

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AA/MG/2020-21/8529-8531]

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

Mr. Vidyadhar D Vardam (AEWPV1391M)
M/s. Avenue Supermarts Limited (AACCA8432H)
Ms. Ashu Gupta (AKEPG6148D)

In the matter of Avenue Supermarts Limited

FACTS OF THE CASE IN BRIEF:

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation in the scrip of Avenue Supermarts Limited (hereinafter referred to as '**Noticee 2/ ASL/ Company**'), which is listed on the Bombay Stock Exchange (herein after referred to as '**BSE**') and the National Stock Exchange (herein after referred to as '**NSE**') with respect to certain possible violations, during the period from 1st January 2018 to 31st December 2018 (herein after referred to as '**Examination Period**'). SEBI observed that one of the employees of the ASL viz. Mr. Vidyadhar Dinkar Vardam (hereinafter referred to as '**Noticee 1/by name**') had not complied with the disclosure norms as laid down in regulation 7(2)(a) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations**'). SEBI also observed that the Noticee 1 had failed to file the required

disclosure in terms of regulation 7(2)(b) of PIT Regulations and there is lapse on the part of the Compliance Officer viz. Ms. Ashu Gupta, (hereinafter referred to as '**Noticee 3/ by name**') (Collectively Noticees 1, 2 and 3 are referred to as '**Noticees**') with respect to regulatory compliance under the provisions of PIT Regulations and the Code of conduct framed thereunder for its employees as envisaged under PIT Regulations. Therefore, SEBI initiated adjudication proceedings against the Noticees under the provisions of Section 15A(b) of the SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI, vide order dated October 25, 2019, appointed the undersigned as Adjudicating Officer under Section 15 I of the **SEBI Act**, read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under Section 15A(b) of SEBI Act, the alleged violation of the provisions of law by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A show-cause notice (hereinafter referred to as '**SCN**') dated January 31, 2020, was issued to the Noticees under rule 4 of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against the Noticees and penalty not be imposed upon them under section 15A(b) of SEBI Act for the violations alleged to have been committed by the Noticees. The Noticees were given 15 days' time to make their submissions in respect of the allegations made in the SCN.
4. The following violations were alleged in the SCN, to have been committed by the Noticees:

Disclosure violations by the Noticee 1

- a. The Company has informed SEBI that one of its employees i.e. the Noticee 1, had not complied with the disclosure norms as laid down in regulation 7(2)(a) of PIT Regulations. SEBI observed that the following are the dates on which the trades executed by the Noticee 1 had triggered disclosure requirements in terms of Regulation 7(2)(a) of PIT Regulation:

Table 1

Sr. No.	Date of transaction	Traded Value (Rs. In lacs)	Whether disclosure required under Regulation 7(2)(a) of PIT Regulations	Due date for disclosure to company	Actual date of disclosure to company	No. of days of delay / Non-disclosure
1	08/02/18	229.97	Yes	12/02/18*	18/03/18	34 days
2	03/04/18	67.90	Yes	05/04/18	29/07/19	480 days
3	24/08/18	46.69	Yes	27/08/18	17/09/18	21 days
4	28/08/18	63.61	Yes	30/08/18	17/09/18	18 days
5	21/12/18	164.45	Yes	26/12/18*	31/12/18	5 days
6	28/12/18	63.10	Yes	01/01/19	31/12/18	Nil

*10/02/18, 11/02/18, 24/03/18, 25/03/18, 19/05/18, 20/05/18, 22/12/18, 23/12/18→ Saturday/ Sunday; 25/12/18→ Christmas holiday

- b. It is observed from the trades executed by the Noticee 1 during the examination period, that such trades had triggered disclosure requirement in terms of Regulation 7(2)(a) of PIT Regulations on six (6) occasions, as shown in Table 1. Out of the aforesaid 6 occasions, the Noticee had complied with disclosure requirement, on time only on one occasion (Mentioned in Sr. No. 6). In respect of the remaining 5 occasions (Mentioned in Sr. No. 1 to 5), the Noticee had delayed in making disclosures and on one occasion (Mentioned in Sr. No. 2) the delay was of 480 days. It is to be noted that there is consistent delay in making disclosures by the Noticee 1, prior to the receipt of warning letter from the company dated September 18, 2018 and continued with delay on one occasion dated December 21, 2018 even after receipt of warning letter. In view of the above facts and observations, it is alleged that the Noticee 1 has violated Regulation 7(2)(a) of PIT Regulations for making delayed disclosures on five (5).

