BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/GR/KG/2020-21/9695]

ORDER 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) RULES, 1995, IN RESPECT OF MR. P. SELVAMANI (PAN - APHPS7897D) IN THE MATTER OF EQUITAS HOLDINGS LIMITED

BACKGROUND:

1. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI"**) had received references from Equitas Holdings Ltd. (hereinafter referred to as '**Equitas'/ 'the Company'**) with respect to certain officials of the company, including Mr. P. Selvamani (Executive Vice President- Legal-Equitas Small Finance Bank Ltd.) (hereinafter referred to as "the **Noticee**") with respect to their dealings in the scrip of the Company during the month of October 2018. It was observed that during the period from September 01, 2018 to November 30, 2018, price of the scrip had opened at Rs. 157.60, reached a high of Rs. 163.20 and a low of Rs. 78 before closing at Rs. 107.75.

2. SEBI had conducted an examination in order to ascertain whether there was any violation of the provisions of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") and the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "**PIT Regulations**") by any employee/ promoter/ Key Managerial

Personnel of the company in the trading in the scrip of the company during the period September 1, 2018 to November 30, 2018. The findings of the examination *prima facie* indicated that the Noticee had failed to make the requisite disclosure within the stipulated timeline to the company and the stock exchanges regarding the sale of its shares of the company on November 26, 2018 for a sum of Rs. 32,45,275/-, thereby violating Regulation 7(2) of the PIT Regulations.

3. The undersigned was appointed as the Adjudicating Officer (hereinafter referred to as the "**AO**") vide order dated March 3, 2020 (communicated vide communiqué dated March 12, 2020) to adjudicate upon the violations committed by the Noticee *prima facie* observed during the examination conducted in respect of the trading done by certain entities in the scrip of the company under Rule 4 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 read with section 15I of the SEBI Act, 1992.

SHOW CAUSE NOTICE AND REPLY OF THE NOTICEE:

4. Based on the examination conducted by SEBI, a show cause notice dated August 10, 2020 (hereinafter referred to as the "**SCN**") was issued by the undersigned addressed to the Noticee and sent by speed post to the address of the Noticee. As per the postal tracking report, the SCN was served upon the Noticee on August 24, 2020. However, no reply to the SCN was received from the Noticee. Thereafter, vide email dated October 20, 2020, a scanned copy of the SCN along with the annexure thereto, was sent to the Noticee. The SCN contained the following allegations with respect to the Noticee:

a. That vide the letter dated November 8, 2018, the Company had issued a Show Cause Notice to the Noticee which had stated the following:

"…You are aware that, as per SEBI (Prohibition of Insider Trading) Regulations, 2015 and EHL Internal Code of Conduct for Prevention of insider Trading (collectively referred to as "Insider Trading Regulations"), as an Equitas Employee, you are required to disclose to the Company, the number of such Securities acquired or disposed of within 2 (two) trading days of such transaction, if the value of the Securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of Rs. 10,00,000/-

Despite our regular awareness mailers on requirements and restrictions under Insider Trading Regulations, you have sold the above number of shares for a traded value of Rs. 32,45,275/- and have not intimated the Company within the stipulated time limit.

Your action tantamounts to violation of SEBI (Prohibition of Insider Trading) Regulations, 2015 and EHL Internal Code of Conduct for Prevention of Insider Trading.

As per directions of the Internal Committee for Monitoring & Prevention of Insider Trading, you are hereby required to show a convincing cause within 10 days from the date of receipt of this notice as to why disciplinary action should not be taken against you for contravening the Insider Trading Regulations..."

b. That vide letter dated November 15, 2018, the Noticee had replied to the said show cause notice issued by the Company, as follows:

"…I wish to inform you of the following transaction were carried out by me in the equity shares of Equitas Holdings Ltd. (EHL) on October 26, 2018. The below transactions were informed to the Company on November 7, 2018.

