

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO. EAD-9/ AO/SM/ 142 /2018-19]**

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**UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992  
("SEBI ACT") READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA  
(PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING  
OFFICER) RULES, 1995**

In respect of:

**T.S.D Menon  
(PAN: AIHPM2943F)**

**In the matter of Saianand Commercial Limited (formerly known as Oregon Commercial Limited)**

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**FACTS OF THE CASE IN BRIEF**

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), pursuant to investigation of the alleged irregularity in the trading of the shares of Saianand Commercial Limited (hereinafter referred to as "SCL/ company") had observed that T.S.D. Menon (hereinafter referred to as "Noticee"), who was holding more than 5% of the paid up capital of SCL had disposed of his holdings, held in physical form and allegedly failed to make the requisite disclosures under regulation 13(3) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "PIT Regulations") read with regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "PIT 2015").

**APPOINTMENT OF ADJUDICATING OFFICER**

2. Vide an order of the Competent Authority, SEBI, dated May 18, 2017, the undersigned has been appointed as the Adjudicating Officer under section 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") read with section 15 I of SEBI Act and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating

Officer) Rules, 1995 (hereinafter referred to as 'Rules') to inquire into and adjudge the alleged violations of provisions of PIT Regulations.

### **SHOW CAUSE NOTICE, REPLY AND HEARING**

3. Based on the findings by SEBI, Show Cause Notice dated March 12, 2018 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4(1) of AO Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on it under Section 15A (b) of SEBI Act for the alleged violations. The Noticee, vide letter dated March 22, 2018 made, inter alia, the following submissions:

*I say and submit that at no point of time, during my entire life, have I invested a single rupee in any of the shares of any Joint Stock Company or a public/ private Limited Company of even a single rupee. I have never bought stock or traded in any shares either in primary or secondary market. I do not hold any demat account in my name nor have I ever opened any demat account during my entire lifetime, till date. I do not hold or have never purchased or sold any shares of any Company, whatsoever, either in a physical form or a dematerialised form.*

*In that view of the matter I most emphatically and categorically state and submit that I never held a single share either as a promoter or otherwise of any company, whatsoever, much less, Oregon Commercial Limited or Saianand Commercial Limited during my entire life, till date.*

*I most humbly and respectfully submit that there is no violation of any nature whatsoever, by me, more particularly in view of the fact that I have never been allotted nor I have purchased, held or sold the shares of the said Company or any other Company, whatsoever, during my entire lifetime till date.*

*I find that the only people that I know, from amongst those whose names have been mentioned therein, are Mr. Nitin Shivlal Rupani and some of his family members, who have been named therein. I, however, do not know, at all, what business or occupation they were into except that they were doing some business. I say and submit and I knew Mr. Nitin Shivlal Rupani as he owned and possessed Flat No. 53, Chitrakoot, Ashram Road, Ahmedabad, which is situated on the same floor as that of mine. Mr. Nitin Shivlal Rupani owned and possessed the same Flat for a number of years and to the best of my knowledge, he was one of the original allottees of the said Flat. Thereafter, before some years, the said Flat was transferred to the name of Mr. Naresh Shivlal Rupani and since then, to the best of knowledge, is owned and possessed by Mr. Naresh Shivlal Rupani, till date. This I am in a position to state on the basis of the information gathered by me from the records of the Flat Owners Association of Chitrkoot. As my neighbours we had social interactions with them beyond which we were not at all involved with each other, in any manner whatsoever. At the cost of repetition, I emphatically submit that I, being a*

*full time Professor since 1956 and having retired in the year 1994, have never entered into any kind of business with any person whatsoever, much less, Mr. Rupani and his family, I have stated only because I thought it is relevant as their name also figure out in the list supplied to me by your good self. How far the same is relevant for your investigation, I do not know. In my humble and respectful submission, none of the Regulations or provisions thereof are applicable to me in any manner, whatsoever, as I never being an investor in shares during my entire life till date, there is no question of any breach or violation of any of those regulations or provisions of law.*

*I most humbly and respectfully urge that considering my age, my profession and the fact that I am physically also not in a position to take this kind of stress in view of the fact that I am cardiac patient and have undergone open heart surgery in the month of April 2017 and have also been operated for a paralysis stroke in the year 2012. I may be spared of undergoing the trauma of suffering pain agony, stress and humiliation for something which I have never done and for which I am wrongly blamed.*

4. In order to comply with the principles of natural justice an opportunity of personal hearing was given to the Noticee on June 1, 2018 vide notice dated May 10, 2018. The Noticee, vide letter dated May 17, 2018 submitted that *"As specifically informed to you earlier, please note that I am not in a physical condition or health to attend the personal meeting fixed by you on 01.06.2018 at 3:00 p.m. at Securities and Exchange Board of India, 4<sup>th</sup> Floor, NCL Premises Co-op. Soc. Ltd. Plot No. C-6, E Block, Bandra Kurla Complex, Bandra East Mumbai. However, as requested to you earlier, I am ready and willing to cooperate in any manner whatsoever, either by way of written correspondence or telephonic conferences or video conferences or even, if any officer personally visits me at my residence, taking into consideration my physical inability."*
5. Another opportunity of hearing vide telephonic conference was given to the Noticee on June 1, 2018 at SEBI, Western Regional Office, Ahmedabad. The Noticee requested the hearing to be adjourned to a later date. Noticee and his authorised representative appeared on June 4, 2018 vide telephonic conference and reiterated the submissions made vide letter dated March 22, 2018.
6. Pursuant to the telephonic conference, the Noticee vide letter dated June 9, 2018, submitted the copies of the bank statements duly certified by the concerned bank.

