

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER: EAD-2/SS/SK/2018-19/1484]

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:

Pereira Sebastian Ruzario
(PA No. AEWPP4711R)
5, Yogiraj Ashram, Kalina,
Santacruz East, Mumbai – 400098.

In the matter of Marksans Pharma Limited

1. During examination in the scrip of Marksans Pharma Limited (hereinafter referred to as ‘MPL’), SEBI observed that Mr. Pereira Sebastian Ruzario (hereinafter referred to as ‘the Noticee’) had traded in the scrip of MPL during the period of trading window closure from January 01, 2015 to December 31, 2016. MPL had informed that he was a designated person (employee) of the company. The details of trading activities of the Noticee in the scrip of MPL during the said period of trading window closure are tabulated as under:

Date	Broker Name	Gr Buy Vol	Gr Sell Vol	Gr Buy Value (Rs.)	Gr Sell Value (Rs.)	Remarks
29/05/2015	Axis Securities Limited	0	1000	0.00	60183.60	Financial results announced on May 30, 2015. Trading window was closed between May 21, 2015 to June 01, 2015.
29/05/2015	Axis Securities Limited	0	500	0.00	30089.50	
31/07/2015	M . B. Parikh Finstocks Ltd.	100	0	10560.00	0.00	Financial results announced on August 08, 2015. Trading window was closed between July 30, 2015 to August 09, 2015
05/08/2015	M . B. Parikh Finstocks Ltd.	1000	0	104250.00	0.00	
06/08/2015	M . B. Parikh Finstocks Ltd.	200	1200	20920.00	128975.00	
07/08/2015	M . B. Parikh Finstocks Ltd.	1000	900	110622.95	97675.00	
02/11/2015	M . B. Parikh Finstocks Ltd.	0	1000	0.00	96750.00	Financial results announced on

Date	Broker Name	Gr Buy Vol	Gr Sell Vol	Gr Buy Value (Rs.)	Gr Sell Value (Rs.)	Remarks
04/11/2015	Axis Securities Limited	0	700	0.00	71050.00	November 10, 2015. Trading window was closed between November 02, 2015 to November 11, 2015
04/11/2015	M . B. Parikh Finstocks Ltd.	0	1000	0.00	102200.00	
05/11/2015	Axis Securities Limited	1000	0	100650.00	0.00	
09/11/2015	Axis Securities Limited	0	1500	0.00	145054.50	
09/11/2015	M . B. Parikh Finstocks Ltd.	500	1500	48200.00	147250.00	
10/11/2015	M . B. Parikh Finstocks Ltd.	3000	0	297700.00	0.00	
11/11/2015	M . B. Parikh Finstocks Ltd.	0	681	0.00	67623.30	
04/02/2016	Kotak Securities Ltd.	0	450	0.00	26325.00	Financial results announced on February 12, 2016. Trading window was closed between January 30, 2016 to February 13, 2016
09/02/2016	M . B. Parikh Finstocks Ltd.	2000	0	116100.00	0.00	
12/02/2016	Kotak Securities Ltd.	420	0	20118.00	0.00	
12/02/2016	M . B. Parikh Finstocks Ltd.	1000	2000	49450.00	94125.00	
27/05/2016	Axis Securities Limited	0	1000	0.00	47300.00	Financial results announced on May 30, 2016. Trading window was closed between May 20, 2016 to May 31, 2016
30/05/2016	Kotak Securities Ltd.	600	600	28710.00	28350.00	
12/08/2016	Axis Securities Limited	2000	0	91600.00	0.00	Financial results announced on August 13, 2016. Trading window was closed between August 05, 2016 to August 14, 2016
12/08/2016	Kotak Securities Ltd.	486	0	22331.70	0.00	
09/11/2016	Axis Securities Limited	1000	0	42850.00	0.00	Financial results announced on November 12, 2016. Trading window was closed between November 04, 2016 to November 14, 2016.
10/11/2016	Axis Securities Limited	0	1000	0.00	49900.00	

2. In view of the above, it has been alleged that the Noticee has violated the provisions of clause 4 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders specified in Schedule B read with Regulation 9(1) and (2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as 'the PIT Regulations'). The said provisions of PIT Regulations read as under:

PIT Regulations

Code of Conduct.

