

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**ADJUDICATION ORDER NO. AO/SG-VS/EAD/95/2018**

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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**  
**Ms. Gargi Dash**  
**(PAN No – AANPD9616N)**  
F3/13, Ground Floor,  
DLF Phase 1,  
Gurgaon – 122 001.

**In the matter of M/s ING Vysya Bank Limited**

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**FACTS OF THE CASE**

1. Securities and Exchange Board of India (hereinafter referred as 'SEBI') conducted an examination of buying, selling and dealing in the shares of M/s ING Vysya Bank Limited (hereinafter referred as 'ING') for the period from August 26, 2011 to May 20, 2013. The shares of ING were listed on BSE Limited (hereinafter referred as 'BSE').
2. Upon perusal of the trading details of Ms. Gargi Dash (hereinafter referred as 'Noticee'), then Head – Retail Finance, ING by a department of SEBI (hereinafter referred as 'ISD'), following transactions were observed:

Date	Gross Buy Volume	Gross Sell Volume	Net Traded Volume	Gross Traded Volume	Gross Buy Value (₹)	Gross Sell Value (₹)
02-11-2012	0	3600	-3600	3600	0.00	1663846.60
31-01-2013	0	11000	-11000	11000	0.00	6358325.50
28-03-2013	0	4000	-4000	4000	0.00	2192060.65

3. From the above, it was observed by ISD that Noticee upon selling the shares of ING during the period mentioned in the said table, the change in shareholding of the Noticee exceeded ₹ 5 lakh in value on November 02, 2012, January 31, 2013 and March 28, 2013.

4. It was alleged that Noticee being an officer of ING, upon selling the shares of ING leading to change in the shareholding for more than ₹ 5 Lakh in value, was required to make the disclosures to ING and to BSE in accordance with the provisions of regulation 13(4) read with regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred as 'PIT Regulations') within two working days from the date of transactions, which Noticee failed to do. Therefore, it was alleged that Noticee had violated the provisions of regulation 13(4) read with regulation 13(5) of PIT Regulations.

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

5. Shri Jayanta Jash was appointed as the Adjudicating Officer (hereinafter referred to as 'AO') vide order dated April 09, 2014 under section 15-I of the Securities and Exchange Board of India, 1992 (hereinafter referred to as 'SEBI Act, 1992') and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'AO Rules') to inquire and adjudge under section 15A(b) of the SEBI Act, 1992, the alleged violations committed by the Noticee. Consequent upon the transfer of Shri Jayanta Jash, the undersigned was appointed as AO vide Order dated June 22, 2015.

#### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

6. A Show Cause Notice (hereinafter referred to as "SCN") in terms of the provisions of rule 4 of AO Rules was issued to the Noticee by the previous AO on September 05, 2014. The said Notice of hearing was sent at "*B1001, St. Jhon Wood apts, Tavarhare Road Horamangla, Bangalore, Karnataka - 560 029*" through registered post and the same returned undelivered with remark '*door locked and intimation delivered*'.
7. Pursuant to the appointment of the undersigned as the AO, in the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the AO Rules, the Noticee was granted an opportunity of personal hearing on January 05,

2016, vide notice of hearing dated December 08, 2015 at SEBI, Head Office, Mumbai. The copy of the SCN dated September 05, 2014 was also enclosed along with the said notice of hearing with an advise to reply and was sent at the address "B1001, St. Jhon Woods Apts, Tavarakare Road Koramangla, Bangalore, Karnataka – 560 001" and the same returned undelivered with remark 'Addressee left'. In view of the above, the Noticee was granted an opportunity of hearing on July 01, 2016 vide notice of hearing dated June 13, 2016. A copy of the SCN and the Notice of hearing dated December 08, 2015 were annexed to the said notice of hearing and the Noticee was also advised to submit a reply to the SCN on or before June 27, 2016. The said notice of hearing was sent to the Noticee at the addresses 'A/47, Kharvel Nagar, Unit – 3 Bhubaneswar, Dist Khurda, Khurda Orissa - 751001' and 'Carraro India Ltd, B2/2 MIDC, Ranjangaon Pune - 412210'. Noticee vide her email and reply dated June 23, 2016 acknowledged the receipt of the aforesaid notice of hearing. Vide her said email & letter, she also submitted her address for communication and *inter alia* submitted as under:

