

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/MC/DS/2020-2021/ 8759]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of –

1. **Shri Harsh Dugar** (PAN – ACWPD1110C) having address at – B32, Garden City Apartments, 318, Village Road, Nungambakkam, Chennai – 600034

In the matter of Federal Bank Limited.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') has initiated adjudication proceedings against Shri Harsh Dugar (**the Noticee / Harsh**) who is an employee of the Federal Bank Limited (hereinafter referred to as '**Federal / Scrip / Bank**') holding position of Country Head – Corporate and institutional Banking, and a designated person in terms of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations**'). Adjudication proceedings have been initiated against the Noticee for the alleged violations of Regulation 7(2)(a) and Clause 6 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders specified in Schedule B read with Regulation 9(1) and (2) of PIT Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI appointed the undersigned as Adjudicating Officer (hereinafter referred to as "**AO**") vide order dated September 11, 2019 to inquire into and adjudge under section 15A(b) and 15HB of the Securities and Exchange Board of India

Act, 1992 (hereinafter referred to as '**SEBI Act**'), the aforesaid alleged violations against the Noticees. The appointment of the AO was communicated vide order dated September 24, 2019.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD5/MC/DPS/1033/2020 dated January 8, 2020 (hereinafter be referred to as, the "**SCN**") was served upon the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against it under Section 15A(b) and 15HB of SEBI Act, 1992, for the alleged violations of Regulation 7(2)(a) and Clause 6 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders specified in Schedule B read with Regulation 9(1) and (2) of PIT Regulations.
4. The allegations levelled against the Noticee in the SCN are summarized as below:
5. An investigation was carried out by SEBI in the scrip of the Federal Bank Limited (hereinafter referred to as '**Federal / Scrip / Bank**') during the period March 10, 2017 to April 28, 2017 (hereinafter referred to as '**investigation period / IP**').
6. During investigation period it was observed that Noticee traded in the scrip of Federal Bank and HDFC Bank on NSE as per the details given below:-

Date	Scrip Name	Days Buy qty	Days Sell qty
Pre-IP (December 11, 2016 – March 09, 2017)			
13/02/2017	FEDERALBNK	15,000	-
13/02/2017	HDFCBANK	-	1,000
15/02/2017	FEDERALBNK	25,000	-
15/02/2017	HDFCBANK	-	1,100
16/02/2017	HDFCBANK	-	500
21/02/2017	HDFCBANK	-	1,900
08/03/2017	FEDERALBNK	10,000	-
08/03/2017	HDFCBANK	-	1,000
IP (March 10 - April 28, 2017)			

20/03/2017	FEDERALBNK	10,000	-
	HDFCBANK	-	1,500
21/03/2017	FEDERALBNK	10,000	-
	HDFCBANK	-	500
22/03/2017	FEDERALBNK	20,000	
23/03/2017	FEDERALBNK	10,000	
Total during UPSI Periods (March 10 - April 28, 2017)		50,000	2,000
Post IP (April 29 – July 28, 2017)			
29/06/2017	FEDERALBNK	10,000	-
30/06/2017	FEDERALBNK	15,000	-
24/07/2017	HDFCBANK	-	2,500
25/07/2017	HDFCBANK	-	1,000
27/07/2017	HDFCBANK	-	2,000
Total		25,000	5,500

7. It was observed that the Noticee had traded in the scrip of Federal Bank during pre-IP (bought 50,000 shares), IP (bought 50,000 shares) and post IP (bought 25,000 shares). Further, apart from Federal Bank, Noticee had traded in the scrip of HDFC Bank on NSE during pre-IP (sold 5,500 shares), IP (sold 2,000 shares) and post IP (sold 5,500 shares). Vide E-mail dated May 27, 2019, Noticee inter alia stated that the trading done in Federal Bank was for long term investment purpose and no shares have been sold and he continues to hold all the shares.
8. Federal Bank vide its reply dated May 13, 2019 had provided a certified copy of code of conduct in which it was inter alia stated “Nothing in this Code relating to preclearance shall apply to any trade for designated persons involving a value less than Rs. 5 Lakhs market value or such other amount as may be specified by the Board of Directors from time to time (a “de minimis Trade”) provided the Designated Person is not in possession of UPSI while executing the de minimis trade”.
9. The trade details of Noticee on NSE having a market value of more than Rs. 5 lakhs during the IP in the scrip of federal bank are as follow:

Date	Scrip Name	Days Buy qty	Trade Value (in Rs.)
IP (March 10 - April 28, 2017)			
20/03/2017	FEDERALBNK	10,000	866,760

21/03/2017	FEDERALBNK	10,000	875,000
22/03/2017	FEDERALBNK	20,000	1,746,201
23/03/2017	FEDERALBNK	10,000	873,500

10. Further vide email dated June 11, 2019, Federal bank inter alia stated that no preclearance of trades was given to Shri Harsh nor any trading plan/s approved by Federal Bank during the period March 10, 2017 to April 28, 2017 in the scrip of The Federal Bank Limited.

