

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/KS/AA/2019-20/6517]

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) RULES, 1995.

In respect of

Shri Abhishek Jalan

(PAN: ACQPJ7802B)

In the matter of Pantaloon Retail (India) Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation into the trading activities of certain entities in the scrip of Pantaloon Retail (India) Ltd. (now known as Future Enterprises Limited and hereinafter referred to as '**PRIL/ the Company**'), while in possession of Unpublished Price Sensitive Information ('**UPSI**') during the period February 2, 2012 – April 30, 2012. The company is listed at both BSE and NSE. Class B shares of the company carrying differential voting rights (hereinafter referred as '**PRIL DVR**') are also listed at both BSE and NSE.

2. Pursuant to investigation, SEBI observed that Shri Abhishek Jalan (hereinafter referred to as the '**Noticee**') had traded on NSE in the scrip of PRIL DVR in the futures segment during the period of UPSI and, therefore, had violated the provisions of Regulations 3(i) and 4 of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations, 1992**') read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations, 2015**') and Section 12A (d) & (e) of the SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**'). In view of the same, SEBI initiated adjudication proceedings against the Noticee under Section 15G of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer vide communique dated November 06, 2019, under section 19 read with section 15 I(1) of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to conduct adjudication proceedings in the manner specified under Rule 4 of Adjudication Rules read with section 15 I(1) and (2) of SEBI Act, and if satisfied that penalty is liable, impose such penalty deemed fit in terms of Rule 5 of Adjudication Rules and Section 15G of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice dated December 05, 2019 (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 initiated against the Noticee and why penalty should not be imposed upon the Noticee under Section 15G of the SEBI Act for the violations alleged to have been committed by the Noticee.

5. The details of the violations against the Noticee as stated in the SCN are as follows:

- (i) *The company announced on April 30, 2012 at the stock exchanges that the board of the company had approved the demerger of Pantaloons Format Business into a separate entity and further approved acquisition of controlling stake in the demerged entity by Aditya Birla Nuvo Limited (ABNL). SEBI noted during investigation that the UPSI related to the demerger of Pantaloons Format Business had come into existence on February 02, 2012, as this was the date on which PRIL set up a review committee to review various options for re-alignment and divestments of business. Further, the corporate announcement pertaining to the demerger of Pantaloons Format Business was made on April 30, 2012, at 4:28 PM on BSE and at 4:36 PM on NSE. Therefore, it was observed that the period of UPSI was from February 02, 2012 to April 30, 2012.*
- (ii) *Details of the major corporate announcements made by PRIL, on BSE and NSE, during IP, and their impact on the price of the scrip in BSE are given as follows:*

S. No.	Date-Time	Announcement/News	Price Impact/Shares Traded (Price in Rs.)					
			Date	O	H	L	C	No. of shares traded
1	10/02/2012 18:54 (BSE)	Company informed exchange about financial results for the period						

	19:23 (NSE)	ended December 31, 2011	10/02/2012	198	201.85	187.2	189.5	1346917
			13/02/2012	188.95	189	175.85	176.9	873062
2	10/02/2012 19:09 (BSE) 19:53 (NSE)	The company informed exchange that it has approved reappointment of Rakesh Biyani as Managing Director and resignation of Kailash Bhatia, Wholetime director. It has formed a review committee with mandate to consider various options for realignment and divestments with specific objective to ensure unlocking shareholder value.						
3	30/04/2012 16:28 (BSE) 16:36 (NSE)	Board of the company approved demerger of Pantaloons Format Business into a separate entity and acquisition of controlling stake in the demerged entity by Aditya Birla Nuvo Limited (ABNL)	Date	O	H	L	C	No. of shares traded
			30/04/2012	173	189.4	171.1	187.75	2950622
			02/05/2012	188.55	191.65	178.4	183	2733896

(iii) During the course of investigation, SEBI sought information from PRIL regarding the persons who were privy to the UPSI till the date of public announcement; were involved in the discussions regarding UPSI; were aware of the UPSI till the date of the public announcement; or were in possession of the UPSI prior to the public announcement and thus, were insiders as per SEBI (PIT) Regulations, 1992. In terms of Regulation 2 (e) of SEBI (PIT) Regulations, 1992, “insider” means any person who:

(a) is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access

to unpublished price sensitive information in respect of securities of a company , or

(b) has received or has had access to such unpublished price sensitive information.