Disclosure violations by the Noticee 2

- c. In terms of Regulation 7(2)(b) of PIT Regulations, the Noticee 2 has to file disclosures in respect of transactions mentioned at Regulation 7(2)(a) of PIT Regulation, within two trading days of receipt of the disclosure or from the date of becoming aware of such information.
- d. It was observed that there was one instance of delay in filing disclosure, by the Noticee 2, to the Exchanges as mentioned below:

Table 2

Name of the entity	Date of transaction	Nature of transaction	No of Shares	Traded Value (Rs. In lacs)	Date on which company became aware of transaction	Due date for reporting to Exchange	Date of report by the Noticee 2 to exchange	No of days of delay
Vidyadhar Dinkar Vardam	April 03, 2018	Sale	5000	67.90	April 09, 2018	April 11, 2018	July 29, 2019	474 days

- e. It is observed that M/s Link Intime India Private Limited, the RTA to the Noticee 2, had vide email dated April 09, 2018, informed the Noticee 2, about the transaction of the Noticee 1, executed on April 03, 2018, through its periodical "Benpos" report. Thus, the Noticee 2 was aware of the transaction of the Noticee 1, executed on April 03, 2018 on April 09, 2018 itself and was required to file disclosure in terms of Regulation 7(2)(b) of PIT Regulations by April 11, 2018. However, the Noticee 2 vide its email dated July 30, 2019 submitted that it had filed disclosure to the Exchanges on July 29, 2019, i.e. after a delay of 474 days. In view of the above facts and observations, it is alleged that the Noticee 2 has violated Regulation 7(2)(b) of PIT Regulations for making delayed disclosures on one (1) occasion and the delay was of 474 days.

Role of Compliance Officer:

- f. SEBI, vide its email dated August 05, 2019, had asked the Compliance Officer i.e. the Noticee 3, to confirm her duties and responsibilities with respect to PIT Regulations. The Noticee 3, in its reply, vide email dated August 06, 2019, had confirmed that the company had fixed the responsibility of monitoring the disclosure requirements under 7(2)(a) and 7(2)(b) of PIT Regulations on the Compliance

Officer cum Company Secretary. Further, it is also seen from the website of the company that the Noticee 3 is designated as the Compliance officer of the company. In addition to that, on September 18, 2018, Ms. Ashu Gupta had issued a warning letter to the Noticee 1, an employee of the company, as a compliance officer of the company.

- g. With respect to the transaction of the Noticee 1, executed on April 03, 2018, the disclosure was filed by the Noticee 2 to the Exchange on July 29, 2019. M/s Link Intime India Private Limited, the RTA to the Noticee 2, had informed the Noticee 2, vide email dated April 09, 2018, about the transaction of the Noticee 1, while forwarding its periodical “Benpos” report to the company and the aforesaid email was addressed to ashu.gupta@dmartindia.com. Therefore, there is lapse on the part of the Compliance Officer in regulatory compliance of provisions of PIT Regulations and the Code of conduct framed thereunder for its employees as envisaged under Regulation 9(3) of PIT Regulations. In view of the above facts and observations, it is alleged that the Noticee 3 has violated Regulation 9(3) read with 7(2)(b) of PIT Regulations.*

5. The SCNs were sent to the Noticees through Speed Post Acknowledgement due (herein after referred to as ‘**SPAD**’). Although the SCNs sent to the Noticees 1 & 2 were delivered, SCN sent to the Noticee 3 returned undelivered. The Noticee 1 vide letter dated February 24, 2020 and the Noticee 3 vide letter dated February 17, 2020, informed that they have not received the SCN. They also shared their latest addresses and requested for a copy of the SCN. The Noticees 1 & 3 were served copies of SCNs along with annexures vide separate letters dated March 04, 2020. The Authorized representative (herein after referred to as ‘**AR**’) of the Noticees 1 & 2 requested for inspection of documents. The request was acceded to and the inspection of the documents was completed on March 12, 2020. The Noticee 2, vide letter dated March 31, 2020, submitted reply to the SCN and *inter-alia* made the following submissions:

- a. *The Noticee submitted that its conduct has, at all times been in compliance with all obligations cast on it, in terms of the extant regulatory framework.*
- b. *The Noticee denied all allegations made against it in the SCN.*
- c. *That the copies of all the sought for documents were not provided during the inspection of documents.*
- d. *That Mr. Vardam was a non-designated employee of the Company at the relevant time and it was responsibility of Mr. Vardam to make disclosure of relevant trades. Mr. Vardam had made the disclosure to the Noticee 2 on July 29, 2019 and the Noticee 2 had made requisite disclosure to the stock exchanges on the same day.*
- e. *Mr. Vardam was aware of his obligations under the PIT Regulations and the same is also reflected in the Code. In fact, the Code was available on ESS Portal of the Company and the same could be accessed by all employees of the Company (including Mr. Vardam). Also, the Code was shared with all the employees via an email on March 18, 2017.*
- f. *That the Noticee 2 issued a warning letter to the Mr. Vardam for delayed disclosure. The Noticee 2 was not informed about the relevant trades within time.*
- g. *That the disclosure by Mr. Vardam in proper format which consist of all the relevant information about the transactions, to the Noticee 2 is precursor for the disclosure to be made by the Noticee 2 in terms of Regulation 7(2)(b) of PIT Regulations.*
- h. *That the Benpos report submitted by the depository to RTA is only record of securities as on date and is used by the listed companies for declaring dividends and to ascertain the voting rights as on date. Therefore, the 'Benpos' in itself is not a document that can be relied upon to determine the acquisition and disposable of shareholding which exceeded the threshold limits that require disclosure under the PIT Regulations.*
- i. *That the Benpos Report shared by the RTA to the Noticee 2, included the shareholding 'positions' as on April 06, 2018 as against that of March 31, 2018 ("**Benpos Report**"). This Benpos Report did not show the date wise transactions or the change in overall individual shareholding. The Benpos report does not include all the relevant information about trades of Mr. Vardam.*
- j. *That the conversion of shares from physical form to dematerialized form is typically reflected as a purchase of shares in the 'Benpos' report, which further demonstrates*

that placing reliance on 'Benpos' report for tracking of trades would be misplaced and could result in identification of incorrect information.

