

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. EAD/SR/PP/AO/ 6-7 /2019-20]**

---

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

In respect of

Noticee	PAN
<b>S V Trading and Agencies Limited</b> <i>Shop no. 6, Building no. 1, Vasant Aishwarya CHSL, Mathurdas Extn, Road, Kandivali (W), Mumbai-400067</i>	<b>AABCS6163N</b>
<b>Kappac Pharma Limited</b> <i>B-302 Sony Apartment, Opposite St. Jude High School, 90 Feet Road, Jarimari, Sakinaka, Mumbai-400072</i>	<b>AAACK4205A</b>

In the matter of **Oricon Enterprises Limited**

---

**FACTS OF THE CASE IN BRIEF**

1. Investigation Department (hereinafter referred to as **OD**) of Securities and Exchange Board of India (hereinafter referred to as **SEBI**) conducted investigation in the trading activities of certain entities in the scrip of Oricon Enterprises Limited (hereinafter referred to as **OEL / Company**). The said investigation revealed that S V Trading and Agencies Limited (hereinafter referred to as **Noticee 1 / SVT**) and Kappac Pharma Limited (hereinafter referred to as **Noticee 2 / KPL**) had not made required disclosures under the provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **PIT Regulations, 1992**). The Noticee 1 and 2 are hereinafter collectively referred to as **Noticees**. The shares of the OEL were listed at Bombay Stock Exchange Ltd. (**BSE**) at the time of alleged violation.

## **APPOINTMENT OF ADJUDICATING OFFICER**

2. Based on the said investigation, OD initiated Adjudication Proceedings against the Noticees. In this regard, Shri Nagendraa Parakh was appointed as the Adjudicating Officer and his appointment was communicated vide communique dated August 09, 2016. Subsequently, matter was transferred and Ms Sangeeta Rathod (undersigned) has been appointed as the Adjudicating Officer in the matter, vide an order dated July 10, 2017, under section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **SEBI Act, 1992**) and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **Adjudication Rules, 1995**) to inquire into and adjudge under section 15A(b) of SEBI Act, 1992, the alleged violations of provisions of regulation 13(4A) read with (r/w) regulation 13(5) of PIT Regulations, 1992. Further, PIT Regulations, 1992 have been repealed and SEBI (Prohibition of Insider Trading) Regulations, 2015 have come into force. The present proceedings against the Noticees are initiated in terms of PIT Regulations, 1992 r/w SEBI (Prohibition of Insider Trading) Regulations, 2015 (specifically Regulation 12 (2) under the head 'Repeal and savings').

## **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

3. A common show cause notice SEBI/HO/A&E/EAD/SR/SJ/ 7363 and 7365 /2017 dated March 31, 2017 (hereinafter referred to as **SCN**) were issued to the Noticees separately under rule 4 of the Adjudication Rules, 1995 to show cause as to why an inquiry should not be held against them and why penalty under section 15A(b) of SEBI Act, 1992 be not imposed on them for the violations alleged and specified in the said SCN.
4. Details of the SCN are given as under:
  - a. OD of SEBI conducted investigation in the scrip of OEL for the period April 01, 2011 to November 30, 2011 (hereinafter referred to as **Investigation Period / IP**). The Noticee 1 acquired 35,500 shares of OEL from the Noticee 2, on September 15, 2011. The Noticees were the promoters of OEL on the date of the aforementioned transaction. In view of the said transfer of shares of OEL, this had resulted in change in shareholding exceeding 25,000 shares, and hence Noticees were required to make disclosures to OEL and BSE under Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, 1992. It is alleged that the Noticee 1 and 2 have failed to make the required disclosures

to OEL and BSE within the required time frame, therefore they have violated Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, 1992.

