BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER/SS/AS/2018-19/1129]

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:

Ms. Kontala Krishnaveni
(PAN No. BWKPK4464K)
15-93/5, Aganampudi,
B Colony, Gajuwaka,
Vishakhapatnam – 530046

In the matter of Covidh Technologies Limited

1. Covidh Technologies Limited (hereinafter referred to as 'the company') formerly known as Aptus Industries Limited, a company having its shares listed on the Bombay Stock Exchange (BSE), Ahmedabad Stock Exchange and Madras Stock Exchange, during the relevant period. SEBI observed change in shareholding of promoters of the company during the quarter ending March 2014 wherein shareholding of one of the promoters Ms. Kontala Krishnaveni (hereinafter referred to as 'the Noticee') had changed from 14.9% to 8.86% (i.e. change of 6.04%). Such change in shareholding of the Noticee was on account of her off market transaction in the shares of the company on January 27, 2014 as described in the following table:-

Shareholding before transactions	Volume of transaction (shares)	Date of transaction	Shareholding post transactions
15,79,000 (14.9%)	6,40,000	January 27, 2014	9,39,000 (8.86%)

2. Such change exceeded two per cent of total shareholding in the company. Hence, Ms. Konatala Krishnaveni was required make disclosures to the company and the concerned stock exchange/s as required under regulation 13(3) and 13(4A) read with regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'the PIT Regulations') and regulation 29(2) read with regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **'**the SAST Regulations') within 2 working days from January 27, 2014 i.e. by January 29, 2014. The relevant provisions of the PIT Regulations and the SAST Regulations are reproduced hereinafter:

PIT Regulations, 1992

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

(4A) *Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such persons from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.*

(5) *The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of:*

(a) *the receipts of intimation of allotment of shares, or*

(b) *the acquisition or sale of shares or voting rights, as the case may be.*

SAST Regulations, 2011

Disclosure of acquisition and disposal

29 (2) *Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, 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 two per cent of total shareholding or voting rights in the target company, in such form as may be specified.*

29 (3) *The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—*

(a) *every stock exchange where the shares of the target company are listed; and*

(b) *the target company at its registered office.*

3. SEBI noted that the Noticee had made disclosure under regulation 13(4), 13(4A) and 13(6) of the PIT Regulations to the company in Form D on February 26.02.14. Vide its letter dated February 28, 2014, while making disclosure under regulation 13(6) of the PIT Regulations to BSE, the company had confirmed that the disclosure to it was made by the Noticee in Form D on February 26, 2014.

4. BSE, vide its letter dated January 07, 2015, had confirmed that for the aforesaid transaction in the shares of the company the above Noticee had not filed any disclosures with it under the PIT Regulations and the SAST Regulations. Vide e-mail dated April 01, 2015, BSE again confirmed that no disclosures were received by it from the Noticee under the PIT Regulations and SAST Regulations for the said transaction.

5. The Whole Time Member, SEBI *prima facie* felt satisfied that there are sufficient grounds to adjudicate upon the alleged violations by the Noticee of the provisions of regulation 13(3) and 13(4A) read with 13(5) of the PIT Regulations and regulation 29(2) read with regulation 29(3) of the SAST Regulations and Shri Suresh Gupta, Chief General Manager, was appointed as Adjudicating Officer (AO) vide order dated January 31, 2017 to adjudge under rule 5 of SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 and under section 15A (b) of the SEBI Act, the said violations by the Noticee. The AO had remitted back the matter seeking evidence in support of the allegations.

6. The concerned department undertook further inquiry in the matter. During such inquiry, the company had, vide its e-mail dated October 10, 2017, *inter alia* submitted that it had received the "…. *intimation regarding the aforesaid transaction on 26th February 2014 and Company has intimated about the same to stock exchange on 28th February 2014 (i.e. within 2 days of receipt of intimation as per Regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulations, 1992*…" Further, vide its e-mail dated October 11, 2017, the company had submitted that "*As per regulation 29(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, the Company has not received the said disclosure from Smt. Kontala Krishnaveni*".

7. Subsequently, by a common communication- order dated April 02, 2018, this case has been transferred to me with advise that except for the change of the Adjudicating Officer the other terms and conditions of the original orders *'shall remain unchanged and shall be in full force and effect'* and that the "*Adjudicating Officer shall proceed in accordance with the terms of reference made in the original orders".* Accordingly, in terms of Rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act and terms of reference as advised in above communication- order dated April 02, 2018 the notice to show cause no. EAD/SS/GSS/12623/1/2018 dated April 25, 2018 (hereinafter referred to as 'the SCN') was issued to the Noticee, calling upon her to show cause as to why an inquiry should not be held against her in terms

of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15A (b) of the SEBI Act for the aforesaid alleged violations. The provisions of section 15A(b) of the SEBI Act provide as under:

> ***Penalties and Adjudication***
>
> ***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*

8. In view of the terms of reference and evidences relied upon in this matter it was alleged in the SCN that the Noticee –

   a) did not make disclosure to the company in terms of regulation 13(3) of the PIT Regulations;
   b) made belated disclosure to the company in Form D prescribed for regulations 13(4A) read with regulation 13(5) of the PIT Regulations;
   c) did not make disclosures to the stock exchange under regulation 13(4A) of the PIT Regulations; and
   d) did not make disclosures to the company and stock exchange/s as required under regulation 29(2) read with regulation 29(3) of the SAST Regulations.

9. The SCN was duly served upon the Noticee but no reply was received from the Noticee. In terms of Rule 4 (3) of the Adjudication Rules, an opportunity of personal hearing was granted to the Noticee on June 08, 2018. The notice of hearing was duly served upon her but the Noticee did not availed the opportunity. In the interest of principles of natural justice, another opportunity of personal hearing was granted to the Noticee on July 09, 2018, but the notice was returned undelivered with remarks '*insufficient address'*. Accordingly, the hearing notice was sent on another address of the Noticee available on record granting another opportunity of personal hearing to the Noticee on August 09, 2018. However, the Noticee again did not avail this opportunity also despite service of the notice of date, place and time of hearing upon her.

10. It is noted that the Noticee has neither filed any reply nor has availed the opportunity of personal hearing despite service of notices upon her. The SCN clearly indicated that in case of failure to submit reply the

case would be proceeded with *ex-parte* on the basis of the material available on record. Despite such clear advice and service of notices in these proceedings the Noticee has ignored them and has deliberately chosen to keep herself away from the proceedings. In the facts and circumstances of this case, I am of the view that the Noticees has nothing to submit and in terms of rule 4(7) of the Adjudication Rules the matter can be proceeded *ex-parte* on the basis of material available on record. In absence of any response from the Noticee to the SCN, I presume that the Noticee has admitted the charges levelled against her. In this regard, it is pertinent to note that the Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006)* has, *inter alia*, 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"*. Further, the Hon'ble SAT in the matter of *Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013 decided on February 11, 2014),* has also, *inter alia*, and observed that: *"..... 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..."*

11. I have considered the allegation levelled in the terms of reference and the relevant material brought on record. In this case, in absence of any response from the Noticee and any material suggesting contrary to the charges/allegation the only possible conclusion is that the allegations and charges have been admitted by the Noticee. It is admitted position that the Noticee made disclosures about her aforesaid transactions under regulations 13(4A) read with regulation 13(5) of the PIT Regulations belatedly to the company in prescribed Form D on February 26, 2014. It is also established that with regard to her aforesaid transactions dated January 27, 2014, the Noticee did not make any disclosures -

    (a) to the company in terms of regulation 13(3) read with regulation 13(5) of the PIT Regulations;

    (b) to BSE under regulation 13(4A) read with regulation 13(5) of the PIT Regulations; and

    (c) did not make disclosures to the company and BSE as required under regulation 29(2) read with regulation 29(3) of the SAST Regulations.

