

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SR/PP/2019-20/7292/204]

**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

Incap Financial Services Limited

Address: 11, Tagore Park,
Near Nehru Circle, Ambawadi
Ahmedabad 380015

(PAN: AABC10538B)

In the matter of Incap Financial Services Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (**SEBI**) had received a letter from India Infoline Limited complaining that an individual named as Prem Agarwal had circulated a message through short message service (**SMS**) regarding trading in the scrip of Incap Financial Services Limited on January 11, 2011, stating: "BSE call buy INCFS (530887) at CMP TRGT 35/50 within a week news (splited), going to declare dividend within week so hurry up don't miss profit www.indiainfoline.com".

2. On the basis of the aforementioned complaint, a department of SEBI (**OD**) undertook an investigation in the matter for the period from December 1, 2010–February 23, 2011

(Investigation period / IP) to ascertain whether there was any violation of the Adjudication Order in respect of Incap Financial Services Limited in the matter of Incap Financial Services Ltd.

provisions of the SEBI Act, 1992 (in short **SEBI Act**) and the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (in short **PIT Regulations, 1992**). The shares of Incap were listed at BSE Limited (**BSE**).

3. OD observed certain non-compliances with regard to the SEBI Act and PIT Regulation, 1992. OD initiated Adjudication Proceedings against Incap Financial Services Limited (hereinafter referred to as "**the Noticee**") to inquire into and adjudge under section 15HB of the SEBI Act, the alleged violations of provisions of regulation 12(1) of PIT Regulations read with (r/w) Regulation 12(2) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (in short **PIT Regulations, 2015**).

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI appointed Shri Nagendraa Parakh as the Adjudicating Officer (**AO**) and his appointment was communicated vide communique April 27, 2016. Subsequently, Ms. Sangeeta Rathod (undersigned) was appointed an AO in this matter. The appointment of undersigned as AO was communicated vide communique dated July 10, 2017 under Section 15-I of the SEBI Act r/w rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (in short "**AO Rules**") to inquire into and adjudge under the alleged violation of provisions violations of provisions of regulation 12(1) of PIT Regulations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show cause notice EAD/AO-NP/VVK/14001/2/2016 dated May 13, 2016 (hereinafter referred to as **SCN**) was issued by the previous AO to the Noticee under rule 4 of the Adjudication Order in respect of Incap Financial Services Limited in the matter of Incap Financial Services Ltd.

AO Rules to show cause as to why an inquiry should not be held against him and why penalty under section 15HB of SEBI Act be not imposed on it for the violations alleged and specified in the said SCN.

6. Details of the violations alleged in the SCN are given as follows:

<i>Alleged violation of provisions of law</i>	<i>Charging sections under the Act</i>
<i>Regulation 12(1) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992</i>	<i>section 15HB of SEBI Act, 1992</i>

It is observed that the Noticee has failed to implement the Model Code of Conduct as required under Regulation 12(1) of PIT Regulations, 1992 and failed to provide information with respect to non-implementation of the code of conduct, therefore, Noticee has allegedly acted in violation of Regulation 12(2) of PIT Regulation, 2015.

7. The SCN was sent to the Noticee through the speed post acknowledgment due (SPAD) and vide email dated May 20, 2016. Proof of service of the SCN upon the Noticee is available on record. Vide letter dated September 07, 2016, Noticee was advised to file its reply by September 20, 2016. Proof of delivery of this letter is on record.
8. Subsequent to the appointment of the undersigned as AO, the Noticee was informed about the change of AO vide letter dated November 20, 2017 and an opportunity of hearing before the undersigned was granted on December 12, 2017. Letter sent through SPAD has not returned undelivered. Vide letter dated February 03, 2020, Noticee was advised to file reply to the SCN by February 10, 2020 and an opportunity

of hearing was granted on February 12, 2020. This letter has returned undelivered with the comment “*Insufficient Address*” as noted from India Post website. Vide letter dated February 20, 2020, one last and final opportunity to file reply by February 25, 2020 and to avail personal hearing was granted on February 26, 2020. This letter was sent through SPAD and through email. Letter sent through SPAD was delivered and proof of delivery downloaded from India Post website is on record.

