

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. PG/AM/AO-72/2012

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 Mohit Satyanand
(PAN - AFGPS1957P)**

In the matter of:

DFM Foods Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) observed that one of the directors of DFM Foods Limited (hereinafter referred to as “the Company”), Shri Mohit Satyanand (hereinafter referred to as “the Noticee”), had purchased 4209 shares on February 09, 2011 amounting to ₹ 5,26,985.25. It was also

observed that the Noticee had also sold 5000 shares of the Company on October 14, 2011 at the rate of ₹ 281.80 amounting to ₹ 14,09,000. However, the Noticee had failed to make necessary disclosures to the Bombay Stock Exchange (hereinafter referred to as “BSE”) as required under Regulation 13(4) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “PIT Regulations”).

2. From trading details of the Noticee it was observed that the Noticee had been buying and selling in shares of the Company and taking opposite positions. However, Clause 4.2 of Schedule I of Model Code of Conduct for Prevention of Insider Trading for Listed Companies [Under Regulation 12(1)] of PIT Regulations, *inter alia*, prohibit directors/officers/designated employees who buy or sell any number of shares of the company from entering into an opposite transaction, i.e., sell or buy any number of shares during the next six months following the prior transaction. The trading details reflected that the Noticee had entered into opposite transactions in shares of the Company within less than six months on many occasions such as April 08, 2010; November 09, 2010; November 23, 2010; January 07, 2011; January 20, 2011; May 5, 2011; May 11, 2011; May 30, 2011; August 10, 2011; September 02, 2011; October 14, 2011; November 02, 2011.

3. In view of the aforesaid, it was alleged that the Noticee has violated the provisions of Regulation 13(4) read with Regulation 13(5) and Clause 4.2 of Schedule I of Model Code of Conduct for Prevention of Insider Trading for Listed Companies [Under Regulation 12(1)] of PIT Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer vide order dated March 22, 2012 and the said appointment was conveyed vide proceedings of the Whole Time Member dated March 23, 2012 to inquire and adjudge under Section 15A(b) and Section 15HB of the SEBI Act, 1992, the alleged violations of provisions of Regulation 13(4) read with Regulation 13(5) and Clause 4.2 of Schedule I of Model Code of Conduct for Prevention of Insider Trading for Listed Companies [Under Regulation 12(1)] of PIT Regulations committed by the Noticee.

SHOW CAUSE NOTICE, HEARING & REPLY

5. A Show Cause Notice (hereinafter referred to as “SCN”) in terms of the provisions of Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as “**Adjudication Rules**”) was issued to the Noticee on April 12, 2012, calling upon it to show cause why an

inquiry should not be held against the Noticee under Rule 4(3) of the Adjudication Rules for the alleged violations. The said SCN was duly delivered to the Noticee on April 17, 2012.

6. Subsequently, vide letter dated April 30, 2012 the Notice sought further time to submit reply to the SCN. Vide Notice of Inquiry dated May 02, 2012 was issued to the Noticee under Rule 4(3) of the Adjudication Rules vide which an opportunity of personal hearing was given to the Noticee which was scheduled for May 14, 2012. The Noticee was advised to submit his reply, if any, on or before the date of hearing. Thereafter, vide letter dated May 07, 2012 the Noticee expressed his intention to avail the consent process and requested not to initiate any proceeding till the disposal of the consent process. Vide letter dated May 09, 2012 the Noticee was informed that notwithstanding his application for consent, the proceedings would continue and passing of the appropriate Adjudication Order would be kept in abeyance till conclusion of consent process and hence, the Noticee was once again advised to appear for personal hearing on May 14, 2012 as previously informed vide Notice of Inquiry dated May 02, 2012.

7. Mr. Vinod Kumar, Company Secretary appeared on behalf of the Noticee as his Authorised Representative and made written submissions vide letter dated May 10, 2012. The Authorised

Representative of the Noticee also submitted that the Noticee had filed consent application in the matter.

8. The Noticee vide letter dated May 10, 2012 replied to the SCN and *inter alia* made the following submissions:

I wish to inform you that in the first transaction, I had purchased 4209 shares of the company on February 09, 2011 amounting to Rs. 5,26,985.25 and not made any disclosure under Regulation 13(4) read with Regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulation, 1992 to the Bombay Stock Exchange and the Company. In this regard, I would like to state that the alleged violation was committed by me inadvertently and there were no malafide intentions on my part.