- b. The above alleged violations and the transactions carried out were provided to the Noticees in the following table format:

Name	Date of transaction	Change in Shareholding (Reduction)	Change in Shareholding (Addition)	Regulation of SEBI (PIT), 1992 under which disclosure required	Whether Disclosures made(Y/N)
<b>S V Trading &amp; Agencies Ltd</b>	15/09/2011	-	35,500	13(4A) r/w 13(5)	N
<b>Kappac Pharma Ltd</b>	15/09/2011	35,500	-		N

5. The SCN were sent separately to the Noticees through the speed post acknowledgment due. The said SCN sent to Noticee 1 was delivered at the address available on record *1076 Dr. Moses Road, Worli, Mumbai-400018* of the Noticee 1. Further, the SCN sent to Noticee 2 was delivered at the address available on record *B-302 Sony Apartment, Opposite St. Jude High School, 90 Feet Road, Jarimari, Sakinaka*. Acknowledgments of service of the SCNs upon the Noticees are available on record. Noticee 1 did not file any reply to the SCN. Further, Noticee 2 vide letter dated December 21, 2017 and November 21, 2018 requested for hard and soft copy of SCN with all the annexures stating the misplacement of the SCN and inspection of documents. Vide letter dated December 04, 2018, Noticee 2 replied to the SCN and requested to provide an opportunity of personal hearing in this matter. Subsequently, an opportunity of personal hearing was granted to Noticee 2 on November 29, 2018. The hearing notices were issued to the Noticees and delivered at the addresses of the Noticees. Thereafter, OEL vide its letter dated November 27, 2018 brought to the notice of undersigned that the present registered office address of Noticee 1 is *Shop no. 6, Building no. 1, Vasant Aishwarya CHSL, Mathurdas Extn, Road, Kandivali (W), Mumbai*. Subsequently, vide letter dated December 04, 2018, SCN alongwith the hearing notices were issued at the said address of Noticee 1. However, letter dated December 04, 2018 had returned undelivered with the comment "Left". Thereafter, another attempt to serve the SCN and hearing notices upon the Noticee 1 was made through affixture in terms of Rule 4 of Adjudication Rules, 1995. However, affixture report also returned back with the comment "office moved" as affixture could not be done. Thereafter, SCN was uploaded on the SEBI website under "Unserved Summons / Notices" on February 08, 2019. Subsequently, by way of release

of public notice, opportunity of personal hearing was granted to Noticee 1 on March 12, 2019 through the publication of the hearing notice in the newspapers. Newspaper publication were released on February 15, 2019 in the newspapers detailed hereunder-

S. no.	Name of the Newspaper	Language	Edition / Circulation
1.	Times of India	English	Mumbai Edition
2.	Navbharat Times	Hindi	Mumbai Edition
3.	Lokmat	Marathi	Mumbai Edition

6. The Noticee 1 has neither filed its reply to the SCN nor appeared for the hearing fixed on March 12, 2019. Further, with regard to Noticee 2, vide hearing notice dated December 13, 2017 and November 16, 2018, the Noticee 2 was granted an opportunity of personal hearing on January 05, 2018 and November 29, 2018, respectively. Vide email dated November 29, 2018, Noticee 2 had requested for postponement of personal hearing. Acceding to the request of Noticee 2, another opportunity of personal hearing was granted on December 05, 2018. Authorized Representative (AR) attended the hearing on behalf of the Noticee 2 on the scheduled date and submitted that - “ *KPL had sold only 7100 shares of OEL through physical transfer deed to SVT. After the shares were sold to SVT, the shares of OEL got split and the said 7100 shares became 35500 shares of OEL. The transferee, SVT got the shares transferred in its name much after the share were sold by the KPL in physical form and therefore, no violation of Regulation 13(4A) of SEBI PIT had been committed by KPL*”. During the course of hearing, the AR was provided with the copy of an email dated June 22, 2015 received from OEL upon request of AR. The AR sought an extension till December 26, 2018 to file additional written submissions. The said request of AR is acceded to. Hearing minutes are on record. Further, Noticee 2 vide its letter dated January 08, 2019 submitted the additional written submissions *inter alia* stating that the provisions of Section 31 (1) (b) of the SEBI (ICDR) Regulations 2009 with regard to face value of equity shares and hence while determining the number of shares (above 25,000 shares), the number of shares should be adjusted according to face value of the shares. It also relied on the provision of Companies Act, 1956 with regard to transfer of shares which states that during the interregnum, that is, from the date of the transfer till the date of lodgement the transferee no doubt, becomes the owner of the beneficial interest though the legal title continues with the transferor.

