

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PKB/AO - 1/2012]

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:

Pratik Rameshchandra Shah

(PAN - ALWPS7673Q)

In the Matter of: Platinum Corporation Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigations relating to buying, selling or dealing in the shares of Platinum Corporation Limited (hereinafter referred to as “**the Company**”). Investigation, *inter-alia*, had revealed that certain persons were holding more than 5% of equity capital of the Company but did not disclose their shareholdings and change in shareholding in compliance with SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT Regulations**”) and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as “**SAST Regulations**”).
2. It was observed that Pratik Rameshchandra Shah (hereinafter referred to as the “**Noticee**”) was having beneficiary account with Depository Participant (hereinafter referred to as “**DP**”), H. Nyalchand Financial Services having BOID: 10008793. It was observed that the Noticee received one crore shares of the Company from beneficiary account of Anand Ramanlal Trivedi on June 28, 2005, which translated to 9.34 % of the equity capital of the Company. It was further observed that these shares were transferred back to Anand Ramanlal Trivedi on July 01, 2005.
3. It was observed that the Noticee was a director of the Company during the relevant time and despite being a responsible director in managing affairs of the Company, the

Noticee did not disclose his acquisition of shares on June 28, 2005 and change of shareholding on July 01, 2005 to the Company and to the Stock Exchange. It was also observed that the Noticee did not even disclose his shareholding as on June 30, 2005 in the quarterly shareholding submitted by the Company to BSE.

4. It was observed that the Noticee transacted substantially in the shares of the Company, but failed to make disclosures about his initial shareholding and change in shareholding to the Company and also to the Stock Exchanges as required under the PIT Regulations and SAST Regulations. In view of the Noticee's actions and omissions in this matter, it was alleged that the Noticee had violated the provisions of Regulation 13(1), 13(3) and 13(4) of PIT Regulations and Regulation 7(1) of SAST Regulations.
5. The undersigned was appointed as the Adjudicating Officer vide Order dated March 23, 2011 and the said appointment was conveyed vide proceedings of the Whole Time Member dated July 04, 2011 to inquire into and adjudicate under Section 15 A (b) of the SEBI Act, 1992, the alleged violation of provisions of Regulation 13(1), 13(3) and 13(4) of PIT Regulations and Regulation 7(1) of SAST Regulations.

SHOW CAUSE NOTICE, HEARING & REPLY

6. A Show Cause Notice (hereinafter referred to as "SCN") in terms of the provisions of Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") was issued to the Noticee on July 15, 2011, calling upon the Noticee to show cause why an inquiry should not be held against him under Rule 4(3) of the Adjudication Rules for the alleged violations.
7. The aforesaid SCN was duly delivered to the Noticee. Since no reply was received from the Noticee, Notice of Inquiry dated September 23, 2011 was issued under Rule 4(3) of the Adjudication Rules vide which an opportunity of personal hearing was given to the Noticee which was scheduled for October 12, 2011. However, the Noticee failed to appear for personal hearing on the scheduled date.
8. Thereafter, another opportunity of personal hearing was granted to the Noticee on November 09, 2011, which was subsequently rescheduled to November 24, 2011. However, the Noticee vide email dated November 23, 2011 requested for another

hearing date which was acceded to and accordingly the personal hearing of the Noticee was rescheduled to December 14, 2011. Vide email dated December 13, 2011, the Noticee expressed his inability to attend the hearing scheduled on December 14, 2011, and accordingly, the personal hearing of the Noticee was rescheduled to December 19, 2011. However, the Noticee failed to attend the hearing.

9. I note that the Noticee failed to submit any reply to the SCN and also failed to appear for hearing. For the reasons mentioned above, I observe that the Noticee was provided with enough opportunity of being heard and hence, the inquiry is proceeded with taking into account the material available on record.

ISSUES FOR CONSIDERATION

10. After perusal of the material available on record, I have the following issues for consideration, viz.,
- A. Whether the Noticee has violated provisions of Regulation 13(1), 13(3) and 13(4) of PIT Regulations and Regulation 7(1) of SAST Regulations?
 - B. Whether the Noticee is liable for monetary penalty under Section 15 A (b) of the SEBI Act, 1992?
 - C. What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

FINDINGS

11. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

ISSUE 1: Whether the Noticee has violated provisions of Regulation 13(1), 13(3) and 13(4) of PIT Regulations and Regulation 7(1) of SAST Regulations?

12. The provisions of Regulation 13(1), 13(3) and 13(4) of PIT Regulations and Regulation 7(1) of SAST Regulations read as under:

SEBI (Prohibition of Insider Trading) Regulations, 1992

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure.

- 13 (1)** *Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 4 working days of : –*

- (a) the receipt of intimation of allotment of shares; or
- (b) the acquisition of shares or voting rights, as the case may be.

Continual Disclosure

- 13 (3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.
- 13 (4) Any person who is a director or officer of a listed company, shall disclose to the company 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 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.

