority to give directions to other employees. Thus, an 'Officer' as distinct from a mere employee is a person who has the power of directing any other person or persons to do anything whereas an employee is one who only obeys. The Noticee submitted that the person concerned in this case was a part of the promoter group of that company and was the Senior Vice President (Special Projects), who admittedly occupied a senior management position and was the fourth person in the hierarchy of the appellant company, with several general managers reporting to him. He was also admittedly handling all the Special projects of that company. It was in the aforementioned context that the Hon'ble SAT held him to be an officer of the appellant company. The Noticee, thus, submitted that in these circumstances, to hold the Noticee to be an 'officer' of the company, would be misapplication and misinterpretation of the law laid down in the above mentioned case. The findings of the case that *'an 'Officer' as distinct from a mere employee is a person who has the power of directing any other person or persons to do anything* cannot be read independently and in isolation from its context and taken to an absurd extreme, whereby, only the lowest employee in an organizational structure will not be held to be an officer of the organization. Further, the Noticee submitted that such an interpretation, even otherwise, would be wholly incongruous to the intent and purpose of the definition of the term 'officer' which finds reference in the definition of 'officer in default' under Section 5 of the Companies Act, 1956 and attaches wide liability to such persons. To expand the definition

of 'officer' to include all employees capable of issuing directions to other employees would expose them to grave consequences in general law, having no connection with the securities market.

14. Further, the Noticee submitted that the Hon'ble SAT in its subsequent decision in *Shri Mahendra Pandey Maitri v. SEBI* [2011] SAT 201 has clarified the scope of the definition of 'officer' in the context of regulation 13 (4) of the PIT Regulations. The Hon'ble SAT relied on the definition of 'officer' in section 2(30) of the Companies Act, 1956 and held that, "*A reading of the above provision makes it clear that an 'officer' envisaged in Section 2 (30) of the Companies Act, 1956 is one who can direct or influence the affairs of the company as distinguished from a mere compliance officer.*" It is the submission of the Noticee that this principle has been applied in the case of Mr A. K. Chowdhury and the same ratio and principle would be applicable in the Noticee's case also.

