

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/VV/JR/2019-20/6587-6589]**

**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:

**Prafulbhai Parshottambhai Bavishiya
(PAN: ACYPP9907H)**

**Shaileshbhai Parshottambhai Bavishiya
(PAN: AAUPP1539R)**

**Arunaben Prafulkumar Bavishiya
(PAN: AAUPP1398N)**

**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 Prafulbhai Parshottambhai Bavishiya (hereinafter referred to as "**Noticee 1**"), Shaileshbhai Parshottambhai Bavishiya (hereinafter referred to as "**Noticee 2**") and Arunaben Prafulkumar Bavishiya (hereinafter referred to as "**Noticee**")

3”) (together they are referred to as “**Noticees**”) were directors of the company and traded in the shares of the company exceeding the threshold limit without obtaining pre-clearance of trade which is in violation of clause 3(a) of the code of conduct adopted by the company, as required under regulation 9(1) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as “**PIT Regulations**”). Further, it is alleged that Noticee 3 had executed contra trades without obtaining necessary approvals during the period July 4, 2014 to October 30, 2016 (hereinafter referred to as “**investigation period**”) which is in violation of clause 3(e) of the code of conduct adopted by the company, as required under regulation 9(1) of PIT Regulations.

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 section 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 section 15HB of SEBI Act for the alleged violations. Although the SCN was delivered no reply was received from the Noticees.

4. In order to comply with the principles of natural justice an opportunity of personal hearing was given to the Noticees by the undersigned on January 14, 2020 vide notice dated December 20, 2019. On the scheduled date of personal hearing, the Authorised Representative of Noticee 1 appeared and sought further time to make submission. Another opportunity of personal hearing was given to the Noticees on January 21, 2020. However, no one appeared on the scheduled date of hearing.
5. 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 all the Noticees have violated clause 3(a) of the code of conduct adopted by the company for insider trading, as required under regulation 9(1) of PIT Regulations.
 - (b) Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15HB of SEBI Act for the alleged violation?;
 - (c) Whether the Noticee 3 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 3 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:

9. Code of Conduct.

(1) The board of directors of every listed company and the board of directors or head(s) of the organisation of every intermediary shall ensure that the chief executive officer or managing director shall formulate a code of conduct with their approval to regulate, monitor and report trading by its designated persons and immediate relatives of designated persons] towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B (in case of a listed company) and Schedule C (in case of an intermediary) to these regulations, without diluting the provisions of these regulations in any manner.

Relevant provisions of the company's code of conduct:

3. a) *All designated employees and their immediate relatives shall obtain the pre-clearance from the Compliance Officer if they intend to trade in to the securities of the Company quantum of which exceeds 10000 (Ten Thousand) in numbers by way of making application. However the Compliance officer shall submit his application for the purpose of obtaining pre-clearance of the trade to the Chief Financial Officer of the Company.*
- 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 Noticees had traded in the scrip of the company. Following table gives a list of their transactions:

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
1. Mr. Prafulbhai Parshottambhai Bavishiya (ACYPP9907H):											
09/02/2016	0	0.00%	Became director of the company on 09/02/2016						09/02/2016	N.A.	7(1)(b) of PIT, 2015
05/04/2016	0	0.00%	32,000	0.07%	196,480.00	196,480.00	32,000	0.07%	N.A.	N.A.	N.A.
07/04/2016	32,000	0.07%	240,542	0.53%	1,455,484.73	1,651,964.73	272,542	0.60%	11/04/2016	16/04/2016	7(2)(a) of PIT, 2015
2. Mr. Shailesh Bhai Parshottambhai Bavishiya (AAUPP1539R):											
17/03/2016	155,389	0.34%	Became director of the company on 17/03/2016						17/03/2016	N.A.	7(1)(b) of PIT, 2015
12/04/2016	155,389	0.34%	47,915	0.10%	302,886.36	302,886.36	203,304	0.45%	N.A.	N.A.	N.A.
13/04/2016	203,304	0.45%	10,542	0.02%	68,109.64	370,996.00	213,846	0.47%	N.A.	N.A.	N.A.
18/04/2016	213,846	0.47%	13,613	0.03%	89,712.27	460,708.27	227,459	0.50%	N.A.	N.A.	N.A.
3. Ms. Arunaben Prafulkumar Bavishiya (AAUPP1398N):											
09/02/2016	149,103	0.33%	Became director of the company on 09/02/2016						09/02/2016	N.A.	7(1)(b) of PIT, 2015
01/04/2016	149,103	0.33%	-20	0.00%	121.2	121.2	149,083	0.33%	N.A.	N.A.	N.A.
06/04/2016	149,083	0.33%	-26,078	-0.06%	156,468.00	156,589.20	123,005	0.27%	N.A.	N.A.	N.A.
17/05/2016	123,005	0.27%	110,000	0.24%	557,700.00	714,289.20	233,005	0.51%	N.A.	N.A.	N.A.
09/06/2016	233,005	0.51%	29,000	0.06%	97,150.00	811,439.20	262,005	0.57%	N.A.	N.A.	N.A.
17/06/2016	597,006	1.31%	-1	0.00%	3.72	811,442.92	597,005	1.31%	N.A.	N.A.	N.A.
17/06/2016	262,005	0.57%	335,001	0.73%	1,190,320.93	2,001,763.85	597,006	1.31%	18/06/2016	21/06/2016	7(2)(a) of PIT, 2015
15/07/2016	597,005	1.31%	-98,701	-0.22%	245,765.49	245,765.49	498,304	1.09%	N.A.	N.A.	N.A.
24/08/2016	498,304	1.09%	-2,165	0.00%	3,269.15	249,034.64	496,139	1.09%	N.A.	N.A.	N.A.
25/08/2016	496,139	1.09%	-50	0.00%	75.5	249,110.14	496,089	1.09%	N.A.	N.A.	N.A.
31/08/2016	496,089	1.09%	-155	0.00%	234.05	249,344.19	495,934	1.09%	N.A.	N.A.	N.A.
07/10/2016	495,934	1.09%	-50,000	-0.11%	52,000.00	52,000.00	445,934	0.98%	N.A.	N.A.	N.A.
19/10/2016	445,934	0.98%	-25,840	-0.06%	28,234.08	80,234.08	420,094	0.92%	N.A.	N.A.	N.A.

