

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PB/AO- 15/2011]

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

MR. NAVAL CHOUDHARY

(Pan No.: ADVPC3724D)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted examination in the trading in the scrip of M/s Albright and Wilson Chemicals India Ltd. (hereinafter referred to as ‘AWCIL/Company’) for the period from January 01, 2008 to April 02, 2008 (hereinafter referred to as “**Investigation period**”).
2. The findings of the examination led to the allegation that Mr. Naval Choudhary, Managing Director of the Company (hereinafter referred to as ‘Noticee’) had violated regulation 3(ii) and regulation 12(1) read with clause 3.2-5 of the Code of Conduct specified under Part A of Schedule I of the SEBI (Prohibition of Insider Trading) Regulations,

1992 (hereinafter referred to as “**PIT Regulations**”) and consequently, liable for monetary penalty under section 15HB and section 15G(i) of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned has been appointed as Adjudicating Officer vide order dated March 23, 2010 under section 15 I of the SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the ‘**Rules**’) to inquire into and adjudge under section 15HB and section 15G (i) of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice No. EAD-7/PB/RG/21692/2010 dated September 30, 2010 (hereinafter referred to as “**SCN**”) was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15HB and section 15G (i) of the SEBI Act for the alleged violation of regulations as alleged in the SCN.
5. It was alleged in the SCN that the Noticee had violated regulation 12(1) read with clause 3.2-5 of the Code of Conduct specified under Part A of Schedule I of the PIT Regulations by trading in the shares of AWCIL during the prohibitory period when the trading window was closed for finalization of annual accounts for the year ended December 2007 and for preparation of quarterly results of the quarter ended March 31, 2008. Further, it was also alleged that the Noticee had violated regulation 3(ii) of the PIT Regulations by communicating unpublished

price sensitive information to his wife who has sold shares during the prohibitory period.

6. The aforesaid SCN was sent through Hand Delivery. The said notice was received and acknowledged by the Noticee on October 12, 2010. Vide letter dated October 22, 2010 the Noticee requested to keep the proceedings in abeyance till the end of January 2011. The Noticee vide letter dated January 01, 2011 requested for granting personal hearing.
7. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on January 25, 2011 vide notice dated January 10, 2011. The Noticee appeared for the hearing. During the course of the hearing, the Noticee admitted that trading was done by him during the prohibitory period inadvertently and he had traded on behalf of his wife. The Noticee *inter-alia* stated that:

“It may be noted that the amount of shares (450 shares) traded by me was miniscule. I admit that the trading was done inadvertently by me with no mala fide intention on my part. Also, when I realized that the trading was done during the prohibitory period I informed the company and the same was discussed in their Board meeting. I will make detailed written submission on the matter, for which I request the Adjudicating Officer to grant 10 days time. I submit that I traded on my wife’s behalf which was inadvertently done by me. I request the Adjudicating Officer to take a lenient view.”

The Noticee was given time upto February 05, 2011 for filing written submissions and other necessary supporting documents.

8. The Noticee vide letter dated January 31, 2011 filed written submissions and *inter-alia* stated that:

- *“.....Albright and Wilson Chemicals India Ltd had notified the prohibitory period from 7th January 2008 to 16th March 2008. Prohibitory period was for 70 days.....*
- *Myself and my wife Mrs. Madhu Choudhary were holding (300+150) = 450 shares of AWCIL as on 01.01.2008.*
- *Total no. of AWCIL shares are over 33 lacs. Thus, our shareholding was less than 0.014% which could not have any impact on share prices.*
- *Kotak Securities our broker was instructed on 4th January 2008 i.e. 3 days before the start of the prohibitory period to sell entire 450 shares to avoid any possibility of violation of SEBI Regulation.*
- *Unfortunately Kotak Securities could not carry out the transaction on 4th January 2008 and without consulting us, they carried out the transaction on 7th and 9th January 2008. This fact is confirmed by Kotak Securities vide their email dated 2nd May 2008.....*
- *I admit that the trading was done inadvertently with no mala fide intention on my part. Moreover, our miniscule shareholding of 450 shares less than 0.014% of total shareholding would not have impacted share price.*
- *Also when I realized that trading had taken place during prohibitory period, I informed the company and my submission was discussed by the Board of the company in its meeting held on 25th April 2008. Board considered the circumstances in which the transactions had taken place and since such violation had never taken place during my 9 years on the Board, the Board levied just a token of Rs. 500..... The compliance officer also informed SEBI about the Board decision. Further my cheque for Rs. 500 was sent to SEBI by our Company Secretary but the same was returned by SEBI.*