(iv) It is noted that the Noticee was part of the senior management of PRIL. Vide its letter dated January 16, 2019, PRIL has inter alia submitted that the Noticee was an insider with respect to the above UPSI. SEBI observed during investigation that the Noticee has not traded in cash or derivative segment on BSE in the scrip of PRIL and PRIL DVR during the period of UPSI. However, it was observed that the Noticee had traded on NSE in the scrip of PRIL and PRIL DVR. The details of the trades of the Noticee are as follows:

Table 1: Cash Segment (Scrip: Future Enterprise Ltd earlier known as Pantaloon Retail) Exchange - NSE

Date	Buy Qty	Wt. Avg Buy Price (in Rs.)	Sell Qty.	Wt. Avg. Sell Price (in Rs.)
Prior to UPSI Period (November 02, 2011 – February 01, 2012)				
21-Nov-11	1000	199.86	-	-
Total	1000	199.86	0	0
During UPSI Period (February 02, 2012 – April 30, 2012)				
No trades observed related to Abhishek Jalan				
Post UPSI Period (May 01, 2012 – July 31, 2012)				
No trades observed related to Abhishek Jalan				

Table 2: Futures Segment (Scrip: Future Enterprise Ltd earlier known as Pantaloon Retail) Exchange – NSE (Futures Expiry Date: 26 April 2012)

Date	Buy Qty	Wt. Avg Buy Price (in Rs.)	Sell Qty.	Wt. Avg Sell Price (in Rs.)
Prior to UPSI Period (November 02, 2011 – February 01, 2012)				
No trades observed related to Abhishek Jalan				
During UPSI Period (February 02, 2012 – April 30, 2012)				
12-Apr-12	1000	169.25	1000	168.90
Total	1000	169.25	1000	168.90

Post UPSI Period (May 01, 2012 – July 31, 2012)
<i>No trades observed related to Abhishek Jalan</i>

(v) *It is observed from the above tables that the Noticee had traded in PRIL futures during the UPSI period. On April 12, 2012, he had bought and sold 1000 contracts of PRIL futures with expiry date of April 26, 2012. The futures contract had expired before announcement of UPSI, hence buy and sell price are used for calculation of profit / loss of the Noticee. Accordingly, it is observed that the Noticee had made a loss of Rs. 350 while trading in PRIL Futures during UPSI period as follows:*

Exchange	Buy Qty	Wt. Avg. Buy Price (in Rs.)	Sell Qty	Closing Price (May 02, 2012)	Unlawful Gains made (in Rs.)
NSE PRIL Futures	1000	169.25	1000	168.90	-350
Total Unlawful gains	1000	169.25	1000	168.90	-350

(vi) *In view of the above, it was alleged that the Noticee had violated the provisions of Regulations 3(i) and 4 of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 and Section 12A (d) & (e) of the SEBI Act, when he had traded in PRIL futures during the UPSI period.*

6. The SCN issued to the Noticee was sent via Speed Post Acknowledgement Due ('SPAD') and via digitally signed email. The SCN was duly delivered to the Noticee. Thereafter, the Noticee, vide his letter dated December 17, 2019, *inter alia* made the following submissions in the matter:

"I'm in receipt of your above letter vide your email of December 6, 2019 and humbly would like to submit the following points:

At the outset I would like to submit that my knowledge related to various SEBI Regulations (including SEBI (Prohibition of Insider Trading) Regulations), is minimal and for compliance purposes, I am guided by the relevant legal professional in the organisation, where I am also employed. Further, as a law abiding citizen, I have no intention to violate any rules and regulations. I am a genuine investor who trades once in a while in the stock markets and try to do all such transactions within the ambit of applicable regulations. Please note that I am not a professional full time trader/investor and do not indulge in trading large volumes in the stock markets.

