

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/VV/JR/2019-20/6516]**

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

In respect of:

**Viju Babulal Jain
(PAN: AUXPJ7590H)**

**In the matter of Siddarth Businesses Limited (currently known as Shivamshree
Businesses Limited)**

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), pursuant to investigation in the matter of Siddarth Businesses Limited (currently known as Shivamshree Businesses Limited) (hereinafter referred to as "**SBL/ company**") observed that Viju Babulal Jain (hereinafter referred to as "**Noticee**"), one of the directors failed to make disclosure regulation 7(2)(a) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "**PIT Regulations**") and executed contra trades without obtaining necessary approvals during the period July 4, 2014 to October 30, 2016 (hereinafter referred to as "**investigation period**").

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI vide order dated February 7, 2019 appointed Shri Jeevan Sonparote as the Adjudicating Officer under section 15 I of Securities Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as “**AO Rules**”) to inquire into and adjudge the aforesaid allegations under sections 15A(b) and 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”). Pursuant to the transfer of the case, the undersigned was appointed as the Adjudicating Officer vide order dated August 13, 2019.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Based on the findings by SEBI, Show Cause Notice dated September 17, 2019 (hereinafter referred to as 'SCN') was issued to the Noticees under Rule 4(1) of AO Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on them under sections 15A (b) and 15HB of SEBI Act for the alleged violations. The SCN returned undelivered.
4. In order to comply with the principles of natural justice an opportunity of personal hearing was given to the Noticee by the undersigned on January 20, 2020 vide notice dated December 23, 2019. In the said notice, the Noticee was informed that a copy of the SCN is available on SEBI website and a copy of the same can be obtained from there. The said hearing notice was affixed at the last known address of the Noticee.
5. No person appeared on the schedule date of hearing. Enough opportunities were given to the Noticees to represent their case by way of reply to SCN and also by appearance for personal hearing. In order to complete the proceeding timely, I am constrained to proceed with the matter on the basis of the material available on record.

CONSIDERATION OF ISSUES AND EVIDENCE

6. I have carefully perused the charges levelled against the Noticees in the SCN and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-

- (a) Whether the Noticee has violated the provisions of regulation 7(2)(a) of PIT Regulations.
- (b) Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of SEBI Act for the alleged violation?;
- (c) Whether the Noticee has violated clause 3(e) of the code of conduct adopted by the company for insider trading, as required under regulation 9(1) of PIT Regulations.
- (d) Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15HB of SEBI Act for the alleged violation? and,
- (e) 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?

7. Before proceeding further, I would like to refer to the relevant provisions of the PIT Regulations and code of conduct.

Relevant provisions of PIT Regulations:

7. Disclosures by certain persons

(2) Continual Disclosures.

(a). Every promoter, member of the promoter group, designated person and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified

Relevant provisions of the company's code of conduct:

3. e) All Designated Employees who buy or sell any number of shares of the company shall not execute a contra trade i.e. sell or buy any number of shares during the next six months following the prior transaction. However the Compliance Officer may grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate the regulations and such trade shall not be executed when designated persons is in possession of UPSI.

8. I note from the documents on record that the Noticee had traded in the scrip of the company. Following table gives a list of his transaction:

Date	No. of shares held - pre Acquisition/disposal	% of shareholding held - pre Acquisition/disposal	No. of shares Acquired/ (disposed off)	No. of shares Acquired/ (disposed off) as a % of paid up capital	Value of transaction (Rs.)	Cummulative Value of transaction (Rs.)	No. of shares held - post Acquisition/disposal	% of shareholding held - post Acquisition/disposal	Date of disclosure to company	Date of disclosure by Company to stock exchange	Regulation(s) under which disclosure is required	Observations regarding disclosures
<u>Mr. Viju Babulal Jain (AUXPJ7590H):</u>												
06/11/2015	650,937	1.43%	Became director of the company on 06/11/2015						06/11/2015	N.A.	7(1)(b) of PIT, 2015	Required disclosure was made
09/11/2015	650,937	1.43%	-10,510	-0.02%	168,135.00	168,135.00	640,427	1.40%	N.A.	N.A.	N.A.	N.A.
10/11/2015	640,427	1.40%	-782	0.00%	11,413.50	179,548.50	639,645	1.40%	N.A.	N.A.	N.A.	N.A.
17/11/2015	639,645	1.40%	-215	0.00%	2,924.00	182,472.50	639,430	1.40%	N.A.	N.A.	N.A.	N.A.
18/11/2015	639,430	1.40%	-43,000	-0.09%	584,800.00	767,272.50	596,430	1.31%	N.A.	N.A.	N.A.	N.A.
19/11/2015	596,430	1.31%	-2,020	0.00%	27,472.00	794,744.50	594,410	1.30%	N.A.	N.A.	N.A.	N.A.
27/11/2015	594,410	1.30%	-48,000	-0.11%	652,800.00	1,447,544.50	546,410	1.20%	Not disclosed	Not disclosed	7(2)(a) of PIT, 2015	Required disclosure was not made
05/02/2016	546,410	1.20%	-20,000	-0.04%	185,000.00	185,000.00	526,410	1.15%	N.A.	N.A.	N.A.	N.A.
05/02/2016	526,410	1.15%	20,000	0.04%	178,000.00	363,000.00	546,410	1.20%	N.A.	N.A.	N.A.	N.A.
09/02/2016	546,410	1.20%	Resigned on 09/02/2016									