- *I also submit that I traded on my wife's behalf which was inadvertently done by me (150 shares).*
- *I request the Adjudicating Officer to consider the circumstances explained above to take a lenient view.....”*

CONSIDERATION OF ISSUES AND FINDINGS

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

- Whether there is any violation of regulation 3(ii), regulation 12(1) read with clause 3.2-5 of the Code of Conduct specified under Part A of Schedule I of the PIT Regulations by the Noticee?
- Does the violation, if any, attract monetary penalty under section 15HB and section 15G (i) of the SEBI Act?
- If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

10. Before moving forward, it would be pertinent to refer to the provisions of regulations 2 (c), 2(e), 2(ha), 2(k), 3(ii) and 12(1) of PIT Regulations, clauses 3.2-3 and 3.2-5 of Code of Conduct specified under Part A of Schedule I of the PIT Regulations which reads as under:-

Regulation 2

(c) “connected person” means any person who—

(i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act or

(ii) occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company:

Explanation:—For the purpose of clause (c), the words “connected person” shall mean any person who is a connected person six months prior to an act of insider trading.

Regulation 2 (e)

“insider” means any person who, 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 company, or who has received or has had access to such unpublished price sensitive information.

Regulation 2(ha)

“price sensitive information” means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.

Explanation.—The following shall be deemed to be price sensitive information:—

- (i) periodical financial results of the company;
- (ii) intended declaration of dividends (both interim and final);
- (iii) issue of securities or buy-back of securities;
- (iv) any major expansion plans or execution of new projects.
- (v) amalgamation, mergers or takeovers;
- (vi) disposal of the whole or substantial part of the undertaking;
- (vii) and significant changes in policies, plans or operations of the company;

Regulation 2(k)

“unpublished” means information which is not published by the company or its agents and is not specific in nature.

Explanation.—Speculative reports in print or electronic media shall not be considered as published information.

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

3. No insider shall—

- (i)
- (ii) communicate counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities :

Provided that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law.

Regulation 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 without diluting it in any manner and ensure compliance of the same.

3.2-3 The trading window shall be, inter alia, closed at the time:—

- (a) Declaration of financial results (quarterly, half-yearly and annually).
- (b) Declaration of dividends (interim and final).

- (c) Issue of securities by way of public/rights/bonus etc.*
- (d) Any major expansion plans or execution of new projects.*
- (e) Amalgamation, mergers, takeovers and buy-back.*
- (f) Disposal of whole or substantially whole of the undertaking.*
- (g) Any changes in policies, plans or operations of the company.*

3.2-5 All directors/officers/designated employees of the company shall conduct all their dealings in the securities of the Company only in a valid trading window and shall not deal in any transaction involving the purchase or sale of the company's securities during the periods when trading window is closed, as referred to in para 3.2.3 or during any other period as may be specified by the Company from time to time.

11. The first issue for examination is (a) whether there is any violation of regulation 12(1) read with clause 3.2-5 of the Code of Conduct specified under Part A of Schedule I of the PIT Regulations by the Noticee.

Regulation 12(1) of PIT Regulations deals with the code of internal procedures and conduct for listed companies and other entities which include intermediaries, self-regulatory organisations, recognised stock exchanges and clearing house or corporation, public financial institutions, professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc, assisting or advising listed companies. The regulations require such entities to frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations.

Clause 3.2-5 of Code of Conduct specified under Part A of Schedule I of the PIT Regulations states that all the directors/officers/designated employees of the company shall conduct all their dealings in the securities of the company only in a valid trading window and shall not deal in any transaction involving the purchase or sale of the company's securities during the periods when the trading window is closed which is explained under clause 3.2-3 of the Code of Conduct specified under Part A of Schedule I of the PIT Regulations or during any other period as may be specified by the company from time to time.