9. After taking into account, the allegations levelled in the SCN and material available on record, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS

10. I have carefully perused the charges levelled against the Noticee in the SCN and the material available on record. In the instant matter, the following issues arise for consideration and determination:-

- a. Whether the Noticee has violated the provisions Regulation 12(1) of PIT Regulations, 1992?***
- b. Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15HB of SEBI Act for the alleged violations by the Noticee?***
- c. If yes, then 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?***

11. Before proceeding further, I would like to refer to the relevant provisions:-

Code of internal procedures and conduct for listed companies and other entities.

12. (1) *All listed companies and organisations associated with securities markets including :*

(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;

(b) the self-regulatory organisations recognised or authorised by the Board;

(c) the recognised stock exchanges and clearing house or corporations;

(d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and

(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies,

shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same.

12. Issue a: *Whether the Noticee has violated the provisions of Regulation 12(1) of PIT Regulations, 1992?*

- a. I find that the allegation against the Noticee is that the Noticee has failed to implement the Model Code of Conduct as required under Regulation 12(1) of PIT Regulations, 1992 and failed to provide information with respect to non-implementation of the code of conduct. I note that Noticee has neither filed any reply nor availed of opportunity of hearing granted to it. As regards, no reply received to the SCN issued, I refer to the judgment of Hon'ble Securities Appellate Tribunal (SAT) dated December 08, 2006 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..." .

- b. In view of the above, I find that the allegations levelled in the SCN are not in dispute in absence of any reply from Noticee and by not submitting any reply to SCN, the Noticee has admitted the charges levelled against it in the said SCN.
- c. However, I proceed to deal with the charges levelled against the Noticee on merit. I note from the investigation report that the Noticee has failed to implement the Model Code of Conduct as required under Regulation 12(1) of PIT Regulations, 1992 and failed to provide information with respect to non-implementation of the code of conduct. Further, there is nothing on record evidencing otherwise.

Issue (b) Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15HB of SEBI Act for the alleged violations by the Noticee?

After taking into account the aforesaid entire facts / circumstance of the case, it is noted that the said violations of provisions of regulation 12(1) of PIT Regulations, 1992 by the Noticee attracts the imposition of monetary penalties upon the Noticee under section 15HB of the SEBI Act, which is reproduced below:

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 may extend to one crore rupees.

Issue (c) If yes, then 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?

13. While determining the quantum of penalty under section 15J of SEBI Act, it is important to consider the factors stipulated in section 15J of SEBI Act read with rule 5(2) of the AO Rules, which reads as under:-

SEBI Act

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

While adjudging quantum of penalty under section 23 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."

14. I observe that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any made by the Noticee and the loss, if any suffered by the investors due to the aforesaid violations. Also, material available on record does not show that the violation was repetitive in nature. Therefore taking into consideration the facts/circumstance of the case and the above case laws, I am of the view that the Noticee is liable for a a penalty of Rs. 3,00,000/- (Rupees Three Lakh only) on Noticee i.e. Incap Financial Services Limited for violations of provision of regulation 12(1) of PIT Regulations, 1992.

ORDER

15. In exercise of the powers conferred under section 15-I of the SEBI Act and rule 5 of the AO Rules, I hereby impose a penalty of Rs. 3,00,000/- (Rupees Three Lakh only) on Noticee i.e. Incap Financial Services Limited vide SCN dated May 13, 2016 under section 15HB of the SEBI Act for violation of the abovesaid provisions of regulation 12(1) of PIT Regulations, 1992. I am of the view that the said penalty is commensurate with the defaults committed by the Noticee.
16. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order by one of following two modes:
- a. By using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>
 - b. By way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai
17. Details of Demand Draft made as given in format below shall be sent to "The Division Chief, EFD-DRA-III, Securities and Exchange Board of India, SEBI Bhavan-II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051." and also to e-mail id :- tad@sebi.gov.in
- a) Case Name
 - b) Name of the 'Payer/Noticee'
 - c) Date of Payment
 - d) Amount Paid
 - e) Transaction No.
 - f) Bank Details in which payment is made
 - g) Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)
18. 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, interest, by attachment and sale of movable and immovable properties.

19. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of rule 6 of the Adjudication Rules.

Date: March 18, 2020

Place: Mumbai

SANGEETA RATHOD

ADJUDICATING OFFICER