

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**ADJUDICATION ORDER NO. PG/AO-35/2012**

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**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:  
DFM Foods Limited  
(PAN - AAACD1017B)**

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**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 Noticee/Company**”), Shri Mohit Satyanand, had sold 5000 shares of the Company on October 14, 2011 at the rate of ₹ 281.80 amounting to ₹ 14,09,000. However, it appeared that no disclosures were filed in terms of Regulation 13(4) and 13(6) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT Regulations**”).
2. Subsequently, vide letter dated November 14, 2011, SEBI sought details from the Noticee regarding reporting of the transaction by Shri Mohit Satyanand to the Company and the reporting thereof to the Bombay Stock Exchange (hereinafter referred to as “**BSE**”), where the shares are listed.
3. It was observed that the Noticee, vide letter dated November 19, 2011 informed that Shri Mohit Satyanand vide his letter dated October 15, 2011 had informed the Noticee regarding the sale of 5000 equity shares of the Noticee in Form D in terms of Regulation 13(4) read with 13(5) of PIT Regulations and that the Noticee also informed the BSE vide its letter dated October 17, 2011, alongwith the copy of Form D received from Shri Mohit Satyanand.

4. From the enclosures to the Noticee's letter dated November 19, 2011 it was observed that the letter of the Noticee dated October 17, 2011 and the Form D did not bear the seal of BSE and hence it could not be ascertained whether BSE had received the same or not. In order to verify the claim of the Noticee, SEBI vide email dated November 29, 2011 forwarded the reply of the Noticee to BSE. However, BSE vide email dated November 30, 2011 confirmed that the Noticee did not file any disclosures under Regulation 13(6) of PIT as claimed in their letter dated November 19, 2011.
5. It was observed that Shri Mohit Satyanand had also purchased 4209 shares of the Noticee on February 09, 2011 amounting to ₹ 5,26,985.25. In this regard as well, BSE vide its email dated December 23, 2011 confirmed that no disclosure had been filed with respect to the purchase of 4209 shares of the Company.
6. In view of the aforesaid, it was alleged that the Noticee has violated the provisions of Regulation 13 (6) of PIT Regulations.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

7. 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) of the SEBI Act, 1992, the alleged violations of provisions of Regulation 13(6) of PIT Regulations committed by the Noticee.

#### **SHOW CAUSE NOTICE, HEARING & REPLY**

8. 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 16, 2012.
9. However, as no reply was received from the Noticee, 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.

10. The Noticee vide letter dated May 08, 2012 replied to the SCN and *inter alia* made the following submissions:

*As per the show cause notice in the first transaction, Shri Mohit Satyanand one of the Director of the company had purchased 4209 shares of the company on February 09, 2011 amounting to Rs. 5,26,985.25 and he had not made any disclosure under Regulation 13(4) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 to the company. We would like to inform you that, as the Company had not received any intimation for the above said transaction, it had not made any further intimation to the stock exchange under the provisions of Regulation 13(6). Hence, the company had not violated the provisions of said regulations.*

*In the second transaction, Shri Mohit Satyanand had sold 5000 shares of the Company on October 14, 2011 amounting to Rs. 14,09,000/- and provided information to the company for the said transaction vide his letter dated 15<sup>th</sup> October, 2011 along with Form – D under Regulation 13(4) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992. Subsequently, in compliance with regulation 13(6) the company had forwarded the same to Bombay Stock Exchange vide letter dated 17<sup>th</sup> October, 2011 through courier. A copy of this letter along with Form – D and courier receipt in proof of dispatch is enclosed herewith for your reference. Hence, the company had not violated the provisions of SEBI (PIT) regulation 1992.*

11. Mr. Vinod Kumar, Company Secretary in practice appeared for hearing on behalf of the Noticee as its Authorised Representative (hereinafter referred to as “AR”) on the scheduled date, i.e., May 14, 2012. During the course of hearing the AR was asked to provide proof of delivery of Noticee’s letter dated October 17, 2011 to BSE to which the AR submitted that they only had proof of dispatch of the said letter.

### **ISSUES FOR CONSIDERATION**

12. 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(6) of PIT Regulations?
- B. Whether the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992?
- C. 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**

13. 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(6) of PIT Regulations?**

14. The provisions of Regulation 13(4), 13(5) and 13(6) 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.

**Disclosure by company to stock exchanges..**

**13 (6)** Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (3) and (4) in the respective formats specified in Schedule III.

15. 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. Further, Regulation 13(6) *inter alia* requires the company to disclose to the Stock Exchange the information received under Regulation 13(4), within two working days of receipt of such information.