9. It was observed that from November 6, 2015, the Noticee started disposing of his shareholding and on November 27, 2015 the value of the disposed shareholding was ₹14,47,544.50, i.e., it exceeded ₹10,00,000/-. As per regulation 7(2)(a) of PIT Regulations, the Noticee should have disclosed to the company the number of securities disposed of within two trading days. However, no such disclosure was made by him.
10. In view of the above, I find that the allegation of violation of regulation 7(2)(a) of PIT Regulations by the Noticee stand established.
11. The company vide email dated February 22, 2018, provided the documents related to pre-clearance obtained by the Noticee. On perusal, it was observed that the compliance officer of the company vide letter dated November 07, 2015 had granted relaxation to the Noticee to execute contra trade within a period of six months. However, there was no reason recorded in writing for granting such relaxation. Clause 3(e) of the code of conduct adopted by the company for insider trading r/w clause 10 of Schedule B r/w regulation 9(1) of PIT Regulations, clearly states that a Compliance Officer of the company may grant permission to execute contra trades for reasons recorded in writing. The letter dated November 7, 2015 simply states:
- “I, Hemant Ashokbhai Palanpuri, Compliance officer of the company be and hereby grant relaxation under clause 10 of Schedule B (Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders) of SEBI (Prohibition of Insider Trading) Regulations, 2015 to trade (buy/ sell) securities in supersession of the period specified in clause 3(e) of the CODE OF CONDUCT FOR PROHIBITION OF INSIDER TRADING AND CODE OF PRACTICES AND PROCEDURES FOR FAIR DISCLOSURE adopted by the Company which is within a period of six months.”*
12. No valid reason was provided by the Compliance Officer to the Noticee to execute the contra trades. It was further observed that neither the pre-clearance application nor the approval forms have mention of the Noticee's intention to execute contra trades.

13. The summary of contra trades executed by the Noticee is as follows:

Name	Sum of Gr Buy Qty	Sum of Gr Sell Qty	Contra Trade Qty (A or B, whichever is less)	Buy Value (in actual)	Sell Value (in actual)	Profit Made*
	A	B	C	D	E	F=E-D
Viju Babulal Jain	20000	124527	20000	178000.00	297977.30	119977.30

14. Being one of the directors of the company, the Noticee was an insider who is not allowed to take opposite position of his own trades within six months of the transaction without getting explicit relaxation from the compliance officer with proper reason. In this case, the Noticee bought and sold shares within six months without obtaining a proper reasoned relaxation from the compliance officer and made of profit of ₹ 119977.30.

15. In view of the above, I find that the Noticee have violated of clause 3(e) of the code of conduct adopted by the company for insider trading, as required under regulation 9(1) of PIT Regulations.

16. It is observed that the Noticee did not submit any reply to the SCN issued to him. Hon'ble Securities Appellate Tribunal, in Appeal no. 68 of 2013 in *Sanjay Kumar Tayal and others v SEBI*, vide its order dated February 11, 2014 have stated that “*appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices.*”

17. In view of the above, I find that the Noticee is liable for penalty under section 15A(b) of the SEBI Act for violation of regulation 7(2)(a) of PIT Regulations and liable for penalty under section 15HB for violation of clause 3(e) of the code of conduct adopted

by the company for insider trading, as required under regulation 9(1) of PIT Regulations which reads as under:

15A. Penalty for failure to furnish information, return, etc..

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 or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

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 shall not be less than one lakh rupees but which may extend to one crore rupees.

18. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..."*.

19. While determining the quantum of penalty under sections 15A(b) and 15 HB of the SEBI Act, it is important to consider the factors relevantly as stipulated in section 15J of the SEBI Act which read as under:-

Section 15J - Factors to be taken into account by the adjudicating officer While adjudging quantum of penalty under section 15, 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. It is of utmost importance that substantial change in shareholding of directors are made aware to the public. The investors have a right to know the details of the shareholding of the target company and such disclosures also help in enhanced scrutiny of the securities market by the regulator. Moreover, the regulator discourages frequent trading of shares in the company by directors (who are insiders) as it leads to biased profit making.

21. I find that the investigation did not bring out the disproportionate gain or unfair advantages to the Noticees and loss caused to investors as a result of non-disclosure of change of shareholding. The Noticee failed to make the relevant disclosure on one occasion. Hence, violation is not repetitive in nature. It is important to note that timely disclosure of information prescribed under relevant provisions, is an important regulatory tool intended for proper functioning of the securities market and failure to do so results in preventing investors from taking well informed decision. It is further observed that the Noticee had earned a profit of ₹119977.30 while indulging into contra trades.

ORDER

22. After taking into consideration the nature and gravity of the charges established in the preceding paragraphs, factors mentioned under section 15J of the SEBI Act and in exercise of the powers conferred upon me under section 15-I of the SEBI Act, read with Rule 5 of the SEBI Adjudication Rules, I hereby impose a penalty of ₹ 2,00,000/- (Rupees Two Lakh only) on the Noticee viz. Viju Babulal Jain in terms of section 15A(b) of the SEBI Act, for the violation of the provisions of regulations 7(2)(a) of PIT Regulations and a penalty of ₹ 3,00,000/- (Rupees Three Lakh only) on the Noticee for violation of clause 3(e) of the code of conduct adopted by the company for insider trading as required under regulation 9(1) of PIT Regulations i.e. a total of ₹ 5,00,000/-

(Rupees Five Lakh only). In my view, the aforesaid penalty is commensurate with the violations committed by the Noticee.

PENALTY PAYMENT OPTIONS

23. The Noticees shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai and 1) the said DD should be forwarded to the Division Chief, Enforcement Department 1(EFD), Division of Regulatory Action - II [**EFD 1-DRA-2**] SEBI Bhavan, Plot No.C4-A, ‘ G’ Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following details:

Case Name	
Name of the Payee	
Date of payment	
Amount Paid	
Transaction No.	
Bank Details	
In which payment is made for	Penalty

OR

24. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>

25. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

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

Date : January 24, 2020
Place : Mumbai

VIJAYANT KUMAR VERMA
ADJUDICATING OFFICER