*"....My position in ING Vysya Bank Limited was Head of Retail Finance, C band/scale in Finance & Accounts division. ING Vysya Bank was a Private sector bank with ING (foreign promoter) holding 43%. Please refer to ING Vysya Bank's Annual Report, for 2012-2013.....pdf enclosed). There is no reference to me or to any person at my level in the Senior Management Team.*

*In terms of organization structure, Bank had 13 divisions, spread across CEO's Office, Wholesale Banking, Retail Assets, Branch Banking, Private Banking, Financial Markets and support functions like Operations, Risk, Finance and Accounts, Information Technology, Human Resource, Internal Audit, Secretarial and Chief of Staff. The Board of Directors were at the apex, representing the shareholders and were responsible for the strategic supervision of the Bank. The Senior Management Team were the heads of each division. Finance and Accounts was headed by the Chief Financial Officer who in turn had a Financial Controller, Accounts Head, Taxation Head. My position reported to the Financial Controller and was responsible for business support to Retail Assets, Branch Banking and Private Banking. My position was therefore incapable of giving directions to the Board of Directors or any of the Directors; Senior Management Team or any of its members*

*nor to the Financial Controller. There were only a team of 5 to 6 members as my subordinates in the Bank to whom I was capable of giving directions to regarding report making at a business segment (retail assets and branch banking), branch and product level. There must have been around 50 positions in the Bank at C band/scale and another 50 employees above that scale. Neither was I ever in possession of any unpublished price sensitive information as I was not part of the Financial Reporting team.*

*Hence, I am neither a Director nor an Officer of the Bank within the meaning of Regulation 13 (4) of the PIT Regulations.*

*Given the above, request you to defer the hearing by three months, so that I can access the relevant records from my erstwhile employer ING which has subsequently merged into Kotak Mahindra Bank; search and appoint a representative in Mumbai given that I am on maternity leave."*

8. With respect to the opportunity of hearing dated July 01, 2016, Noticee sought time to obtain the relevant records. Further, the Noticee was granted another opportunity of hearing on August 02, 2016 vide notice of hearing dated July 13, 2016. The said notice was sent at the address, 'F3/ 13, Ground Floor, DLF Phase 1, Gurgaon - 122001'. Noticee vide her email dated July 29, 2016 confirmed the attendance of her authorized representative for the hearing.
9. On the date of hearing, Mr. Krishnava Dutt, Managing Partner, M/s Argus Partners, Advocates, Authorized Representative (AR-1) on behalf of the Noticee. At the time of hearing, the AO explained the purpose of the hearing and the charges/offences leveled against the Noticee. During the hearing, the AR stated as under:  
  
*" I, AR, on behalf of the Noticee reiterate the submissions dated June 23, 2016 made by the Noticee. The copy of the PAN Card of the Noticee is hereby submitted. In addition to it, I request 4 weeks time to submit additional written submissions in the matter"*
10. The AO acceded to the request of the Noticee and allowed time as requested.

