

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER No.: Order/KS/VC/2019-20/4099)

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of:

Swaminathan Muthukrishnan
(PAN: AAJPM4805C)

In the matter of

Bodhtree Consulting Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received an alert regarding trading in the scrip of Bodhtree Consulting Limited (hereinafter referred to as '**BCL**'/'**Company**'). In view of same, SEBI requested Bombay Stock Exchange (**BSE**) to examine the matter *inter-alia* for violations of provisions of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations**'), if any, in the dealings in the scrip of the company. BSE accordingly carried out the examination for the period from November 22, 2017 to January 16, 2018 and submitted the report dated May 16, 2018 to SEBI.
2. BSE, in its report, mentioned that, during the period of analysis, Mr. Swaminathan Muthukrishnan (hereinafter referred to as '**Noticee**'), who was an Independent Director of BCL, had sold 407 shares amounting to Rs.32,767/- in value. Due to this observation, SEBI felt it necessary to examine his trades for

a longer period. In view of this, to verify whether such trades were done by the said entity in a longer period, SEBI again requested BSE to expand the period of examination from January-2017 to March-2018. BSE carried out the examination and submitted the report date August 30, 2018. In this report BSE reiterated that the Noticee had traded in the scrip of the company in as much as carried out contra trades.

3. In view of this BSE report, SEBI conducted examination in the scrip of BCL for the period of January 02, 2017 to March 26, 2018 (hereinafter referred to as '**examination period**') to examine whether the Directors and Designated persons had prima-facie violated the Code of Conduct prescribed under PIT Regulations. During the course of examination, it was observed by SEBI that the Noticee had entered into multiple contra trades within prohibition period i.e. within 6 months of earlier trades.
4. Therefore, it was alleged that the Noticee, by entering contra trades within 6 months, has violated the provisions of Clause 10 of Code of Conduct mentioned at Schedule II read with Regulation 9(1) of PIT Regulations. In view of this, adjudication proceedings were initiated against the Noticee under the provisions of section 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as the Adjudicating Officer, vide Order dated June 14, 2019 under Section 19 read with Section 15-I(1) of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**'), to inquire into and adjudge under the provisions of section 15HB of the SEBI Act the alleged failure on the part of the Noticee to comply with the relevant provisions of PIT Regulations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

6. A Show Cause Notice ref. SEBI/HO/EAD-8/KS/VC/18113/2019 dated July 17, 2019 (hereinafter referred to as '**SCN**') was issued to the Noticee under the provisions of Rule 4(1) of the Adjudication Rules, to show cause as to why an inquiry should not be held against him and why penalty, if any, should not be imposed on him under the provisions of section 15HB of the SEBI Act for alleged violation of the relevant provisions of PIT Regulations.
7. The details in respect of alleged violation by the Noticees are as given below:
- a. *SEBI conducted examination in the scrip of BCL for the period of January 02, 2017 to March 26, 2018 (hereinafter referred to as 'examination period') to examine whether the Directors and Designated persons had prima-facie violated the Code of Conduct prescribed under PIT Regulations. It is observed that the Noticee was Non-Executive - Independent Director during the examination period.*
- b. *During the course of Examination, it was observed that the Noticee had entered into the following trades in the scrip of BCL:*

Table 1

<i>Date of Acquisition / Sale</i>	<i>No. of shares acquired</i>	<i>No. of Shares Sold</i>	<i>Sale/ Acquisition Value</i>	<i>Balance No. of shares held</i>
30-Aug-16	25	0	848.75	25
8-Sep-16	25	0	948.75	50
23-Sep-16	50	0	1,691.25	100
5-Oct-16	200	0	6,490.00	300
14-Oct-16	200	0	6,480.00	500
22-Dec-16	1,000	0	33,358.50	1500
2-Jan-17	1,000	0	40,436.50	2500
23-Jan-17	1,000	0	37,331.15	3500
23-Mar-17	500	0	22,341.85	4000
7-Apr-17	200	0	7,850.00	4200
11-Apr-17	200	0	7,824.50	4400
6-Jun-17	500	0	24,250.00	4900
30-Jun-17	100	0	6,674.50	5000
4-Jul-17	500		33,050.00	5500
4-Jul-17		500	33,900.00	5000
5-Jul-17	600	0	40,250.00	5600
6-Jul-17	400	0	26,800.00	6000