11. Vide email dated June 11, 2019, Noticee inter alia informed the following:

- a) Purchased the shares in the month of March 2017 without taking any preclearance of trades as the trading window was open. In my understanding of the SEBI (Prohibition of Insider Trading) Regulations / Bank's Code of Conduct at that point in time, preclearance was required only when the trading window was closed as there may be some unpublished price sensitive information (UPSI) which one may have access to. However, when the trading window is open, I had presumed that there is no UPSI and hence no requirement of taking preclearance.
- b) Subsequently, when Secretarial Department informed that preclearance has to be taken every time the cumulative trade value in the shares of Federal Bank during a calendar quarter exceeds Rs. 5 lakhs, started taking the preclearance of trades from June 2017 onwards, including complete details of existing holdings. Confirm that the shares had been purchased purely for the purpose of long term investment (not basis any UPSI) and continue to hold the shares till date.
- c) The above procedural lapse was solely on account of misinterpretation of the regulations by the Noticee, which was subsequently corrected. Request to kindly condone for this procedural lapse and would like to assure you that this shall not recur.

12. In this regard, Federal Bank vide its emails dated July 08, 2019 inter alia stated following:

- a) The Bank has taken action against Noticee by way of issuing Cautionary Letter.

13. In terms of Regulation 7(2)(a) of PIT Regulations, *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;

14. Federal Bank vide its reply dated May 13, 2019 had provided a certified copy of code of conduct in which it was inter alia stated “*Every employee, director of the Bank and each of their Immediate Relatives shall disclose as per form C set out in Annexure 6 to the Bank 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 Rs. Ten Lakhs.*”

15. The trade details of Noticee during the quarter January – March, 2017 are as follow:

Date	Scrip Name	Days Buy qty	Trade Value in Rs.	Cumulative Value (in Rs.) wherever applicable	Disclosure required under regulation	Whether disclosure made Yes/No
Quarter - January – March 2017						
13/02/2017	FEDERALBNK	15,000	12,54,600	-	7(2a) of SEBI(PIT) Regulations, 2015	No
15/02/2017	FEDERALBNK	25,000	20,24,734	-	7(2a) of SEBI(PIT) Regulations, 2015	No
08/03/2017	FEDERALBNK	10,000	842,480	-	-	-
20/03/2017	FEDERALBNK	10,000	866,760	(842,480 + 866,760)= 17,09,240	7(2a) of SEBI(PIT) Regulations, 2015	No
21/03/2017	FEDERALBNK	10,000	875,000	-	-	-
22/03/2017	FEDERALBNK	20,000	17,46,201	(875,000 + 17,46,201)= 26,21,201	7(2a) of SEBI(PIT) Regulations, 2015	No
23/03/2017	FEDERALBNK	10,000	873,500	-	-	-
Total		1,00,000	84,83,275			

16. Federal Bank vide its email dated July 17, 2019, confirmed that no disclosures were made by the Noticee during the period January 01, 2015 to May 31, 2017

and no preclearance was taken / trading plan was approved for the Noticee. Noticee had joined the Bank on October 25, 2016.

17. In view of the above, it was alleged that Noticee is in violation of Regulation 7(2)(a) and clause 6 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders specified in Schedule B read with Regulation 9(1) and (2) of PIT Regulations, 2015.
18. The aforesaid alleged violations, if established, make the Noticee liable for monetary penalty under Section 15A(b) and 15HB of the SEBI Act.
19. The SCN was served to the Noticee and Noticee vide email dated January 20, 2020 requested for extension of time till January 31, 2020 for filing its reply. Noticee vide letter dated January 31, 2020 filed its reply.
20. An opportunity of hearing was provided to the Noticee on February 5, 2020 vide notice dated January 21, 2020. Hearing on February 5, 2020 was attended by Noticee himself along with his Authorised Representative (AR) – Mr. Rushin Kapadia. AR of the Noticee reiterated the submissions made in the reply dated January 31, 2020 and sought to file additional submissions by February 13, 2020.
21. The key submissions of the Noticee vide letter dated January 31, 2020 and February 11, 2020 are summarized as below:
 - a) Each of the purchases of shares in February and March 2017 was effected during the period when the trading window was open. Noticee was also not in possession of any unpublished price sensitive information ("UPSI") at all times relevant to the Notice. Noticee was not aware that when the cumulative trade value crosses a threshold within a calendar quarter, it needed pre-clearance. This was a technical breach at the relevant point of time.