12. Upon perusal of the facts and circumstances of the case, submissions of the Noticee and the charges thereof, I find that the prohibitory period was notified by AWCIL from January 07 to March 16, 2008, on account of board meeting being scheduled on March 11, 2008, for the purpose of finalization of financial results for the year ending December 31, 2007. On account of postponement of board meeting of the Company to March 31, 2008, the prohibitory period was extended till April 02, 2008. Further, the prohibitory period was extended from April 03 to April 27, 2008. The Board of AWCIL in its Board meeting dated January 29, 2008 noted that “The Board was informed that there were additional debits to the extent of ₹120 lacs on account of provisions to be made and write-off irrecoverable accounts. Board noted that without these additional debits, the operations showed a turnaround”. The information of turnaround in operations of AWCIL during the quarter ended December 2007 was known only to the Board and attendees to the Board meeting held on January 29, 2008. This information was known to the public only on March 31, 2008 when the company announced its quarterly and annual results for the period ended December 2007. The said Board meeting was attended by the Noticee along with other six Directors of the Board and two senior Management personnel including Mr. K.P. Venugopalan, Company Secretary. Noticee and his family members have traded in the scrip of AWCIL through a broker, Kotak Securities Limited, member BSE. The details submitted by the Noticee shows that the Noticee and his family were holding 1251 shares as on July 01, 2007. Beneficiary account-wise holdings are tabulated below-

Name of the person	Beneficiary account no.	No. of shares
Noticee	Kotak Securities /	200

	11506484	
Noticee & Madhu Choudhary	Kotak Securities / 100 11280866	
Madhu Choudhary	Kotak Securities / 150 11389650	
Priyanka Choudhary	Kotak Securities / 600 11347031	
Pallavi choudhary & Madhu Choudhary	Kotak Securities / 1 11347022	
Neeraj Jain & Priyanka Choudhary	Kotak Securities / 200 11657125	
Total shares held as on 01/07/2007		1251

13. Noticee and his family members further purchased 525 shares by January 04, 2008. I find that Noticee and his family members have sold 450 shares of AWCIL during the prohibitory period i.e. on January 07, 2008 and January 09, 2008. The prohibitory period was from January 07, 2008 to April 02, 2008. By selling the shares during the prohibitory period Noticee has violated the code of conduct. Trading during prohibitory period are collated and tabulated below-

Name of the person	Date	Period	Purchase qty	% of market volume	Sales qty	% of market volume
Naval Choudhary	07/01/2008	Shares sold during prohibitory			300	1.5 %
Madhu Choudhary	09/01/2008	period from 07/01/2008-			150	

(in the name of Madhu Enterprises)		02/04/2008				
Total					450	

I find that the Noticee has violated code of conduct by trading in the shares of AWCIL when the trading window was closed for finalization of annual accounts for the year ended December 2007 and for preparation of quarterly results of the quarter ended March 31, 2008.

From the table below, I find that Noticee and his wife have sold 450 shares during the prohibitory period, thereby, avoided loss to the tune of ₹18,821.50. Computation of the same is given below-

Date	In the name of	Qty sold	Rate	Sale amount	Loss avoided
07/01/2008	Noticee	100	164.5	16450	4,285.00
07/01/2008	Noticee	200	165	33000	8,670.00
09/01/2008	Mrs. Madhu Choudhary (in the name of madhu enterprises)	150	160.76	24114	5,866.50
Total		450		73564	18,821.50
Average sale rate			163.58		
Closing price as on 28/04/2008 (as the prohibitory period was extended till 27/04/2008)			121.65		

(amount in ₹)

14. At same time I have considered the following submissions of the Noticee:

- The Noticee traded on his wife's behalf for 150 shares. Also, from the material available on record I find that the Noticee has specifically instructed Kotak Securities Limited, his broker to sell 450 shares on January 04, 2004 so as to avoid the possibility of trading during the prohibitory period. But the transactions were carried out by the broker on January 07, 2008 and January 09, 2008
- The amount of shares traded by the Noticee was minuscule (450 shares) which is less than 0.0145 of the total shareholding.
- Also, from the material available on record I find that when the Noticee realized he has traded during the prohibitory period, he discussed it in the Board Meeting of AWCIL.