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
20/10/2016	420,094	0.92%	-13,824	-0.03%	16,469.07	96,703.15	406,270	0.89%	N.A.	N.A.	N.A.

9. It was observed that during the investigation period in 17 instances (2 instances of Noticee 1, 3 instances of Noticee 2 and 8 instances of Noticee 3), the Noticees had traded in more than 10,000 shares.

10. As per clause 3(a) of the code of conduct adopted by the company for insider trading, all designated employees and their immediate relatives are required to obtain pre-clearance from the Compliance Officer if they intend to trade in shares which is more than 10,000 in number by making an application. In the present case, although the company had provided documents relating to pre-clearance, it was observed that the same were incorrect documents. On perusal, it was observed that the company had provided pre-clearance of the trades which were signed by one Mr. Hemant Palanpuri, who had already resigned from the company w.e.f. March 17, 2016 and signed the documents after the said date. Hence, it is observed that Noticee 1 (in 2 instances), Noticee 2 (in 3 instances) and Noticee 3 (in 8 instances) have traded in the shares of the company exceeding the threshold limit i.e. 10,000 shares without obtaining pre-clearance of trade.

11. In view of the above, I find that all the Noticees have violated clause 3(a) of code of conduct adopted by the company, as required under regulation 9(1) of PIT Regulations.

12. The company vide email dated February 22, 2018, provided the documents related to pre-clearance obtained by Noticee 3 which was once again signed by Mr. Hemant

Palanpuri after March 17, 2016. Further, Noticee 3 did not confirm whether whether any pre-clearance was obtained from the company before executing contra trades. It was further observed that none of the pre-clearance applications and approval forms have mention of intention of Noticee 3 to execute contra trade.

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
Arunaben Prafulkumar Bavishiya	474001	216834	216834	932000.14	502640.26	-429359.88

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 incurred a loss of ₹ 4,29,359.88.

15. In view of the above, I find that Noticee 3 has 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 Noticees 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 Noticees are liable for penalty under section 15HB of the SEBI Act for violation of clause 3(a) of the code of conduct adopted by the company for insider trading, as required under regulation 9(1) of PIT Regulations and Noticee 3 is 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:

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 section 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. Moreover, the regulator discourages frequent trading of shares in the company by directors (who are insiders). So there is an obligation on the directors to obtain pre-clearance whenever there is any substantial change in its shareholding. 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 not obtaining pre-clearance of the trades. Moreover, each of the Noticees have traded in more than one occasion which makes their default repetitive in nature. It is further observed that Noticee 3 had incurred a loss of ₹4,29,359.88 while indulging into contra trades. However, it has to be considered that it is immaterial whether Noticee 3 had made profit or loss. The fact that she had executed contra trades without getting a reasoned relaxation from the Compliance Officer is more important. The misconduct itself entails for imposition of penalty.

ORDER

21. 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 on the Noticees in the following manner:

SI No.	Noticee	Violations Observed	Penalty section	Amount of Penalty
1	Prafulbhai Parshottambhai Bavishiya	Clause 3(a) of the code of conduct adopted by the company for insider trading, as required under regulation 9(1) of PIT Regulations	Section 15 HB of SEBI Act	₹ 1,00,000/- (Rupees One Lakh only)
2	Shailesh Bhai Parshottambhai Bavishiya	Clause 3(a) of the code of conduct adopted by the company for insider trading, as required under regulation 9(1) of PIT Regulations	Section 15 HB of SEBI Act	₹ 1,00,000/- (Rupees One Lakh only)
3	Arunaben Prafulkumar Bavishiya	Clause 3(a) of the code of conduct adopted by the company for insider	Section 15 HB of SEBI Act	

		trading, as required under regulation 9(1) of PIT Regulations.		₹ 2,00,000/- (Rupees Two Lakh only)
		Clause 3(e) of the code of conduct adopted by the company for insider trading, as required under regulation 9(1) of PIT Regulations	Section 15 HB of SEBI Act	

22. 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 28, 2020
Place : Mumbai

VIJAYANT KUMAR VERMA
ADJUDICATING OFFICER