

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ASK/RGA/AO/73/2014]

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

Mr. Rajat Mathur

(Pan No. AGKPM5220C)

In the matter of

M/s Wipro Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an examination into the alleged irregularity in the trading in the shares of Wipro Ltd. (hereinafter referred to as '**WPL**') and into possible violation of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act, 1992**') and various rules and regulations made there under for the period November 29, 2012 to December 03, 2012 (hereinafter referred to as '**examination period**').

2. The examination inter-alia revealed that the shares of WPL are listed on Bombay Stock Exchange Limited (BSE) and National Stock Exchange Limited (NSE). Mr. Rajat Mathur (hereinafter referred to as '**Noticee**'), one of the designated employee of WPL had violated provisions of regulation 13(4) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations, 1992**').

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer vide order dated April 10, 2014 under section 15 I of the SEBI Act, 1992 read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Rules**') to inquire into and adjudge under section 15A (b) of the SEBI Act, 1992 for the alleged violation of regulation 13(4) read with 13(5) of PIT Regulations, 1992.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice No. ASK/RGA/14326/2014 dated May 20, 2014 (hereinafter referred to as '**SCN**') was issued to the Noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A (b) of the SEBI Act, 1992 for the alleged violation specified in the SCN.
5. Vide letter dated July 03, 2014, the Noticee filed a reply to the SCN. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on August 20, 2014 vide notice dated July 21, 2014. The Noticee vide e-mail dated July 21, 2014 requested for re-

scheduling the hearing. Accordingly, hearing opportunity was granted to the Noticee on August 05, 2014 vide notice dated July 22, 2014. The Noticee personally appeared for the hearing. The Noticee reiterated his submissions and in addition filed written submissions during the course of hearing. Vide e-mail dated August 12, 2014, Noticee made further submissions.

CONSIDERATION OF ISSUES AND FINDINGS

6. I have carefully perused the written submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :
 - a. Whether the Noticee had violated the provisions of regulation 13(4) read with 13(5) of PIT Regulations, 1992?
 - b. Does the violation, if any, attract monetary penalty under section 15A (b) of SEBI Act, 1992?
 - c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act, 1992?
7. Before moving forward, it is pertinent to refer to the relevant provisions of PIT Regulations, 1992 which reads as under:-

SEBI (Prohibition of Insider Trading) Regulations, 1992

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

13. (1)
(2)
(3).....

(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) and (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.

Finding

The issues for examination in this case and the findings thereon are as follows:

(a) Whether the Noticee had violated the provisions of regulation 13(4) read with 13(5) of PIT Regulations, 1992?

8. It was observed during examination that

a) The Noticee was a designated employee of WPL.

b) The Noticee had traded in the scrip during the examination period. The details of trading are as follows:

Date	Gross Buy Volume	Gross Sell Volume	Gross Trade Volume	Gross Sell value
29/11/2012	0	3000	3000	1149000
30/11/2012	0	3000	3000	1173000
03/12/2012	0	2000	2000	788019

c) As a result of trading done by the Noticee, his shareholding had changed by more than ₹ 5 lakh in value on the above mentioned three days of trading i.e. November 29, 2012, November 30, 2012 and December 03, 2012.

9. In this regard, I note that as per the provisions of regulation 13(4) read with 13(5) of PIT Regulations, 1992 any person who is a director or officer of a listed company has to disclose to the company and to the stock exchange where the securities are listed, within two working days, if change in holding of such person from the last disclosure exceeds ₹ 5 Lakh in value, or 25,000 shares or 1% of the total shareholding or voting rights whichever is lower. In the instant case, as a result of the aforesaid transactions done by the Noticee, there has been a change in his shareholding, which exceeded the benchmark limit of ₹ 5 lakh on each of the three trading days i.e. November 29, 2012, November 30, 2012 and December 03, 2012. I find from the reply of the Noticee to the SCN that the Noticee has not disputed the trades done him.
10. The Noticee has contended that he is neither a director or an officer of WPL within the meaning of PIT Regulations, 1992. The Noticee has referred to the definition of an 'Officer' as per regulation 2 (g) of the PIT Regulations, 1992 read with section 2 (59) of the Companies Act, 2013. The Noticee has stated that he does not fall under the aforesaid definition and therefore, regulation 13(4) read with 13(5) of PIT Regulations, 1992 does not apply to him.
11. I would like to refer to the relevant definitions which read as under:
- Regulation 2 (g) of PIT Regulations, 1992** - *"Officer of a company' means any person as defined in Clause (30) of Section 2 of the Companies Act, 1956 (1 of 1956) including an auditor of the company".*
- Section 2 (30), Companies Act, 1956- Definition of 'Officer'** – *"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".*

12. Noticee in his submissions has referred to section 2(59) of Companies Act, 2013 which reads as under:

Section 2(59) of Companies Act, 2013 *“officer” includes any director, manager or key managerial personnel 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.*

13. I note that Companies Act, 2013 was enacted on August 29, 2013. The transactions of the Noticee preceded the date of enactment of Companies Act, 2013 and therefore, the provisions of section 2(59) of Companies Act, 2013 are not applicable to the Noticee.