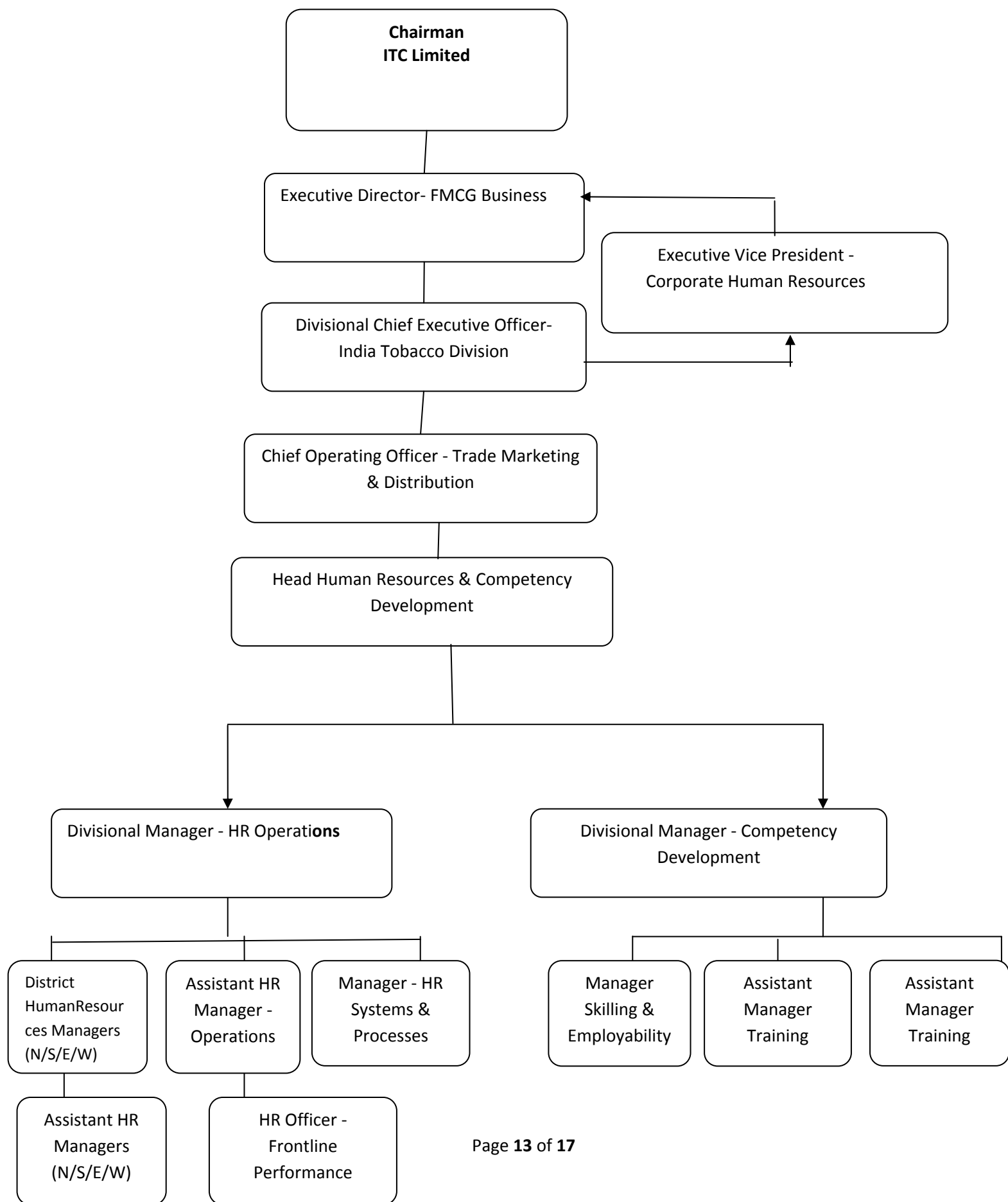
15. I find that ITCL is a multi-business Indian Conglomerate with Five Businesses i.e. FMCG, Hotels, Paperboards, Speciality Papers & Packaging and Agri - Business and Nine Corporate Functions i.e. Planning & Treasury, Accounting, Legal, Secretarial, Employees Health Scheme (EHS), Human Resources, Communications, Internal Audit and Information technology. The structural Governance of ITCL consists of the Board of Directors (Executive & Non-Executive Directors), who oversees the following committees, i.e. audit committee, compensation committee, nominations committee, investor services committee and sustainability committee, which consists of Executive Chairman and Members (Directors & Company Secretaries). They are followed by the Executive Chairman,

the Executive Director, DMC and the Divisional Chief Executive Officer, in the hierarchy. Further, the practice of Corporate Governance in ITCL takes place at three interlinked levels:

- i. **Strategic Supervision** by the Board of Directors
- ii. **Strategic Management** by the Corporate Management Committee, and
- iii. **Executive Management** by the Divisional/Strategic business Unit (SBU) Chief Executives assisted by the representative Divisional/SBU Management Committees.

16. Each business division has a separate Human Resources department and Corporate Human Resources department. The Noticee holds the position of the head of the 'Competency Development and Human Resource' function of the 'Trade Marketing and Distribution' vertical of the Indian Tobacco Division' of ITCL. The duties of the Noticee in ITCL are recruitment of personnel for Trade Marketing & Distribution, recruitment profile, qualifications and terms of employment of new employees, dealing with appraisals, promotions and processing of exits and maintenance of reports/records and information systems of the employees of the Trade Marketing & Distribution vertical. Some decisions emanate from the Executive Director - FMCG Business along with the Executive Vice President - Corporate Human Resources and are approved by the chairman and communicated to the Noticee through the Divisional Chief Operating officer of the Trade, Marketing and Distribution vertical.