- b) Since the PIT Regulations are intended to prevent the mischief of trading in marketable securities using insider information (i.e. UPSI) particularly when the trading window is closed, the violations alleged is purely on account of misinterpretation of process requirements. Noticee joined Federal Bank just 4 months prior to the impugned acts and was not proficient enough in the internal procedure.
- c) Subsequently on being advised that disclosure / pre-clearance is required every time the cumulative trade value in the shares of Federal Bank during a calendar quarter exceeds a certain value, Noticee followed the requirements meticulously.
- d) The alleged procedural lapses are purely unintentional and without any motives. This is the first time in the course of Noticee's unblemished career in the banking industry that any allegation has been made upon him. Infact, his record has been impeccable and he has not received any regulatory stricture (including from SEBI) till date. Any adverse order in this proceeding will only tarnish his reputation. As is clear from the information on record, Noticee's conduct vis-a-vis these present proceedings (including during the investigation stage) clearly demonstrates his bonafide intentions to be in compliance with SEBI laws at all times.
- e) No harm or loss has been caused to the securities market due to the alleged violations of the PIT Regulations. The Hon'ble Supreme Court has held that a penalty should not be imposed for the sake of it and should be utilized to achieve a specific purpose, rather than as an end in itself. The relevant extract is as under:

"8. Under the Act penalty may be imposed for failure to register as a dealer -Section 9(1) read with Section 25(l)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation / the result of a quasi - criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest. or

acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to be act in the manner prescribed by the statute. " (emphasis supplied)

(Mis Hindustan Steel Ltd. v.State of Orissa reported in 1969 (2) SCC 627)

- f) Noticee also submitted that Section 15 A(b) of the SEBI Act 1992, refers to the submission to SEBI or other authority such as stock exchange, but would not cover an employer that is a private entity such as Federal Bank. The undersigned has not failed in filing of any return or submission to SEBI or to any other regulatory authority. Thus, the penalty referred under the said provision is not applicable in the impugned matter.
- g) Section 15HB of the SEBI Act applies when there is no separate penalty has been provided. The Show Cause Notice refers to both Section 15 A(b) and Section 15HB, which is untenable.
- h) Similarly, the Regulation 9(1) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) is a direction to the Board of Directors of a listed company, namely Federal Bank in this case. Pursuant to the Regulation, Federal Bank has adopted the minimum standards set out in Schedule B of the Regulations. Hence, there is no breach of this Regulation that has ever occurred. The alleged violation of the undersigned at the best could be the breach of the Code of Conduct of Federal Bank. Kindly note that Federal Bank has already examined the alleged breach and taken a disciplinary action in the form of a cautionary letter to the undersigned, which will form part of his employment record. When the alleged breach of the

Code of Conduct of Federal Bank is already penalized by Federal Bank, Noticee submit that it would be disproportionate and unfair to subject him to penalty twice. Hence, these proceedings may be disposed off without imposition of penalty and taking note of the caution.

- i) Regulation 9(2) of the PIT Regulations is not applicable in the instant case as the provision is applicable to the Board of Directors or every other person handling UPSI. The provision and Schedule C referred therein is applicable to Intermediaries and Fiduciaries and not to a listed company like Federal Bank. Hence, the reference to this provision in the Notice is not applicable.
- j) With reference to Regulation 7(2) of the PIT Regulations, as Federal Bank has already penalized for the alleged lapse by issuance of the cautionary letter, no other second penalty may be awarded. In this regard, Noticee submitted to consider lack of any insider information or its misutilization by it; Hence, no second penalty may be awarded.
- k) Without prejudice to the above submissions, even assuming that, as per the Code of Federal Bank, Noticee applied for pre-clearance, the Compliance Officer would have, in any event, granted it the pre- clearance for the following reasons:
 - i. There was no existent UPSI during the time of trade; and
 - ii. The trading window was open.
- l) Thus, in effect, the fact that pre-clearance was not sought from the Compliance Officer, has not incrementally benefitted it, in any manner whatsoever.
- m) Applying the principles of penalty under Section 15J of the SEBI Act, it is clear that no gain was made by anyone, no loss was suffered by anyone and there is no question of any repetitive nature of any default, whether as alleged or otherwise. Additionally, the shares purchased during the Investigation Period have not been sold till date (i.e. from 2017), and, therefore, Noticee has not realized any profit or avoided loss.

