

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. RA/DPS/ 223 /2017]

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 Nirav Shah
(PAN No. AWLPS8653C)
J122 Forest County, Opp EON IT Park
Kharadi, Pune - 411014

In the matter of M/s Tata Communications Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received a reference from Tata Communications Ltd (TCL / Company / Scrip) dated February 14, 2014 informing that one of its employees, **Shri Nirav Shah (the Noticee)** – Deputy General Manager – Corporate Strategy, has dealt in American Depository Receipts (ADRs) of the company and failed to make upfront disclosure regarding his ADR holding and on certain occasions have entered into opposite transactions, and by so doing, allegedly the Noticee is not in conformity with Clause 4.2 Part A of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies as specified in Schedule I of regulation 12(1) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**').

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**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**') vide order dated March 4, 2016, to inquire into and adjudge under section 15A(b) of the SEBI Act, the violations of Clause 4.2 of the Model Code of Conduct for prevention of Insider Trading for Listed companies in terms of Schedule I under Regulation 12(1) of PIT Regulations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. Show Cause Notice No. SEBI/HO/EAD/EAO/OW/P/2016/14614/1 dated May 20, 2016 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed under section 15A(b) of the SEBI Act for the aforesaid alleged violation of PIT Regulations and SAST Regulations.
4. The observations made under the examination and the allegations levelled against the Noticee in the SCN are mentioned hereunder;
5. SEBI received a reference from the Tata Communications Ltd / Company vide letter dated February 14, 2014 informing that one of its employees, Shri Nirav Shah / Noticee – Deputy General Manager – Corporate Strategy, has dealt in ADRs of the company. Company vide email dated July 8, 2014 has confirmed that the Noticee is a designated employee. Copy of the letter dated February 14, 2014 and email dated July 8, 2014 were provided as **Annexure II** of SCN. It was also observed that Noticee failed to make upfront disclosure regarding his ADR holding at the time of joining in February 2010 as

Senior Manager, Corporate Strategy. It is observed that Noticee as on year ending March 2010 held 3,000 TCL ADRs (equivalent to 6,000 shares). Further, Noticee has traded in ADRs of the company on certain occasions and also have entered into opposite transactions of ADRs within 6 months on two occasions, which is not in conformity with Clause 4.2 of the Model Code of Conduct for prevention of Insider Trading for Listed companies in terms of Schedule I under Regulation 12(1) of PIT Regulations. The details of transactions are given below:-

Sr. No.	Date	No of ADRs	Equivalent No. of Shares	Type of Transaction
1	February 1, 2010	900	1800	Sold
2	February 4, 2010	1000	2000	Bought
3	April 29, 2010	1000	2000	Bought
4	May 7, 2010	1000	2000	Bought
5	July 23, 2010	1000	2000	Sold
6	October 12, 2012	182	364	Sold
7	June 27, 2013	423	846	Sold
8	August 2, 2013	1500	3000	Sold
9	September 6, 2013	1895	3790	Sold

6. In view of above, it is alleged that the Noticee by indulging into opposite transactions of ADRs within 6 months on two occasions; and thereby, the Noticee had allegedly violated Clause 4.2 Part A of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies as specified in Schedule I of regulation 12(1) of PIT Regulations. The aforesaid regulations are reproduced as under;

PIT Regulations

POLICY ON DISCLOSURES AND INTERNAL PROCEDURE FOR PREVENTION OF INSIDER TRADING

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 the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same.

(2) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.

(3) All entities mentioned in sub-regulation (1), shall adopt appropriate mechanisms and procedures to enforce the codes specified under sub-regulations (1) and (2).

(4) Action taken by the entities mentioned in sub-regulation (1) against any person for violation of the code under sub-regulation (3) shall not preclude the Board from initiating proceedings for violation of these Regulations.

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.