Similarly some decisions emanate from the Divisional Chief executive Officer, India tobacco Division and are communicated to the Noticee through the Chief operating Officer of the Trade, Marketing and Distribution vertical. Further, Annexure C to her reply dated May12,2014, which is a flowchart of the Human resources function in the Trade Marketing & Distribution vertical of ITCL, is reproduced hereunder:



17. Upon perusal of the above chart, I find that the Noticee is the Head-Human Resource & Competency Development. The Divisional Manager - HR Operations, Divisional Manager - Competency Development, District human resources managers (N/S/E/W), the Assistant HR Managers - Operations, Manager - HR Systems and Processes, Manager Skilling & Employability, Asst Manager Training, Asst Manager Training, Asst. HR Managers (N/S/E/W), HR Officer - Frontline Performance are the personnel subordinate to the Noticee. The fact that there are 65 personnel who are at the same level as that of the Noticee and there were 42 personnel in the Company who were above the Noticee in the hierarchy at the relevant point of time is taken note of.

18. Now, I would like to refer to the relevant definitions which read as under:

i. **Regulation 2 (g) of PIT Regulations** - "*Officer of a company' means any person as defined in Clause (30) of Section 2 of the Companies Act, 1956 (1 of 1956) including an auditor of the company*".

ii. **Section 2 (30), Companies Act, 1956- Definition of 'Officer'** - "*Officer includes any director, manager or secretary or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act*".

19. Upon perusal of the definition of the term "Officer", I find that the said definition is an inclusive definition which includes any director, manager or secretary or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act. A plain reading of the said definition clearly shows that apart from a director, manager or secretary, any person who is in a position to direct or instruct the Board of Directors is included within the

ambit of the said definition. Here, I would like to refer to the judgement of the Hon'ble Securities Appellate Tribunal (SAT) in Sundaram Finance Ltd. V. SEBI [2010] SAT 286, (decided by 3 member bench) wherein it was held that "*....A reading of the aforesaid definition makes it clear that it is an inclusive definition. Apart from what the word 'Officer' means, it includes all that is stated therein. In other words, the definition does not exhaust all persons who otherwise come within its ambit or scope. While the definition says that it includes the persons specified therein, it doesn't say who are all the persons who will come within the term. We are of the view that an 'Officer' means a person holding an appointment to an office which carries with it an authority to give directions to other employees. Thus, an 'Officer' as distinct from a mere employee is a person who has the power of directing any other person or persons to do anything whereas an employee is one who only obeys. Any person who occupies a position of responsibility in a company will be an 'Officer' and this has been clarified by the Department of Company Affairs, government of India as per its letter dated October 7, 1963.*"

20. In the present case, I find that the Noticee is Head-Human Resource & Competency Development and the primary duties of the Noticee are recruitment of personnel for Trade Marketing & Distribution, recruitment profile, qualifications and terms of employment of new employees, dealing with appraisals, promotions and processing of exits and maintenance of reports/records and information systems of the employees of the Trade Marketing & Distribution vertical.

21. I further find that while remanding the present case to the undersigned, the Hon'ble SAT has relied upon an order dated February 26, 2015 passed by another Adjudicating Officer against Shri A.K. Chowdhury in the same scrip. The learned Adjudicating Officer in the said order had concluded

that the position held by Shri A. K. Chowdhury i.e “Head – Operations” - Education and Stationery products Strategic Business Unit is very low in the chain of management and would have no interaction with the Board of Directors or would not be a person on whose directions or instructions the Board of Directors or any Directors would be accustomed to act.

22. From the foregoing, I find that the Noticee, being the Head-Human Resource & Competency Development, is holding a position which is capable of giving directions or instructions to her subordinates only and not to the Board of Directors or any of the Directors of the Company and that she is an officer in the Company could not be established in the present case.

23. In view of the above, I conclude that the Noticee cannot be held liable for violating the provisions of Regulation 13 (4) read with Regulation 13 (5) of the PIT Regulations in as much as she cannot be said to be an “officer” of the Company within the meaning of Section 2(30) of the Companies Act, 1956.

### **ORDER**

24. 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 conclude that the charges levelled against the Noticee, Ms Chandana Ghosh do not stand established and the matter is, accordingly, disposed of.



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

**Date: March 22, 2016**

**Place: Mumbai**

**D. SURA REDDY  
GENERAL MANAGER &  
ADJUDICATING OFFICER**