

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-2/AO/65/2012]

**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:

Shri Jayesh Shah
(PAN - ACXPJ9086G)

In the Matter of:

Platinum Corporation Limited

Background

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation into the alleged irregularity in the trading in the shares of Platinum Corporation Limited (hereinafter referred to as "**PCL**") and into the possible violation of the SEBI Act, 1992 and various Rules and Regulations made there under. The Investigation, *inter-alia*, revealed that Shri Jayesh Shah (hereinafter referred to as "**the Noticee**") was one of the promoters of PCL, was holding more than 5% equity capital and his share holding changed by more than two percentages for which he did not make disclosures as required under the provisions of 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. In view of the above, SEBI vide order dated March 23, 2011 appointed Shri P K Bindlish as the Adjudicating Officer to inquire into and adjudicate under Section 15A(b) of the SEBI Act, 1992, the alleged violation of provisions of Regulation 13(1) and 13(3) of PIT Regulations and Regulation 7(1) and 8(2) of SAST Regulations. Consequent upon transfer of Shri P K Bindlish, the undersigned has been appointed as the Adjudicating Officer vide Order dated May 22, 2012.

Show Cause Notice, Reply & Personal Hearing

3. A Show Cause Notice dated July 15, 2011 (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 calling upon the Noticee to show cause why an inquiry be not held against him under Rule 4(3) of the Adjudication Rules for the aforesaid alleged violations. The SCN was sent by speed post but returned undelivered. Thereafter, the SCN was affixed at the last known address of the Noticee on June 01, 2012 in terms of Rule 7(c) of the Adjudication Rules. The Noticee neither submitted any reply to the SCN nor entered into any correspondence in this regard.
4. An opportunity of personal hearing was granted to the Noticee vide letter dated June 14, 2012, which was scheduled for June 21, 2012. The notice of hearing was also served by affixture at the last known address of the Noticee on June 18, 2012. However, the Noticee failed to appear for personal hearing on the scheduled date, time and venue.

5. In view of the aforesaid steps taken, I am convinced that ample opportunities have been given to the Noticee to explain his case. As per rule 4(7) of the Rules, if any person fails neglects or refuses to appear as required by sub-rule (3) before the Adjudicating Officer, he may proceed with the inquiry in the absence of such person after recording the reasons there for. Despite having been given ample opportunities, the Noticee had failed to avail of the same. I am, therefore, compelled to proceed with the matter *ex-parte* based on the material available on record.

Consideration of Issues, Evidence and Findings

6. I have carefully perused the charges made against the Noticees as mentioned in the SCN and the documents available on record. In the instant matter the following issues arise for consideration and determination:
- a) **Whether the Noticee has violated provisions of Regulation 13(1) and 13(3) of PIT Regulations and Regulation 7(1) and 8(2) 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?**
7. Before proceeding, I would like to refer to the relevant provisions of the PIT Regulations and of SAST Regulations which 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.

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.

Continual disclosures.

- 8(2) :** A promoter or every person having control over a company shall, within 21 days from the financial year ending March 31, as well as the record date of the company for the purpose of declaration of dividend, disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that company to the company.

8. The Noticee was having beneficiary account with the Depository Participant (hereinafter referred to as "DP") Stock Holding Corp of India Limited (SHCIL) account no. 30308092 (Shri Jayesh Shah). I find from the beneficiary account statements (Demat statements) of the Noticee in **Annexure II** to the SCN that on January 13, 2005, the Noticee tendered 50,00,000 shares of company for dematerialization which were rejected on March 31, 2005 and subsequently, he tendered 50,00,000 shares for dematerialization on April 08, 2005 which were confirmed on April 16, 2005. The Noticee was holding physical shares as on January 13, 2005 and his shareholding was more than 5% of the equity capital of

the Company. Hence, the Noticee was under obligation to make disclosures under Regulation 13(1) of the PIT Regulation to PCL. Relevant transactions of the Noticee in the aforesaid beneficiary accounts were as follows:

Account no	Date	Description	Credit	Debit	Balance	Balance % to equity
30308092	01/01/2004	Opening balance			0	0%
30308092	29/12/2004	By of market credit from Shankarlal M Patel	40,00,000	0	40,00,000	3.73%
30308092	16/04/2005	By dematerialization	50,00,000	0	90,00,000	8.41%
30308092	02/09/2005	To off market transfer to Robinson Worldwide	0	5,00,000	85,00,000	7.94%
30308092	30/01/2006	To off market transfer to Girish Shah	0	20,00,000	65,00,000	5.60%
30308092	29/08/2006	To off market transfer to Siddhi Vinayak Tradelink	0	10,00,000	55,00,000	5.14%
30308092	28/08/2006	To off market transfer Shankeshwar Metal Pvt. Ltd.	0	10,00,000	45,00,000	4.20%
30308092	29/08/2006	To off market transfer to Shanti Tradelink Pvt. Ltd.	0	10,00,000	35,00,000	3.27%
30308092	30/08/2006	To off market transfer to Shanti	0	10,00,000	25,00,000	2.33%
30308092	04/09/2006	To off market transfer to Rudra Securities	0	8,50,000	16,50,000	1.54%
30308092	31/08/2006	To off market transfer to Rudra Securities	0	8,50,000	8,00,000	0.74%
30308092	04/09/2006	To off market transfer to Rudra Securities	0	8,00,000	0	0%

