

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO: Order/AA/AR/2020-21/9325]

UNDER SECTION 15 - I OF THE SECURITIES AND EXCHANGE BOARD
OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND
EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY
AND IMPOSING PENALTIES) RULES, 1995

In respect of:

Devendra Gupta
PAN: AADPG5710G

In the matter of

NIIT Technologies Ltd

FACTS OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation into the suspected insider trading in the shares of NIIT Technologies Ltd (hereinafter referred to as '**NIIT Technologies**' / '**the Company**') by a few suspected entities during the period December 22, 2014 to March 23, 2015. During the course of investigation, it was observed that one Mr. Devendra Gupta (hereinafter referred to as '**the noticee**' / '**Devendra**'), who was the Senior Vice President of NIIT Technologies, had allegedly failed to disclose the transactions carried out by him in the scrip of NIIT Technologies during the period of February 09, 2015 to March 24, 2015 (hereinafter referred to as the '**relevant period**') to the Company and to the Stock Exchanges, as required under Regulation 13(4) read with Regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**') read with Regulation 12 of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations 2015**').
2. Further, the noticee, while being a designated person of the Company, failed to obtain the pre-clearance for the aforesaid trading done in the shares of the Company, thereby allegedly violating the provision of Clause

3.3.1 under Schedule I – Part A of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies (hereinafter referred to as '**Model Code of Conduct**') read with Regulation 12(1) of PIT Regulations and Regulation 12 of PIT Regulations 2015. It is also alleged that the noticee entered into contra trades (sell trades followed by buy trades) within a period of six months, thereby allegedly violating the provisions of which is in violation of clause 4.2 of Model Code of Conduct read with Regulation 12(1) of PIT Regulations and Regulation 12 of PIT Regulations 2015.

3. In view of the above observations and alleged violations, the adjudication proceedings were initiated against the noticee under the provisions of sections 15A(b) and 15HB of the SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**'), as applicable.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer(hereinafter referred to as '**AO**'), vide communiqué dated May 04, 2020, under section 15-I of the SEBI Act read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of section 15 A(b) of the SEBI Act, the alleged violation of the relevant provisions of the SEBI Act, by the noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Show Cause Notice ref. SEBI/EAD/KL/12850/2020 dated August 06, 2020 (hereinafter referred to as '**SCN**') was issued to the noticee in terms of Rule 4 of the Adjudication Rules to show cause as to why inquiries should not be initiated and penalties, if any, be not imposed on him under sections 15HB and 15A(b) of the SEBI Act, for the alleged contravention of the provisions of the PIT Regulations by him. Briefly, the allegations made in the SCN against the noticee is given below: -

- a) It is observed that the Noticee 4 / Devendra Gupta is an employee of the company and had traded in the scrip of NIIT wherein he traded 1743 shares of NIIT during the period between February 09, 2015 and March 24, 2015 (NIIT mail dated December 12, 2018 regarding trading details is annexed as **Annexure 7**). The relevant details w.r.t the trading done by him are given in the table below:

Table - 5

Sr. No.	Trade Date	Gross Buy	Gross Sell	Net Qty (Total)	Value of shares sold in Rs. Lakhs (Approx)
1	February 09, 2015	-	300	(300)	6.54
2	February 23, 2015	-	300	(300)	
3	February 24, 2015	43	-	43	
4	February 25, 2015	-	300	(300)	
5	March 24, 2015	400	-	400	

- b) As per the terms of the Code of Conduct of the Company (**Annexure 8**) for Prevention of Insider Trading, Devendra Gupta as a designated person of the company was required to obtain pre-clearance for trading (as his total sale of shares was more than the threshold limit of 1500 shares of the company). However, it is alleged that Devendra Gupta failed to obtain pre-clearance for his aforementioned trading in the shares of NIIT which resulted in the violation of clause 3.3.1 under Schedule I – Part A of the model code of conduct of the company under PIT Regulations. It is also alleged that he entered into contra trade (buy trades) within a period of six months, which is in violation of clause 4.2 under Schedule I - Part A of the model code of conduct of the company under PIT Regulations.