7. SCN was issued through Speed Post Acknowledgement Due (SPAD) to the Noticee on May 20, 2016 which was duly delivered to the Noticee. Noticee vide email (nirav.usc@gmail.com) dated June 15, 2016, October 5, 2016 and January 6, 2017 had submitted its reply in the matter which inter alia stated as under:-

“

- *This is purely a technical violation of the code due to my lack of knowledge of the process and formalities involved, rare circumstances and personal setbacks, failure by Tata Communications to provide a copy or awareness session of Insider Trading Code and associated obligations during the time of joining, of annual declarations where I have declared my holdings or till the technical violation was actually spotted in my declarations, improper guidance on ADR declarations and requirements, lack of guidance on ADR in the TCL policy on Model Code of Conduct for Prevention of Insider Trading, negligence by Tata Communications to observe my annual declarations in Mar 2010, and lack of experience of any prior such cases managed by Tata Communications Legal, Corporate Affairs and HR team.*
- *Tata Communications has already followed very strict protocol, conducted a diligent investigation, and imposed large penalties.*
- *As you will see, I have been already disciplined, have had to withstand an unnaturally long and arduous inquiry process by Tata Communications, stigmatized as well as possible subtle victimization, incurred significant losses due to the above-mentioned reasons, as well as have been charged severe penalties.*
- *As you will see below, I have incurred, in Tata Communications ADR, a total loss of 37,758.06 US dollars, equivalent to approximately 25 Lakh Indian Rupees or about ~80% of my investment. During the process of inquiry, show cause proceedings by Tata Communications, Tata Communications asked me to freeze the stocks of Tata Communications leading to losses of almost 80% of the value of my investment.*
- *Due to the freezing of the stocks, I subsequently also suffered losses equivalent to 33,338.41 US dollars in HP shares, equivalent to approximately 23 Lakh Indian Rupees, about ~50% of my investment in HP shares.*
- *Apart from these losses made on stocks, I also suffered losses on margin interest that I have not computed, however exceed 5000 USD. Also, if these setbacks would not have occurred, the notional loss i.e. the current market price of Tata Communications and HP are far higher, almost more than twice that of the actual incurred loss of 48 lakh Indian rupees or cost price.*
- *With such a situation, I have altogether stopped direct investment in capital markets in equities in India, or otherwise. These unfortunate events have occurred during delicate and unfortunate personal setbacks in my life, and its implications and impact has been exponential, including on my health. These events and setbacks continue to plague my life, and I request you to please expedite and close this matter. Keeping in mind the facts and context that I present below, I sincerely request SEBI to reconsider and close the adjudication and inquiry decision and close this matter.*
- *To present the matter in full clarity, I am listing below all the transactions, price at which the transactions were conducted, a small note on the reason the transaction was conducted, whether and if the transaction was conducted voluntarily and at my instruction or involuntarily by the investment account margin algorithm, and what losses were incurred due to these transactions.*
- *During the detailed response, I shall provide more context on the reason for the transaction and the reason involuntary transactions occurred in 2012/13 period.*

Date	No of ADR	Bought/Sold	Price	Holding	Reason	TCL Employee	Voluntary	Loss Incurred
08-Dec-09	1000	Bought	15.2	1000	Bought @ 52-week low	N	Y	N/A

27-Jan-10	2000	Bought	13.7	3000	Average at ~10% price drop and new 52-week low	N	Y	N/A
29-Jan-10	100	Sold	13.95	2900	Sold 1000 to keep some cash for future	N	Y	125 USD
Joined Tata Communications on 1 Feb 2010								
01-Feb-10	900	Sold	13.95	2000	Pending trade from 29 Jan by system	Y, First day of employment	Y	1500 USD
04-Feb-10	1000	Bought	13.2	3000	Average at ~7% price drop from 13.95 and new 52-week low	Y, Fourth day of work	Y	N/A
March 2010 Declaration with declaration of 3000 TCL Holding – Tata Communications Legal Team does not notice the declaration								
26-Apr-10	1000	Bought	12.2	4000	Average at ~10% price drop and new 52-week low	Y	Y	N/A
07-May-10	1000	Bought	11	5000	Average at ~10% price drop and new 52-week low; TCL stock fell 20% after this purchase	Y	Y	
20-Jul-10	1000	Sold	11.85	4000	Sold at about 30% move up from new 52-week low of 9.02\$; To keep cash for further averaging if required	Y	Y	1850 USD
12-Oct-12	182	Sold	9.1	3818	Involuntary sale due to margin ratio requirement;	Y	N	836.69 USD
27-Jun-13	423	Sold	4.77	3395	Involuntary sale due to margin ratio requirement;	Y	N	3777.77 USD
02-Aug-13	1500	Sold	4.59	1895	Involuntary sale due to margin ratio requirement;	Y	N	13011.52 USD
06-Sep-13	1895		2.71	0	Involuntary sale due to delisting of ADR	Y	N	16782.08 USD