Date of transaction	Transaction	Number of shares	Amount
26.10.2018	Sale	32,825	29,54,250
26.10.2018	Sale	3,500	2,91,025

	Total	**36325**	**32,45,275**

Further, I wish to state that I am neither a Designated Person under the Company's Internal Code of Conduct for Prevention of Insider Trading nor do I have access to any Unpublished Price Sensitive Information (UPSI). I confirm that I did not have knowledge of any UPSI while the above transactions were carried out by me.

I wish to state that I had availed loan facility from ECL Finance Ltd. during the month of April 2018. for purchase of Esop shares of Equitas Holdings Ltd., with comfortable margin. Unfortunately, due to sudden crash of Equitas Holdings Ltd. share price during 26/10/2018, the ECL Finance Ltd. called me over phone and informed me about the short of margin money due to sudden drop in Share price. While I was in the process of arranging margin money, the financier had sold my shares without due intimation to me. I came to know the intimation about the sale of shares only after 7 days and hence the above transaction was done without my prior consent. Thus, the above transaction was neither intentional nor wanton. And once coming to know about the transaction I have immediately informed the transactions to the Company.

I request you to kindly condone the delay in intimating the transaction to the Company…"

c. Subsequently vide letter dated November 19, 2018, the Company levied a penalty of Rs. 5000/- on the Noticee as mentioned below:

"…as per the directions of Internal Committee of the Company for Monitoring and Prevention of Insider Trading in its meeting held today, you are hereby levied a penalty of Rs. 5000 for contravening SEBI (Prohibition of Insider Trading) Regulations, 2015 and EHL Internal Code of Conduct for Prevention of Insider Trading (collectively referred to as "Insider Trading Regulations"), as an Equitas employee.

You are hereby advised to pay the above amount to any charitable institution of your choice within 30 days of receipt of this letter and confirm the same to us…"

d. Since no trades were carried out by the Noticee on BSE and NSE during examination period, his statement of transactions in the scrip of the company for the period July 01, 2018 to January 31, 2019, as provided by CDSL and NSDL was examined by SEBI and the following was observed from his statement of transactions:

Date	Transaction Particulars	Credit	Debit	Current Balance
Mr.P. Selvamani(DP ID: 12032300 Client ID: 01065688)				
29/10/2018	Confiscate Accept: 03724734 Counter: 0002 DR Pledge	-	19382	43079
29/10/2018	Confiscate Accept: 03724734 Counter: 0002 DR Current	-	19382	23697
29/10/2018	Confiscate Accept: 03671994 Counter: 0001 DR Pledge	-	3000	23697
29/10/2018	Confiscate Accept: 03671994 Counter: 0001 DR Current	-	3000	20697
29/10/2018	Confiscate Accept: 04056110 Counter: 0001 DR Current	-	6500	14197
29/10/2018	Confiscate Accept: 04056110 Counter: 0001 DR Pledge	-	6500	14197
29/10/2018	Confiscate Accept: 03641107 Counter: 0001 DR Pledge	-	7443	14197
29/10/2018	Confiscate Accept: 03641107 Counter: 0001 DR Current	-	7443	6754

It was *prima facie* observed from the transaction statement of the Noticee that on October 29, 2018, total 36,325 pledged shares of the company had been confiscated from his demat account.

e. That vide email dated March 08, 2019, the Noticee was *inter-alia* asked to provide the details and reasons for his dealings in the scrip of the Company during the period of examination. Vide email dated March 22, 2019, the Noticee provided the following details:

"*I had availed a loan from ECL Finance Ltd., for subscribing to shares of Equitas Holdings Ltd. (EHL) under ESOP, details of which are provided under S No 4 below. I had also availed an additional personal loan from ECL Finance Ltd. The shares allotted thereunder will be held in demat account held with Edelweiss. The said shares allotted along with the free shares of EHL already held by me in the said demat account were pledged in favour of ECL Finance Ltd. as a security for the loan.*
As per the terms of the loan agreement entered into with ECL Finance Ltd.,

a. During the currency of the loan facility, I am required to maintain margin at 2 times the outstanding loan. If at any time, the value of pledged securities falls below 1.9 times the loan amount, I am required to pre-pay immediately, part of the loan obligations to increase the Margin to 2 times the loan obligations.

b. Further, ECL has the right to sell the pledged securities lying in the Designated DP Account without any further notice or reference to the borrower if value of pledged securities falls below 1.7 times the loan obligations.(Sanction letter attached as Annexure - C) [emphasis supplied]

Representatives from Edelweiss called me over phone to arrange the margin money shortfall of around Rs.7 Lacs to maintain the LTV ratio. While in the process of arranging money to meet margin shortfall, Edelweiss had sold 36,325 shares without my consent and utilised the proceeds to prepay loan and maintain the required LTV. I became aware of the sale only on November 5, 2018 consequent to which I immediately informed the Company. Please note that I am neither a Designated Person under the Company's Internal Code of Conduct for Prevention of Insider Trading nor do I have access to any

Unpublished Price Sensitive Information (UPSI). I confirm that I did not have knowledge of any UPSI while the said transactions were carried out. [emphasis supplied]

As already explained above, these transactions were executed by Edelweiss without my specific consent and by exercising their right under the loan agreement, to meet the margin money shortfall arising out of steep decline in share prices of EHL, against the security of which I had availed loan from ECL Finance Ltd.

On October 25, 2018, EHL made an intimation to stock exchanges about a letter received by ESFBL from RBI pursuant to which on October 26, 2018, there was a steep decline in share prices of EHL (upto 30%). This led to a margin money shortfall in respect of my loan with ECL Finance Ltd."

The Noticee also provided the documents pertaining to the loan facility given by ECL Finance Ltd. to him for subscription of Securities to be purchased or acquired pursuant to employee stock options scheme of Equitas Holdings Ltd.

f. From the documents/ information received from the Company, BSE, NSE, CDSL, NSDL and the Noticee, it was *prima facie* observed that:

Name of Acquirer /Seller	**Transaction Date**	**No of security before transaction**	**Percent of shareholding before transaction**	**No of Security acquired/disposed**	**Type of Transaction**	**Value of Security (Acquired /Disposed) (Rs.)**	**No of security after transaction**	**Percent of shareholding after transaction**	**Date of Intimation to the Company**	**Date of receipt of disclosures by the Exchange**	**Whether disclosure required**	**Observations w.r.t disclosure**
	26/10/2018	43079	0.01	32825	Disposal	29,54,250	10254	0.00	07/11/2018	07/11/2018	**YES**. Since	Delay of 8

Mr. P Selvamani	26/10/2018	10254	0.00	3500	Disposal	2,91,025	6754	0.00	07/11/2018	07/11/2018	value of transaction is greater than Rs. 10 Lakhs.	days by employee.

Prima facie, a delay of 8 days was observed on part of the Noticee in intimating his dealings on October 26, 2018 to the Company.

5. In view of the delay in the disclosure made by the Noticee, it was *prima facie* alleged that the Noticee has violated Regulation 7(2)(a) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, the text of which is reproduced herein below:

"***7(2) Continual Disclosures.***

(a). Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;"

6. The Noticee vide email dated November 4, 2020, replied to the SCN. The written submissions/ reply of the Noticee is reproduced herein below:

i. *ESBFL* ('Equitas Small Finance Bank Ltd"*) has been the subsidiary of EHL. Being an employee of the group Company ESOP of EHL I was entitled and had been offered ESOPs. I thought it may be wise to avail the purchase of ESOP as a part of savings for my retirement life and as a savings for family needs I was entitled to purchase 26460 equity shares from the Company However being a salaried person I did not enough funds to purchase the ESOPs*

ii. *I reached out to Edelweiss Finance Limited ("Edelweiss") for availing a loan that would enable me the ESOP purchases. I had executed a loan agreement with Edelweiss for a loan of Rs.1819800 and acquired 26460 ESOPs of EHL Copy of the Loan agreement is enclosed – Annex 2 I pledged the 26460 shares with ECL as security for due repayment of the Loan.* [emphasis supplied]

iii. *I had availed an additional personal loan from ECL finance Limited under the condition that the shares allotted held in DEMAT would held as Security by ECL Both the allotted shares and free shares of EHL held in my DEMAT were thus pledged in favor of ECL finance Limited as a Security for the repayment of the loan The loan agreement stipulated among other conditions the conditions for maintaining the margin and in case of fall or margin the financier had the power to sell the shares held in security .* [emphasis supplied]

iv. *a. "During the currency of the loan facility I was required to maintain a margin TWICE the value of loan Outstanding If at any time the value of pledged securities falls below 1.9 times of the loan amount I was required to PREPAY the loan immediately. I was under an obligation to increase and maintain the margin at 2 time of the loan obligations* [emphasis supplied]

v. *b. ECL had the right to sell the pledged shares lying in Designated DP account without any further notice to me if the value of the pledged securities fall below 1.7 times of the loan Obligations. Copy of the Loan sanction letter in enclosed vide Annexure 3.* [emphasis supplied]

vi. *On 26.10.2018 the amount of loan outstanding was Rs32.45 lakh. Due to market variation the value of securities held as pledge fell short by Rs 7 Lakhs of the agreed margin under the loan agreement. ECL had urged me over phone to make good the short fall. Being a salaried person arranging of shot fall of Rs 7 laks within a few days of notice was a herculean task and almost an impossible task. ECL finance was continuously pressurizing me to make good the shortfall. While I was busy running pillar to post for arranging the shortfall without giving any final chance the ECL had exercised its right as a pledgee and sold 36325 shares unilaterally and adjusted the proceeds towards the loan shortfall. The 36325 shares of EHL were confiscated from my DEMAT account and adjusted. I was under enormous stress as any amount of buying time with ECL was not fruitful and ultimately landed me in a huge financial loss wiping out the savings. The rate per share at the time pledge was Rs143 and the rate at which it was sold Rs 83 per share. Copy of the contract note of ECL is enclosed for ready reference Annexure 4.* [emphasis supplied]

vii. *It may be noted that hardly any notice was given to me before the pledge was invoked and the impugned shares were transferred to the account of Edelweiss. Amidst all the pressure and harassment I was facing, inadvertently I failed to look into the compliance requirements prescribed under the PIT Regulations. In fact, at this juncture, all my time and energy were vested in the attempts to arrange the funds so that the pledge is not invoked. Moreover, since the invocation of pledge and transfer shares occurred without intimation during which I was under acute pressure, failed to calculate and keep track of the fact that*

the Rupees 10 lakh limit has been breached as prescribed under Regulation 7(2) of the PIT Regulations.

[emphasis supplied]

viii. *I submit that I have been working as an employee and depended on monthly salaries for my sustenance and I have not been a regular investor in the securities market. I neither deal in shares nor a market player in any manner. For the first time, I had acquired the ESOPs on loan taking into account the future financial needs for the retired life plan. As far as the Impugned transactions are concerned, I did not even receive any consideration for the 'sale' of my shares, let alone, making any profit. In fact I had incurred substantial loss. Adding to my horror I found the market recovered the day after sale of my shares adding further to my woes Further, I also did not have access to any UPSI with respect to the Company. Therefore, the question of me deriving any advantage over the public investors of EHL does not arise.*

ix. *On a broad basis I was aware for the need to intimate the company the details of shares of the company held and sold on my account it completely missed my mind in view of the mental distress that I was undergoing. Delay in intimation to the Company is solely attributable inadvertence and unintentional oversight. I was not in possession of any UPSI, the mistakes did not have any detrimental impact on the Company or its investors even in terms of the PIT Regulations* [emphasis supplied]

x. *I received the information of sale over phone from ECL on 5.11.2018 and I intimated the fact of sale to the company on 07.11.2018 . The Company issued a SCN on 08.11.2018 seeking explanation for the delay in intimating the sale on 26.10.2018 of 36325 shares beyond the permitted time under the regulation The Directors of the Internal Committee for monitoring and prevention of Insider Trading vide its meeting held on 19.11.2018 after due consideration of my reply dated 15..11.2018 advised me to pay*

a penalty of Rs 5000/- for contravention of SEBI (Prohibition of Insider trading) Regulation 2015 and EHL Internal code of Conduct for prevention of Insider trading as an Equitas Employee I complied with the Order of Committee by remitting Rs 5000/- to Equitas Development Initiatives Trust and intimated the fact to the Company on 11.12.2018 [emphasis supplied]

xi. *I submit that I have never been an active trader in shares . Due to enormous pressure to arrange for shortfall of margin money within a short time and ultimately incurring huge loss wiping out all my savings I had inadvertently missed the time line for intimating the sale of EHL shares within the 2 trade days as permitted by the Regulations* [emphasis supplied]

xii. *I humbly submit that the sale had taken place at the instance of the pledgee invoking the pledge and it has taken place beyond my control. I have already been put into serious financial pressures due to the huge loss suffered on account of the invoking of the pledge by selling in the shares in the falling market Any act of imposing additional penalty for the technical mistake in delay in reporting to the company of such sale would add further damage and put me into irreparable damage and such imposing a penalty upon me r would not be just and commensurate* [emphasis supplied]

xiii. *The presumption under the allegations under PIT Regulations is that when an insider trades or deals in securities of a listed company, he/she does so on the basis of UPSI and the burden of proof lies on the insider to establish the divergent view. The same was held by the SAT in the in the case of Chandrakala Vs. SEBI [Appeal 209 of 2011]. wherein the SAT further goes on to give an elaborate explanation on the basic tenets and principles of these Regulations. The SAT endorses the legal principle for the applicability of PIT Regulations that the trading by an insider should be induced by the UPSI, and*

accordingly, in the said case the SAT concluded that the appellant was not guilty of insider trading despite having traded while in possession of UPSI, merely because such trade was not induced by the UPSI. Accordingly, the penalty imposed on the Appellant by the adjudicating officer was suspended.

xiv. *It is urged that a similar view based on the spirit and not letter of law be taken in this case as well, since the infractions in this case were not with any intention or to violate the principles underlying the PIT Regulations. Even the SCN does not state the contrary. The impugned transactions lacked commercial intent and were merely done for the purpose of repayment of loan. There is also no impact of the Impugned Transactions on the market value of the EHL scrip, and the same is not even alleged anywhere in the SCN.*

7. Vide email dated November 9, 2020, the Noticee was provided an opportunity of personal hearing on November 19, 2020. The Noticee vide email dated November 16, 2020, sought an adjournment an accordingly the hearing was rescheduled on November 25, 2020, which was intimated to the Noticee vide email dated November 18, 2020. The Noticee was further informed that this was the last and final opportunity of personal hearing being provided to him. Vide an email dated November 23, 2020, the Notice confirmed that the authorised representative of the Noticee shall attend the hearing on November 25, 2020. The Authorized Representative appeared and reiterated the submissions already made by the Noticee vide email dated November 4, 2020.The Authorized Representative sought twenty-four hours' time for the Noticee to make additional submissions, if any, by email. No such additional submissions were however made on behalf of the Noticee.

ISSUES AND FINDINGS

8. I have gone through the examination report of SEBI, the allegations levelled against the Noticee in the SCN and the reply of the Noticee to the said SCN as already elaborated in the preceding paragraphs. The issues to be determined in the present cases are as follows:

   a. Whether the Noticee had failed to make the requisite disclosure with respect to the sale of 36325 shares of the company held by it on October 26, 2018, to the company within the stipulated timeline, thereby violating Regulation 7(2)(a) of the PIT Regulations?

   b. If the answer to the question posed above is in the affirmative, then whether the Noticee is liable for penalty under section 15A (b) of the SEBI Act?

   c. If the answers to the questions posed above are in the affirmative, what should be the quantum of penalty that should be levied upon the Noticee?

9. On a perusal of the available material, I note that it is necessary to answer to the following questions, in order to ascertain if the Noticee has violated Regulation 7(2)(a) of the PIT Regulations:

   a. Whether the sale of 36325 shares of the company held in the account of the Noticee, by Edelweiss Finance Limited ("**pledgee**"), happened with the consent of the Noticee?

   b. When did the Noticee come to know of the sale of its shares by the pledgee?

c. Did the Noticee inform the company about such sale of shares within two working days since he came to know of the sale transaction?

10. On a perusal of the submissions of the Noticee (already reproduced in the preceding paragraphs), I note that the Noticee itself had entered into a pledge agreement with the pledgee for availing a loan that would enable him to purchase the shares of the company under the ESOP. Accordingly, the Noticee had executed a loan agreement with the pledgee for a loan of Rs.18,19,800 and had acquired 26460 shares of the company under the ESOP. The Noticee had pledged the 26460 shares of the company purchased under the ESOP with the pledgee as security for due repayment of the aforesaid loan. It is noted from paragraph no. (iv) of the reply of the Noticee that he had availed an additional personal loan from the pledgee under the condition that both the allotted shares and free shares of the company held in his demat account were pledged as a security for the repayment of the loan availed from the pledge. The loan agreement *inter alia* stipulated the conditions for maintaining the margin and in case of fall or margin, the pledgee had the power to sell the shares held as security. The relevant submissions of the Noticee in this regard is reproduced herein below:

a. "During the currency of the loan facility I was required to maintain a margin TWICE the value of loan Outstanding If at any time the value of pledged securities falls below 1.9 times of the loan amount I was required to PREPAY the loan immediately. I was under an obligation to increase and maintain the margin at 2 time of the loan obligations

b. ECL had the right to sell the pledged shares lying in Designated DP account <u>without any further notice to me if the value of the pledged securities fall below 1.7 times of the loan Obligations.</u>

[emphasis upplied]

Thus, I note that the terms of the pledge agreement executed by the Noticee for availing a loan for purchasing shares of the company issued under the ESOP, categorically provided the pledgee the power to invoke the pledge in case of a margin shortfall when the value of the pledged securities fell below 1.7 times of the loan obligation, without any further notice to the Noticee. From the submissions of the Noticee at paragraph no. (v) of its reply, I note that the pledgee had in fact intimated the Noticee about the shortfall in the margin due to the fall in the price of the shares of the company pledged as securities on October 26, 2018 and had asked the Noticee to recompense for the shortfall. On the Noticee's failure to make such recompense immediately, the pledgee had invoked the pledge and sold the shares of the Noticee held with it as security on the same date. Therefore, the submissions of the Noticee himself at paragraph no. (v) contradicts the statement of the Noticee at paragraph no. (vi) of the reply where he claims that "*hardly any notice was given to me before the pledge was invoked and the impugned shares were transferred to the account of Edelweiss*". Thus, it should have been reasonably clear to the Noticee that if he fails to recompense the shortfall in the margin immediately, the pledgee shall be at liberty to invoke the pledge and sell the pledged shares of the company.

11. From a reading of the facts as detailed in the preceding paragraphs, it becomes clear that the Noticee was well aware of the terms and conditions of the pledge agreement and therefore the invocation of the pledge and sale of shares of the company held in the account of the Noticee

by the pledgee cannot be held to have happened without the consent or the knowledge of the Noticee. The pledge agreement or any part thereof has not been disowned by the Noticee anywhere in his submissions. Thus, being fully aware of the terms and conditions of the pledge agreement and the fact that the pledgee had communicated to the Noticee on October 26, 2018, regarding the shortfall in the margin, it cannot now be claimed by the Noticee that the shares were sold without his consent or his knowledge.