In the case of second transaction, I had sold 5000 shares of the Company on October 14, 2011 amounting to Rs. 14,09,000/- and provided information by post to the Bombay Stock Exchange and the company on the next day with regard to the said transaction vide my letter dated 15th October, 2011 along with Form-D under Regulation 13(4) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulation, 1992. A copy of the letter along with Form-D is enclosed herewith for your reference. Hence, you would appreciate that there is no violation of the provisions of the SEBI (PIT) Regulation 1992 for the transaction made on 14th October, 2011.

In reply to para 3 and para 4 of the show cause notice, I have noted from Annexure-III of Show Cause Notice that there are opposite transaction i.e. buy or sell of shares of the company within a period of Six Months as per provisions of Clause 4.2 of the Schedule I of Model code of Conduct for prevention of Insider Trading for Listed Companies [Under Reg. 12(1)] of PIT Regulation. However it is submitted that these transactions had not been made on day to day basis i.e. while buying, I had continuously bought shares and while selling, I had sold continuously. Further, most of the transaction are in compliance with the earlier restriction i.e. period of 30 days.

9. From the material available on record, it is observed that the said consent application of the Noticee was rejected and the rejection was communicated to the undersigned by SEBI vide communication dated November 05, 2012. Hence, I am proceeding with the inquiry taking into account the material available on record.

ISSUES FOR CONSIDERATION

10. After perusal of the material available on record, I have the following issues for consideration, viz.,
 - A. Whether the Noticee has violated provisions of Regulation 13(4) read with Regulation 13(5) of PIT Regulations?
 - B. Whether the Noticee has violated provisions of Clause 4.2 of Schedule I of Model Code of Conduct for Prevention of Insider

Trading for Listed Companies [Under Regulation 12(1)] of PIT Regulations?

- C. Whether the Noticee is liable for monetary penalty under Section 15A(b) and Section 15HB of the SEBI Act, 1992?
- D. What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

FINDINGS

- 11. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

ISSUE 1: Whether the Noticee has violated provisions of Regulation 13(4) read with Regulation 13(5) of PIT Regulations?

- 12. The provisions of Regulation 13(4) and 13(5) of PIT Regulations read as under:

SEBI (Prohibition of Insider Trading) Regulations, 1992

13 (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.

13 (5) *The disclosure mentioned in sub-regulations (3) and (4) 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.

13. I note that Regulation 13(4) read with 13(5) of PIT Regulations *inter alia* requires disclosure to the company and to the Stock Exchange by any person who is a Director or Officer of a listed company, of 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 which exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower; and such disclosure has to be made within two working days of acquisition or sale of shares or voting rights, as the case may be.

14. From the material available on record, I note that one of the directors of the Company, i.e., the Noticee had purchased 4209 shares on February 09, 2011 amounting to ₹ 5,26,985.25. Since, the change in Noticee's shareholding exceeded by Rs. 5 lakh in value, the Noticee was under an obligation to make necessary disclosures in Form D to the Company and to the stock exchange in which

shares of the Company are listed. From Annexure II of the SCN, I note that BSE vide email dated December 23, 2011 confirmed that the Noticee did not file any disclosures under Regulation 13(4) of PIT Regulations for the transaction carried out on February 09, 2011. From the reply of the Noticee, I note that the Noticee has accepted the fact of not making any disclosure under Regulation 13(4) read with Regulation 13(5) of PIT Regulations to the BSE and the Company for the transaction carried out on February 09, 2011. The Noticee has also stated that the violation was committed by him inadvertently and there was no malafide intention on his part. Hence, I hold that the Noticee has failed to make required disclosures under Regulation 13(4) of PIT Regulations to the Company and to BSE for the transaction carried out on February 09, 2011.

15. From the material available on record, I further note that the Noticee had sold 5000 shares of the Company on October 14, 2011 at the rate of ₹ 281.80 amounting to ₹ 14,09,000/-. Hence, as per Regulation 13(4) of PIT Regulations, the Noticee was under an obligation to make necessary disclosures in Form D to the Company and to the stock exchange in which shares of the Company are listed. In this regard, the Noticee in his reply has submitted that he had made the required disclosures to the Company and BSE by post vide his letter dated October 15, 2011 and has enclosed copies of the said letter. However, from Annexure I of the SCN, I note that BSE vide its letter dated

November 08, 2011 has stated that the Noticee did not file any disclosure under Regulation 13(4) of PIT Regulations for the transaction carried out on October 14, 2011. Further, the Noticee has not provided any material indicating proof of delivery of his letter dated October 15, 2011 to BSE. Hence, even though the Noticee might have made the necessary disclosures to the Company as claimed, the Noticee failed to make required disclosures under Regulation 13(4) of PIT Regulations to BSE for the transaction carried out on October 14, 2011.