11. Further, Noticee vide her letter dated August 30, 2016 submitted that she would be approaching SEBI for settlement of proceedings under the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 in the next 10 days and vide her letter dated September 22, 2016 submitted a copy of the settlement application dated September 22, 2016 addressed to SEBI. Vide email dated January 04, 2017, Settlement Division, SEBI, confirmed the receipt of settlement application filed by the Noticee. Subsequently, on August 23, 2017, it informed that the settlement application by the Noticee was rejected by SEBI.
12. In view of the aforesaid, the Noticee was granted another opportunity of hearing on October 24, 2017 vide notice of hearing dated October 06, 2017. Vide the said notice of hearing, the Noticee was also advised to submit additional submissions, if any, on or before October 23, 2017. In response, the Noticee vide her 2 separate emails (without any enclosures) dated October 23, 2017 submitted her replies. Vide her first email October 23, 2017, she *inter alia* submitted as under:

*"The Noticee was an employee of the Bank at its Bangalore office. She resigned from the Bank on August 31, 2013. The Noticee was granted employee stock options in the Bank ("ESOPs"). Pursuant to the exercise of the ESOPs, the Noticee acquired equity shares of the Bank. Thereafter, on November 2, 2012, January 1, 2013 and March 28, 2013, the Noticee sold an aggregate of 18,600 (eighteen thousand six hundred) shares of the Bank, constituting less than 0.01% (zero point zero one percent) of the total share capital of the Bank, at a total price of Rs. 10,214,232 (Rupees ten million two hundred fourteen thousand two hundred thirty two).*

*As the Noticee was neither an officer nor a director of the Bank, the Noticee was under a bona fide belief that the provisions of regulations 13(4) and 13(5) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 ("PIT Regulations") were not applicable and accordingly no disclosure was made by the Noticee in respect of the aforesaid transactions.*  
....."

13. Vide her Second reply sent vide email dated October 23, 2017, she submitted as under:

*"The Noticee was an employee of ING Vysya Bank Limited ("Bank") at its Bangalore office. She resigned from the Bank on August 31, 2013. The Noticee was granted employee stock options by the Bank ("ESOPs"). The Noticee exercised the ESOPs and accordingly equity shares of the Bank ("Shares") were issued to her. After exercise of the ESOPs, the Noticee sold 18,600 (eighteen thousand six hundred) Shares which*

issued to her pursuant to the exercise of the ESOPs, at a total price of Rs. 1,02,14,232 (Rupees one crore two lac fourteen thousand two hundred thirty two).

As the Noticee was neither an officer nor a director of the Bank, the provisions of regulations 13(4) and 13(5) of the PIT Regulations were not applicable and accordingly no disclosure was made by the Noticee in respect of the aforesaid transactions involving the sale of 18,600 (eighteen thousand six hundred) Shares ("Share Sale Transaction").

The Noticee was an employee of the Bank. She was based out of Bangalore. She resigned from the Bank on August 31, 2013. It may be noted that the Bank has since merged with Kotak Mahindra Bank.

Organisation Structure of the Bank and the position of the Noticee

As Head of Retail Finance, Noticee was an employee in the Finance and Accounts Division, which was one of the 13 (thirteen) different divisions of the Bank. The Bank had 13 divisions, spread across CEO's Office, Wholesale Banking, Retail Assets, Branch Banking, Private Banking, Financial Markets and support functions like Operations, Risk, Finance and Accounts, Information Technology, Human Resource, Internal Audit, Secretarial and Chief of Staff. The Board of Directors were at the apex, representing the shareholders and were responsible for the strategic supervision of the Bank. The Senior Management Team were the heads of each division. Finance and Accounts was headed by the Chief Financial Officer who in turn had a Financial Controller, Accounts Head, Taxation Head. Noticee position reported to the Financial Controller.

A reference may be made to page 2 of the 82nd Annual Report 2012-2013 of the Bank which lists out the senior management team of the Bank. It can be seen that the Noticee does not form part of the senior management team of the Bank. An extract of the 82nd Annual Report 2012-2013 of the Bank is enclosed hereto and attached as Annexure "A". The said Annual Report is also available online on the website of the Bank at: .....

Further, from an Investor Presentation of the Bank which is available on the website of the Bank, it can be seen that the Noticee was not shown as being part of the senior management team. An extract of the investor presentation is enclosed hereto and attached as Annexure "B". The said Investor Presentation is also available online on the website of the Bank at: .....