- *I found Tata Communications stock, and I saw that it was at a 52-week low during that time, and I entered the stock on 8 Dec 2009 with an intention of exiting it, when it fluctuates up by 3-4%, expecting a \$400-500 return on a short term investment of ~\$15,000 for a couple of weeks.*
- *At that time, I was in US, and returning to India, since my employment visa had not been granted, due to very rare circumstances, as had occurred with few people, during the 2009 period of US economic recession. At that time i.e. 8 Dec 2009, I was not in employment of Tata Communications, nor received an employment offer from them.*
- *Subsequently over the period from 8 Dec 2009 to 27th Jan 2010, the Tata Communications ADR fell 10% in a short time period of 5-6 weeks. At a 52-week low, On 27 Jan 2010 I purchased additional 2000 TCL ADRs to average my buying price, with an intention of exiting the entire position of 3000 TCL ADRs without any loss or profit. On 27 Jan 2010, I was not an employee of Tata Communications. I was employed with Tata Communications from 1 Feb 2010.*

- On 1 Feb 2010, amongst many employment forms, I was asked to fill a declaration form listing my holdings in Tata Communications shares. Since the form only had Indian Terms such as PAN No, Name of Holder, DP ID, Client ID, etc. I mentioned my holding of 3000 Tata Communications ADR in USA as a comment, and told my HR joining officer Havisha Vijay that I did not have details of my USA bank and investment account numbers handy. I had not been assigned a laptop by the company, nor did I carry a private laptop or have any internet access, and I told her that I may submit those details subsequently in next couple of days. She told me that since ADR details are not requested in the form format, I need not fill them up. She gave me another blank form which I filled mentioning in the columns with Indian terms such as DP ID, Client ID etc. as N/A.
- Had the Tata Communications HR Officer guided me properly, I would have provided the declaration of ADRs that I had already declared, in the first form. Also, if she had provided me any kind of awareness information or guided me to the online link to the Model Code of Conduct for Prevention of Insider Trading, I would not have conducted any trades in TCL holding.
- Please note that the transaction on 1 Feb 2010 is actually a transaction conducted on 29 Jan 2010 that just concluded on the system on 1 Feb 2010. Hence between 1 Feb 2010 to 31 Mar 2010, I was not in any contravention of the Model code of conduct.
- During the joining process, or for the next 7-8 months, I had not received a copy or any other form of awareness material regarding my obligations as a designated employee including the TCL Policy on Model Code of Conduct for insider trading code or other.
- Due to this, I was not aware that I could not make any minor or regular trades in Tata Communications ADR. At that time till Oct-Nov 2010, the code by Tata Communications on its website (Attached as Annexure 5) specified rules only applicable to Indian Shares and did not have any reference to ADR holdings, as I have detailed in Annexure 3 and 4.
- I was unaware of the Model Code of Conduct, and its applicability to ADR trades. I made 3 TCL trades between Apr 2010 – July 2010, two purchases of 1000 TCL ADRs at an interval of 10% price drops on 26 Apr 2010 and 7 May 2010, and one sale of 1000 TCL ADRs at a small price gain of roughly 7% from my last purchase price, and ~ 30% from TCL's new 52-week low price.
- On 26 June 2012, I bought 4000 stock of HPQ at the price of 20.43\$ (in US securities market) leading to a margin – based holding of HPQ stocks on my trading account. Due to the unprecedented and heavy, sharp decline in HPQ stock price and subsequently TCL stock price, the margin situation led to gradual and involuntary sale of TCL holding. I made my best efforts, as I shall detail below, to avoid this situation including offloading HPQ stock at a very heavy loss, seeking permission from TCL Legal and Management team to pro-actively offload TCL stock so as to avoid any non-compliance situation, and depositing additional funds to my bank and investment account.
- The TCL ADR trades between Oct 12 – Oct 13 have been listed below for ready reference. All the trades mentioned below have been involuntary:

Date	No of ADR	Bought/Sold	Price	Holding	Reason	TCL Employee	Voluntary	Loss Incurred	Losses in INR
12-Oct-12	182	Sold	9.1	3818	Involuntary sale due to margin ratio requirement;	Y	N	836.69 USD	56894.92
27-Jun-13	423	Sold	4.77	3395	Involuntary sale due to margin	Y	N	3777.77 USD	256888.36

					ratio requirement;				
02-Aug-13	1500	Sold	4.59	1895	Involuntary sale due to margin ratio requirement;	Y	N	13011.52 USD	884783.36
06-Sep-13	1895	ADR Delisted from NYSE	2.71	0	Delisting of ADR from NYSE by TCL	Y	N	16782.08 USD	1141181.44

- *The system offloaded the TCL holdings on October 12, 2012, June 27, 2013, August 2, 2013 and September 6, 2013, involuntarily to meet the margin short fall, I learnt about it after a couple of days, and was surprised as I did not expect the Bank of America/Merrill Lynch investment management account to involuntarily trade TCL holdings as they were never purchased on margin amount.*
- *Please note: Had I been informed of the protocol required to be followed after my declarations during Mar-Apr 2010, I would have been in complete conformance to the clause 4.2 of SEBI Model Code of Conduct for prevention of insider trading. Since my Mar-Apr 2010 declaration did not invite any questions, I felt that as long as I was declaring my holdings on every interval, as requested by TCL Legal Team, and kept my immediate manager informed, I was in conformance and compliance to the rules.*
- *Management and legal team of TCL decided to set up a committee of TCL HR head, CFO and a senior representation from our International Legal Team to evaluate this matter. The TCL India Legal Team investigated the matter, and sent a show cause notice to me. Once I provided a response, the legal team interviewed me with questions related to my response in presence of the Evaluation Committee.*
- *Detailed investigation, review and diligence, my case was a rare instance in TCL, and it highlighted significant gaps in TCL's HR, joining processes, designated employee awareness practices, annual declaration observations and lack of an updated 'Model code of conduct for Prevention of Insider Trading Code' that provided guidance on ADR holdings.*
- *TCL corrected some of these practices, by immediately conducting awareness sessions for designated employees of TCL on the model code of conduct, taking an undertaking asking few designated employees from completely refraining from trading in TCL holdings even in compliance with SEBI code, and attaching the Model Code of Conduct along with email requests and forms for half-yearly and annual declarations for statement of holdings; I am not aware if TCL made adequate changes to its joining process for designated employees, and conducted awareness training sessions for TCL HR and on-boarding officers or not.*
- *After August 2013, Tata Communications set up another committee led by the audit and compliance team members of Tata Communications with members of domestic and international legal team. A hearing was conducted in the last week of Jan 2014.*
- *Subsequent to the hearing, the review team placed their report to the Board Team Members and Audit and Compliance committee. The Audit and Compliance committee of TCL board decided to impose a penalty on me approximately equivalent to 1.5 Lacs INR. During this process, TCL did not provide me with minutes of meetings, or a copy of the report placed before the audit committee. They directly informed me about the penalty imposed, and intimation to SEBI about the incident.*
- *I sincerely apologize for the sequence of events, and am truly sorry to the individuals and the institutions affected. I believe that a transparent and fair capital market is important for the*

development for our country. I believe that from these experiences in technical code, and losses, I shall be very disciplined in future and ensure to learn the proper procedures and follow them. In case I work in these areas again or I find the courage and time and can apply my skills for a for-profit or social entrepreneurship venture. By closing this matter promptly, I request you to allow me to focus my energies and attention for some positive work in my personal and professional life, and I hope that I shall engage, at some point, with the capital markets and SEBI in a positive and contributory manner.