With regard to the alleged trading in the securities of PRIL futures on April 12, 2012 during the UPSI Period and before announcement of transaction by the Company at that time, please note that I had no intention to do any trade during the UPSI Period. However, it was a clear case of trading the PRIL future by human error or due to oversight, which has happened while I was trading shares / futures of GMR Infrastructure Limited and hence to undo the human error of the said transaction, the buy transaction of PRIL future for same quantity was also effected within just three minutes to ensure that I am on right side of law. The exact details of the transaction is explained hereunder.

I am having a trading account with Motilal Oswal Securities Limited, which allows you to do your trades directly through a web based application on your computer. As part of the said web based application, after logging in to your client trading account, there are various options for doing trades in equity shares and derivatives. Upon selection of appropriate options, a screen pops-up on your computer giving various scripts options which you have to select while buying or selling shares/ share future. On 12

April 2012, while I was proposing to trade in the future of GMR Infrastructure Limited, it was by mistake PRIL future got selected and without realising the error, order was placed and it triggered the transaction in PRIL future. Post execution of trade and on receipt of confirmation, I realised my mistake and immediately without waiting for any other time lapse, I bought the same quantity of future of PRIL on market price, since there was no intention of doing any trade in PRIL future.

I would like to submit a copy of contract note issued by Motilal Oswal Securities Limited in the above connection to reflect the factual information reflecting the time and date of trade. It can be clearly seen from the said contract note that the trade (which was done by error and gross negligence) was executed at 10:02:34 am on April 12, 2012 and as submitted above, immediately within next three minutes, the trade was settled at 10:05:20 am on April 12, 2012 (same day) to undo the wrong transaction, which was done by human error and without any intention to do trade in the PRIL future. I would like to resubmit that the trade was done by human error on my part and immediately on realising the error and further to undo the error, the trade was settled by a corresponding buy transaction.

I would like reiterate one more point that the trade was settled irrespective of loss of Rs.350/- within minutes of execution of first trade as mentioned above. In fact, as pointed by your good Office also in para 7 of your above letter, the trade was settled with loss of Rs.350/- and I have not made any unlawful gains from the said trades.

I would like to make following submission for your kind and humble consideration:

- *I didn't had any intention to trade in PRIL futures and it happened by human error and through oversight. I further submit that there has been no intention to make any unlawful gains by doing trades in PRIL future during UPSI Period.*
- *As soon as I realised the human error of wrongly trading in PRIL future instead of GMR Infra future, I did not wait for the suitable price to avoid any loss, and cancelled the said trade by making a opposite trade for same quantity immediately, which could be easily observed from the time of the second trade transaction, which happened in about 3 minutes of the first transaction.*
- *I have in fact incurred loss of Rs. 350 on the trade and incurred a gross loss of Rs. 560 (including brokerage and taxes) while settling the trade in order to correct human error and oversight on my part.*
- *If I had bad or other intention of making profit by trading in futures of PRIL, I would have surely not settled the trade immediately and would have surely waited for some favourable price movement to make some gain in the said futures. However, as can be seen from the above details, this was not the case and since there is no option to cancel the trade, I tried to do the next possible solution, i.e., made a buy transaction of the corresponding quantity immediately so as to avoid any open position in the said PRIL future.*

I would submit that there had been no malafide intention and the said transactions were but of human error and then the opposite transaction was done to ensure that the error is undone or minimised as much as possible. I further undertake to ensure utmost care in future for any trade in shares or derivatives and abide by all applicable regulations in this respect.