The employees at the Bank were categorised into 7 (seven) grades, namely, Grade A, Grade B, Grade C, Grade D and Grade E. Grade A was the highest and Grade G was the lowest. The Noticee was a Grade C employee and held the position of Head – Retail Finance. The Bank had 13 (thirteen) different divisions and there were several Grade C employees. The Noticee reported to the Financial Controller of the Bank who was a Grade B employee. The Financial Controller in turn was subordinate to the Chief Financial Officer of the Bank who was a Grade A employee. The following organisation chart depicts the reporting structure in respect of the Noticee:

### Reporting Structure In Respect Of The Noticee Annexure "C"

#### Roles and responsibilities of the Noticee:

The team in which the Noticee was a part of, was primarily a report dissemination unit. The main responsibility of the Noticee was to provide support services to the retail bank business team by interpreting reports at branch, ATM and product level. The Noticee was also engaged in providing assistance in matters relating to retail bank budget assigned at the branch and product level and in preparing new initiatives for approval of finance and tracking progress thereof based on reports from core financial reporting team. The responsibility of the Noticee was limited to taking queries from business and obtaining relevant information from the financial reporting team. As the Head Retail Finance, the Noticee also assisted the human resources division of the Bank in analysing and computing the incentives to be paid out to employees of the Bank based on criteria set by the business in which the employees were engaged.

The Noticee was not part of the senior management of the Bank and was very low in the chain of management. She would have no interaction with the Board of Directors of the Bank. Further, the Noticee was not a person on whose directions or instructions the Board of Directors or any director would be accustomed to act. Therefore, the Noticee was not an 'officer' of the Bank as defined in the PIT Regulations as she was neither a director nor a person with whose directions or instructions the Board of Directors of the Bank or any one or more of the Directors of the Bank was accustomed to act.

#### Issuance of ESOPs and sale of shares

The Bank had formulated employee stock option schemes for its employees. The Noticee was granted ESOPs under ESOS 2007 and ESOS 2010 formulated by the Bank. Pursuant to the exercise of the ESOPs granted to the Noticee, the Noticee acquired 36,000 (thirty six thousand) equity shares of the Bank between December 5, 2010 and August 5, 2013. The details of grant of ESOPs to the Noticee is attached hereto and enclosed as Annexure "D". The details of exercise of the ESOPs by the Noticee is attached hereto and enclosed as Annexure "E".

Between November 2, 2012 and March 28, 2013, the Noticee sold an aggregate of 18,600 (eighteen thousand six hundred) shares of the Bank on the stock exchange, constituting less than 0.01% (zero point zero one percent) of the total share capital of the Bank, at a total price of Rs. 1,02,14,232 (Rupees one crore two lac fourteen thousand two hundred thirty two). The details of the sale are provided in Annexure "F" hereto.

Pursuant to the sale of Shares, an approximate gain of Rs. 34,45,885 (Rupees thirty four lac forty five thousand eight hundred eighty five) was made by the Noticee. Details of the profit value is provided in Annexure "G" hereto.

The Noticee had approached the Bank for pre-clearance for the sale of shares as she was a designated employee. It may be noted that as per the Bank's policy, all employees in the secretarial, finance & accounts, financial markets and wholesale

*operations department were included in the definition of 'designated employees'. In this regard, the Noticee would like to disclose that in respect of the 3,600 (three thousand six hundred) Shares sold on the stock exchange on November 2, 2012, the Noticee had obtained pre-clearance on October 22, 2012 and sold the Shares on November 2, 2012. As more than 7 (seven) days had elapsed from the date of approval, the Bank imposed a penalty of Rs. 1,41,393 (Rupees one lac forty one thousand three hundred ninety three).*

*Considering the Noticee was very low in the chain of management and was not part of the senior management of the Bank (as mentioned earlier hereinabove), she was not an 'officer' of the Company, and accordingly no disclosure was made under regulations 13(4) and 13(5) of the PIT Regulations. As mentioned above, the Noticee resigned from the Bank with effect from August 31, 2013.*