14. As mentioned above, the requirement of the disclosure under regulation 13(4) read with 13(5) of PIT Regulations, 1992 is cast upon 'any person who is a director or officer of a company' to make disclosure to the company and to the stock exchange. On perusal of the reply of the Noticee, it is noted that the Noticee is a designated employee of the company and reports to Chief Executive Officer of the company who is the P&L owner. The Chief Executive Officer has SBU heads for various vertical segments (like manufacturing, telecom, energy and utilities etc) who are the P&L owners under him. Other reportees of Chief Executive Officer are 1) service line heads who are responsible for practice building, 2) geography heads (like the Noticee) who are responsible for sales and building country operations and 3) functional heads (HR, Finance, Administration, Quality, etc.). The Noticee is occupying the position of geography head who is responsible for sales and building country operations across Asia Pacific, Africa and Latin America. His major role is to get large local clients for Wipro through the sales team in the countries of operation. The Noticee's direct reportees are the 3No. heads for Asia Pacific, Africa and Latin America. He has a total team of about 128 employees.

Apart from them, the functional heads for HR, Recruitment and Finance are also his direct reportees.

15. In this regard, it is pertinent to mention here the observations of Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Sundaram Finance Limited vs SEBI* (decided on 16.09.2010) which are as under:

"....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 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 07, 1963...."

16. By virtue of the position held by the Noticee, it can be said beyond doubt that the Noticee is holding a senior position of responsibility and that he has the authority to give directions to other employees of the company. Thus, I conclude that the Noticee is an 'officer' within the meaning of provisions of regulation 2(g) of PIT Regulations, 1992 read with section 2(30) of the Companies Act, 1956. Therefore, the provisions of regulation 13(4) read with 13(5) of PIT Regulations, 1992 are applicable to him.
17. Having concluded that the Noticee is an 'officer' of the company, I note that, consequent to his aforesaid sale transactions and the resultant change in his shareholding, on each trading day, he was clearly under an obligation to make necessary disclosure to the company and to the stock exchanges as mandated under the provisions of regulation 13(4)

read with 13(5) of PIT Regulations, 1992 in respect of his trading on each day. From the material available on record, I note that the Noticee admittedly has not made any disclosure under the aforesaid Regulations.

18. Noticee also contended that he has sold the shares which were allotted to him pursuant to exercise of stock options granted by the company under various Employee Stock Option Plans (ESOP). He never bought any WPL shares from the secondary market and never traded shares for gain. It is immaterial whether the shares sold by the Noticee were bought from the secondary market or acquired on exercising ESOP's. What is relevant is whether there is any change in the shareholding of the Noticee in excess of the benchmark limits specified under regulation 13(4) read with 13(5) of PIT Regulations, 1992. Finding in this regard has already been made in the preceding paragraphs. Therefore, the contention of the Noticee is devoid of merit.
19. Another contention of the Noticee is that he has not taken pre-clearance for sale of shares from the company during the open trading window when the aggregate consideration of sale proceeds exceeded ₹ 25 lakh which is the limit of such pre-clearance as per Company's Internal Code for PIT Regulations, 1992. Consequently, he was issued a warning letter by the Insider Trading Compliance Committee of the company. Therefore, he is covered under Company's internal Code for PIT Regulations, 1992 and not under regulation 13(4) read with 13(5) of PIT Regulations, 1992.
20. The aforesaid contention of the Noticee is not acceptable. It is noted that compliance requirement under Company's Internal Code for PIT Regulations, 1992 is a separate and independent obligation from compliance requirement under regulation 13(4) read with 13(5) of PIT

Regulations, 1992. Both the obligations are distinct in nature. Under the Company's Internal Code for PIT Regulations, 1992 the pre-clearance limit is ₹ 25 lakh and the clearance from the company has to be taken prior to the acquisition, whereas, under regulation 13(4) read with 13(5) of PIT Regulations, 1992 for any change in shareholding exceeding ₹ 5 lakh in value, or 25,000 shares or 1% of the total shareholding or voting rights whichever is lower, there is an obligation to make disclosure to the company and to the stock exchange, post acquisition.

21. I find that the Noticee has not made disclosure under regulation 13(4) read with 13(5) of PIT Regulations, 1992. I, therefore, hold that the Noticee has violated the provisions of regulation 13(4) read with 13 (5) of PIT Regulations, 1992

(b) Does the non-compliance, if any, attract monetary penalty under section 15A (b) of SEBI Act, 1992?

22. In this context, I would like to quote the observations of The Hon'ble Supreme Court of India in the matter of *Chairman, SEBI v.. Shriram Mutual Fund* {[2006] 5 SCC 361} 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..."*.
23. As the violation of the statutory obligation under regulation 13(4) read with regulation 13(5) of PIT Regulations, 1992 has been established, I am convinced that it is a fit case for imposing monetary penalty under section 15A(b) of SEBI Act, 1992, which reads 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 there under,-

(a)

(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.

(c)

(c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act, 1992?

24. While determining the quantum of penalty under section 15A (b) of SEBI Act, 1992 , it is important to consider the factors stipulated in section 15J of SEBI Act, 1992, 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.”*

25. It is difficult, in cases of this nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and

the consequent losses suffered by the investors. There is no material on record which dwells on the extent of specific gains made by the Noticee by not making the specified disclosures on the due dates. However, the fact remains that by not making the required disclosures, the Noticee had deprived the investors of important information at the relevant time. It is also noted that there are three instances of such violation committed by the Noticee and hence the violation is repetitive in nature.

ORDER

26. After taking into consideration all the facts and circumstances of the case, I hereby impose a monetary penalty of ₹ 5,00,000/- (Rupees Five Lakh Only) on the Noticee which will be commensurate with the violation committed by him.
27. The Noticee shall pay the said amount of penalty by way of demand draft 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 should be forwarded to General Manager, Integrated Surveillance Department, SEBI, SEBI Bhavan, Plot No. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
28. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

DATE: AUGUST 13, 2014

PLACE: MUMBAI

A. SUNIL KUMAR

ADJUDICATING OFFICER