- n) Entire scope of the PIT Regulations is to ensure that a person does not trade in a listed security based on unpublished price sensitive information ("UPSI"). The Noticee purchased shares of Federal Bank Limited ("Bank") during the investigation period between March 10, 2017 to April 28, 2017 ("IP"). The Noticee purchased a total 50,000 shares from the market on 4 days i.e. from March 20, 2017 to March 23, 2017, for long term investment in the Bank.
- o) Noticee was not in possession of or had access to UPSI while purchasing shares of the Bank. The Bank has also reconfirmed vide its email dated July 17, 2017 (Annexure 8 of the Notice) that the Noticee was not in possession of the UPSI. The Noticee also does not carry any charge of purchasing shares of the Bank on the basis of UPSI. In such circumstances, the fact of the Noticee not taking pre-clearance has not resulted in any unfair advantage being afforded to the Noticee.
- p) Noticee, in spirit, has not violated the provisions of the PIT Regulations.

22. Noticee vide letter dated February 11, 2020 also informed that it had filed Settlement Application on February 10, 2020 and requested to keep the present proceedings in abeyance. Noticee vide letter dated August 18, 2020 informed that the settlement application has been rejected and requested that the proceedings be revived. Noticee also made submissions regarding family hardship and requested that leniency be shown towards him and no penalty be imposed in trying circumstances.

23. As the inquiry in the matter has been completed, I now proceed to decide the case on the basis of SCN issued, replies made by the Noticee and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

24. The issues that arise for consideration in the instant matter are:

Issue No. I Whether Noticee had failed to make mandated disclosures under the Regulation 7(2)(a) and Clause 6 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders specified in Schedule B read with Regulation 9(1) and (2) of PIT Regulations as alleged in the SCN?

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A(b) and 15HB of the SEBI Act?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

Issue No. I **Whether Noticee had failed to make mandated disclosures under the Regulation 7(2)(a) and Clause 6 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders specified in Schedule B read with Regulation 9(1) and (2) of PIT Regulations as alleged in the SCN?**

25. I note from the SCN that Noticee has executed following four transactions without obtaining pre-clearance, whose market value was more than Rs. 5 Lakhs during the investigation period in the scrip of federal bank:-

Date	Scrip Name	Days Buy qty	Trade Value (in Rs.)
IP (March 10 - April 28, 2017)			
20/03/2017	FEDERALBNK	10,000	866,760
21/03/2017	FEDERALBNK	10,000	875,000
22/03/2017	FEDERALBNK	20,000	1,746,201
23/03/2017	FEDERALBNK	10,000	873,500

26. Clause 6 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders specified in Schedule B of PIT Regulations, states that "When the trading window is open, trading by designated persons

shall be subject to preclearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate. No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed.”

27. In terms of Regulation 9(1) of the PIT Regulations, the board of directors of every listed company is required to adopt a code of conduct with the minimum standards set out in Schedule B. Accordingly, Federal Bank adopted a code of conduct as per which preclearance is required for any trade by designated persons involving a value more than Rs. 5 Lakhs market value or such other amount as may be specified by the Board of Directors from time to time. In terms of this code of conduct, the transactions carried out on March 20, 21, 22 and 23, 2017, with value more than Rs. 5 Lakhs, required preclearance from the compliance officer before trading. Noticee has admitted in his reply that he did not seek preclearance due to misunderstanding of the requirement for such pre-clearance.

28. In view of the aforesaid, it is established that the Noticee carried out the trades in violation of the Federal Bank Code of Conduct prescribed under Regulation 9(1) of PIT Regulations read with Clause 6 of Schedule B of PIT Regulations.

29. *In terms of Regulations 7(2)(a) of PIT Regulations, “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;”*

30. The Noticee has not disputed the charge in the SCN that he did not make required disclosures when its transactions or series of transactions traded

value exceeded ten lakh rupees and triggered mandatory disclosure under Regulations 7(2)(a) of PIT Regulations in four instances as given below:-

Date	Scrip Name	Days Buy qty	Trade Value in Rs.	Cumulative Value (in Rs.) wherever applicable	Disclosure required under regulation	Whether disclosure made Yes/No
Quarter - January – March 2017						
13/02/2017	FEDERALBNK	15,000	12,54,600	-	7(2a) of SEBI(PIT) Regulations, 2015	No
15/02/2017	FEDERALBNK	25,000	20,24,734	-	7(2a) of SEBI(PIT) Regulations, 2015	No
08/03/2017	FEDERALBNK	10,000	842,480	-	-	-
20/03/2017	FEDERALBNK	10,000	866,760	(842,480 + 866,760)= 17,09,240	7(2a) of SEBI(PIT) Regulations, 2015	No
21/03/2017	FEDERALBNK	10,000	875,000	-	-	-
22/03/2017	FEDERALBNK	20,000	17,46,201	(875,000 + 17,46,201)= 26,21,201	7(2a) of SEBI(PIT) Regulations, 2015	No
23/03/2017	FEDERALBNK	10,000	873,500	-	-	-
Total		1,00,000	84,83,275			

31. Noticee submitted that Federal Bank has already penalized for the alleged lapse by issuing a cautionary letter to the Noticee.