I am of the view that the reasons cited by the Noticee, did not, in any way, absolve the Noticee from the violation. At the best, these are the factors which may, to some extent, be relevant while considering the penal consequences that could attract the violation.

In view of the foregoing, the allegation of violation of provisions of regulation 12(1) of the PIT Regulations read with clause 3.2-5 of Code of Conduct specified under Part A of Schedule I of the PIT Regulations against the Noticee stands established.

15. The second issue for examination is (b) whether there is any violation of regulation 3(ii) of the PIT Regulations by the Noticee.

The term insider is defined in the PIT Regulations as any person who is or was or is deemed to be connected with the company and who is reasonably expected to have or has received or has had access to such unpublished price sensitive information in respect of securities of a company. The word "person" is a generic term and it may take in its ambit, when construed in common parlance, not only individuals but

also firms, associations or bodies corporate. Section 3(42) of the General Clauses Act, 1987 gives an inclusive definition of this word, according to which, “person” shall include any company or association or body of individuals, whether incorporated or not”. The definition of insider under regulation 2(e) of PIT Regulations has three elements: (i) the person should be a natural person or legal entity; (ii) he should be connected person or a deemed connected person and (iii) acquisition of the unpublished price sensitive information should be by virtue of such connection.

The term “connected person” has been defined in regulation 2(c) of the PIT Regulations and includes any person who is a “director” of a company, as defined in clause (13) of section 2 of the Companies Act, 1956 or is an officer or employee of the company or holds position involving a professional or business relationship between himself and the company and who has reasonable access to the unpublished price sensitive information of the company. As per section 2(13) of the Companies Act 1956, a “Director” includes any person occupying the position of director, by whatever name called. As per section 307(10) of Companies Act, 1956, any person in accordance with whose directions or instructions the Board of Directors of a company is accustomed to act, shall be deemed to be a director of the company and a director of a company shall be deemed to hold or to have an interest or a right in or over them, and either- (i) that body corporate or its Board of Directors is accustomed to act in accordance with his directions or instructions or (ii) he is entitled to exercise at any general meeting of that body corporate.

Before proceeding with the issue, let us consider the definition of price sensitive information provided in the PIT Regulations. Price sensitive information means any information which relates directly or indirectly to

a company and which if published is likely to materially affect the price of securities of the company. The information relating to periodical financial results, intended declaration of dividend, issuance and buy-back of securities, major expansion plan or execution of new project, amalgamation, merger and takeovers, disposal of whole and substantial part of undertaking or any significant change in policies, plans or operations of the company is generally considered as “price sensitive information”. These factors directly affect the market price of the share. Further, the list given in the explanation of regulation 2(ha) of the PIT Regulations is an inclusive list and not an exhaustive one. So any other information, which has a material implication on the price of the scrip, is price sensitive information.

Information can be regarded as price sensitive information, if the following conditions are fulfilled:

- i. It relates to the company in whose securities insider trading has been allegedly indulged in.
- ii. It is not generally known or published by the company for general information.
- iii. It is, if published or known, likely to affect materially the price of securities of the company.

“Unpublished” means information which is not published by the company or its agents or which is not made public in print or electronic media and is not specific in nature. The information published by a company or its agent in any newspaper or any print or electronic media as prescribed which is specific in nature with an objective to make it known to the investing public, would be a published information or otherwise “unpublished”.

An insider, being in possession of any unpublished price sensitive information, shall not deal in the securities of a company listed on any stock exchange, either on his own behalf or on behalf of any person. Further, an insider shall not communicate, counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities. An insider being in possession of unpublished price sensitive information is prohibited with respect to: (i) dealing; (ii) communicating; (iii) counseling; and (iv) procuring, in or about securities of such a company, directly or indirectly. Similarly, under clause (ii) of regulation 3, a person to whom the unpublished price sensitive information is communicated, is prohibited to deal in securities. Communication may be written or verbal and communication of information by an insider to any other person even without the latter asking for it would be sufficient to bring the insider within this prohibition. In such case, the other person to whom the information is conveyed becomes an insider if he uses the information to deal in company's securities provided he is one of the "connected persons" or a person who is "deemed to be connected" with the company within the scope of definitions of those phrases. The word "directly or indirectly" denotes that communication, counseling or procuring of such information may be done directly by the insider himself or through any other person or mode. "Counsel" means advice or consultation and "procure" means obtain, acquire or bring about. An insider who counsels or procures someone else to deal in securities will be guilty of contravention of this prohibition if the latter deals in securities. In nut shell, insider trading is indulged in by an insider by passing on to any other person unpublished price sensitive information in his possession enabling such person to deal in securities.