Submission

Based on above points, I would like to humbly submit following request(s) for your kind consideration and perusal:

- Not to initiate any inquiry in the matter as the error was totally unintentional and due to oversight, where the best possible efforts had already been made by me to minimise the error, inspite of suffering loss on the said transaction.*
- Not to levy any fine or penalty on me for the above trade which was done inadvertently and by human error and then as per my abilities and possibilities corrective action was taken immediately, inspite of unfavourable price and resultant losses on the sale transaction;*
- As I undertake to ensure utmost care in future for any trade in shares or derivatives and abide by all applicable regulations in this respect, request to give an opportunity without initiating any further proceedings in the matter;..”*

7. In the interest of natural justice, an opportunity of hearing was granted to the Noticee on December 27, 2019 vide hearing notice dated December 18, 2019. On the scheduled date of hearing, i.e., on December 27, 2019, the Noticee along with Shri Sanjay Rathie appeared for hearing. During the course of hearing, the Noticee reiterated the contents of the letter dated December 17, 2019 submitted by him. The hearing proceedings were concluded and the Noticee sought no further hearing in the matter.

CONSIDERATION OF ISSUES

8. I have carefully perused the charges levelled 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 violated the provisions of Regulations 3(i) and 4 of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 and Section 12A (d) & (e) of the SEBI Act?
- (b) Does the violation, if any, attract monetary penalty under Section 15G of the SEBI Act?
- (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

9. Before proceeding further, I would like to refer to the relevant provisions of the PFUTP Regulations as below:

PIT Regulations, 1992

Definitions.

2. In these regulations, unless the context otherwise requires:—

.....

(e) “insider” means any person who,

- (i) is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or

- (ii) *has received or has had access to such unpublished price sensitive information ;*

Prohibition on dealing, communicating or counselling on matters relating to insider trading.

3. No insider shall—

- (i) *either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information;....*

Violation of provisions relating to insider trading.

4. *Any insider who deals in securities in contravention of the provisions of regulation 3 or 3A shall be guilty of insider trading.*

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.

SEBI Act

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

.....

(d) engage in insider trading;

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;...

10. I note that the company had announced the decision of its Board of Directors regarding approval of demerger of Pantaloons Format Business into a separate entity and the acquisition of controlling stake in the demerged entity by Aditya Birla Nuvo Limited (ABNL) at the stock exchanges on April 30, 2012.

SEBI noted during investigation that the UPSI related to the demerger of Pantaloons Format Business had come into existence on February 02, 2012, as this was the date on which PRIL set up a review committee to review various options for re-alignment and divestments of business. Further, the corporate announcement pertaining to the demerger of Pantaloons Format Business was made at 4:28 PM and at 4:36 PM on BSE and NSE respectively on April 30, 2012. Thus, the period of UPSI was from February 2, 2012 – April 30, 2012. Therefore, I note that there was a UPSI during the stated period and the impact on price due to UPSI upon announcement on exchanges has been brought out by SEBI as under:

Date	Open (Rs.)	High (Rs.)	Low (Rs.)	Close (Rs.)	No. of shares traded
30/04/2012	173	189.4	171.1	187.75	29,50,622
02/05/2012	188.55	191.65	178.4	183	27,33,896

11. It is stated in the SCN that the Noticee was in possession of UPSI, on account of him being part of the senior management of PRIL. I note that, PRIL, vide its letter dated January 16, 2019, has *inter alia* submitted that the Noticee was an “insider” with respect to the above UPSI. In terms of Regulations 3(i) and 4 of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 and Section 12A (d) & (e) of the SEBI Act, an insider is prohibited from dealing in securities of any company listed company, either on his own behalf or on behalf of any other person, when in possession of any UPSI related to that company. If any insider still deals in such securities, while in possession, he

shall be considered guilty of insider trading. I note that it is alleged in the SCN that the Noticee had traded in PRIL futures on April 12, 2012, while in possession of UPSI.