## CONSIDERATION OF ISSUES AND EVIDENCE

7. I have carefully perused the charges levelled against the Noticee in the SCN, his reply and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-
- (a) Whether the Noticee have violated the provisions of regulations 13(3) read with 13(5) of PIT Regulations read with regulation 12(2) of PIT 2015?
  - (b) Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of SEBI Act for the alleged violation?; and,
  - (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?
8. Before proceeding further, I would like to refer to the relevant provisions of the PIT regulations, PIT 2015.

### **Relevant provisions of PIT Regulations:**

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

##### ***13. Continual disclosure.***

*(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.*

*(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.*

### **Relevant provisions of PIT 2015:**

#### ***12. Repeal and Savings:***

*(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;*

9. I note from the documents on record that the shareholding of the Noticee as on April 15, 2010 was 74,400 shares which was 7.75% of the total shareholding of the company. On April 15, 2010 he transferred 57,000 shares in physical form which changed his shareholding to 5.94%. The website of Bombay Stock Exchange Limited shows him as a promoter holding 74,400 shares in the quarter ended March 2010..
10. Since it was mentioned that shares were sold by TSD Menon in the year 2010, therefore he was advised to submit his two bank statements. Upon perusing the same, I find there was no entry to substantiate that any sale proceeds were credited into his account. I have also checked that TSD Menon do not maintain any demat account.
11. Efforts were made by the undersigned to check the veracity of the submission of the Noticee. The present Registrar and Transfer Agent of SCL (M/s Satellite Corporate Services Private Limited) (hereinafter referred to as "RTI") was contacted and it was requested to provide documents evidencing the Noticee as a shareholder of the company. The RTI submitted copies of the share certificate wherein it was mentioned that the Noticee was a shareholder of the company. As the Noticee ceased to be a shareholder in 2010, the present RTI contacted the company and the previous RTI (M/s Adroit Corporate Services Private Limited) for further documents. I had advised RTI to submit the share transfer deed by which Shares held by TSD Menon were sold, Signature card of TSD Menon and name and address of the transferee. However, vide email dated October 30, 2018, the present RTI submitted that no further details could be obtained by it from earlier RTI or the Company.

12. As per the copy of share certificates provided by the RTI, it appears that shares were allotted to the Noticee and were under lock in until November 30, 2009. In the absence of any documents to prove the contrary, I am inclined to agree with the allegations as mentioned in the SCN that shares were held in the name of the Noticee. However upon perusal of the reply of the Noticee and his vehement denial of holding any shares of SCL, I perused the information, however I find that there is no evidence available before me to substantiate that
- a. these shares were actually held by the Noticee by his wish.
  - b. he had paid for acquiring those shares
  - c. he had received sales proceeds when his shares were sold in the year 2010 or
  - d. he had received any dividend from the company or
  - e. he had attended any general Meeting of the Company or any correspondence between company and him.
  - f. how name of the Noticee has been included in the list of promoter
13. During personal hearing with Shri Ashok Shivilal Rupani and Shri Naresh Shivilal Rupani in the same matter (both directors of SCL), based on submission of the Noticee, they were requested to share their relationship with the Noticee (who was the promoter of SCL), On this Shri Naresh Shivilal Rupani (representing himself and his brother Shri Ashok Shivilal Rupani) had mentioned that he does not know the Noticee and hence unable to share information.
14. It is also a matter of record that Shri Ashok Shivilal Rupani and Shri Naresh Shivilal Rupani were also alleged that they had not made requisite disclosure under PIT Regulations for their changed shareholding in the company SCL for which SEBI has levied a penalty of ₹ two lakh on each.
15. I find it quite strange that a director of the company do not know the promoter of the same company especially when both of them had stayed on the same floor of the same building. I find this is the case of identity stealing wherein identity of the Noticee was stolen and shares were allotted in his name and subsequently were sold also. In the light of the same and non-availability of any cogent evidence to suggest that actually the Noticee was holding shares of SCL and he had disposed of his shares. Looking at the peculiar situation, I hereby drop the allegation levelled against Noticee of non-disclosure under PIT Regulations.

## **ORDER**

16. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of section 15-J of the SEBI Act, I, in exercise of the powers conferred upon me under section 15-I (2) of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, I hereby drop the adjudication proceedings against the Noticee and accordingly dispose of the SCN issued.
17. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

**Date : October 31, 2018**  
**Place : Mumbai**

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