9. (1) The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.

NOTE: *It is intended that every company whose securities are listed on stock exchanges and every market intermediary registered with SEBI is mandatorily required to formulate a code of conduct governing trading by its employees. The standards set out in the schedule are required to be addressed by such code of conduct.*

(2) Every other person who is required to handle unpublished price sensitive information in the course of business operations shall formulate a code of conduct to regulate, monitor and report trading by employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.

NOTE: *This provision is intended to mandate persons other than listed companies and market intermediaries that are required to handle unpublished price sensitive information to formulate a code of conduct governing trading in securities by their employees. These entities include professional firms such as auditors, accountancy firms, law firms, analysts, consultants etc., assisting or advising listed companies, market intermediaries and other capital market participants. Even entities that normally operate outside the capital market may handle unpublished price sensitive information. This provision would mandate all of them to formulate a code of conduct.*

SCHEDULE B

[See sub-regulation (1) and sub-regulation (2) of regulation 9]

Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders

1.
4. *Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.*

3. Vide a communication-order dated June 21, 2018, it has been informed that the competent authority in SEBI is satisfied that there are sufficient grounds to inquire into the affairs and adjudicate upon the alleged violation by the Noticee as aforesaid and has appointed the undersigned as Adjudicating Officer under section 15-I(1) of the SEBI Act and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'the Adjudication Rules') to inquire into and adjudge the aforesaid alleged violation.
4. Accordingly, after receipt of records of the proceedings on August 02, 2018, a notice to show cause no. EAD/SS-SKS/OW/21931/2018 dated August 06, 2018 (hereinafter referred to as 'the SCN') was issued to the Noticee, calling upon him to show cause as to why an inquiry should not be held against him in terms of rule 4 of the Adjudication Rules and penalty be not imposed under Section 15HB of the SEBI Act for the aforesaid alleged violation which reads as under:

Penalty for contravention where no separate penalty has been provided.

15HB. *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.*

5. As reply from the Noticee was not forthcoming, in order to conclude the inquiry in terms of Rule 4 (3) of the Adjudication Rules, the Noticee was granted an opportunity of personal hearing on September 14, 2018 vide hearing notice dated August 30, 2018. The said hearing notice was served upon the Noticee through speed post. In the meantime, the Noticee filed his reply to the SCN vide letter dated September 04, 2018. Further, the Noticee attended the personal hearing on September 14, 2018 and reiterated the submissions made vide his letter dated September 04, 2018. The replies/submissions of the Noticee are as under:
 - a) The Noticee is working in MPL for the last around 17 years as peon/ office assistant. The position that he hold does not have any access to Unpublished Price Sensitive Information ('UPSI').
 - b) He is drawing a total annual salary of about ₹3,40,000/- and has to support a full family including two grown up daughters and parents to support and he is the only income earner in the family. He does not have any movable and immovable properties in his name. Hence, he does not have any corpus to pay penalty, if any levied by SEBI.
 - c) The shares of MPL were traded without knowing the fact that the trading window was closed and he had no knowledge that trading window was closed when the trading were carried out. He was not having any UPSI when MPL's shares were traded nor the trading done with any

mala fide intention. In fact, these trading were carried out by the brokers without his knowledge in order to square off his position and recover money as he was unable to pay their dues. To square off his position and recover money, the brokers carried out multiple trading in his account without his knowledge.