*Please consider that the Noticee did not make any disclosure under regulations 13(4) and 13(5) of the PIT Regulations as she was not an 'officer' of the Bank. It is humbly submitted that the non-disclosure under regulations 13(4) and 13(5) of the PIT Regulations has not resulted in any disproportionate or unfair advantage to the Noticee; no loss has been caused to an investor or group of investors; and the default is not repetitive in nature.*

*It is further humbly submitted that the alleged default is minor in nature. The total Shares sold by the Noticee is only 18,600 (eighteen thousand six hundred) constituting less than 0.01% (zero point zero one percent) of the total share capital of the Bank. Further, pursuant to the sale of Shares, the Noticee made an approximate gain of Rs. 34,45,885 (Rupees thirty four lac forty five thousand eight hundred eighty five). No economic benefit has accrued to the Noticee due to the alleged non-disclosure. Further, there are no other proceedings pending against the Noticee for non-compliance of securities law.*

*It is apparent from a bare perusal of Regulation 13 (4) that the obligation there under is only upon a 'director' or an 'officer' of a listed company.*

*The SCN does not adduce any evidence whatsoever in support of its allegation that the noticee was either a Director or an officer of the Company. Therefore, it is respectfully submitted that SCN has failed to make out any charge against the noticee and on this basis itself, the SCN is liable to be withdrawn. Without prejudice to the above, it is submitted that the noticee admittedly was not a Director of the Company. Therefore, the issue is whether the noticee is an "officer" of the Company within the meaning of the said expression under the PIT Regulations.*

*Regulation 2(g) of PIT Regulations stipulates that an "officer of a company" means any persons as defined in Section 2(30) of the Companies Act, 1956, and includes an auditor. Section 2(30) of the Companies Act, 1956 defines "officer" as being any "...director, manager or secretary or any person in accordance with whose directions or instructions the Board of directors of any one or more of the directors is or are accustomed to act".*

*Noticee is admittedly neither a "director" nor an "auditor" of the Company.*



*Section 2(45) of the Companies Act, 1956 defines "secretary" as being a Company secretary within the meaning of Section 2(1) (c) of the Company Secretaries Act, 1980, and including any other individual possessing the prescribed qualifications and appointed to perform the duties which may be performed by a secretary under the Companies Act, 1956 and any other ministerial or administrative duties. Noticee was not a company secretary and does not possess the prescribed qualifications for the same. Therefore, the noticee was not a "secretary" of the Company.*

*Additionally, the Noticee had no interaction with the Board of Directors of the Company and was not a person on whose directions or instructions the Board of Directors or any of the directors was accustomed to act. Even the SCN does not allege this to be the case.*

*Therefore, the only question remaining would be whether the noticee was a "manager" within the meaning of Section 2(24) of the Companies Act, 1956 i.e. whether the Noticee "....has the management of the whole, or substantially the whole, of the affairs of a company". By no conceivable means can it ever be said that the noticee had "the management of the whole, or substantially the whole, of the affairs of a company". The SCN also does not adduce any evidence that would indicate that the noticee has the management of the whole or substantially the whole of the affairs of the Company.*

*Quite to the contrary, as detailed above, the noticee was involved solely with the dissemination of reports for the Relevant SBU and cannot even be said to have the management of the Relevant SBU much less of the Company as a whole. In fact, in the overall corporate hierarchy of the Company, the noticee held a relatively insignificant position. Given that the company has a total of thirteen divisions, by no stretch of argument can it be alleged that the noticee is in the management of whole or substantially the whole of the affairs of the Company.*