12. Considering the above facts and circumstances, I am of the view that the Noticee is liable for penalty under Section 15A (b) of The SEBI Act. For the purpose of adjudicating the aforesaid default under the provisions of section 15A (b) of the SEBI Act is mandatory to consider the factors stipulated in Section 15J of the Act, 1992 which reads as follows:

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."

Explanation.—*For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section;*

13. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default cannot be computed. It is noteworthy that the Noticee had disclosed its sell transactions to the company but belatedly. The transaction in question is more than 4 years old. There is no material to indicate any deliberate design of suppression of true fact to defraud investors.

14. However, the change in shareholding of the Noticee in this case was by more than 5% and the Noticee did not make disclosures in terms of the PIT Regulations and the SAST Regulations as found hereinabove. The delayed disclosures and no disclosure as found in this case would create information asymmetry, at relevant time and would defeat the purpose of the provisions. In my view timely disclosures of the details of the shareholding of the persons acquiring substantial stake is of significant importance from the point of view of the investors, as such information received by them in a time bound manner would facilitate them in taking an informed investment decision and the requirements also enable the regulators to monitor such acquisitions.

15. It is also relevant to mention that after amendment in section 15J of the SEBI Act, vide Part VIII of Chapter VI of the Finance Act, 2017, it has been clarified that while the adjudging the quantum of penalty the adjudicating officer has discretion and such discretion should be exercised having regard to the factors specified in section 15J. It is also settled position that the words "shall be liable to" used in the context of "penalty in any statute, do not convey an absolute imperative; they are merely directory and leave it to the discretion of the Authority to impose any penalty or not. Further, from the ratio of the Judgement of Hon'ble SAT in the matter of *M/s. Ushdev Trade Ltd. vs. SEBI (SAT Appeal No 106 of 2010- 0rder dated 14.9. 10)*, it is noted that the adjudicating officer is not bound to be always within the range specified in section 15H (ii) while imposing the penalty on a delinquent and he must exercise his discretion in imposing any penalty having regard to the factors listed in section 15J.

16. It is noted that the requirements under regulation 13(3) of the PIT Regulations and the regulation 29(2) of the SAST Regulations are not substantially different and the obligation under the first automatically triggers the obligation under the other. Therefore, imposing the penalty under section 15A (b) twice in such cases may not be justifiable. In this regard, it is relevant to mention that with regard to similar common obligations under the PIT Regulations and the SAST Regulations, Hon'ble SAT in its judgment dated September 04, 2013 in the matter of *Vitro Commodities Private Limited Vs SEBI* held that –

> *"It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other."*

17. Therefore, for the purpose of adjudging the quantum of penalty for the violation of provisions of Regulation 13(3) of the PIT Regulations and Regulation 29(2) of the SAST Regulations, these violations by the Noticee can be considered as a single violation. Further, the disclosure obligations under all the charged Regulations i.e. Regulation 13(3), 13(4) and 13(4A) read with Regulation 13(5) of the PIT Regulations and regulation 29(2) read with Regulation 29(3) of the SAST Regulations have triggered from the same transactions.

18. Considering all the facts and circumstances of the case including the mitigating factors as aforesaid, I, exercising the powers conferred upon me under section 15I of the SEBI Act read with rule 5 of the Adjudication Rules, hereby impose a penalty of Rs. 1, 00,000/- (Rupees one lac only) on the Noticee viz. Ms. Kontala Krishnaveni under section 15A (b) of SEBI Act. In my view, the said penalty is commensurate with the violation committed by the Noticee in this case.

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

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

20. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be sent to "*The Division Chief, EFD-DRA-I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051*" and also to e-mail id:- tad@sebi.gov.in

1	Case Name	
2	Name of the Payee	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

21. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: August 10, 2018
Place: Mumbai

Santosh Shukla
Adjudicating Officer