32. In view of the above, it is established that Noticee failed to make mandated disclosures for the transactions executed on February 13, 15, March 20 and March 22, 2017 as required under Regulations 7(2)(a) of PIT Regulations.

33. Noticee has relied upon judgements of the Hon'ble Supreme Court in the matter of M/s Hindustan Steel Ltd. v. State of Orissa reported in 1969 (2) SCC 627 and Hon'ble SAT Order in respect of Mr. Utsav Pathak vs SEBI dated June 12, 2020 are not helpful to the Noticee. Here I refer to the judgement of the Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) has also 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...”.

34. Noticee in its reply also contended that under Section 15 A(b) and 15HB of the SEBI Act, 1992, would not cover an employer that is a private entity such as Federal Bank. This contention of the Noticee is not acceptable as Penalty under Section 15A(b) covers any *Any person, who is required under this Act or any rules or regulations made thereunder...to file any return of furnish any information....* The Section thus applies to information required to be filed to a private employer under the PIT Regulations.

35. The aforesaid regulations are reproduced as under;

PIT Regulations, 2015

Disclosures by certain persons.

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;

SCHEDULE B

[See sub-regulation (1) and sub-regulation (2) of regulation 9]

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

6. When the trading window is open, trading by designated persons shall be subject to preclearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate. No designated person shall apply for pre-clearance of any

proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed.

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A(b) and 15HB of the SEBI Act?

&

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

36. Since failure of the Noticee in making disclosures to Company under Regulations 7(2)(a) of PIT Regulations and in complying with the Federal Bank Code of Conduct prescribed under Regulation 9(1) of PIT Regulations read with Clause 6 of Schedule B of PIT Regulations is established, I am of the view that it warrants imposition of monetary penalty under Section 15A(b) and 15HB of the SEBI Act on the Noticee, text of which is reproduced as under:

SEBI Act

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 therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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.”

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

37. While determining the quantum of penalty under Section 15A(b) and 15HB of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:

- 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.

38. I note that no quantifiable figures are available on record to assess disproportionate gain made or loss caused to investors by the aforesaid violation. Similarly, from the material available on record, no past default by the Noticee could be ascertained. I have also perused the disclosures available on the BSE website under the head disclosures made under PIT Regulations. I note that the said transactions have been intimated to the Federal Bank on February 25, 2020. I further note that holding of Noticee as on March 23, 2020 is 1,00,000 shares i.e. 0.01% of the share capital. The Noticee has also intimated that the shares purchased during investigation period i.e. from 2017, were by way of investment and are still held by him. I also note that there is no charge of possession of UPSI by the Noticee, or of trading on the basis of UPSI. Hence, based on submissions made by the Noticee, I am of the view that the non-disclosure and failure to take pre-clearance in respect of the impugned trades by the Noticee was a technical breach by the Noticee. However, as the Noticee failed to comply with legal obligations which are an important part of the mechanism to prevent insider trading, he is liable for an appropriate penalty as prescribed.

39. Therefore, taking into account the facts and circumstances of this matter, and the mitigating factors, I am of the view that a penalty of ₹4,00,000/- (Rupees Four Lakh only) under section 15A(b) and ₹4,00,000/- (Rupees Four Lakh only) under section 15HB will be commensurate with the violations committed.

ORDER

40. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹4,00,000/- (Rupees Four Lakh only) under section 15A(b) and ₹4,00,000/- (Rupees Four Lakh only) under section 15HB upon the Noticee, i.e. Shri Harsh Dugar. Total penalty of ₹8,00,000/- (Rupees Eight Lakh only) under Section 15A(b) and 15HB of the SEBI Act.

41. 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 online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link

ENFORCEMENT → Orders → Orders of AO → PAY NOW

42. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – IV of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

- a) Name and PAN of the entity (Noticee)
- b) Name of the case / matter
- c) Purpose of Payment – Payment of penalty under AO proceedings
- d) Bank Name and Account Number
- e) Transaction Number

43. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: AUGUST 27, 2020

PLACE: MUMBAI

MANINDER CHEEMA

ADJUDICATING OFFICER