8. During the period of instant proceeding, the Hon'ble Supreme Court of India vide judgment dated November 26, 2015 in the case of *SEBI vs. Roofit Industries Ltd.* held that Adjudicating Officer has no discretion in deciding quantum of penalty under Chapter VI A (except in u/s 15F(a) and 15HB of the SEBI Act). The issue involved in *Roofit* case was differently interpreted in case of *Sidharth Chaturvedi* (decided on March 14, 2016) and accordingly, the legal issue / matter was pending for Larger Bench of Hon'ble Supreme Court of India. Meantime, as per "The Finance Act 2017" (Notified for Part VIII of Chapters VI came into effect from April 26, 2017) following has been *inter - alia* clarified in respect of adjudication under SEBI Act-

147. In section 15J of the principal Act, the following Explanation shall be inserted, namely:-

"Explanation- For the removal of the doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under section 15A to 15E and 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."

9. Consequent to the clarity brought into the Finance Act, 2017, an opportunity of hearing was provided to the Noticee on October 4, 2017 vide notice dated September 6, 2017 through SPAD. The said notice was also communicated to the Noticee through email dated September 6, 2017, which was duly digitally signed by the undersigned. In this regard, Noticee vide emails dated September 13 and 14, 2017 requested for reschedule / pre-pone the hearing. Accordingly as per the request of the Noticee, an opportunity of hearing was provided to the Noticee on September 21, 2017 vide notice dated September 15, 2017 which was served to the Noticee vide email dated September 15,

2017, which was duly digitally signed by the undersigned. Hearing on September 21, 2017 was attended by the Noticee. Noticee reiterated as submitted in its replies dated June 15, 2016, October 5, 2016 and January 6, 2017 and submitted that he will be submitting additional submissions by September 25, 2017. Noticee vide email dated September 23, 2017 submitted two additional documents i.e. TCL Insider Trading Code as on October 2011 and CNN Insider Trading Code as of October 2011 that he shared with the TCL management/ Legal Team.

CONSIDERATION OF ISSUES AND FINDINGS:-

10. The issues that arise for consideration in the present case are :

- a. Whether the Noticee indulged into opposite transactions of ADRs within 6 months as stated at Para 3 – 4 of the SCN?
- b. If yes then, whether the Noticee is in violation of Clause 4.2 Part A of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies as specified in Schedule I of regulation 12(1) of PIT Regulations.
- c. If yes, then, does the violation, on the part of the Noticee attract monetary penalty under section 15A(b) of the SEBI Act?
- d. If yes, then, what would be the monetary penalty that can be imposed upon the Noticee?

11. From the perusal of the SCN at para 3 - 4, it is observed that the Noticee being the Deputy General Manager – Corporate Strategy, has dealt in opposite transactions of ADRs within 6 months, the details of the transactions are given below:-

Sr. No.	Date	No of ADRs	Equivalent No. of Shares	Type of Transaction
1	February 1, 2010	900	1800	Sold
2	February 4, 2010	1000	2000	Bought
3	April 29, 2010	1000	2000	Bought
4	May 7, 2010	1000	2000	Bought
5	July 23, 2010	1000	2000	Sold

6	October 12, 2012	182	364	Sold
7	June 27, 2013	423	846	Sold
8	August 2, 2013	1500	3000	Sold
9	September 6, 2013	1895	3790	Sold

12. I note that Noticee was holding TCL ADRs before joining the Company / Tata on February 1, 2010 and it is observed from the above table that Noticee had indulged into opposite transactions of ADRs within 6 months on two occasions.