12. I note that the Noticee in his reply has not denied the facts stated in the SCN.

The Noticee has accepted that he had traded in PRIL futures on April 12, 2012. However, the Noticee has stated that he had traded in PRIL futures on April 12, 2012 by mistake, while intending to do trades in the futures of GMR Infrastructure Limited. The Noticee has submitted that he had placed a sell order through a web based application provided by his broker and, by mistake, he had selected PRIL futures instead of futures of GMR Infrastructure Limited. The Noticee has further stated that, upon execution of the trade, he realized his mistake and he bought the same quantity of PRIL futures on market price to square off the futures position. The Noticee has submitted a copy of the contract note issued by his broker for the said transactions. I note that the sell transaction was executed at 10:02:34 am on April 12, 2012 and the corresponding buy transaction was settled at 10:05:20 am on the same day. Thus, I note that there was a time lapse of around 3 minutes, when the Noticee reversed his futures position in PRIL futures. Incidentally, I note the Noticee incurred a net loss of Rs. 350 on the said transactions.

13. In view of the submissions made by the Noticee, trading details of the Noticee for the period of January 01, 2012 – June 30, 2012 were sought from stock

exchanges. NSE, vide email dated January 13, 2020, has provided the trading details of the Noticee in the cash and futures segment; while BSE has stated that there were no trades of the Noticee on BSE during the above period. I note from the details submitted by NSE that the Noticee has indeed traded in the futures of GMR Infrastructure Limited on April 12, 2012; April 13, 2012; April 16, 2012 and April 17, 2012. I also note the impugned transactions in PRIL futures were also done on April 12, 2012 by the Noticee. I further observe that the expiry of both the GMR Infrastructure Limited futures and the PRIL futures was on April 26, 2012.

14. I note from the foregoing, the alleged violation of Regulations 3(i) and 4 of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 and Section 12A (d) & (e) of the SEBI Act is getting established against the Noticee based on his submissions and available records. However, I am inclined to accept the submission of the Noticee that the violation occurred because of genuine error for the following reasons:

- (i) The Noticee had reversed the sell transaction in PRIL futures within 3 minutes of its execution by placing a corresponding buy transaction for the same quantity.
- (ii) The expiry of the PRIL futures contracts traded by the Noticee was April 26, 2012, which was well before the announcement of UPSI on exchanges by the company.

- (iii) The Noticee had traded in the futures of GMR Infrastructure Limited on date of impugned transactions having the same contract expiry date of April 26, 2012, which has been independently verified with NSE.
- (iv) No other allegation has been levelled against the Noticee.

15. Insider trading has to be seen in the backlight of an UPSI. The UPSI carries sensitivity as long as it remains unpublished. The object of the law is to penalize those who are in possession of the UPSI and make gains or avoid losses, that accrue once the UPSI is published, in exclusion of the other investors in the securities market. In the present matter, the Noticee has reversed the impugned trade within a few minutes and also the contracts have expired even before the UPSI was announced. Therefore, the opportunity to evaluate the price impact on impugned transactions post the UPSI becoming public is not available in the present matter. Therefore, I find it difficult to accept that the impugned transaction has met the test of insider trading.

16. In the matter of SEBI v. Cabot International Capital Corporation, the Hon'ble Bombay High Court held that *"... though looking to the provisions of the statute, the delinquency of the defaulter may itself expose him to the penalty provision yet despite, that in the statute minimum penalty is prescribed, the authority may refuse to impose penalty for justifiable reasons like the default occurred due to bona fide belief that he was not liable to act in the manner prescribed by the statute or there was too technical or venial breach, etc."* In

view of the foregoing, I am inclined to take a lenient view and consider it not a fit case for imposition of monetary penalty.

ORDER

17. In view of my findings noted in the preceding paragraphs, I hereby dispose of the adjudication proceedings initiated against the Noticee viz. Shri Abhishek Jalan vide Show Cause Notice dated December 05, 2019 without imposition of any monetary penalty.
18. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Shri Abhishek Jalan and also to the Securities and Exchange Board of India.

Date: January 24, 2020

Place: Mumbai

**K SARAVANAN
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER**