

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO. EAD-9/SM/96-98/2018-19]**

**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:**

<b>Champalal Agarwal PAN: AAPPA7695A</b>	<b>Gopiram Shankarlal Gopiram Agarwal PAN: AAPPA7694B</b>	<b>Subhashchandra Omkarmal Agarwal PAN: AAPPA7696D</b>
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**In the matter of M/s. Omkar Overseas Limited**

**Facts of the Case:**

1. Securities and Exchange Board of India ("SEBI") pursuant to investigation into the trading activities of certain entities in the scrip of Omkar Overseas Limited (hereinafter referred to as "OOL/Company") for the period from October 01, 2009 to April 01, 2010 (hereinafter referred to as "Investigation period/IP") had alleged based on the observation of Investigation that :
  - 1.1. Champalal Gopiram Agarwal (Champalal) and Shankarlal Gopiram Agarwal(Shankarlal) had not made disclosure in violation of Regulation 13(3), 13(4) read with Regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations 1992 (PIT Regulations).
  - 1.2. Subhashchandra Omkarmal Agarwal (Subhashchandra) had not made disclosure in violation of Regulation 13(4) read with Regulation 13(5) of the PIT Regulations.
2. In this order wherever PIT Regulations is mentioned it should be referred to as PIT Regulations read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015.
3. All Noticee shall be collectively hereinafter referred to as Noticees.

**Appointment of Adjudicating Officer**

4. SEBI had appointed Shri D.S. Reddy as Adjudicating Officer vide order dated May 08, 2015 under Section 19 of the SEBI Act, 1992 read Section 15-I of SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as AO Rules) to inquire and adjudge under Section 15A(b) of SEBI Act on Noticees for the alleged provisions of law Subsequently, pursuant to the transfer of the case, the undersigned have been appointed as Adjudicating Officer (AO), vide order dated May 18, 2017 for the aforesaid Noticees.

### **Show Cause Notice, Reply and Personal Hearing:**

5. A common Show Cause Notice dated July 03, 2015 (hereinafter referred to as 'SCN') was served on Noticees in terms of Rule 4 of AO Rules read with Section 15 (I) of SEBI Act, calling upon the Noticees to show cause as to why an inquiry should not be held against them and penalty should be not imposed under Section 15A(b) of SEBI Act, 1992 on Noticees for the alleged provisions of law.

6. **Status of the SCN:**

The SCN issued to all noticees was delivered except to Champalal. The undelivered SCN was duly affixed at the last known address of Champalal.

### **Allegations in the SCN with respect to :**

7. **Champalal**

- 7.1. Champalal being the Chairman and Managing Director of OOL, upon receipt of 225000 shares on November 23, 2009 from Shri Ronit Satyanarayan Agarwal (Promoter of OOL) was required to make necessary disclosure to the company as well as stock exchange as prescribed under 13(4) read with Regulation 13(5) of the PIT Regulations. However, it was alleged that the said disclosure was not made by Champalal. It was also alleged that during October 2009 to April 2010, the total sale of shares by Champalal was more than 25,000 shares/more than Rs. 500000 in value on thirteen occasions. Champalal was required to make necessary disclosure to the company as well as stock exchange as prescribed under 13(4) read with Regulation 13(5) of the PIT Regulations. However, it was alleged that he made delayed disclosure in this regard.
- 7.2. Further on October 15, 2009, the shareholding of Champalal had reduced by more than 2%, which required him to make necessary disclosure to the company under Regulation 13(3) read with Regulation 13(5) of the PIT Regulations by October 17, 2009. However, it was alleged that Champalal had made delayed disclosure in this regard to the company.

8. **Shankarlal**

- 8.1. It was alleged Shankarlal (Director of OOL) had sold shares during November 2009 to January 2010 on eight occasions which required him to make necessary disclosures as required under Regulation 13(4) read with Regulation 13(5) of the PIT Regulations to the company and to the stock exchange as the sale was more than 25,000 shares/more than Rs. 500000 in value.. However, it was alleged that Shankarlal Agarwal has made those disclosure belatedly to the company and stock exchange,
- 8.2. It was also alleged that shareholding of Shankarlal had reduced by more than 2% on December 11, 2009 and December 23, 2009, and he was under an obligation to make disclosure under Regulation 13(3) read with 13(5) of PIT Regulations. However it was alleged that he had violated Regulation 13(3) read with 13(5) of the PIT Regulations by not making desired disclosures within stipulated time.

9. **Subhashchandra**

Subashchandra being the Director of the company sold shares during December 2009-January 2010 on five occasions which required him to make necessary disclosures to the company and the stock exchange as prescribed under Regulation 13(4) read with

Regulation 13(5) of PIT Regulations within 2 working days as the total sale was more than 25,000 shares/more than Rs. 500000 in value. However, it was alleged that Subhashandra made delayed disclosure in this regard.

#### **10. Inspection of Documents:**

All Noticees had sought inspection of documents which was duly provided on November 05, 2015 and on July 08, 2016.

#### **11. Filing of Settlement Application:**

The Noticees had communicated that they had filed settlement application before SEBI. I note that the settlement application was rejected by SEBI as request of Noticees for the condonation of delay was not acceded by SEBI.

12. No reply was received from the Noticees.

#### **13. Personal Hearing:**

13.1. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Rules, Hearing Notice was issued to Noticees on January 19, 2018 granting an opportunity of personal hearing before the undersigned on February 09, 2018 along with the reminder to reply to SCN. On behalf of the Noticees, the Authorized Representative (hereinafter referred to as "AR") appeared before me seeking an adjournment of Personal Hearing.

13.2. Further personal hearing opportunity was extended to the Noticees on February 26, 2018 and March 20, 2018 and on both of these dates, Noticees did not appear and had sought adjournment for medical reasons and for Inspection of documents respectively.

13.3. An e-mail was sent to Noticees stating inspection of documents was already conducted by them on November 06, 2015 and further documents sought by them was provided on July 08, 2016.

13.4. Noticees through their AR finally appeared before me on April 17, 2018 and made oral submission and informed that written submission would be made soon.

14. Noticees vide letter dated April 26, 2018 broadly made the following submission:

14.1. *It is submitted that the delay if any, in making the stipulated disclosures was unintentional and inadvertent. Further, due to delayed disclosure, the Noticees neither got any undue benefit nor the investors incurred any loss.*

14.2. *It is further submitted that as soon as the Noticees viz Shankarlal Champalal, Subhash realized the errors, they corrected the same by making required disclosures to the company 'Omkar Overseas Limited' (OOL) and to the concerned stock exchange. The Noticees submit that the OOL has made the requisite disclosures under the shareholding pattern for the respective quarters within the stipulated time which establishes that the requisite disclosures were made albeit a little late. In view of the same, it is denied that there has been non-disclosure by the Noticees viz Mr. Shankarlal, . Champalal, Subhash,.*

14.3. *It is submitted that the concerned stock exchange accepted the disclosures and never took any cognizance within the limitation period and hence have ratified the action of the Noticees.*

14.4. *the necessary disclosures were made by OOL under the quarterly shareholding pattern which is sent to the stock exchanges within 21 days of the end of the quarter although the disclosure was not in the format as specified in SEBI (PIT) Regulations, 1992. In view of the same, it is submitted that the disclosure were made albeit a little late and OOL denies that there has been any non-disclosure.*

- 14.5. As soon as the said Noticees were being made aware about the disclosures to be filed, they immediately filed the same with the stock exchange and the OOL. Failure to make disclosures in required time frame has not resulted in any undue benefit/ profit to the said Noticees. Failure to make disclosures in required time frame has not caused any loss to the investors. make disclosure, then the Noticees would not have made even delayed disclosures.
- 14.6. Further, with respect to non-disclosure by Mr. Champalal Agarwal for the transaction of 2,25,000 shares of OOL on 23-11-2009 is concerned, it is submitted that the said transaction was by way of gift executed by Mr. Ronit Agarwal in favour of Mr. Champalal Agarwal. Further, the transaction of 2,25,000 shares of OOL was among the promoters i.e. both Mr. Ronit Agarwal and Mr. Champalal Agarwal belonged to the promoter group of OOL. Therefore, the promoters shareholding of OOL ultimately remained the same. Further, admittedly, Mr. Ronit Agarwal had made the required disclosures under SEBI (SAST) and SEBI (PIT) Regulations and which is also accepted by SEBI
- 14.7. It is submitted on behalf of the Noticees that penalty should not be levied merely because there is default. In this regard, we would like to cite SAT decision in Chandrakant Gandhi Stock Broker P. Ltd. Vs. Securities and Exchange Board of India [2000 (37) CLA 238] SAT. Further, we would like to cite Tribunal's view in Housing Development Finance Corporation [(2000) 28 SCL 289 (SAT)], that "default per se is not dominant guiding principle for imposition of penalty. It is the consequence of the default that weighs in taking the decision to impose penalty and its quantum".

## **ISSUES FOR CONSIDERATION and FINDINGS:**

15. I have carefully perused the replies and submissions of the Noticees and the documents available on record. The issues that arise for consideration in the present case are:

### **Issue I: Whether the following was violated**

- Regulation 13(3), 13(4) read with Regulation 13(5) of the PIT Regulations by Champalal and Shankarlal;
- Regulation 13(4) read with Regulation 13(5) of the PIT Regulations by Subhashchandra.

### **Issue II Does the violation, if any, attract monetary penalty under Section 15A(b) of SEBI Act on Noticees;**

### **Issue III If so, what should be the quantum of monetary penalty?**

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

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

**13(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.

**13(5)** The disclosure mentioned in sub-regulations (3) and (4) 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.

**Relevant provision of PIT Regulations, 2015**

**Repeal and Savings:**

12. (1) The Securities and Exchange Board of India (Prohibition of Insider Trading)

Regulations, 1992 are hereby repealed.

(2) Notwithstanding such repeal,—

(a) the previous operation of the repealed regulations or anything duly done or suffered

thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and

(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

**Findings:**

17. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder:

**Champalal :**

**17.1. Receipt of Shares as Gift.**

17.1.1. I do not any merit in the argument of Champalal that he was under no obligation to make disclosure under Regulation 13(4) of PIT 1992 as change in his shareholding is owing to gift received by him from one of Promoter Shri Ronit Satyanaryan Agarwal, since the transfer was between two promoters of the promoter group and therefore promoters group shareholding remain the same and disclosure has been made by transferor promoter Shri Ronit Satyanaryan Agarwal in this regard to the company and to the Stock Exchange. I note that the objective of PIT Regulations mandating disclosure beyond certain quantity is to give equal opportunity to all shareholders and protecting their interests. Upon receipt of shares Champalal was under an obligation to make disclosure under Regulation 13(4) of PIT Regulations. Since there was change in his shareholding and in terms of PIT Regulations he was under an obligation to make disclosure.

17.1.2. Here I would like to rely on the observation made by Hon'ble Securities Appellate Tribunal (SAT) in the matter of **Komal Nahata Vs. SEBI (Date of judgment- January 27, 2014)**:

*“Argument that erroneous transfer was without consideration and did not constitute trade is also without any merit because, for purposes of SAST Regulations what is*

*relevant is acquisition of shares and once acquisition of shares exceeds the limits prescribed therein, provisions of SAST Regulations are triggered.”*

17.1.3. In the light of the aforesaid judgement of Hon'ble SAT, I note that requirement of disclosure triggers moment there is a change in the shareholding beyond threshold limit, irrespective of whether it is a gift or commercial transaction. In the given case, in respect of PIT Regulations, since the shares have changed hands, regardless of the gift, once transfers or acquisitions exceed the limits prescribed therein, disclosures become mandatory under the PIT Regulations and hence I conclude Champalal is liable for penalty under Section 15A(b) of SEBI Act.

#### **17.2. Selling of Shares by Champalal:**

17.2.1. I note that Champalal has sold his shares on various occasions and this has resulted in change of his shareholding and hence he was required to make the necessary disclosure to OOL and stock exchange within 2 working days as stipulated under Regulation 13(3) of PIT Regulation. I note that the Champalal had belatedly made disclosure to the company on January 11, 2013 and to BSE on January 15, 2013.

17.2.2. I also note that Champalal has made delayed disclosure with regard to change in his shareholding in compliance of Regulation 13(3) read with 13(5) of PIT Regulations.

**17.2.3.** In view of the above, I conclude that by non-disclosing /belatedly disclosing his shareholding, Champalal has violated provisions of Regulation 13(3) and 13(4) read with Regulation 13(5) of PIT Regulation

#### **Shankarlal:**

18. I note that Shankarlal has made disclosure for the instances mentioned above belatedly and hence disclosures were not available for the public at large within the stipulated time. Shankarlal has also accepted the fact that the disclosures were not made on time, however it was made belatedly. Hence I conclude that violation of Regulation 13(3) and 13(4) read with 13(5) of PIT Regulations stands established against Shankarlal and is liable for penalty under Section 15A(b) of SEBI Act.

#### **19. Subashchandra:**

I note that Subashchandra being the Director of the company, had sold his shares and this has resulted into change of his shareholding. I note that the Subashchandra had belatedly made disclosure to the company on January 11, 2013 and to BSE on January 14, 2013. In view of the above, I conclude find that by belatedly disclosure of change in shareholding Subashchandra has violated the provision of Regulation 13(4) read with Regulation 13(5) of PIT Regulations which makes him liable for monetary penalty under Section 15A(b) of SEBI Act.

#### **20. Common Arguments of the Noticees**

20.1. I do not find any merit in the submissions of the Noticees that the non disclosures were unintentional and not wilful. Also, I do not find any merit in the submissions of the Noticees that they have not made any illegal or undue profits. In this context, I note that the Hon'ble Securities Appellate Tribunal in the matter of Komal Nahata Vs. SEBI vide order dated January 27, 2014 has observed that:

*“Argument that no investor has suffered on account of nondisclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non-compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such nondisclosure.”*

20.2. Further, I also note that in Appeal No. 78 of 2014 in the case of Akriti Global Traders Ltd. Vs. SEBI, the Hon'ble Securities Appellate Tribunal vide order dated September 30, 2014 has observed that:

*“... Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, 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”.*

20.3. Further, I do not find merit in the submission made by AR that after realizing the error, immediately disclosure was made to the company and stock exchange, hence there is no non-disclosure. I note that the disclosure was made by the Noticees in the instant matter much later than the stipulated time. Though I take into cognizance of disclosure made by the Noticees, however, since those were not made within stipulated time, hence I conclude that delayed disclosure is as good as non-disclosure.

20.4. Noticees have argued that details of change in shareholding has been duly reflected in the quarterly shareholding pattern disclosed by the company on Stock Exchange. I accept the argument however since disclosures were not made within stipulated time, violation is established.

20.5. Noticees has argued that penalty should not be levied merely because there is a default and in support of their arguments they have cited judgment of Hon'ble SAT in the matter of *Chandrakant Gandhi Stock Broker P. Ltd. Vs. Securities and Exchange Board of India* [2000 (37) CLA 238] and in the matter of *Housing Development Finance Corporation* [(2000) 28 SCL 289 (SAT)], that *"default per se is not dominant guiding principle for imposition of penalty. It is the consequence of the default that weighs in taking the decision to impose penalty and its quantum."*

20.6. Here I refer to the judgment of Hon'ble Supreme court in the matter of *SEBI v/s Shri Ram Mutual Fund* (2006) wherein it was held that *"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of the parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow."*

20.7. Therefore, considering the facts of the case and law cited, I am of the view that a monetary penalty in terms of Section 15(A)(b) on Noticees needs to be imposed.

**Issue II Does the violation, if any, attract monetary penalty under Section 15A (b) of SEBI Act, 1992 on Noticees?**

**Relevant provisions of the SEBI Act, 1992:**

***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,—***

(a) .....

**(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;

**Issue III: If so, what should be the quantum of monetary penalty?**

21. While determining the quantum of penalty under Section 15A(b), it is important to consider the factors stipulated in Section 15J of SEBI Act, which read 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.*

22. With regard to the above factors, it may be noted that the examination report has not quantified the profit/loss for the violations committed by the Noticees. It is not possible from the material available on record to ascertain the disproportionate gain or unfair advantage made by the Noticees or the amount of loss caused to an investor or group of investors as a result of the default. The Noticees have made delayed disclosure however they have failed to make true and correct disclosures on time and have thus severely impaired the integrity of the disclosure system put in place by the regulator and has deprived the investors of the significant information at the relevant time. Hence Noticees actions warrant the imposition of penalty.

**ORDER**

23. In view of the above, after considering all the facts and circumstances of the case, the material available on record, the submission made by the Noticees, in exercise of the powers conferred upon me under Section 15-I of SEBI Act, 1992 on Noticee(s) OOL, Champaklal, Shankarlal and Subashchandra.

Name Of The Noticees	Violations Provisions	Penalty Provision under Section SEBI Act, 1992	Amount of Penalty (Rs.)
Champalal Gopiram Agarwal	Regulation 13(3) read with Regulation 13(5) of PIT Regulations, 1992	Under Section 15A(b) of SEBI Act, 1992	1,00,000 (Rs One lakh only)
	Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992		4,00,000 (Rs Four lakhs only)
Shankarlal Gopiram Agarwal	Regulation 13(3) read with Regulation 13(5) of PIT Regulations, 1992		1,00,000 (Rs One lakh only)
	Regulation 13(4) read with Regulation		2,00,000 (Rs Two lakhs only)



Name Of The Noticees	Violations Provisions	Penalty Provision under Section SEBI Act, 1992	Amount of Penalty (Rs.)
	13(5) of PIT Regulations, 1992		
Subhashchandra Omkarmal Agarwal,	Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992.		2,00,000 (Rs Two lakhs only)

24. 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 favor 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:

**Account No. for remittance of penalties levied by Adjudication Officer**

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RT GS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

25. The Noticees shall forward said Demand Draft or the details/confirmation of penalty so paid through e-payment to the General Manager (Enforcement Department - DRA- II) of SEBI. 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 Entity	
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	

26. In terms of Rule 6 of the Rules, copy of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

**Date: August 14, 2018**  
**Place: Mumbai**

**SAHIL MALIK**  
**ADJUDICATING OFFICER**