c) *Further, as a designated person of the company Devendra Gupta is required to disclose the details of transactions to the company and the stock exchange within two trading days, if the value of the shares traded by him exceeds Rs. 5 lakhs. It is observed that the value of the aforementioned trading done by him in the scrip of NIIT amounted to Rs 6.54 lakhs approximately. In this context, Devendra Gupta was required to disclose the details of the abovementioned transactions to the company and the stock exchanges. However, it is alleged that he had not complied with the same and therefore violated the provisions of Regulation 13(4) read with regulation 13(5) of the PIT Regulations and Regulation 12 of the PIT Regulations, 2015.*

d) *Based on the above analysis, the Noticee 4 is alleged to have committed the following violations*

i. *Clause 3.3.1 under Schedule I - Part A of Model Code Of Conduct For Prevention Of Insider Trading for Listed Companies, read with Regulation 12(1) of PIT Regulations, 1992 and Regulation 12 of SEBI (PIT) Regulations, 2015.*

ii. *Clause 4.2 under Schedule I - Part A of Model Code Of Conduct For Prevention Of Insider Trading For Listed Companies, read with Regulation 12(1) of PIT Regulations, 1992 and Regulation 12 of SEBI (PIT) Regulations, 2015.*

iii. *Regulation 13(4) read with regulation 13(5) of SEBI (PIT) Regulations, 1992 and Regulation 12 of SEBI (PIT) Regulations, 2015.*

6. The SCN for the noticee was served on it vide a digitally signed email dated August 06, 2020, in terms of the Rule 7(b) of the Adjudication Rules. The noticee, vide its email dated August 19, 2020 made the following submissions;

a) *During 2015, I worked with NIIT in the capacity of Sr. Vice President - Infrastructure and was not involved in any decision*

making of the company and hence was not at all aware of any dispute, the Company was facing at that time.

- b) Here I would like to correct transaction statement of your show cause notice that I did a total transaction of 1343 shares only, including Sale & Contra trade for which total transacted amount comes to 5.0 lacs approx.*
- c) During February, 2015 to 23rd March, 2015, I sold 900 shares with a transaction amount of 3.50 lacs approx., but due to ignorance, did a contra trade of 43 shares for which I seek an apology from you.*
- d) On 24th March, 2015 due to the same ignorance I purchased 400 shares & I again seek apology from you for the same. But fortunately this transaction was done after the UPSI date made public.*

7. Further, an opportunity of hearing was granted to the noticee through video conferencing on Webex platform on September 10, 2020, which was communicated to him vide email dated August 19, 2020. The noticee availed the opportunity of personal hearing on September 10, 2020 and reiterated the submissions made in his earlier reply dated August 19, 2020. Further, vide email dated September 14, 2020, the noticee made additional submission as given below: -

- a) I did not have any inside information regarding ongoing disputes with the company at that time as I was not involved in any decision making of the company related to business, except Infrastructure Development.*
- b) I had 3325 ESOP of NTL (please refer to the attached statement) in my DEMAT account at that time, but I sold only 900 shares, in 3 transactions, with a transaction amount of 3.50 lacs approx. which was within 5.0 lacs limit & for that no pre-clearance was required. Had I known about the dispute, I would have taken pre-clearance for trading & would have sold more no of the shares.*

- c) *In addition to selling shares, I had also sold Mutual Funds worth Rs. 207075.00 at that time to pay the School fee of my son in CAD (9400 CAD) & installment of Rs. 324840.00 of a property bought by me. Please refer to my attached bank a/c statement to support the same. Please refer to mutual fund transaction against sr no 5, 6 & 7, and School Fee transaction against sr no. 25 & property installment transaction against sr no. 26 respectively, in the a/c statement.*
- d) *My only mistake is that that I have done contra trade of 443 shares due to ignorance, out of that one transaction of 43 shares @Rs.392.60 was done on 24th Feb, 2015 & another 400 shares @348.90 on 24th March, 2015, and the total amount of all transactions of 1343 shares (sale & purchase) was 5.03 lacs including brokerage & Taxes. I request for your lenient view for this mistake.*

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

8. I have carefully perused the charges leveled against the noticee and the documents / material available on record. The issues that arise for consideration in the present case are:
- a) Whether the noticee has failed to make relevant disclosures to the Company and Stock Exchanges for his trading in the shares of the Company, thereby violating the provisions of the Regulation 13(4) read with Regulation 13(5) of the PIT Regulations?
 - b) Whether the noticee has failed to obtain the pre-clearance for the trading done by him, thereby violating the provision of Clause 3.3.1 of Model Code of Conduct?
 - c) Whether the noticee entered into contra trades (sell trades followed by buy trades) within a period of six months, thereby allegedly violating the provisions of which is in violation of clause 4.2 of Model Code of Conduct?

- d) Does the violation, if any, attract monetary penalty under sections 15HB and 15A(b) of the SEBI Act?
- e) If yes, what should be the quantum of penalty?
9. Before proceeding further, I would like to refer to the relevant provisions of the PIT Regulations and PIT Regulations 2015, alleged to have been violated by the noticee, as below:

➤ **PIT Regulations**

POLICY ON DISCLOSURES AND INTERNAL PROCEDURE FOR PREVENTION OF INSIDER TRADING

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

(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

(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.