- d) There was no *mens rea* involved in the trading in MPL's shares. The total volume of 29,337 shares traded in his account is very miniscule i.e. only 0.03% of the total market volume, hence, the act of his trading such a miniscule quantity will never impact the volume and / or price in the scrip. Further, in majority of cases the price of shares when trading window opened was less than the price at which the shares were traded.
 - e) His violation, if any, is technical and venial in nature, same is unintentional. No gain or advantage has occurred to him and no loss or harm been caused to any investors. The same was only a procedural lapse/unawareness of the window closing time, and devoid of any malafide intention. He further submitted an undertaking that such kind of violation will not be repeated in future.
6. The Noticee has claimed that he was not aware of closures of trading window at the relevant time and he traded due to inadvertence. The Noticee had even claimed that he was not having any 'functional role' in his employment with MPL and had no knowledge or information of any UPSI about MPL at the relevant times. The allegation against the Noticee that he was a designated employee is based on the information provided by MPL. Thus, for the purpose of the inquiry, it was considered relevant to find out as to whether any Code of Conduct was laid down by MPL as mandated in terms of Regulation 9 read with Clause 3 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders specified in Schedule B of the PIT Regulations and whether it had designated its employees based on their functional role as required under the PIT Regulations. Therefore, in terms of Rule 4(6) of the Adjudication Rules read with section 15I (2) of the SEBI Act further information in the above regard was sought from MPL vide Notice dated October 09, 2018 and it was also asked to depute a person acquainted with facts of the case to be present with relevant documents/ records on October 15, 2018. By this Notice, following information relevant to the inquiry were sought from MPL:
- a) Copy of Code of Conduct laid down, if any, by it to regulate, monitor and report trading by insiders in compliance with Regulation 9 of the PIT Regulations.
 - b) Whether the employee was, at the relevant times, the designated person based upon his functional role in MPL in terms of the code of conduct.
 - c) Functional Role and Designation of the employee of MPL during the time of their respective trades as well as his present designation and role.

7. On October 15, 2018, Mr. Harshavardhan Panigrahi, Company Secretary of MPL, Authorised Representative ('AR'), appeared on behalf of MPL and provided the information along with letter dated October 13, 2018 and explained the content thereof. Relying upon the said letter, he explained that MPL had intimated its employees about closure of trading window from time to time through e-mail(s) and notice board. In its letter dated October 13, 2018, MPL has confirmed the following:-

- a) It has in place a Code of Conduct to regulate, monitor and report trading in securities in compliance with Regulation 9 of the PIT Regulations. The same was approved by its Board of Directors on May 30, 2015. Subsequently, MPL circulated a revised Code of Conduct approved by the Board of Directors on August 11, 2017. It also provided copies of its Code of Conduct and has confirmed that the Code of Conduct is informed to all the employees through e-mails and notice board and has also been uploaded in the Company's website www.marksanspharma.com.
- b) As per the Code of Conduct approved by the Board of Directors on May 30, 2015 which remained valid during the subject period between May 2015 and December 2016, all employees of MPL comprising top tier of the management upto the Manager level and all employees in the Corporate Office at Mumbai are included in the definition of "Designated Person". Accordingly, the employee under reference is a Designated Person.
- c) In terms of its code of conduct, all its employees were intimated about the closures of trading window from time to time through e-mail and notice board.
- d) On receipt of information from SEBI, the matter was taken up by the Board of Directors in its meeting held on May 29, 2017 wherein it was decided to issue warning letters to the employees who made profit of less than ₹10 Lakh and to withhold promotion, salary increment, LTA and Bonus for one year of those employees who made profit of more than ₹10 Lakh and debar from trading in the shares of the Company for one year. It was further decided to recover the amount of profit from such employees for credit into the Investor Protection and Education Fund administered by SEBI.
- e) MPL has already recovered the amount from the employees, to the extent possible, and deposited the same in 'Investor Protection and Education Fund'. The MPL has also permanently debarred the Noticee from trading in the company scrip. It has intimated SEBI about the same and has provided a copy of its letter dated June 04, 2018 sent to SEBI.

8. I have carefully considered the allegations levelled in the matter, the submissions of the Noticee and the relevant material available on record. Admittedly, this is not a case where an insider has been alleged to have traded in the shares of MPL on the basis of any UPSI. The charge in this case is that the Noticee being designated person of MPL had traded in

the scrip of MPL when the trading window was closed and has thus, alleged to have violated the provisions of Clause 4 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders specified in Schedule B read with Regulation 9(1) and (2) of the PIT Regulations.