*Furthermore, it is pertinent to note that the appointment and remuneration of a 'manager' of a company is regulated under Chapter IV, Part B of the Companies Act, 1956. Particularly, proviso to Section 386 (2) of the Companies Act, 1956 clearly stipulated that the appointment of a 'manager' of a company shall be made pursuant to the approval of the resolution by the Board of Directors passed at the Board meeting with the consent of all the directors present at the meeting with a prerequisite that a specific notice has to be served on all the directors then in India for the meeting and for the resolution proposed to be passed at the meeting. The remuneration of a manager of a company has to be determined as per Section 387 of the Companies Act, 1956 which, in turn, prescribes a procedure for determination of remuneration of the manager similar to that of a director as per the provisions of the companies Act, 1956. It is therefore submitted that the conclusion that the noticee is not a "manager" under the Companies Act is reinforced by the fact that neither of the aforesaid provisions were followed while appointing the Noticee.*

*Accordingly, it is clear that the noticee is not an "officer" of the Company under Regulation 2(g) of the PIT Regulations.*

*Without prejudice to the above, it is respectfully submitted that in the event it is found that the noticee was an "officer" of the Company at the relevant time, her failure to file Form D within the timeframe specified in Regulations 13(5) was a technical and venial breach occasioned only by her genuine and bona fide belief that she was not an "officer of the Company and was not required to make any such filings. Thus, the noticee had not acted in deliberate defiance of the law. Additionally, none of the factors provided for in Section 15-J of the SEBI Act, which are to be considered for the purpose of imposing of penalty under Section 15-I are applicable to the present case.*

*Furthermore, request the Board to grant us hearing date around mid-December to present our case through a qualified lawyer."*

14. In view of the aforesaid request of the Noticee, the Noticee was granted an opportunity of hearing on November 23, 2017 vide notice of hearing dated October 31, 2017. Subsequently, the reply of the Noticee dated October 23, 2017 mentioned at para 13 above along with annexures was received on November 02, 2017. Further, the Noticee was granted a final opportunity of hearing on December 21, 2017 vide notice of hearing dated December 05, 2017. Noticee vide her email and letter dated December 12, 2017 confirmed the attendance of her Authorized Representatives for the said hearing.

15. On the date of hearing, Mr. Ajay Dahiya and Mr. Pranab Ghosal, Authorized Representatives (ARs-2), appeared on behalf of the Noticee. At the time of hearing, the AO explained the purpose of the hearing and the charges/offences leveled against the Noticee. During the hearing, the ARs-2 stated as under:

*"We, ARs, on behalf of the Noticee reiterate her earlier submissions dated October 23, 2017. In addition, we hereby submit additional submissions dated December 21, 2017 on behalf of the Noticee."*

16. The additional submission dated December 21, 2017 submitted by ARs-2 stated as under:

*"The following documents be kindly taken on record:*

- (i) Organizational Chart (which is in lieu of Annexure – C Filed with the reply dt 23/10/17, which may kindly be taken off the record). The said document be treated as Annexure – C.*

- (ii) *Adjudication Order No. JS / DJ / 12-16 / 2017 dated 8/11/2017 passed in the matter of Tech Mahindra & ors.*
- (iii) *Judgment of SAT in Appeal No. 178 / 2011 decided on 22.12.2011 in the matter of Sh. Mahendra Pandey Maitri v/s SEBI.*
- (iv) *Judgment of the Supreme Court in Civil Appeals 14730, 14728 & 14729 of 2015 titled Siddharth Chaturvedi & ors. v/s SEBI. dt. 14/3/2016."*

## **ISSUES FOR CONSIDERATION**

17. After perusal of the material available on record, I have the following issues for consideration viz.

- I. Whether the Noticee has violated the provisions of regulation 13(4) read with regulation 13(5) of PIT Regulations?
- II. Whether the Noticee is liable for monetary penalty under Section 15A (b) of the SEBI Act?
- III. If so, what quantum of monetary penalty should be imposed on the Noticee?