SCHEDULE I

PART A

MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES

3.3 Pre-clearance of trades

3.3.1 All directors/officers/designated employees of the company [and their dependents as defined by the company] who intend to deal in the securities of the company (above a minimum threshold limit to be decided by the company) should pre-clear the transaction as per the pre-dealing procedure as described hereunder.

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.

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

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.

(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.

➤ **PIT Regulations 2015**

Repeal and Savings

12. (1) *The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.*

(2) *Notwithstanding such repeal—*

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and
(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(3) *After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.*

A. Whether the noticee has failed to make relevant disclosures to the Company and Stock Exchanges for his trading in the shares of the Company, thereby violating the provisions of the Regulation 13(4) read with Regulation 13(5) of the PIT Regulations?

10. NIIT Technologies is a global IT solutions organization which is listed on BSE and NSE. It is seen that in its annual report for the F.Y. 2014-15, NIIT stated the following: “During the financial year under review, revenues increased 3% on a consolidated basis, from Rs. 23,050 million in FY2014 to Rs. 23,725 million in FY2015. The consolidated Profit after Tax (PAT) for

the year was Rs. 1,141 million, representing a decline from the preceding financial year mainly due to exceptional items relating to the settlement of a dispute between one of the Company's subsidiaries and its client in the Asia-Pacific region, with a total impact of Rs. 800 million". Thus, it is observed that the above mentioned disputed Rs. 80 crore is 3.37% of the consolidated revenue of the company (Rs. 2,372.5 crore) for the F.Y. 2014-15 and it appears to be a significant change in the operations of the company. Further, it is also observed that the price of the scrip of NIIT fell by 6.37% on BSE and 5.96% on NSE on March 24, 2015 i.e. the next day of the company making the corporate disclosure.

11. The noticee was the Senior Vice President of the Company during the relevant period. It is observed that while being the Senior Vice President of the Company, the noticee transacted in 1343 shares of the Company during the period February 09, 2015 to March 24, 2015. The details of the trading done by the noticee in the scrip of NIIT Technologies during the relevant period is given in the table below:

Sr. No	Trade Date	Gross Buy	Gross Sell	Net Qty (Total)
1	February 09, 2015	-	300	(300)
2	February 23, 2015	-	300	(300)
3	February 24, 2015	43	-	43
4	February 25, 2015	-	300	(300)
5	March 24, 2015	400	-	400

12. Pursuant to the relevant period, the noticee also sold 400 shares of the Company in the month of April, 2015. The disclosure requirement under the Regulation 13(4) of the PIT Regulations are triggered when the shareholding of an entity/ person in a listed company, who is also an officer of that company, inter alia, changes by more than Rs. Five lakh in value or 25,000 shares or 1% of the total shareholding of such company. From the data available on record, it is observed that the value of the 1300 shares sold by the noticee was Rs. 4,95,670 and the value of 443 shares purchased by the noticee was Rs. 1,56,246. It is noted that in the instant matter the change in the shareholding of the noticee (value of shares sold –

value of purchased shares) was less than the threshold limit of 25,000 shares and Rs. 5,00,000 in value. Further, the net change in shareholding was also less than 1% of the total shareholding of the Company. Thus it is clear that the requirement of making disclosure under the regulation 13(4) of the PIT Regulation was not triggered by way of the trading done by the noticee in the Company. Therefore, the noticee was not required to make the disclosures to the Company and to the Stock Exchanges in terms of Regulation 13(4) read with Regulation 13(5) of the PIT Regulations.

B. Whether the noticee has failed to obtain the pre-clearance for the trading done by him, thereby violating the provision of Clause 3.3.1 of Model Code of Conduct?

13. It is alleged that the noticee traded in the 1743 shares of the Company (sale of 1300 shares and purchase of 443 shares) without obtaining any pre-clearance from the Compliance officer. In terms of the Code of Conduct of the Company for Prevention of Insider Trading, the noticee, as a designated employee of the Company, is required to obtain the pre-clearance from the Compliance Officer for trading in the shares of the Company if such trading is for more than 1500 shares.
14. It is observed that the Code of Conduct of the Company for Prevention of Insider Trading clearly mentions that its Directors/Designated Employees who intend to deal in the securities of the Company for more than 1500 shares shall obtain the pre-clearance from the compliance officer of the Company. The detail of the trading done by the noticee during the relevant period is already given in the previous paragraphs. The noticee has dealt in 1343 shares of the Company during the relevant period and sold further 400 shares during the month of April, 2015. Further, the noticee was one of the 'Designated Employees' of the Company as he was the Senior Vice President of the Company and the same is not disputed by the noticee. However, the Company has informed SEBI that the noticee did not obtain pre-clearance for trading in the shares of the Company.
15. In this regard, the noticee has submitted that he has sold only 900 shares, in 3 transactions, with a transaction amount of approximately 3.50 lakh