16. Upon perusal of the facts and circumstances of the case, submissions of the Noticee and the charges thereof, I find that, the information of turnaround in operations of AWCIL during the quarter ended December 2007 was known only to the Board and attendees to the Board meeting held on January 29, 2008. The Board was aware on January 29, 2008, that the operations of the company had turned around even though working results were poor in the year 2007. AWCIL reported a loss of ₹1.45 crore during the quarter ended June 2007 and loss of ₹ 1.92 crore during the quarter ended September 2007. However, during the quarter ended December 2007 the loss was reduced to ₹ 9 lakh, whereas, it reported a profit of ₹ 12 lakh during the quarter ended March 2008. This fact of turnaround in the company became unpublished price sensitive information as it is known only to the Board of AWCL including Noticee. This information was known to the public only on March 31, 2008 at 6:01:53 p.m. (after market hours) when the company announced its quarterly and annual results for the period ended December 2007. The said Board meeting was attended by the Noticee along with other six Directors of the Board and two senior Management personnel including Mr. K.P. Venugopalan, Company Secretary. Further, the Noticee being Managing Director of the company also had knowledge about its financial affairs and day-to-day operations. Thus, the Noticee in particular, since he was looking into the day-to-day operations of the company was aware of the turnaround even much before January 29, 2009, i.e., the day when the board met.

I find that the Noticee has admitted that he had sold 150 shares on behalf of his wife during the prohibitory period. Therefore, the Noticee has violated regulation 3(ii) of the PIT Regulations since the Noticee being an insider in terms of regulation 2(e) of the PIT Regulations has communicated unpublished price sensitive information to his wife.

However, the quantum of shares sold by the Noticee on behalf of his wife is very small of 150 shares.

In view of the foregoing, the allegation of violation of provisions of regulation 3(i) of the PIT Regulations against the Noticee stands established.

17. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216 (SC) held that "*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow*".

18. As the violation of the statutory obligation under regulation 12(1) of PIT Regulations read with clause 3.2-5 of Code of Conduct specified under Part A of Schedule I of the PIT Regulations and regulation 3(ii) of the PIT Regulations has been established, I hold that the Noticee is liable for monetary penalty under section 15HB and section 15G(i) of 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.

15G. Penalty for insider trading. - If any insider who,-

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or

(ii).....

(iii).....

shall be liable to a penalty not exceeding five lakh rupees.

19. While determining the quantum of penalty under section 15HB and 15G(i) of the SEBI Act, it is important to consider the factors stipulated in section 15J of SEBI 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.”*

20. From the material available on record, I find that the Noticee along with his wife sold 450 shares during the prohibitory period. Noticee himself sold 300 shares on his own and 150 shares on his wife's behalf. The Noticee sold 150 shares on behalf of his wife during the prohibitory period while being in possession of unpublished price sensitive information. By selling 450 shares Noticee has avoided a minimum loss of ₹ 18,822. The principles of corporate governance viz. transparency and accountability have been ignored by the Noticee. The Noticee by using such information and using it for own benefit have violated the law in letter and spirit.

ORDER

21. After taking into consideration all the facts and circumstances of the case, I impose a penalty of ₹ 25,000/- (Rupees Twenty Five Thousand only) under section 15HB and ₹ 25,000/- (Rupees Twenty Five Thousand only) under section 15G (i) of SEBI Act, {i.e. a total penalty of Rs.50,000/- (Rupees Fifty Thousand only) on the Noticee which will be commensurate with the violation/s committed by him.

22. The Noticee shall pay the said amount of penalty by way of demand draft 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 should be forwarded to Ms. Anita Kenkare, General Manager, Investigation Department- 2, SEBI, SEBI Bhavan, Plot No. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
23. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: **February 28, 2011**
Place: **MUMBAI**

PARAG BASU
ADJUDICATING OFFICER