## **FINDINGS**

18. 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 I: Whether the Noticee has violated the provisions of regulation 13(4) read with regulation 13(5) of PIT Regulations?***

19. I note that the provisions of regulation 13(4) read with regulation 13(5) of PIT Regulations read as under:

*13. (1)...*

*...*

*(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.*

*(4A)...*

*(5) The disclosure mentioned in sub-regulations (3), (4) and (4A) 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.*

20. In this regard, I further note the following observation made by Hon'ble Securities Appellate Tribunal (hereinafter referred as 'SAT') in the matter of Sundaram Finance Limited vs. SEBI (Appeal No. 69 of 2010 decided on September 16, 2010):

*"3. ....*

*The term "officer of a company" has been defined in Clause (g) of Regulation 2 of the Regulations to mean any person as defined in clause (30) of Section 2 of the Companies Act, 1956 including an auditor of the company. We are not concerned with an auditor in this case. Clause (30) of Section 2 of the Companies Act defines an 'officer' in the following words:-*

*"Officer includes any director, manager or secretary or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act".*

*....*

*A reading of the aforesaid definition makes it clear that it is an inclusive definition. Apart from what the word 'Officer' means, it includes all that is stated therein. In other words, the definition does not exhaust all persons who otherwise come within its ambit or scope. While the definition says that it includes the persons specified therein, it doesn't say who are all the persons who will come within the term. We are of the view that an 'Officer' means a person holding an appointment to an office which carries with it an authority to give directions to other employees. Thus, an 'Officer' as distinct from a mere employee is a person who has the power of directing any other person or persons to do anything whereas an employee is one who only obeys. Any person who occupies a position of responsibility in a company will be an 'Officer' and this has been clarified by the Department of Company Affairs, government of India as per its letter dated October 7, 1963."*

21. I have duly perused the submissions of the Noticee and the Orders and Judgments referred by her in her submissions. I note that the Noticee has contended that "the Noticee was not an 'officer' of the Bank as defined in the PIT Regulations as she was neither a director nor a person with whose directions or instructions the Board of Directors of the Bank or any one or more of the Directors of the Bank was

*accustomed to act*” and also that neither was she an ‘auditor’ or ‘manager’ nor did she have interaction with the Board and also that she did not form part of the senior management team. In this regard, I note from the document submitted by the Noticee vide her letter dated December 21, 2017 that the Noticee being the ‘HEAD RETAIL FINANCE’, she had admittedly 4 members viz two ‘MANAGER RETAIL FINANCE’, ‘HEAD RETAIL FINANCE’ and an ‘OFFICER RETAIL FINANCE’, directly reporting to her and from her reply dated October 23, 2017, I note that the Noticee reported to Financial Controller of the Bank. Further, I note that the Noticee vide her reply dated June 23, 2016 has also admitted that, *“My position in ING Vysya Bank Limited was Head of Retail Finance, C band/Scale in Finance & Accounts division.....There were only a team of 5 to 6 members as my subordinates in the Bank to whom I was capable of giving directions to regarding report making at a business segment (retail assets and branch banking), branch and product level.”* In view of the above along with the observations of Hon’ble SAT as referred at para 20 above, I note that the Noticee admittedly held the position in ING Vysya Bank reported by 5-6 employees. i.e. she held an office which carried with it an authority to give directions to certain employees.

22. Therefore, from the above, I note that the Noticee held a position of responsibility with an authority to give directions to certain other employees. In view of the above, I conclude that the Noticee was an ‘officer’ of ING for the purpose of PIT Regulations, 1992.
23. I note that the Noticee has submitted that she had acquired shares of ING pursuant to exercise of ESOPs granted to her. I further note that the Noticee vide a signed letter annexed to her reply dated October 23, 2017 has admitted that on 3 occasions i.e. November 02, 2012, January 31, 2013 and March 28, 2013, she sold some of the aforesaid shares of value exceeding ₹ 5 lakh on each occasion. Therefore, upon selling the shares of ING leading to change in the shareholding for more than ₹ 5 Lakh in value on each occasion i.e. November 02, 2012, January 31, 2013 and March 28, 2013, the Noticee was required to make the disclosures to ING and to BSE in accordance with the provisions of regulation 13(4) read with regulation 13(5) of PIT Regulations within two working days from the date of transactions. However,

I note that the Noticee has admittedly failed to make disclosures to ING and BSE in terms of regulation 13(4) read with 13(5) of SEBI (PIT) Regulations, 1992.