13. Noticee in its reply submitted that, *this is purely a technical violation of the code due to my lack of knowledge of the process and formalities involved, rare circumstances and personal setbacks, failure by Tata Communications to provide a copy or awareness session of Insider Trading Code and associated obligations during the time of joining, of annual declarations where I have declared my holdings or till the technical violation was actually spotted in my declarations, improper guidance on ADR declarations and requirements, lack of guidance on ADR in the TCL policy on Model Code of Conduct for Prevention of Insider Trading, negligence by Tata Communications to observe my annual declarations in Mar 2010, and lack of experience of any prior such cases managed by Tata Communications Legal, Corporate Affairs and HR team, is not acceptable as it is settled position of law the ignorance of law is not an excuse. Noticee has also informed that the Audit and Compliance committee of TCL board decided to impose a penalty on me approximately equivalent to 1.5 Lacs INR.*

14. Vide email dated October 30, 2017, Tata Communications Ltd was advised to confirm as to whether the Audit and Compliance committee of TCL has imposed any penalty on the Noticee? If yes then whether Noticee has paid it? In this regard, Tata Communications Ltd vide its email dated October 31, 2017 confirmed that the Noticee was levied an amount of `1.21 Lakh as penalty which was deducted from his Annual Bonus and from November 13, 2014 Noticee is no longer in employment of Tata Communications Ltd.

15. Here, it is relevant to mention that even if it is established that Noticee had indulged into opposite transactions of ADRs within 6 months on two occasions which consequently attracts violation of Clause 4.2 Part A of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies as specified in Schedule I of regulation 12(1) of PIT Regulations, however, the important issue cannot be ignored that for the same violation, the initial regulator in such situation (viz. the Listed Company) has already taken suitable action against the Noticee by imposing penalty and issuing Noticee a warning letter. At this juncture, it is relevant to refer regulation 12 of the PIT Regulations regarding **(Policy on Disclosures and Internal Procedure for Prevention of Insider Trading)**, which states as under –

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

- (a)
- (b)
- (c)
- (d)
- (e)

shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same.

(2) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.

(3) All entities mentioned in sub-regulation (1), shall **adopt appropriate mechanisms and procedures to enforce the codes specified under sub-regulations (1) and (2).**

(4) Action taken by the entities mentioned in sub-regulation (1) against any person for violation of the code under sub-regulation (3) shall not preclude the Board from initiating proceedings for violation of these Regulations.

16. From the aforesaid, it is clear that action can be taken by the Company and penalty can be imposed in case of breach of its code of conduct, which in fact, was so done by the TCL. I have also noted that by virtue of regulation 12 (4) of the PIT Regulation, SEBI may also initiate proceeding for such violation, but, it would be appropriate to mention that during the adjudication proceedings, it becomes important to examine the issue whether the action taken by the Company, are commensurate to the violation committed by the entity / Noticee or not. In case, it is considered that the action taken /penalty imposed by the Company are justifiable / commensurate to such breach, then, further

imposing of penalty upon the entity / Noticee would not be appropriate and would tantamount of punishing twice for the same cause of action. However, if the action taken by the Company is not commensurate to the alleged violations, then, justifiable penalty can be imposed under the adjudication proceeding.

17. I have taken note from the available records that no proof is there showing any profit made by the Noticee by virtue of said transactions or any loss caused to investors; rather the Noticee submitted that he suffered loss by such transactions. Further, no records are there to show that the breach are repetitive in nature. In view of the aforesaid and as it has been established that the Company had already imposed penalty of ₹121,155 by way of deducting 50% of its Annual Bonus of the Noticee and also cautioned him to ensure strict compliance of code of conduct of the TCL. I am of the view that aforesaid actions taken by the TCL, are commensurate to the violation committed by the Noticee.

ORDER

18. Accordingly, taking into account aforesaid observations and keeping holistic approach after following the principles of equity, justice and good conscience, I am of the view that no penalty is warranted to be imposed upon the Noticee in the matter. The case / SCN is disposed off accordingly.

19. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the SEBI.

DATE: November 9, 2017
PLACE: MUMBAI

RACHNA ANAND
ADJUDICATING OFFICER