27-Jul-17	500	0	32,500.00	6500
28-Jul-17	590		38,087.50	7090
28-Jul-17		290	19,778.00	6800
31-Jul-17	7	0	455.70	6807
2-Aug-17	500	0	32,750.00	7307
8-Nov-17	100	0	6,570.00	7407
26-Dec-17	0	200	15,400.00	7207
1-Jan-18	0	207	17,367.30	7000
23-Feb-18	0	100	8,800.00	6900
9-Mar-18	0	100	8,120.00	6800
20-Mar-18	200	0	13,820.00	7000
4-Apr-18	100	0	7,450.00	7100
21-Sep-18	0	300	18,400.00	6800
24-Sep-18	0	1,200	73,045.00	5600
26-Sep-18	0	1,000	60,650.00	4600
28-Sep-18	0	521	28,681.45	4079
3-Oct-18	0	500	27,450.00	3579
9-Oct-18	0	250	12,058.85	3329
10-Oct-18	0	500	25,424.00	2829
17-Oct-18	0	2,829	139,572.20	0

- c. In view of Table 1, it is observed that the Noticee had entered into 22 contra trades, 16 on the buy side and 6 on the sell side during the examination period and had earned a profit of Rs. 28,220/- by those trades. Further, BCL, vide Email dated December 01, 2018 (Annexure 2), has informed SEBI that the Noticee has remitted the profits made out of contra trades i.e. Rs.28,220/- to SEBI - Investors Protection and Education Fund A/c.
- d. In view of this, it is alleged that the Noticee had entered into multiple contra trades within prohibition period i.e. within 6 months of earlier trades. Therefore, it is alleged that the Noticee, by entering contra trades within 6 months, has violated the provisions of Clause 10 of Code of Conduct mentioned at Schedule II read with Regulation 9(1) of PIT Regulations.
8. I note that the Noticee, vide his Email dated July 29, 2019, requested for extension to submit his reply. Accordingly, the Noticee was advised to submit his reply to the SCN on or before August 16, 2019. The Noticee, vide his Email

dated August 15, 2019 submitted his reply to the SCN wherein the Noticee, *inter-alia*, made the following submissions:

- a. *I had not done any trade during the prohibited period.*
 - b. *The alleged contra trade was for a quantity of less than 13,000 Shares and is insignificant in comparison with the paid up share capital of 1,99,58,236 shares of Bodhtree Consulting Limited and is not even 1% of the outstanding equity . Further the alleged contra trade was not done during any prohibited period for sale / purchase for a Director of the company and despite that ,in respect of the same , I have also paid a sum of Rs. 28,220 , as directed by SEBI representing the profits made out of the alleged contra trades . This was duly communicated by the company secretary of Bodhtree Consulting Limited vide their mail to SEBI dated 1/12/2018.*
9. Further, in the interest of natural justice, an opportunity of hearing was provided to the Noticee on August 26, 2019 vide letter dated August 09, 2019. Mr. Madhuprasad Balakrishanan, Chartered Accountant, appeared as the Authorised Representative (**AR**) on behalf of the Noticee on August 26, 2019. The AR reiterated the submissions made by the Noticees in his reply dated August 15, 2019.