- k. That the disclosure obligation of a listed company under Regulation 7(2) (b) of the PIT Regulations, is triggered upon such company 'becoming aware of such information'.*
- l. The PIT Regulations rightly do not impose any obligation on a listed company to undertake suomoto investigation into the trading activity of its employees, since such an exercise would be unviable and result in a significant drain on the resources of the company. It is for this reason, that a legal obligation had been cast on employees themselves to report their trades to the company.*
- m. That it would be unreasonable and wholly impracticable for the Noticee 2 to be expected to review the Benpos Report in order to identify the change in the shareholding of all its employees on an ongoing basis,. As mentioned above, the Benpos Report is generated for an entirely different purpose and is not intended to be used as a tool to track trading by employees.*
- n. That in the instant case a reasonable construction of the phrase 'becoming aware of such information' in Regulation 7(2)(b) of the PIT Regulations is called for. The said phrase has to be interpreted to mean becoming aware due to a disclosure made by the employee. Any other interpretation, which confers an obligation on the company to suomoto investigate the trading history of employees would result in **"hardship, serious inconvenience, injustice, absurdity or anomaly"**.*
- o. That the Noticee has 7700 employees and it is unviable and impractical to rely on the 'Benpos' report as being indicative of the trades undertaken by the Company's employees.*
- p. That failure by Mr. Vardam to perform his legal obligations cannot automatically lead to the creation of an onerous responsibility on the Noticee 2 to conduct a suomoto investigation into the trading history of Mr. Vardam, especially when no such obligation exists under the PIT Regulations.*
- q. That PIT Regulations have been amended with effect from April 01, 2019, and only designated employees are required to make disclosures after amendment. The aforesaid policy change recognized that disclosure of trades by all employees is an onerous requirement and not commensurate to the compliance obligations cast under*

the PIT Regulations. Mr. Vardam was never identified as a Designated person of the Noticee 2.

- r. We would urge the Hon'ble Adjudicating Officer to take a lenient view of this matter, given that the PIT Regulations have themselves undergone a change and are no longer applicable to instances such as the Relevant Trade.*

6. The Noticee 3, vide letter dated March 31, 2020, submitted reply to the SCN and *inter-alia* made the following submissions:

- a. The Noticee 3 submitted that it's conduct has, at all times been in compliance with all obligations cast on it, in terms of the extant regulatory framework.*
- b. The Noticee 3 denied all allegations made against it in the SCN.*
- c. That the copies of all the sought for documents were not provided during the inspection of documents.*
- d. That Mr. Vardam was a non-designated employee of the Company at the relevant time and it was responsibility of Mr. Vardam to make disclosure of relevant trades. Mr. Vardam had made the disclosure to the Noticee on July 29, 2019 and the Noticee had made requisite disclosure to the stock exchanges on the same day.*
- e. Mr. Vardam was aware of his obligations under the PIT Regulations and the same is also reflected in the Code. In fact, the Code was available on ESS Portal of the Company and the same could be accessed by all employees of the Company (including Mr. Vardam). Also, the Code was shared with all the employees via an email on March 18, 2017.*
- f. That the Noticee 3 issued a warning letter to the Mr. Vardam for delayed disclosure. The Noticee 3 was not informed about the relevant trades within time.*
- g. That the disclosure by Mr. Vardam in proper format which consist of all the relevant information about the transactions, to the Noticee is precursor for the disclosure to be made by the Noticee 2 in terms of Regulation 7(2)(b) of PIT Regulations.*
- h. That the Benpos report submitted by the depository to RTA is only record of securities as on date and is used by the listed companies for declaring dividends and to ascertain the voting rights as on date. Therefore, the 'Benpos' in itself is not a document that can*

be relied upon to determine the acquisition and disposable of shareholding which exceeded the threshold limits that require disclosure under the PIT Regulations.

- i. That the Benpos Report shared by the RTA to the Noticee, included the shareholding 'positions' as on April 06, 2018 as against that of March 31, 2018 ("**Benpos Report**"). This Benpos Report did not show the date wise transactions or the change in overall individual shareholding. The Benpos report does not include all the relevant information about trades of Mr. Vardam.
- j. The PIT Regulations rightly do not impose any obligation on a compliance officer to undertake suo moto investigation into the trading activity of the employees of a company, since such an exercise would be unviable and result in a significant drain on the resources of the company. It is for this reason, that a legal obligation had been cast on employees themselves to report their trades to the company.
- k. That the conversion of shares from physical form to dematerialized form is typically reflected as a purchase of shares in the 'Benpos' report, which further demonstrates that placing reliance on 'Benpos' report for tracking of trades would be misplaced and could result in identification of incorrect information.
- l. That the disclosure obligation of a listed company under Regulation 7(2) (b) of the PIT Regulations, is triggered upon such company 'becoming aware of such information'.
- m. That it would be unreasonable and wholly impracticable for the Noticee 3 to be expected to review the Benpos Report in order to identify the change in the shareholding of all its employees on an ongoing basis. As mentioned above, the Benpos Report is generated for an entirely different purpose and is not intended to be used as a tool to track trading by employees.
- n. That in the instant case a reasonable construction of the phrase 'becoming aware of such information' in Regulation 7(2)(b) of the PIT Regulations is called for. The said phrase has to be interpreted to mean becoming aware due to a disclosure made by the employee. Any other interpretation, which confers an obligation on the company to suo moto investigate the trading history of employees would result in "**hardship, serious inconvenience, injustice, absurdity or anomaly**".

- o. *That the Company has 7700 employees and it is unviable and impractical to rely on the 'Benpos' report as being indicative of the trades undertaken by the Company's employees.*
 - p. *That failure by Mr. Vardam to perform his legal obligations cannot automatically lead to the creation of an onerous responsibility on the Noticee 3 to conduct a suomoto investigation into the trading history of Mr. Vardam, especially when no such obligation exists under the PIT Regulations.*
 - q. *That PIT Regulations have been amended with effect from April 01, 2019, and only designated employees are required to make disclosures after amendment. The aforesaid policy change recognized that disclosure of trades by all employees is an onerous requirement and not commensurate to the compliance obligations cast under the PIT Regulations. Mr. Vardam was never identified as a designated person of the Company.*
 - r. *We would urge the Hon'ble Adjudicating Officer to take a lenient view of this matter, given that the PIT Regulations have themselves undergone a change and are no longer applicable to instances such as the Relevant Trade.*
7. The Noticees were granted opportunity of personal hearing on June 22, 2020, in the interest of principles of the natural justice, vide email dated June 09, 2020. The AR of the Noticee 1, vide email dated June 19, 2020, submitted reply to the SCN dated April 13, 2020, and *inter-alia* made the following submissions:
- a. *The Noticee 1 submitted that he is a commerce graduate from Mumbai who joined ASL as a cash officer in December 2000. The Noticee 1 has since been associated with ASL and consistently performed well due to immense hard work. Consequently, the Noticee received several promotions and currently, the Noticee 1 is the store manager at ASL's store in Vidhyavihar, Mumbai. As part of his remuneration, the Noticee 1 has received employee stock options ("ESOPs") of ASL. The Noticee 1 has exercised his ESOPs to obtain shares of ASL in March 2015. The Noticee's career as a store manager of ASL has been exemplary with no complaints from ASL in relation to his professionalism and performance.*

- b. *That he was desirous of purchasing a house in Thane (the current residential address of the Noticee 1). Accordingly, the Noticee 1 began selling/ pledging shares of ASL in tranches to raise funds for the said purchase. In this regard, the Noticee 1 pledged 70,000 shares of ASL in February 2018. Subsequently, the Noticee 1 on various occasions sold shares of ASL on April 3, 2018 (5000 shares), August 24, 2018 (3000 shares), August 28, 2018 (4000 shares) and December 21, 2018 (14,650 shares). It is respectfully submitted that the Noticee 1 does not trade in securities market usually, and the Noticee 1 also lacks knowledge about the functioning of the securities market.*
- c. *For the said trades, the Noticee 1 had made disclosures belatedly. In fact, the Noticee 1 has also been penalized by ASL by way of warning letter dated September 18, 2018 ("Warning Letter") and monetary penalty of INR 25,000.*
- d. *That the Noticee 1 has taken corrective steps and always complied with all the laws.*
- e. *That there was no intention to manipulate or defraud the market. Also, the Noticee 1 had no access to unpublished price sensitive information ("UPSI") relating to ASL. Thus, the violation of Regulation 7(2)(a) of the PIT Regulations was, at best, due to a procedural lapse.*
- f. *That the PIT Regulations has been subsequently amended to remove the requirement of non-designated employees to make disclosures under Regulation 7(2)(a) of the PIT Regulations.*
- g. *That the Noticee 1 did not make any profit or avoided loss due to failure of making timely disclosures relating to the trades of the Noticee 1. Admittedly, the Noticee 1 is not a designated person of ASL, and that the Noticee 1 has no access to UPSI.*
- h. *That the fact of the Noticee 1 not making timely disclosures of his trades has not resulted in any unfair advantage being extended to the Noticee 1. Pertinently, on all the days when the Noticee 1 traded, the volume of the Noticee's trade was minuscule as compared to the total trade volume.*
- i. *Subsequently, upon receipt of the Warning Letter, the Noticee 1 has made timely disclosures (except for the trade on December 21, 2018). The delay in making disclosure pertaining to trade on December 21, 2018 was due to there being public holidays, thus, the Noticee made a miscalculation on the day on which disclosure was*

required to be made. In any event, ASL has imposed a monetary penalty of INR 25,000 on the Noticee 1.

- j. Without prejudice to the aforesaid, it is also humbly submitted that the requirement for an employee to make disclosures upon exceeding a prescribed limit has now been deleted (i.e. by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2019). The Committee on Fair Market Conduct ("Committee") chaired by Dr. T. K. Viswanathan, recognized the difficulty for the company and its employee to comply with the requirement of making disclosures upon exceeding prescribed limits.*
- k. That the track record of the Noticee 1 has been impeccable and the Noticee 1 has never been subjected to any order from any government authority, including SEBI. Admittedly, the Noticee 1 has not made any undue gains or avoided loss by making delayed disclosures. There is not a single investor complaint, or any finding of a loss caused to even a single investor. The sanctity of the securities market is also not compromised in any manner whatsoever.*

8. Pursuant to the consideration of the reply, oral hearing was conducted. In view of the difficulties posed due to Covid -19 Epidemic and subsequent lockdown, the hearing proceedings were conducted online through videoconferencing. The AR of the Noticee 1 attended the online hearing on the scheduled date & time and reiterated the contents of his reply dated April 13, 2020. The Noticee 1 was granted time till June 26, 2020 to file additional submissions in the matter. The AR of the Noticees 2 and 3 attended the online hearing on the scheduled date & time and reiterated the contents of their replies dated March 31, 2020. The Noticees 2 and 3 were granted a further opportunity of hearing on June 24, 2020, upon their request. The AR also attended the final hearing and made submissions. The Noticees 2 and 3 were granted time till July 03, 2020 to file additional submissions in the matter.

9. The Noticee 1, vide letter dated June 26, 2020, *inter alia* made following additional submissions:

- a. *The Noticee 1 submitted that the Noticee was not in possession of or had access to UPSI at the time of trading. He sold shares as he needed money.*
- b. *It is humbly requested that the Hon'ble AO not impose any penalty on the Noticee given that the Noticee's actions were not in defiance of the law or that his conduct was not dishonest. The Noticee has not consciously disregarded his obligations under the PIT Regulations or any other law.*
- c. *That a nil or token penalty may be imposed on the Noticee 1.*
- d. *That the alleged default was merely a procedural and technical breach.*
- e. *That The PIT Regulations, as it stands today, does not require employees (who are not designated persons) to make disclosures to company in relation to trades of such company.*
- f. *That a reasonable benefit of doubt should be extended to the Noticee in the present case. Especially, it should be noted that the Noticee, not being a regular participant in the securities market, was not well versed with the legal requirement of making disclosures under the PIT Regulations. In any event, the Noticee has not gotten any benefit by making delayed disclosures.*

10. The Noticees 2 and 3, vide letter dated July 03, 2020, *inter alia* made certain additional common submissions, which are stated below:-

- a. *The Noticee 2 submitted that the Increase Decrease (Combined) Benpos as on April 6, 2018 and March 31, 2018 ("Benpos Report"), shared by the Registrar and Share Transfer Agent ("RTA"), viz., M/s. Link Intime India Private Limited, to the Noticee, constituted 10,785 entries, spread over 205 pages. In addition, as on April 6, 2018, the Noticee company had 1,58,722 shareholders (which have now been increased to approximately 2,86,933 shareholders). Thus, Mr. Vardam held only 0.01% of the total shareholding in the company.*
- b. *That the Benpos Report is a voluminous document, making it practically impossible for the Noticee company to independently ascertain the need to make disclosures under Regulation 7(2)(b) of the PIT Regulations. Moreover, this Benpos Report contains generic information without any details essential for ascertaining the identity of a person*

including PAN number. It also does not show the date wise transactions, the change in overall individual shareholding or the particulars of transaction, including whether the change in shareholding is due to a net off of multiple transactions in a week or a single transaction

- c. That the Benpos Report is only a record of securities as on date and is used by the listed companies for declaring dividends and ascertaining the voting rights as on a particular date. Therefore, the Benpos Report in itself is not a document that can be relied upon to determine the acquisition and disposable of shareholding which exceeded the threshold limits that require disclosure under the PIT Regulations.*
- d. That SEBI vide the 2015 Circular, introduced system driven disclosures, specifically for promoter/promoter group entities under the SAST Regulations. Subsequently, vide the 2018 Circular, system driven disclosures were inter alia expanded to disclosures under Regulation 7(2) of the PIT Regulations pertaining to directors, CEO and employees upto two levels below CEO. Mr. Vardam did not fall within the category of the identified employees.*
- e. That 'becoming aware of such information' cannot be interpreted in such a way so as to create an onerous burden on the Noticee company to conduct a suo moto investigation into the trading history of Mr. Vardam, especially when no such obligation exists under the PIT Regulations. The same would render the provisions of Regulation 7(2)(a) otiose and create an absurd standard wherein it could be conceivably argued by an employee or a designated person that their obligation under Regulation 7(2)(a) stands complied as the company had received a 'Benpos' report.*
- f. That the FMC Report, the Committee observed that, the reporting requirements by every employee, director, promoter, under Regulation 7(2) of the PIT Regulations, puts undue burden on the listed company, its employees and the compliance officer, especially in cases wherein the company has thousands of employees. Accordingly, it was recommended that Regulation 7 of the PIT Regulations should be amended to restrict its applicability to only a specified category of employees.*
- g. We would urge the Hon'ble Adjudicating Officer to take a lenient view of this matter.*

The Noticees also cited various case laws and judgments in support of their submissions.

Consideration of Issues, Evidence and Findings

11. I have carefully perused the oral and written submissions of the Noticees and the documents available on record. The issues that arise for consideration in the present case are:

- (a) Whether the Noticee 1 has violated Regulation 7(2)(a) of PIT Regulations on five occasions?
- (b) Whether the Noticee 2 has violated Regulation 7(2)(b) of PIT Regulations on one occasion and the Noticee 3 has violated Regulation 9(3) read with Regulation 7(2)(b) of PIT Regulations on one occasion?
- (c) Does the violation, if any, attract monetary penalty under Sections 15A(b) of SEBI Act.
- (d) If so, what should be the quantum of monetary penalty?

12. In this context, it is pertinent to refer to the relevant provisions of the PIT Regulations which read as under:

Relevant provisions of PIT Regulations:

7. (2) Continual Disclosures.

(a). Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;

(b). Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information.

....

Disclosure of interest or holding by directors, officers and substantial shareholders in a listed companies-

Code of Conduct

9.(3) Every listed company, market intermediary and other persons formulating a code of conduct shall identify and designate a compliance officer to administer the code of conduct and other requirements under these regulations.

NOTE: *This provision is intended to designate a senior officer as the compliance officer with the responsibility to administer the code of conduct and monitor compliance with these regulations.*

13. The first issue for consideration is whether the Noticee has violated the provisions of Regulation 7(2)(a) of PIT Regulations on five (5) occasions. A plain reading of Regulation 7(2)(a) of PIT Regulations says that every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified.
14. From the available records, I find that the Noticee 1, who was one of the employees of the ASL at the relevant time, has dealt in shares of ASL on multiple occasions, during the investigation period. I note from the SCN that on six (6) instances as mentioned in Table - 1 of this order, his transactions triggered disclosure in terms of Regulation 7(2)(a) PIT Regulation, as the Noticee 1 has traded shares worth more than Rs. 10,00,000/-. However, on five instances mentioned at serial number 1 to 5 of the Table – 1, it is alleged that the disclosure made by the Noticee 1, in terms of aforesaid PIT Regulations, was delayed by 5 to 480 days.
15. I note that the Noticee 1 has not disputed the facts of the case. Further, in his replies to the SCN dated April 13 and June 26, 2020, the Noticee 1 has submitted that he is not a regular participant in the securities market and he was not well

versed with the legal requirement of making disclosures under the PIT Regulations. He further stated that the default is merely a procedural and technical breach and there was no intention to defraud the market. He also submitted that did not make any profit or avoided loss due to failure in making timely disclosures relating to the trades of the Noticee. In this regard, I note that the Hon'ble SAT through various judgments, has consistently observed that these factors are not valid grounds for not complying with the mandatory disclosure obligations under the PIT regulations. In the matter of Virendrakumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014 order dated October 14, 2014), Hon'ble SAT observed that *"..... obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures."*

16. The Noticee 1 further submitted that PIT Regulations as it stands today, does not require employees, who are not designated persons, to make disclosures to company. In this regard, I note that at the time of trading, the Noticee 1 was required to make the disclosures, under the then existing PIT Regulations, as evident from the applicable legal provisions. In view of the above, I note that the Noticee 1 has admittedly made delayed disclosures, in violation of Regulation 7(2)(a) of PIT Regulations on five (5) occasions.

17. The second issue for consideration is whether the Noticee 2 has violated Regulation 7(2)(b) of PIT Regulations and the Noticee 3 has violated Regulation 9(3) read with Regulation 7(2)(b) of PIT Regulations on one occasion. A plain reading of Regulation 7(2)(b) of PIT Regulations says that every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming

aware of such information. Upon perusal of the replies of the Noticees 2 & 3 and the documents available on record, I find that the Noticees 2 & 3 have not disputed the facts pertaining to delay in disclosures.

18. From the available records, it is observed that one of the employees (the Noticee 1 i.e. Mr. Vidyadhar Vardam) of the Noticee 2, a listed company, has dealt in shares of ASL on multiple occasions, during the investigation period. I note from the SCN that sale trade(s) of 5000 shares executed by the aforesaid employee, on one instance i.e. April 03, 2018, worth more than Rs. 10,00,000/- as mentioned in Table - 2 of this order, triggered disclosure by the Noticee 2, in terms of Regulation 7(2)(b) PIT Regulation. It is further observed from the SCN that on April 09, 2018, the Registrar and Transfer Agent (herein after referred to as '**RTA**') to the Noticee 2, had emailed periodical "Benpos" report to the Noticee 2, which does contain the information about the transaction of the Noticee 1 also. Thus, the Noticee 2 was aware of the transaction of the Noticee 1, executed on April 03, 2018 on April 09, 2018, itself and was required to file disclosure in terms of Regulation 7(2)(b) of PIT Regulations by April 11, 2018. In this regard, the Noticees 2 & 3 submitted that the 'Benpos' is only a record of securities as on date and is used by the listed companies for declaring dividends and ascertain the voting rights as on date. The 'Benpos' report shared by the RTA to the Noticee 2, included the shareholding 'positions' as on April 06, 2018 as against that of March 31, 2018. The Noticees 2 & 3 further submitted that the Benpos Report is a voluminous document and it neither contains the date wise transactions or the change in overall individual shareholding nor it contains other necessary details required for filing disclosure. The Noticees 2 & 3 submitted that the 'Benpos' in itself is not a document that can be relied upon to determine the acquisition and disposal of shareholding which exceeded the threshold limits that require disclosure under the PIT Regulations.

19. I have perused the aforesaid Benpos report, I note that the title of the report is '**List of Beneficiaries where there is decrease in shareholding**'. Further, in the

aforesaid report at serial number 47, in third column the Name Vidyadhar is mentioned and in the next two columns his beneficiary position shareholdings as on April 06, 2018 and March 31, 2018 are mentioned which were 120400 and 125400, respectively. In the next column of aforesaid Benpos Report, a negative difference of five thousand (5000) shares is mentioned. Further, DP-CL ID of the Noticee 1 is also available in the report. From the above, it is observed that the aforesaid Benpos report clearly indicated that there has been reduction of 5000 shares in the shareholding of Mr. Vidyadhar Vardam. Therefore, I find that the Noticees 2 & 3 were in possession of the information regarding change (reduction) in shareholding of Mr. Vidyadhar Vardam on April 09, 2018.

20. The Noticees 2 & 3 further contended that a failure by Mr. Vardam to perform his legal obligations cannot automatically lead to the creation of an onerous responsibility on the Noticee to conduct a *suo moto* investigation into the trading history of Mr. Vardam, especially when no such obligation exists under the PIT Regulations. The Noticees 2 & 3 also submitted that Benpos Report contains generic information without any details essential for ascertaining the identity of a person including PAN number. In this regard, I note from the aforesaid *Benpos* report that in the second column of the report, DP CL Ids, which is also known as *unique Beneficial Owner Ids* (herein after referred to as '**BO ID**') of all the Beneficiaries including Mr. Vardam are mentioned. It is also noted that PAN of the first and second holder is also usually provided in the BenPos Report. A simple search based on BO ID or PAN could have easily revealed to the Noticees 2 & 3 about the transaction of Mr. Vardam and the Company could have asked Mr. Vardam to file the disclosure in proper format along with all the required information. This kind of a search of BO ID by no means can be equated to an investigation. Thus, I do not find any merit in this contention.

21. The Noticees 2 & 3 contended that ASL has more than 7,700 employees. Given the wide geographic reach of the Company and the number of employees, it is unviable

and impractical to rely on the 'Benpos' report as being indicative of the trades undertaken by the Company's employees. The statutory disclosure requirements are applicable to all listed companies, irrespective of the number of its employees or geographical reach. Therefore, I am unable to accept the aforesaid contention of the Noticees 2 & 3.

22. The Noticees 2 & 3 also submitted that the disclosure from Mr. Vidyadhar Vardam, in proper format which consist of all the relevant information about the transactions, to the Noticee 2 is precursor for the disclosure to be made by the Noticee 2 in terms of Regulation 7(2)(b) of PIT Regulations. The Noticees 2 & 3 has further submitted that Mr. Vidyadhar Vardam had not made timely disclosures to the Noticee 1 at the relevant time and therefore, the Noticees 2 & 3 were entirely unaware of the relevant trade. The provisions of Regulation 7(2)(b) clearly requires the company to make disclosures within 2 trading days from the date of receipt of the disclosure or **from becoming aware of such information**. In the replies of the Noticees 2 & 3, they have admitted that on many other instances the Noticees 2 & 3, had promptly complied with its obligations in terms of PIT Regulations yet the Noticee 2 had made necessary disclosures to the stock exchanges upon becoming aware of the transactions. Further, while it is not in dispute that Mr. Vidyadhar Vardam, the employee of the ASL, failed to submit timely disclosures to the Noticee 2, it is the awareness of the Noticee 2 with respect to the trades that form the basis of the charges against it. I note that the intent behind the legislators to specifically include the factor of awareness to trigger the disclosure requirement under Regulation 7(2)(b) cannot be ignored. Such inclusion is in view of the fact that trades executed by an employee of the listed company which valued more than Rs. 10 Lakh in a calendar quarter, is a significant information for the investors of the company. In addition to that, the company having the obligation to disclose within two days from the date of awareness also demonstrates the accountability tagged on to a listed company vis-a-vis its investors. Therefore, the submission of the Noticees 2 & 3,

that the company cannot submit disclosures unless and until it receives complete and proper disclosures from the employee cannot be accepted once it is clear that the company is aware of such trades. The statutory requirement of the Noticee 2 triggered as soon as the Company becomes aware about the trades, which is through BenPos report in the instant case. The Noticee 2 was required to make disclosures in terms of Regulation 7(2)(b) of PIT Regulation for the trades executed by Mr. Vidyadhar Vardam on April 03, 2018, on April 11, 2018; however, it has submitted the disclosure on July 29, 2019.

23. The further issue to be discussed is whether the compliance officer of ASL, the Noticee 3 i.e. Ms. Ashu Gupta was also responsible for such failure of ASL. In this regard, I note from the Regulation 9(3) of PIT Regulations that every listed company, market intermediary and other persons formulating a code of conduct shall identify and designate a compliance officer to administer the code of conduct and other requirements under PIT regulations. I note from the e-mail dated August 06, 2019, sent by the Noticee 3, in her capacity of Compliance officer of ASL that the Compliance officer i.e. the Noticee 3, is responsible for maintenance of records, monitoring of trades and implementation of PIT Regulations etc. I also note from the Annexure III of the SCN, which is email from RTA dated August 06, 2019, to the Company that RTA forwarded aforesaid Benpos report (dated April 06, 2018) vide email dated April 09, 2018, and the aforesaid email was addressed to ashu.gupta@dmartindia.com. Thus, it is clear that the Noticee 3 was not only responsible for the compliance and monitoring of PIT Regulations but she also had the Benpos report in her possession at the relevant time however she did not file the necessary disclosure with the exchanges. Therefore, I conclude that the Noticee 3 i.e., Ms. Ashu Gupta has violated the provisions of Regulation 9(3) read with 7(2)(b) of PIT Regulations.

24. I note that the Noticees 2 & 3 have *inter alia* stated that copies of certain documents including examination report, requested by the Noticee, were not provided to them.

However, it is seen that the documents relied upon in the instant proceedings with respect to the Noticees 2 & 3, have already been provided to them. The Noticees 2 & 3 have also submitted that the Noticee 2 had warned and also penalized Mr. Vardam for delayed disclosures. In this regard, I note that the aforesaid actions taken by the Noticee 2 are within framework of 'Code of Internal Procedures and Conduct for Regulating, Monitoring and Reporting of Trading by Insiders' and such actions cannot absolve the Noticee 2 & 3, from their obligations under PIT Regulations.

25. The Noticees also stated that PIT Regulations are amended and as of now only promoters, directors and designated persons are required to make disclosures. In this regard I note that, the aforesaid amendments are applicable with effect from April 01, 2019 and these amendments do not have retrospective operations. The Noticees have also submitted that the intention of the legislator to include word 'employee' in Regulation 7(2)(a) of the PIT Regulations at the relevant time, was not meant to cover all employees of the company but to create a database of persons who have access to UPSI and trade in the shares of its employer. The Noticees have also cited judgements of the Hon'ble Supreme Court in the matter of *State of Bihar v. S.K. Roy* (reported in AIR 1966 SC 1995) and *Ghanshyam Dass and Ors. v. Dominion of India and Ors.* (Reported in 1984 (32) B.L.J.R. 222). However, I note that the Regulation 7(2)(a) of the PIT Regulations explicitly mentions that the trades of employees have to be disclosed for the relevant period and there is no scope for a different interpretation.

26. The purpose of these disclosures is to bring about transparency in the transactions of Directors/ Promoters/ Acquirers/ employees and assist the Regulator to effectively monitor the transactions in the market. Hon'ble SAT in the case of **M/s. Coimbatore Flavors & Fragrances Ltd. & Ors vs SEBI (Appeal No. 209 of 2014 order dated August 11, 2014)**, observed "*Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and*

timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."

27. In view of the above, I find that the allegation of violation of Regulation 7(2)(a) of the PIT Regulations against the Noticee 1, for making delayed disclosures on five (5) occasions stands established. I also find that the allegation of violation of Regulation 7(2)(b) of the PIT Regulations against the Noticee 2 and allegation of violation of Regulation 9(3) read with 7(2)(b) of the PIT Regulations against the Noticee 3 for making delayed disclosures on one (1) occasion stands established. In this regard I would be guided by the ruling of the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) 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....."*

28. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section 15A(b) of the SEBI Act which reads as under:

SEBI Act

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made there under,—*

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

29. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the relevant factors as stipulated in Section 15J of the SEBI Act which reads as under:

Factors to be taken into account by the adjudicating officer.

Section 15J - 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. In view of the charges as established, the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15-J of the SEBI Act stated as above. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the failure of the Noticees in making timely disclosures or the consequent loss caused to investors as a result of the default. Further, the Noticee 1 has made delayed disclosures on five (5) occasions, in violation of Regulation 7(2)(a) of PIT Regulations as brought out above which demonstrates the repetitive nature of default on its part. However, the delay has been substantial only on one occasion

i.e. with respect to trading on April 03, 2018, there is delay of 480 days in the disclosure. Further, the Noticees 2 & 3 made delayed disclosure on only one (1) occasion, and that is of 474 days.

ORDER

31. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticees and also the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose the following penalties on the Noticees under the provisions of Section 15A(b) of the SEBI Act.

Noticee No.	Name of the Noticee	Penalty
1	Mr. Vidyadhar D. Vardham	Rs. 2,00,000/- (Rupees Two Lakh only)
2	Avenue Supermarts Limited	Rs. 3,00,000/- (Rupees Three Lakh only)
3	Ms. Ashu Gupta	Rs. 1,00,000/- (Rupees One Lakh only)

I am of the view that the said penalty is commensurate with the lapse/ omission on the part of the Noticees.

32. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, the Noticees may contact the support at portalhelp@sebi.gov.in.

33. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - II, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

34. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

35. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees viz. Mr. Vidyadhar D. Vardham, Avenue Supermarts Limited & Ms. Ashu Gupta and also to the Securities and Exchange Board of India.

Place: Mumbai

Date: July 31, 2020

Dr. ANITHA ANOOP

ADJUDICATING OFFICER