9. I find that due to off-market transactions of shares by the Noticee on many occasions as detailed in the table above, there was changes in Noticee's shareholding in PCL, depicting a change exceeding 2% of the share holding in the

PCL. Hence, the Noticee was under obligation to make disclosures under Regulation 13(3) of the PIT Regulation to PCL as well. However, no such disclosures had been made by the Noticee under the aforesaid regulations.

10. I also find that since the Noticee was holding more than 5% of the shares of the PCL on January 13 2005, and in terms of Regulation 7(1) of SAST Regulations, the Noticee was also under an obligation to disclose the aggregate of his shareholding in PCL to the Company and to the stock exchanges where shares of PCL were listed. However, no such disclosures had been made by the Noticee under Regulation 7(1) of SAST Regulations.

11. I find from **Annexure III** to the SCN that PCL disclosed different figures with the stock exchanges in compliance with the listing agreement for quarters ended March 31, 2005, March 31, 2006 and March 31, 2007. However, I find that the actual shareholding vis-a-vis shareholding declared to BSE is as tabulated below:

Relevant date	Shareholding as per Beneficiary account	Shareholding declared to BSE	Remarks
March 31, 2005	90,00,000	40,00,000	Not reported 50 lakhs shares held by Noticee in physical form
March 31, 2006	65,00,000	65,00,000	Reported correctly
March 31, 2007	Nil	65,00,000	Reported 65 lac shares as against the nil balance in his demat account

12. Further, the Noticee being a promoter of PCL was under an obligation to disclose the number and percentage of shares or voting rights held by him or with the persons acting in concert with him in PCL to the Company within 21 days from the financial year ending on March 31. However, I find that no such disclosures had been made by the Noticee under Regulation 8(2) of SAST Regulations.

13. I find that despite delivery of SCN and Notice of Inquiry, the Noticee has neither responded to the aforesaid SCN nor appeared for the hearing before me. As the Noticee has not put up any defence or challenged the SCN, it can be assumed that the charges levelled in the SCN have been accepted by the Noticee. This is in accordance with the principle laid down by Hon'ble Securities Appellate Tribunal in the matter of **Classic Credit Ltd. v. SEBI [2007] 76 SCL 51 (SAT - MUM.) wherein it was inter-alia held 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". The order passed by the Hon'ble SAT is relied upon in the present case for guidance. Therefore, I presumed that the Noticee has admitted the charges alleged in the SCN.
14. In view of the above, and from the material available on record I find that the Noticee was under an obligation to make the required disclosures under Regulation 13(1) and 13(3) of PIT Regulations to the Company and under Regulation 7(1) of SAST Regulations to the Company and to the Stock Exchanges, and under regulation 8(2) of SAST Regulations to the Company, which the Noticee failed to do. Therefore, it is established beyond doubt that the Noticee has violated the provisions of Regulation 13(1) and 13(3) of PIT Regulations and Regulation 7(1) and 8(2) of SAST Regulations.
15. The Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)** held that "*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow*". Thus, as the violation of the statutory regulations by the Noticee has been established, I hold that the Noticee is liable for monetary penalty under Section 15A(b) of the Act.

16. 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.”*

17. 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 in the absence of material on record. 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 disclosure, the Noticee had not provided the vital information which is detrimental to the interest of investors in securities market.

Order

18. In view of the above, after considering the facts and circumstances of the case, and exercising the powers conferred upon me under Section 15A(b) of the SEBI Act, 1992 and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹ 4, 50,000/- (Rupees Four Lakhs Fifty Thousand only) on Shri Jayesh Shah for not making necessary disclosures under Regulation 13(1) and 13(3) of PIT Regulations and Regulation 7(1) and 8(2) of SAST Regulations. I am of the view that the quantum of penalty imposed on the Noticee is commensurate with the violations committed by him.

19. 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 Deputy General Manager, Investigation Department, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.

20. 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 : September 26, 2012

P. K. KURIACHEN

Place: Mumbai

ADJUDICATING OFFICER