CONSIDERATION OF ISSUES AND FINDINGS:

10. I have taken into consideration the facts and circumstances of the case and the material available on record. I note that the allegation levelled against the Noticee is that he had entered into contra-trades within the period of 6 months in violation of Clause 10 of Code of Conduct mentioned at Schedule II read with Regulation 9(1) of PIT Regulations during the examination period. In view of the above, the issues for consideration before me are:-
- a. Whether the Noticee has violated the provisions of Clause 10 of Code of Conduct mentioned at Schedule II read with Regulation 9(1) of PIT Regulations?

- b. If yes, whether the Noticee is liable for penalty and what should be the quantum of penalty that should be imposed on the Noticee?
11. Before moving forward, the relevant extracts of the provision of the PIT Regulations, allegedly violated by the Noticee, is mentioned as under-

PIT Regulations, 2015

Code of Conduct.

- 9. (1)** *The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.*

SCHEDULE B

Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders

- 10.** *The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.*
- a. Whether the Noticee has violated the provisions of Clause 10 of Code of Conduct mentioned at Schedule II read with Regulation 9(1) of PIT Regulations?**
12. In terms of the provisions of Clause 10 of Code of Conduct mentioned at Schedule II of PIT Regulations, a designated person, who is declared so under

PIT Regulations, shall not execute a contra trade within a period, which in any event shall not be less than six months. I note that the contra trade in this provision means any opposite transaction i.e. if a buy transaction in the scrip has been entered first then a designated person is prohibited from selling shares of the Company. Similarly, if a designated person has sold the shares of a company then he is prohibited from buying shares within 6 months from the day shares were sold.

13. I note that the Noticee was a non-executive independent director of BCL during the examination period. In this regard, as per the definition of connected persons, the Noticee falls under the category of connected person by virtue of him being a director of BCL. Therefore, as per Clause 3 of Code of Conduct under Schedule II of PIT Regulations, the Noticee, being a connected person, falls under the Category of Designated persons. Further, the Company Secretary of BCL, vide email dated September 05, 2018, informed BSE that the Noticee falls under the list of Designated persons. Therefore, the Clause 10 of Code of Conduct applies on the Noticee.

14. It is further observed that the Noticee was continuously buying and selling the shares of BCL during the examination period, details of which are mentioned as under:-

Table 1- transactions of the Noticee in shares of the Company

Date of Acquisition / Sale	No. of shares acquired	No. of Shares Sold	Sale/ Acquisition Value	Balance No. of shares held
2-Jan-17	1,000	0	40,436.50	2500
23-Jan-17	1,000	0	37,331.15	3500
23-Mar-17	500	0	22,341.85	4000
7-Apr-17	200	0	7,850.00	4200
11-Apr-17	200	0	7,824.50	4400
6-Jun-17	500	0	24,250.00	4900
30-Jun-17	100	0	6,674.50	5000
4-Jul-17	500		33,050.00	5500
4-Jul-17		500	33,900.00	5000
5-Jul-17	600	0	40,250.00	5600
6-Jul-17	400	0	26,800.00	6000

27-Jul-17	500	0	32,500.00	6500
28-Jul-17	590		38,087.50	7090
28-Jul-17		290	19,778.00	6800
31-Jul-17	7	0	455.70	6807
2-Aug-17	500	0	32,750.00	7307
8-Nov-17	100	0	6,570.00	7407
26-Dec-17	0	200	15,400.00	7207
1-Jan-18	0	207	17,367.30	7000
23-Feb-18	0	100	8,800.00	6900
9-Mar-18	0	100	8,120.00	6800
20-Mar-18	200	0	13,820.00	7000