which was within Rs. 5 lakhs limit & for that no pre-clearance was required. The noticee has further submitted that he was not aware of the dispute of the Company pertaining to Rs. 80 crores, and therefore he traded in the shares of the Company without obtaining the pre-clearance for trading. I am not in agreement with the submissions of the noticee. As mentioned in the previous paragraphs, the noticee had dealt in 1743 shares of the Company (1300 shares sold and 443 shares purchased). Thus he had dealt in shares in greater quantity than the threshold limit of 1500 shares. From the perusal of the Code of Conduct of the Company, it is seen that the threshold for obtaining pre-clearance is only in terms of number of shares and not in terms of value of shares as mentioned by the noticee. Further, the requirement of the Directors/Designated Employees for obtaining pre-clearance for their trades is independent of the possession / existence of Unpublished Price Sensitive Information during the relevant time. Thus, the argument of the noticee that it did not obtain pre-clearance as it was not aware of the price sensitive information is not a sufficient justification for its failure to obtain pre-clearance for its trades. Therefore, it is clearly established that the noticee has failed to obtain requisite pre-clearance for its trading of 1743 shares in the scrip of NIIT.

16. Therefore, in view of the observations made above, I conclude that the noticee has violated the provisions of Clause 3.3 under Schedule I – Part A of Model Code of Conduct for Prevention of Insider Trading For Listed Companies read with Regulation 12(1) of the PIT Regulations.

C. Whether the noticee entered into contra trades (sell trades followed by buy trades) within a period of six months, thereby allegedly violating the provisions of which is in violation of clause 4.2 of Model Code of Conduct?

17. Another allegation against the noticee is that it entered into opposite transactions during relevant period i.e. it entered into sale transaction and buy transactions in the shares of the Company within the time period of one and half months. It is observed from the Code of Conduct prescribed by the Company that the noticee, as one of the Designate Employees of the

Company was restricted from entering into opposite transactions within a period of six months.

18. In this regard, the noticee in its reply email dated September 14, 2020 and also during the course of personal hearing has admitted to the aforesaid violation by him. The noticee has submitted that the purchase of 443 shares by him within 1 and half months of the sale of 900 shares was entirely due to his ignorance. As submitted by the noticee and also on the basis of the material placed before me on record, I find that the noticee has entered into opposite transaction in the shares of the Company within the restricted period of six months, thereby violating the provisions of Clause 4.2 under Schedule I – Part A of Model Code of Conduct for Prevention of Insider Trading for Listed Companies read with Regulation 12(1) of the PIT Regulations.

19. I further observe in this context that the Hon'ble Supreme Court of India, in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006]} 5 SCC 361} held that;

“In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary”

20. In view of the violation of the provisions of law by the noticee, as established above, the noticee is liable for monetary penalty under the provisions of Section 15HB of the SEBI Act, which reads as under:

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 this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, 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.

22. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that the concerned department of SEBI has not quantified the profit/loss for the violations committed by the noticee. No quantifiable figures or data are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default of the noticee. Further, there is nothing on record to show that the default by the noticee was repetitive in nature. I am of the view that the requirements laid down under Model Code of Conduct for prevention of Insider Trading for listed companies stipulate laying down of certain restrictions so that the entities who are responsible for the functioning of a listed company and who are privy to the sensitive information pertaining to the company shall not misuse such information for their own benefits. Therefore, it is imperative that such restrictions are complied by the directors/officers/employees of the listed companies diligently for the protection of interest of the investors. However, I have also considered the fact that the investigation report has not mentioned about any undue advantage gained by the noticee by entering into opposite transactions within a period of six months.

ORDER

23. Having considered all the facts and circumstances of the case, the material available on record, 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 a

penalty of Rs. 2,00,000/- (Rs. Two Lakh only) on the noticee viz. Devendra Gupta, under section 15HB of the SEBI Act.

24. I am of the view that the said penalty is commensurate with the lapses/omissions on the part of the noticee. The noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of demand draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO> PAYNOW; or by using the web link for payment of penalty at SEBI website viz. <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>. In case of any difficulties in payment of the penalty, the noticee may contact the support at portalhelp@sebi.gov.in.

25. 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, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

26. In terms of the provisions of Rule 6 of the Adjudication Rules, copy of this order is sent to Devendra Gupta and also to the Securities and Exchange Board of India.

Date: September 30, 2020
Place: Mumbai

Dr. ANITHA ANOOP
ADJUDICATING OFFICER