16. In view of the above, it is apparent that the Noticee has failed to make required disclosure to the Company and BSE under Regulation 13(4) read with 13(5) of PIT Regulations for the transaction carried out on February 09, 2011. The Noticee has also failed to make required disclosure to BSE under Regulation 13(4) read with 13(5) of PIT Regulations for the transaction carried out on October 14, 2011. Therefore, the Noticee has violated the provisions of Regulation 13(4) read with Regulation 13(5) of PIT Regulations.

ISSUE 2: Whether the Noticee has violated provisions of Clause 4.2 of Schedule I of Model Code of Conduct for Prevention of Insider Trading for Listed Companies [Under Regulation 12(1)] of PIT Regulations?

17. The provisions of Regulation 12(1) and Clause 4.2 of Schedule I of Model Code of Conduct for Prevention of Insider Trading for Listed Companies of PIT Regulations read as under:

Code of internal procedures and conduct for listed companies and other entities.

12. (1) *All listed companies and organisations associated with securities markets including:*

- (a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;*
- (b) the self-regulatory organisations recognised or authorised by the Board;*
- (c) the recognised stock exchanges and clearing house or corporations;*
- (d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and*
- (e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies, shall frame a code of internal procedures and conduct as near thereto to the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same.*

SCHEDULE I [Under Regulation 12(1)]

PART A: Model Code of Conduct for Prevention of Insider Trading for Listed Companies

4.2 *All directors/ officers/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e.*

sell or buy any number of shares during the next six months following the prior transaction. All directors/ officers/ designated employees shall also not take positions in derivative transactions in the shares of the company at any time.

In the case of subscription in the primary market (initial public offers), the above mentioned entities shall hold their investments for a minimum period of 30 days. The holding period would commence when the securities are actually allotted.

18. From trading details of the Noticee (enclosed with the SCN as Annexure III) I note that the Noticee had been buying and selling in shares of the Company and taking opposite positions. The trading details of the Noticee reflect that he had entered into opposite transactions within less than six months on many occasions such as April 08, 2010; November 09, 2010; November 23, 2010; January 07, 2011; January 20, 2011; May 5, 2011; May 11, 2011; May 30, 2011; August 10, 2011; September 02, 2011; October 14, 2011; November 02, 2011. I note that Clause 4.2 of Schedule I of Model Code of Conduct for Prevention of Insider Trading for Listed Companies under Regulation 12(1) of PIT Regulations clearly specifies that the directors cannot take opposite position during the next six months following the prior transaction. Some instances of transactions of the Noticee in the shares of the Company are tabulated below:

Date	Quantity Purchased	Quantity Sold
24/02/2010	-	2000
26/02/2010	-	2000
02/03/2010	-	2000
08/04/2010	2000	-
16/04/2010	4499	-
03/05/2010	101	-
20/05/2010	3000	-
21/05/2010	1000	-
26/05/2010	195	-
09/11/2010	-	5000
.....
24/06/2011	1637	-
27/06/2011	550	-
10/08/2011	-	1750
12/08/2011	-	111
16/08/2011	-	2500
02/09/2011	163	-
14/10/2011	-	5000
17/10/2011	-	1150
02/11/2011	3000	-

19. I note that the Noticee has neither denied nor disputed the trades given in Annexure III of the SCN but has, *inter alia*, submitted that “these transactions had not been made on day to day basis i.e. while buying, I had continuously bought shares and while selling, I had sold continuously. Further, most of the transaction are in compliance with the earlier restriction i.e. period of 30 days”. I do not find the reply of the Noticee satisfactory in this regard and I hold that the same cannot be considered a plausible reason for transacting in contravention of the provisions of PIT Regulations. I note that the aforesaid Clause