9. In this regard, it is noted that in terms of Regulation 9 (1) of the PIT Regulations, all listed companies are obligated to frame a Code of Conduct as near to the Model Code of Conduct as set out in Schedule B to the PIT Regulations. The similar obligation under Regulation 9 (2) is intended for persons other than listed companies and market intermediaries. In this case, MPL being a listed company, the allegation of non-compliance of Regulation 9 (2) does not sustain.
10. In terms Clause 3 to Schedule B of the Code of Conduct, the listed company has to designate the employees and connected persons ('designated persons') on the basis of their functional role. A bare perusal of the various provisions stipulated under the Model Code of Conduct for listed companies under Regulation 9 of the PIT Regulations will make it clear that these provisions are formulated with a view to serve as a guiding charter for all concerned persons associated with the functioning of the company and their trading in its securities. For this purpose, designated employees are to be designated on the basis of their functional role ("designated persons") and are to be governed by an internal code of conduct governing dealing in securities. It is also noted that Regulation 9 (3) of the PIT Regulations casts obligation on the listed company to designate a compliance officer to administer the code of conduct and monitor compliance. As explained in the Note appended to this regulation, the provision is intended that the designated compliance officer identified by the listed company has the responsibility to administer the code of conduct and monitor compliance. Further, in terms of Clause 12 of Schedule B to the Code of Conduct shall stipulate the sanctions and disciplinary actions including wage freeze, suspension etc., for contravention of the Code of Conduct. These actions are without prejudice to the power of the Board under the SEBI Act.
11. In this case, MPL had framed a Code of Conduct prescribing various requirements including the requirement that 'designated persons' and their immediate relatives shall not trade in securities of the Company when the trading window is closed. The Noticee was considered as 'designated persons' as per MPL's Code of Conduct which covers employees comprising top tier of the management upto the Manager level and all

employees in the Corporate Office at Mumbai. The Noticee was admittedly a peon / office assistant in the corporate office of MPL at Mumbai. Thus, he has been considered a 'designated person' on account of his place of posting *per-se* rather than on the basis of functional role. The Noticee has admitted that the trading was inadvertently done without knowing the fact that the trading window was closed during the period May 29, 2015 to November 10, 2016. During this period, the Noticee had bought 14,306 shares and sold 15,031 shares of MPL.

12. Admittedly, there is no charge that the Noticee was in possession of any UPSI and though he works as peon / office assistant in MPL, he has been designated as a 'designated person' by MPL due to an omnibus clause in its Code of Conduct which covers all employees working in its corporate office at Mumbai irrespective of their functional role. It is pertinent to note that while designating an employee as a 'designated person' under Clause 3 to Schedule B, due regard should be had to the access that such role and function would provide to UPSI in addition to seniority and professional designation. In this regard, I note that in the revised Code of Conduct approved by the Board of Directors of MPL on August 11, 2017, it has specifically excluded peons and office assistants from the definition of 'designated person'. Considering the role and function of the Noticee, I am of the view that the preponderance of probability is in his favour.
13. It is an undisputed fact that the Noticee had traded in shares of MPL amounting to total volume of 29,337 shares (0.03% of the total market volume during the relevant period). I am of the view that the said total quantity of 29,337 shares (net sale of 725 shares) of MPL transacted by the Noticee during the entire examination period of two years is not very significant. It is also a matter of record that the Board of Directors of MPL had already taken stern action against the Noticee and withheld his salary increment, leave travel allowance and bonus payment aggregating to ₹ 67,170/- i.e. amount equivalent to profit made by the Noticee and the said amount of ₹67,170/- was transferred by MPL to SEBI- Investor Protection and Education Fund ('IPEF') by cheque dated June 04, 2018. It is also noted that MPL has also permanently debarred the Noticee from buying/ selling the shares of MPL. I am of the view that the Noticee has been adequately sanctioned/penalized by MPL for his defaults which resulted in the violation of the Model Code of Conduct prescribed under Clause 4 of Schedule B of the PIT Regulations.

14. Considering the above facts and circumstances of this case, I am of the view that the actions taken and sanctions imposed by MPL on the Noticee in terms of its Code of Conduct is commensurate with the violations committed by him in this case and the case does not deserve imposition of penalty under section 15HB of the SEBI Act. The SCN is disposed of accordingly.
15. In terms of Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee and also to SEBI.

Date: October 31, 2018
Place: Mumbai

Santosh Shukla
Adjudicating Officer