7. After taking into account, the allegations levelled in the SCN, and other evidences / material available on record, I hereby proceed to decide the case on merit. I find that opportunities were given to the Noticee 1 to submit reply to the said SCN and also to appear for personal hearing in the instant adjudication proceedings. However, the Noticee 1 neither replied to the SCN nor attended the personal hearing granted to it. In this regard, it is pertinent to refer to the judgment dated December 08, 2006 of Hon'ble Securities Appellate Tribunal in the matter of Classic Credit Ltd. v SEBI (Appeal No. 68 of 2003) wherein, it observed that "*... 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*".

I also observe that the Hon'ble Securities Appellate Tribunal in the matter of Sanjay Kumar Tayal & Ors. v SEBI (Appeal 68 of 2013 dated February 11, 2014) had inter alia observed that "*...As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, 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 leveled against them in the show cause notices...*"

8. I hereby proceed further in the matter on the basis of material available on record.

### **CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS**

9. I have carefully perused the charges levelled against the Noticees in the SCN and the materials available on record. In the instant matter, the following issues arise for consideration and determination:-
- a. Whether the Noticees have violated the provisions of regulations 13(4A) r/w 13(5) of PIT Regulations, 1992?**
  - b. Do the violations, if any, on the part of the Noticees attract monetary penalty under Section 15A(b) of the SEBI Act, 1992 for the alleged violations by the Noticees?**
  - c. If yes, then what would be the monetary penalty that can be imposed upon the Noticees, taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 r/w rule 5(2) of the Adjudication Rules, 1995?**

10. Before proceeding further, I would like to refer to the relevant provisions of PIT Regulations, 1992:

***Disclosure of interest or holding in listed companies by certain persons - Continual disclosure.***

*(4A) Any person who is a promoter or part of promoter group 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 from the last disclosure made under Listing Agreement or under sub-regulation (2A) 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.*

*(5) The disclosure mentioned in sub-regulations (3), (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.*

**FINDINGS:**

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

***Issue a: Whether the Noticees have violated the provisions of regulations 13(4A) r/w 13(5) of PIT Regulations, 1992?***

- i) Upon a perusal of shareholding OEL, It is noted that the Noticees are in the category Promoter and Promoter Group for quarter ending June 2011, as available in BSE website.
- ii) Noticee 2 has contended that it had sold only 7100 shares of OEL through physical transfer deed to Noticee 1, and after the shares were sold to Noticee 1, the shares of OEL got split and the said 7100 shares became 35500 shares of OEL. Also that, the transferee, Noticee 1 got the shares transferred in its name much after the shares were sold by the Noticee 2 in physical form and therefore, no violation of Regulation 13(4A) of SEBI PIT had been committed by Noticee 2.

In this regard, I observe that OEL vide its email dated June 25, 2015 has stated that *“35500 shares of OEL held by Kappac Pharma Ltd.(Noticee 2) were transferred to S V trading and Agencies Ltd. (Noticee 1) on 15<sup>th</sup>*

*September 2011. Accordingly, Kappac Pharma Limited is moved out from the promoter group in the shareholding patterns effective from the quarter ended September 2011".* The said email is on record. Therefore, I observe that 35,500 shares of OEL held by Noticee 2 were transferred to Noticee 1 on September 15, 2011. Also that, Noticee 2 has not submitted any evidentiary proof for its contention.

12. As per Regulation 13(4A) of PIT Regulations, 1992 any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchanges where the securities are listed 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 from the last disclosure and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower. I observe from the material available on record that on September 15, 2011 the Noticee 1 had acquired 35,500 shares from Noticee 2 whereby Noticee 2 had sold 35,500 shares. As a result of the same, shareholding of Noticee 2 in OEL had reduced from 35,500 shares to nil. Noticees being the promoters of OEL on the date of transaction i.e. on September 15, 2011, were responsible for the disclosures to be made under PIT Regulations, 1992 as the change in shareholding of the promoters had exceeded 25,000 shares. Therefore, Noticees were under an obligation to make the required disclosures to the Company and BSE under regulation 13(4A) r/w regulation 13(5) of the PIT Regulations, 1992. I find that there is no material on record, to show that the Noticees have made disclosures under the said provisions to BSE and OEL. Therefore, I hold that the Noticees have failed to make disclosures to BSE and OEL under Regulation 13(4A) within two working days of September 15, 2011 and therefore, violated Regulation 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992. In view of the above, the allegations levelled in the said SCN against the Noticees stand established for which the Noticees are liable for monetary penalty.