16. I note that one of the directors of the Noticee, Shri Mohit Satyanand, had purchased 4209 shares of the Noticee on February 09, 2011 amounting to ₹ 5,26,985.25. However, I note that BSE vide email dated December 23, 2011 stated that no disclosures were filed in terms of Regulation 13(6) of PIT Regulations. In this regard, the Noticee has submitted that it had not received any intimation for the above said transaction from Shri Mohit Satyanand and so it had not made any further intimation to the stock exchange under the provisions of Regulation 13(6) of PIT Regulations. I note that obligation of disclosure by a listed company under Regulation 13(6) of PIT Regulations

arises only when it receives information under sub-regulations (1), (2), (3) and (4) of Regulation 13 of PIT Regulations. Since, the Noticee had not received information about the transaction of purchased of 4209 shares of the Noticee on February 09, 2011 amounting to ₹ 5,26,985.25 from Shri Mohit Satyanand, I find that Noticee did not violate the provisions of Regulation 13(6) of PIT Regulations on this count.

17. I further note that Shri Mohit Satyanand sold 5000 shares of the Noticee on October 14, 2011 at the rate of ₹ 281.80 amounting to ₹ 14,09,000/-. Hence, as per Regulation 13(4) of PIT Regulations, Shri Mohit Satyanand was, *inter alia*, required to make disclosure to the Noticee in Form D and as per Regulation 13(6) of PIT Regulations, the Noticee was required to disclose to BSE, the information received from Shri Mohit Satyanand under Regulation 13(4) within two working days. In this regard, the Noticee has submitted that Shri Mohit Satyanand had made the necessary disclosure regarding sale of 5000 shares of the Noticee on October 14, 2011, to the Noticee vide his letter dated October 15, 2011. The Noticee has also submitted that in compliance with Regulation 13(6) of PIT Regulations, the Noticee has forwarded the same to BSE vide its letter dated October 17, 2011. In support of its aforesaid submission, the Noticee also submitted a copy of its letter dated October 17, 2011 and a copy of courier receipt as proof of dispatch. However, I note that the copy of the letter dated October 17, 2011 submitted by the Noticee does not contain any seal/stamp showing acknowledgement of the same by BSE. I also note that despite specifically asking the Noticee to provide proof of delivery of its letter dated October 17, 2011 to BSE, the Noticee has not been able to provide any proof of delivery. I further note that BSE vide email dated November 30, 2011 confirmed that the Noticee did not file any disclosure under Regulation 13(6) of PIT Regulations for the transaction of Shri Mohit Satyanand carried out on October 14, 2011. I also note that the Noticee has not provided any material indicating that it had tried to verify delivery of its letter dated October 17, 2011 forwarding the aforesaid disclosure to BSE.

18. In view of the above, it is apparent that the Noticee had failed to make required disclosure to BSE under Regulation 13(6) of PIT Regulations for the transaction of Shri Mohit Satyanand carried out on October 14, 2011. Therefore, the Noticee has violated the provisions of Regulation 13(6) of PIT Regulations on this count.

**ISSUE 2: Whether the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992?**

19. The provisions of Section 15 A(b) of the Act reads,

***“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;”*

20. As already observed, the Noticee failed to make disclosure as required under Regulation 13(6) of PIT Regulations for the transaction of Shri Mohit Satyanand carried out on October 14, 2011. Therefore, I find that the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992.

**ISSUE 3: What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the Act?**

21. 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.”*

22. 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 disclosure on time, the fact remains that the investors were deprived of the important information at the relevant point of time. In other words, by not complying with the regulatory obligation of making the disclosure, the Noticee had concealed the vital information which is detrimental to the interest of investors in securities market. However, since the Noticee has failed to make the required disclosure under Regulation 13(6) of PIT Regulations on only one occasion, the default of the Noticee cannot be said to be repetitive.

23. In the forgoing paragraphs it is now established that the Noticee failed to make necessary disclosure under Regulation 13(6) of PIT Regulations. Considering the facts and circumstances of the case and the violation committed by the Noticee, I find that imposing a penalty of ₹ 50,000/- (Rupees Fifty Thousand only) on the Noticee would be commensurate with the violations committed by the Noticee.

## **ORDER**

24. Considering the facts and circumstances of the case, in terms of the provisions of section 15A(b) of Act and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹ 50,000/- (Rupees Fifty Thousand only) on DFM Foods Limited for not making necessary disclosures under Regulation 13(6) of PIT Regulations.

25. 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.

26. 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: May 16, 2012**  
**Place: Mumbai**

**Piyoosh Gupta**  
**Adjudicating Officer**