4.2 of Schedule I of Model Code of Conduct for Prevention of Insider Trading for Listed Companies was amended in 2008 by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2008 w.e.f. 19-11-2008 in accordance to which the Noticee, being a Director of the Company, was prohibited taking opposite position within six months following the prior transaction. As already noted, the Noticee's transactions in the shares of the Company were clearly in violation of the aforesaid provision. For instance, on May 05, 2011 the Noticee sold 1000 shares of the Company and bought 1200 shares of the Company on May 11, 2011, which shows that the Noticee had taken opposite positions within a week. Therefore, I hold that the Noticee has violated Clause 4.2 of Schedule I of Model Code of Conduct for Prevention of Insider Trading for Listed Companies [Under Regulation 12(1)] of PIT Regulations.

ISSUE 3: Whether the Noticee is liable for monetary penalty under Section 15A(b) and Section 15HB of the SEBI Act, 1992?

20. The provisions of Section 15 A(b) and Section 15HB of the SEBI Act, 1992 read as under:

“Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder, –

(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;"

15HB: Penalty for contravention where no separate penalty has been provided.

Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

21. In the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216 (SC), the Hon'ble Supreme Court of India has 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 regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant"*.

22. As already observed, the Noticee failed to make disclosures as required under Regulation 13(4) read with 13(5) of PIT Regulations for the transactions carried out on February 09, 2011 and October 14, 2011. Therefore, I find that the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992. Further, the Noticee had taken opposite positions while transacting in the

shares of the Company during 2010 – 2011 which is in absolute violation of provision of Clause 4.2 of Schedule I of Model Code of Conduct for Prevention of Insider Trading for Listed Companies [Under Regulation 12(1)] of PIT Regulations. Therefore, the Noticee is also liable for monetary penalty under Section 15HB of the SEBI Act, 1992.

ISSUE 4: What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the Act?

23. While imposing monetary penalty it is important to consider the factors stipulated in Section 15J of the 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.”

24. In the absence of material on record, the amount of disproportionate gain or unfair advantage made as a result of the default and the amount of loss caused to the investors due to the said default cannot be quantified. However, by virtue of the failure on the part of the Noticee to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time. Further, the Noticee, being a director of the Company, transacted in the shares of the Company and did opposite transactions in contravention of the provisions of Code of Conduct for Prevention of Insider Trading for Listed Companies. Hence, the act of the Noticee was detrimental to the interest of investors in securities market. Since the Noticee has failed to make the required disclosures as specified under Regulation 13(4) read with 13(5) of PIT Regulations on two occasions, the default of the Noticee can be said to be repetitive. Also, the Noticee transacted repeatedly in the shares of the Company in violation of provision of Clause 4.2 of Schedule I of Model Code of Conduct for Prevention of Insider Trading for Listed Companies and hence, the default of the Noticee can be said to be repetitive on this count also.

25. I am of the considered opinion that directors/ officers/ designated employees are senior functionaries in company who are reasonably expected to be aware of major developments in the company. Thus for orderly conduct of securities market, it is of utmost importance that such persons should not be doing buy & sell transactions in the

shares of that company at short intervals but should have a long term view. This is also necessary to ensure a sense of fairplay amongst the ordinary investors.

ORDER

26. Considering the facts and circumstances of the case, in terms of the provisions of SEBI Act, 1992 and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹ 50,000/- (Rupees Fifty Thousand only) under Section 15A(b) of the SEBI Act, 1992 for not making necessary disclosures under Regulation 13(4) read with 13(5) of PIT Regulations and ₹ 1,00,000/- (Rupees One Lakh only) under Section 15HB of the SEBI Act, 1992 for violation of provision of Clause 4.2 of Schedule I of Model Code of Conduct for Prevention of Insider Trading for Listed Companies [Under Regulation 12(1)] of PIT Regulations, i.e., a total penalty of ₹ 1,50,000/- (Rupees One Lakh Fifty Thousand only) on Shri Mohit Satyanand, which is commensurate with the violations committed by him.

27. The penalty shall be paid by way of demand draft drawn in favour of "SEBI - Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this Order. The said demand draft shall be forwarded to Shri Sujit Prasad, Chief General Manager, Integrated Surveillance Department, Securities and

Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400051.

28. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this Order are being sent to the Noticee and also to Securities and Exchange Board of India.

DATE: November 29, 2012
PLACE: Mumbai

PIYOOSH GUPTA
ADJUDICATING OFFICER