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997

Acquisition of 5 per cent and more shares or voting rights of a company

- 7(1): Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

13. I note that the Noticee was having beneficiary account with DP H. Nyalchand Financial Services having BOID: 10008793. From the beneficiary account statement (Demat statement) of the Noticee (enclosed with the SCN as “Annexure II”) I note that on June 28, 2005, the Noticee bought/received 1,00,00,000 shares of the Company (representing 9.34% of the equity capital of the Company). Subsequently, the Noticee sold/transferred the entire 1,00,00,000 shares of the Company on July 01, 2005. Relevant transactions of the Noticee in the aforesaid beneficiary account were as follows:

Date	Description	Credit	Debit	Balance	Balance % to equity
	Opening balance			0	0%
28/06/05	By SHAH INVESTOR'S HOME LTD / 10263667	1,00,00,000	0	1,00,00,000	9.34%
01/07/05	To SHAH INVESTOR'S HOME LTD / 10263667	0	1,00,00,000	0	0%

14. From the above it is evident that the Noticee was holding more than 5% of the equity capital of the Company on June 28, 2005. Hence, the Noticee was under obligation to make disclosures under Regulation 13(1) of PIT Regulations to the Company. It is also

evident that on July 01, 2005, the Noticee transferred 1,00,00,000 shares (representing 9.34% of the equity capital of the Company), depicting a change exceeding 2% of the shareholding in the Company. Hence, the Noticee was under obligation to make disclosure under Regulation 13(3) of PIT Regulations to the Company. However, no such disclosures had been made by the Noticee under the aforesaid regulations.

15. I note that as the Noticee was a director of the Company and had bought/received and sold/transferred 1,00,00,000 shares, therefore, as per the then Regulation 13(4) of PIT Regulations, the Noticee was under an obligation to disclose his acquisition of shares on June 28, 2005 and change of shareholding on July 01, 2005 to the Company. However, no such disclosures had been made by the Noticee under the aforesaid regulation.
16. I further note that since the Noticee was holding more than 5% of the shares of the Company on June 28, 2005, in terms of Regulation 7(1) of SAST Regulations, the Noticee was also under obligation to disclose the aggregate of his shareholding in the Company to the Company and to the stock exchanges where shares of the Company were listed. However, no such disclosure had been made by the Noticee under Regulation 7(1) of SAST Regulations.
17. I note that despite duly receiving the SCN and Notices of Inquiry, the Noticee has failed to submit any reply to the SCN and has not refuted the charges. The Hon'ble Securities Appellate Tribunal in *Classic Credit Ltd. vs. SEBI*, Appeal No. 68/2003 has, *inter-alia*, held – “the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them”. The Order passed by Hon'ble SAT is relied upon in this case for guidance. Therefore, I presume that the Noticee has admitted the charges alleged in the SCN.
18. In view of the above, I hold that the Noticee was under an obligation to make the required disclosures under Regulation 13(1), 13(3) and 13(4) of PIT Regulations to the Company and under Regulation 7(1) of SAST Regulations to the Company and to the Stock Exchanges, which the Noticee failed to do. Therefore, the Noticee has violated the provisions of Regulation 13(1), 13(3) and 13(4) of PIT Regulations and Regulation 7(1) of SAST Regulations.

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

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

“Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made thereunder, –*

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;”

20. As already observed, the Noticee transacted substantially in the shares of the Company, but failed to make disclosures as required under Regulation 13(1), 13(3) and 13(4) of PIT Regulations and Regulation 7(1) of SAST Regulations. Therefore, I find that the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992.

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

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

“15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.”

22. In the absence of material on record, the amount of disproportionate gain or unfair advantage made as a result of the default and the amount of loss caused to the investors due to the said default cannot be quantified. However, by virtue of the failure on the part of the Noticee to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time. In other words, by not complying with the regulatory obligation of making the disclosures, the Noticee had not provided the vital information which is detrimental to the interest of investors in securities market.

23. In the forgoing paragraphs it is now established that the Noticee failed to make necessary disclosures under Regulation 13(1), 13(3) and 13(4) of PIT Regulations and Regulation 7(1) of SAST Regulations. Considering the facts and circumstances of the case and the violations committed by the Noticee, I find that imposing a penalty of ₹ 4,00,000/- (Rupees Four Lakhs only) on the Noticee would be commensurate with the violations committed by him.

ORDER

24. Considering the facts and circumstances of the case, in terms of the provisions of Section 15A(b) of the SEBI Act, 1992 and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹ 4,00,000/- (Rupees Four Lakhs only) on Pratik Rameshchandra Shah for not making necessary disclosures under Regulation 13(1), 13(3) and 13(4) of PIT Regulations and Regulation 7(1) of SAST Regulations.

25. The penalty shall be paid by way of demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this Order. The said demand draft shall be forwarded to the Deputy General Manager, Investigation Department, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.

26. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this Order are being sent to the Noticee and also to Securities and Exchange Board of India.

Date: January 04, 2012
Place: Mumbai

P. K. Bindlish
Adjudicating Officer