15. From the above Table, it is clear that the Noticee purchased or sold shares of BCL in 22 different transactions on 20 different days during the examination Period. Out of this, there were 16 instances wherein the Noticee purchased the shares of BCL and on 6 other occasions the Noticee sold the shares of BCL.
16. Upon scrutinizing the transactions of the Noticee, it is observed that there was no contra trade by the Noticee within 6 months of his buying 1,000 shares of BCL on January 02, 2017. Therefore, I hold that there was no violation of Clause 10 of Code of Conduct under Schedule II read with Regulation 9(1) of PIT Regulations. However, for the rest of 21 transactions, I note that the Noticee had entered in contra trades within 6 months of those trades.
17. I note that the Noticee has contended that the said trades were not done within any prohibited period. However, this contention of the Noticee is not acceptable as there is a 6 months prohibition period after every transaction in the scrip of a company during which no designated person, as named by the company, can enter into opposite trades/contra trades in the scrip of the Company unless the same is cleared by the compliance officer of the company. In this regard, it is clear from Table-1 that the Noticee had entered into contra-trades during the examination period as detailed in the above paragraphs. Further, the Noticee has failed to submit any clearance given by the compliance officer of the company to him for the said transactions.

b. If yes, whether the Noticee is liable for penalty and what should be the quantum of penalty that should be imposed on the Noticee?

18. In this regard, I note from table 1 that the Noticee had entered into 21 contra trades during the examination period wherein he purchased 5,897 shares in 15 different transactions and sold 1397 shares in 6 different transactions.
19. I also note that Clause 10 of Code of Conduct provides for a remedy in case a contra trade gets executed, inadvertently or otherwise, in violation of the restriction mentioned therein. In that case, any profit made out of such trades is liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.
20. In this regard, I note that the Noticee, by entering into contra trades, has earned a profit of mere Rs. 28,220 only. I further note that BCL, in its Email dated December 01, 2018, had informed SEBI that the Noticee had remitted the profit made out of these contra trades i.e. Rs. 28,220/- in the account maintained by SEBI- Investor Protection and Education Fund vide NEFT mode having UTR N. N334180690258255.
21. In this regard, I also note that BCL, vide the said Email dated December 01, 2018, has also undertaken to call for a set of sessions every year, in two or three batches, with all the Key Management Persons and covered stakeholders under PIT Regulations to go over the key highlights of the regulations so that the persons shall be cautious about their trading pattern and abide by the internal code of conduct to avoid discrepancies and strict disciplinary actions. BCL has also undertaken to observe the activity of 10% of the sample persons from the list of the designated persons to check whether they are included in any trading activity *vis-à-vis* the PIT Regulations.
22. I further note that there is no allegation that the act of the Noticee has violated any other provision of law. Further, the Investigation Report does not mention about any loss caused by this act of the Noticee to the general investors. In light of this, the violation of the Noticee may be termed as mere technical violation in nature. In this regard, I note the observations made by Hon'ble Securities

Appellate Tribunal (**SAT**) in its order dated May 15, 2019 in the matter of Piramal Enterprises Limited vs. SEBI:

“Considering the aforesaid, we are of the opinion that the object of the Act is not only to protect the investors but also the securities market. The appellant is part of the securities market and its existence is required for the healthy growth of the securities market. SEBI is the watchdog and not a bulldog. If there is an infraction of a rule, remedial measures should be taken in the first instance and not punitive measures.” (emphasis supplied)

23. In view of SAT observations reproduced above, I note that the remedial measures, as mentioned in Clause 10 of Code of Conduct under Schedule II read with Regulation 9(1) of PIT Regulations, namely deposition of profit in SEBI- Investor Protection and Education Fund has already been done by the Noticee and the same has been confirmed by SEBI. As a result of this, the remedial measures have been completed in the matter and I am of the view that there is no necessity of imposition of penalty on the Noticee. Therefore, I am not inclined to impose any penalty on the Noticee.

ORDER

24. After taking into consideration the facts and circumstances of the case, material/facts on record and also the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, do not impose any penalty on the Noticee under Section 15HB of the SEBI Act for his violation of relevant provisions of PIT Regulations.

25. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Shri Swaminathan Muthukrishnan and also to the Securities and Exchange Board of India.

Place: Mumbai
Date: 26.08.2019

K SARAVANAN
ADJUDICATING OFFICER