**Issue b: Do the violations, if any, on the part of the Noticee attract any monetary penalty under section 15A(b) of SEBI Act, 1992?**

13. Therefore, after taking into account the aforesaid entire facts / circumstance of the case, and material available on record, I am of the view that the said failure on the part of the Noticees to make required disclosures under the relevant provisions discussed above

attracts imposition of monetary penalty under Section 15A(b) of SEBI Act, 1992 which is reproduced below:

***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 therefor in the regulations, fails to file return or furnish the same within the time specified therefor 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.*

**Issue c - What would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 r/w rule 5 (2) of the Adjudication Rules, 1995?**

14. While determining the quantum of penalty under section 15J of SEBI Act, 1992, it is important to consider the factors stipulated in section 15J of SEBI Act, 1992 r/w rule 5(2) of the Adjudication Rules, 1995 which reads as under:-

*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.”*

- i. I observe, that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticees and the loss, if any, suffered by the investors due to such failure on the part of the Noticees. Further, material available on record does not show that the said failure is repetitive.
- ii. The object of the PIT Regulations, 1992 mandating disclosure of acquisition/sale beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required. The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed



decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well informed decision.

- iii. In this regard, it would be appropriate to refer to the observations made by the Hon'ble SAT in the matter of Akriti Global Traders Ltd. Vs. SEBI (Appeal No. 78 of 2014) decided on September 30, 2014:- *“...penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay.”* In Appeal No. 66 of 2003 -Milan Mahendra Securities Pvt. Ltd. Vs. SEBI—the Hon'ble SAT has observed that, *“the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market.”* Further, in the matter of Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed *“Once it is established that the mandatory provisions of Takeover Code was violated, the penalty must follow.”*
- iv. I conclude that the aforementioned violation of provisions of regulations 13(4A) r/w 13(5) of PIT Regulations, 1992 attracts monetary penalty and therefore, taking into consideration the facts/circumstance of the case and the above case laws, I am of the view that the Noticees are liable for a monetary penalty of Rs. 1,00,000/- (Rupees one lakh only) each separately for violating the said provisions of PIT Regulations, 1992.

## ORDER

15. In exercise of the powers conferred under section 15-I of the SEBI Act, 1992 and rule 5 of the Adjudication Rules, I hereby impose following penalty under section 15A(b) of the SEBI Act, 1992-

Noticee	Penalty
S V Trading and Agencies Limited	Rs. 1,00,000/- (Rupees one lakh only)
Kappac Pharma Limited	Rs. 1,00,000/- (Rupees one lakh only)

I am of the view that the said penalty is commensurate with the defaults committed by the Noticees.

16. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI – Penalties Remittable to Government of India”, payable at Mumbai, or through e-payment facility into Bank Account the details of which are given below:

<b>Account No. for remittance of penalties levied by Adjudication Officer</b>	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

17. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI (EFD-1 DRA-II). The Format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID : [tad@sebi.gov.in](mailto:tad@sebi.gov.in)

Date	Department of SEBI	Name of Intermediary/ Other Entities	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (in Rs.)	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually)	Bank name and Account number from which payment is remitted	UTR No
------	--------------------	--------------------------------------	----------------------	-----------------------------------	-----	-----------------	---	---	--------

18. In terms of the rule 6 of the Adjudication Rules, 1995, copy of this order is sent to the Noticees and also to Securities and Exchange Board of India.

**Date: April 30, 2019**

**SANGEETA RATHOD**

**Place: Mumbai**

**ADJUDICATING OFFICER**