12. It was observed from the transaction statement of the Noticee that on October 29, 2018 (next working day after Octonber 26, 2018), total 36,325 pledged shares of the company had been confiscated from his demat account. The knowledge of this fact has also been admitted by the Noticee at paragraph no. (iii) of his written submissions. Thus, as on October 29, 2018, the Noticee was aware of the sale transaction contrary to his statement at paragraph number (ix) that "*I received the information of sale over phone from ECL on 5.11.2018 and I intimated the fact of sale to the company on 07.11.2018*". A copy of the statement of transactions of the Noticee for the relevant period received from the CDSL was annexed to the SCN. The said statement clearly shows the confiscation of 36325 shares of the company held in the account of the Noticee on October 29, 2018.

13. I also note that the Noticee in his letter dated November 15, 2018, addressed to the company *inter alia* states that:

> *"Unfortunately due to sudden crash of Equitas Holdings Limited share price during 26/10/208, the ECL Finance Limited called me over phone and informed me about the short of margin money due to sudden drop in share price. While I was in the process of arranging margin money, the financier had sold*

my shares without due intimation to me. I came to know the intimation about the sale of shares only after 7 days and hence the above transaction was done without my prior consent." [emphasis supplied]

From the abovementioned submission of the Noticee, it appears that the pledgee had called him on October 26, 2018, informed about the shortfall in the margin money and seven days therefrom, i.e., on November 2, 2018, had intimated the Noticee about the sale of the shares. Therefore, even by his own submissions, the Noticee had received the intimation on November 2, 2018 and not on November 5, 2018, as is claimed by the Noticee elsewhere in his written submissions. However, as shall be brought out in the subsequent paragraphs, the Noticee was intimated by CDSL itself on October 29, 2018 about the debit of shares from his account pursuant to the invocation of the pledge.

14. As per the material available on record, 36,325 shares of Equitas Holdings Limited which were pledged earlier were confiscated on October 29, 2018 and SMS for the said transactions were sent by CDSL to the Noticee on his registered mobile no 9500045377 on October 29, 2018 at 13:20:26 hours. As per the own submissions of the Noticee, the disclosure regarding sale of shares of the company held in the name of the Noticee was intimated to the company on November 7, 2018. This was clearly beyond the statutory time period of two working days from October 29, 2018, the date on which the Noticee had come to know of the sale transaction from the intimation received pursuant to the confiscation of shares from his demat account. From the written submissions of the Noticee, I observe that the Noticee too has acknowledged that there has been a delay on his part in making the disclosure, as is observed from the following excerpts from the written submissions of the Noticee:

a. At paragraph no. (vi) of the written submission, the Noticee states that "*inadvertently I failed to look into the compliance requirements prescribed under the PIT Regulations."…… "I was under acute pressure, failed to calculate and keep track of the fact that the Rupees 10 lakh limit has been breached as prescribed under Regulation 7(2) of the PIT Regulations."*

b. At paragraph no. (viii) of the written submission, the Noticee states that "*On a broad basis I was aware for the need to intimate the company the details of shares of the company held and sold on my account it completely missed my mind in view of the mental distress that I was undergoing. Delay in intimation to the Company is solely attributable inadvertence and unintentional oversight."*

c. At paragraph no. (x) of the written submission, the Noticee states that "*I had inadvertently missed the time line for intimating the sale of EHL shares within the 2 trade days as permitted by the Regulations."*

d. At paragraph no. (xi) of the written submission, the Noticee states that: "*Any act of imposing additional penalty for the technical mistake in delay in reporting to the company of such sale would add further damage and put me into irreparable damage".* [emphasis supplied]

e. At paragraph no. (ix) of the written submissions, the Noticee has *inter alia* stated that:

"The Company issued a SCN on 08.11.2018 seeking explanation for the delay in intimating the sale on 26.10.2018 of 36325 shares beyond the permitted time under the regulation. The Directors of the Internal Committee for monitoring and prevention of Insider Trading vide its meeting held on 19.11.2018 after due consideration of my reply dated 15.11.2018 advised me to pay a penalty of Rs. 5000/- for contravention of SEBI (Prohibition of Insider Trading) Regulation 3015 and EHL

Internal Code of Conduct for prevention of Insider trading as an Equitas Employee I complied with the order of Committee by remitting Rs. 5000/- to Equitas Development Initiatives Trust and intimated the fact to the company on 11.12.2018."