24. The Noticee has also submitted that non-disclosure under regulations 13(4) and 13(5) of the PIT Regulations has not resulted in any disproportionate or unfair advantage to the Noticee; no loss has been caused to an investor or group of investors. In this regard, it is pertinent to note the observation of Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT') in the case of Mrs. Komal Nahata vs. SEBI ( Appeal No. 5 of 2014 decided on January 27, 2014 ) *"...Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non-disclosure. "*

25. Further the Noticee has contended that the failure to disclose was a technical and venial breach occasioned only by her genuine and bona fide belief that she was not an 'officer' of the Company and was not required to make any such filings. In this regard, while also noting my findings at para 22 above, I note the following observation made by Hon'ble SAT in the matter of Akriti Global Traders Ltd. Vs. SEBI (Appeal No. 78 of 2014 decided on September 30, 2014):

*"... Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay.."*

26. In view of the above, I conclude that the Noticee has violated the provisions of provisions of regulation 13(4) read with regulation 13(5) of PIT Regulations.

**ISSUE II. Whether the Noticee is liable for monetary penalty under Section 15A (b) of the SEBI Act?**

27. I note that the provisions of Section 15A(b) read as under:

***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,—*

*(a) .....*

*(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;*

*(c) .....*

28. From the conclusions arrived at para 26 above, I further conclude that the Noticee is liable for penalty under section 15A (b) of the SEBI Act.

**ISSUE III: If so, What quantum of monetary penalty should be imposed on the Noticee?**

29. While determining the quantum of monetary penalty, it is important to consider the factors stipulated in Section 15 J of the SEBI Act, which reads as under :

***SEBI Act***

***Factors to be taken into account by the adjudicating officer***

**15J.** *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 a group of investors as a result of the default ;*
- c) the repetitive nature of the default*

30. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the

loss, if any, suffered by the investors as a result of the Noticee's failures. From the documents available on record, it is noted that no prior default is on record.

31. In view of the abovementioned conclusion and after considering the factors under Section 15J of the SEBI Act, I hereby impose a penalty of ₹ 4,00,000/- (Rupees Four Lakh only) on the Noticee under Section 15A (b) of the SEBI Act, 1992 for the violation of regulation 13(4) read with regulation 13(5) of PIT Regulations which is appropriate in the facts and circumstances of the case.

### **ORDER**

32. In exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby impose a penalty of ₹ 4,00,000/- (Rupees Four Lakh only) on Ms. Gargi Dash in terms of the provisions of Section 15A(b) of the Securities and Exchange Board of India Act, 1992 for the violation of regulation 13(4) read with regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 by her.

33. Ms. Gargi Dash shall remit / pay the said amount of penalty within 45 days of receipt of this order either through e-payment facility into the Bank Account, the details of which are given below:

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

or by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai.

34. Ms. Gargi Dash shall forward the following details / confirmation of penalty so paid to the Chief General Manager, Enforcement Department, SEBI Mumbai :



1. Case Name :	
2. Name of Payee:	
3. Date of payment:	
4. Amount Paid:	
5. Transaction No:	
6. Bank Details in which payment is made:	
7.Payment is made for:	Penalty

35. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, a copy of this order is being sent to Ms. Gargi Dash at F3/13, Ground Floor, DLF Phase 1, Gurgaon – 122 001 and also to the Securities and Exchange Board of India, Mumbai.

**Place: MUMBAI**  
**Date: JANUARY 12, 2018**

**SURESH GUPTA**  
**ADJUDICATING OFFICER**