It is observed from the above that the Noticee has accepted the findings of the internal committee of the company holding him liable of violation of the norms of disclosure and has already paid the penalty levied by the company for the said violation.

15. I therefore hold that the Noticee, by making the requisite disclosure beyond the time period stipulated under the statute, has violated Regulation 7(2)(a) of the PIT Regulations, 2015. The said violation make the Noticee liable for penalty under section 15A (b) of the SEBI Act, the text of which is reproduced herein 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 [which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees]];"

16. While determining the quantum of monetary penalty under Section 15A(b) of SEBI Act, I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

17. **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"

18. At this juncture, reliance is placed upon the Order of the Hon'ble Supreme Court in the matter of ***Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361}*** – where the Hon'ble Supreme Court of India 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. At this juncture, I note that the Noticee has submitted that he had not derived any profit from the impugned sale transaction as the said sale was undertaken by the pledgee by invoking the pledge. He has further submitted that he was not a "designated person" and did not possess any UPSI at the time of the impugned transaction. I note that no allegation of 'insider trading' has indeed been levelled against the Noticee in the SCN. Further, the question of deriving any profit or loss is wholly irrelevant to the violation of Regulation 7(2)(a). The Noticee has cited the reasons and the circumstances under which the pledge was invoked by the pledgee and the sale transaction undertaken. That too is irrelevant for the purpose of adjudicating upon

the violation of Regulation 7(2)(a). The *factum matter* for the present case as already established in the preceding paragraphs is that the shares of the company held in the name of the Noticee were sold with the knowledge of the Noticee, in order to meet the financial liabilities incurred by the Noticee in terms of an agreement duly executed by him and the intimation of such sale, breaching the threshold limit in terms of sale value of such shares, was not made to the company within the period of time stipulated for the same under the statute. Whether the default on the part of the Noticee was intentional or otherwise is also irrelevant for the purpose of the present adjudication.

20. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticee's act. There is also no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticee as a result of his non-compliance. It is an established fact that the Noticee, being a senior employee (Executive Vice President- Legal) of a wholly owned subsidiary of the company, in the instant case had failed to intimate the company within the stipulated period o time, of a sale transaction of the shares of the company entered into his behalf, in violation of the PIT Regulations, 2015. In the present context of a disclosure-based regime of the securities market, any default in making requisite disclosures cannot be considered lightly. Further, it is important to note that timely disclosure of information, as prescribed under the statute, is an important regulatory tool intended to serve a public purpose. The fact that the Noticee has not derived any profit from the said transaction and the circumstances under which the said transaction had taken place, do act as

mitigating factors while determining the quantum of penalty, they do not nullify the fact of regulatory non-compliance of the Noticee.

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 Adjudication Rules, I hereby impose penalty of **Rs. 1,00,000/-** (Rupees One Lakh Only) on **Shri P. Selvamani (PAN: APHPS7897D)** payable by the Noticee in terms of Section 15A(b) of the SEBI Act, for his violation of Regulation 7(2)(a) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015.

22. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by online payment through following path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at linkhttps://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html

23. The said demand draft and its details or details of online payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department-DRA-1), the Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 – A, "G" Block, BandraKurla Complex, Bandra (E), Mumbai – 400 051."

Case Name :	
Name of Payee :	
Date of Payment:	
Amount Paid :	
Transaction No. :	
Bank Details in which payment is made :	
Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

24. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, consequential proceedings including, but not limited to, recovery proceedings may be initiated under section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, *inter alia,* by attachment and sale of movable and immovable properties.

25. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this Order is sent to the Noticees and also to the Securities and Exchange Board of India.

Date : November 27, 2020 **G. Ramar**

Place : Mumbai **Adjudicating Officer**