

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/KS/VC/2019-20/4061)

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:

Anil Kumar Agarwal
(PAN: ABBPA9214G)

In the matter of

Sanwaria Consumer Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received a reference from Bombay Stock Exchange (**BSE**) regarding alleged disclosure violation by Mr. Anil Agarwal (hereinafter referred to as '**Noticee**') in the scrip of Sanwaria Consumer Limited (hereinafter referred to as '**SCL**'/'**Company**'). In view of same, SEBI conducted further investigation to ascertain whether there was any disclosure and code of conduct violation of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations**'), by the Noticee, with respect to his Buy / sell transactions during the period January 05, 2018-June 26, 2018 (hereinafter referred to as '**Investigation Period**'/'**IP**').
2. It was observed that the Noticee has allegedly failed to make the necessary disclosures to the company and BSE, which were required to be made by him under the relevant provisions of PIT Regulations. Therefore, it was alleged that

Noticee had violated the provisions of PIT Regulations. In view of the above, adjudication proceedings were initiated against the Noticee under the provisions of section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer, vide Order dated June 07, 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 15A(b) 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:

4. A Show Cause Notice ref. SEBI/HO/EAD-8/KS/VC/15167/2019 dated June 14, 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 15A(b) of the SEBI Act for alleged violation of the relevant provisions of PIT Regulations.
5. The details in respect of alleged violation by the Noticees are as given below:
 - a. *Vide letter dated October 29, 2018, BSE informed SEBI that the Noticee had bought 11,55,170 shares aggregating to Rs. 2,07,73,739/- and sold 13,51,304 shares aggregating to Rs. 2,79,87,862/- for which disclosures are required to be filed under regulation 7 (2) (a) of SEBI (PIT) Regulations, 2015 by the Noticee with the company. BSE further stated that "the company has confirmed that they have not received any disclosure from the promoter Anil Kumar Agrawal under regulation 7 (2) (a) of SEBI (PIT) Regulations, 2015". It was also informed by BSE to SEBI that neither the Noticee nor the company had filed necessary disclosures under regulation 7(2)(a) and 7(2)(b) of PIT Regulations.*

- b. Further, vide email dated March 08, 2019, SCL submitted to SEBI that Noticee did not file disclosure/ information with the Company under PIT Regulations for the transaction done by him in the scrip of SCL during the IP.
- c. Thereafter, SEBI sought transaction statements of the Noticee from Central Depository Services Limited (CDSL) and National Securities Depositories Ltd. (NSDL). Vide email dated March 01, 2019, CDSL submitted details of demat accounts held in the name of the Noticee and details of transaction in the scrip of SCL by him. Further, vide Email dated March 06, 2019, NSDL submitted details of demat accounts held in the name of the Noticee and details of transaction in the scrip of SCL by him. Thereafter, SEBI also sought details of day wise transactions done by the Noticee in the Scrip of SCL from BSE and National Stock Exchange (NSE) during the IP. BSE and NSE, vide email dated March 26, 2019, provided day-wise trading details of the entity on respective exchanges.
- d. On the basis of above, a summary of the transactions of the entity (all on market and off market) is provided as below:

Table 1

Sr No	Transaction Type	Date	Buy quantity	Sell quantity	Buy Value (in Rs)	Sell Value (in Rs)	Disclosure required under regulation	Date of Disclosure to company	Date of Disclosure To Exchanges by company
1	On Market	21/03/2018	355391	0	6341953.65	0.00	7(2)(a) PIT Regulation	Not Disclosed	NA
2	On Market	22/03/2018	1100000	0	20301774	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
3	On Market	23/03/2018	179609	0	3090755.25	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
4	Off Market	26/03/2018	2000000	0	34500000.00	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
5	On Market	27/03/2018	162000	0	3040384.00	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
	Off Market	27/03/2018	203000	0	3674300.00	0.00			
6	On Market	02/04/2018	0	200000	0.00	41640000.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
7	On Market	03/04/2018	0	1500000	0.00	31171992.70	7 (2)(a) PIT Regulation	Not Disclosed	NA
8	On Market	04/04/2018	0	780380	0.00	15595537.65	7 (2)(a) PIT Regulation	Not Disclosed	NA
9	On Market	05/04/2018	0	500000	0.00	10076471.30	7 (2)(a) PIT Regulation	Not Disclosed	NA

10	Off Market	06/04/2018	0	203000	0.00	3988950.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
11	On Market	19/04/2018	530120	0	10457492.90	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
12	On Market	20/04/2018	322546	0	6366746.65	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
13	On Market	23/04/2018	387334	0	7645252.35	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
14	On Market	24/04/2018	266000	0	5290613.95	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
15	On Market	26/04/2018	180020	0	3318211.00	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
16	On Market	22/05/2018	100000	0	1360000.00	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
17	On Market	23/05/2018	100000	0	1389750.00	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
18	On Market	18/06/2018	100000	0	1395250.00	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
19	On Market	19/06/2018	100000	0	1350000.00	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
20	On Market	21/06/2018	100000	0	1359933.65	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
21	On Market	22/06/2018	3000	0	39600.00	0.00	NA	NA	NA
22	Off Market	29/06/2018	400000	0	4480000	0	7 (2)(a) PIT Regulation*	Not Disclosed	NA

* -For the purpose of disclosure obligation in S. No. 22, the shareholding will be taken as combined of S. No. 21 and 22.

Note: For calculating value of Off-market transaction mentioned at S. No 4, 5, 10 and 22 previous day closing price on NSE is considered

- e. *In light of this, it is observed from pre-paragraphs that the Noticee had purchased 65,89,020 shares (On and Off market together) worth approximately Rs 11,54,02,017.40 and sold 49,83,380 shares (On and Off market together) worth approximately Rs 10,24,72,951.65 in value during the investigation period which triggered disclosure threshold of Rs. 10,00,000 on twenty one occasions/ instances as mentioned in the table 1 above.*
- f. *In view of reply received from the company, the Noticee did not intimate to company on all twenty one instances as mentioned above. Further, BSE, vide email dated March 05, 2019, stated that it did not receive any disclosure from the Noticee under PIT Regulations for the transactions done by the Noticee during the investigation period. Vide its email dated March 08, 2019, NSE also provided disclosure dated April 10, 2018 under Regulations 30 (1) and 30 (2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulation, 2011. However, no disclosure pertaining to transactions mentioned above were submitted by the Noticee to the exchange.*

- g. In light of the above, it is alleged that the Noticee, by its failure to disclose to the company regarding the transactions mentioned in Table 1, has violated the provision of Regulation 7(2)(a) of PIT Regulations.*
6. I note that the Noticee, vide his letter dated July 05, 2019, submitted his reply to the SCN wherein the Noticee, *inter-alia*, made the following submissions:
- a. I do not deny that I have done these transactions.*
- b. I had not made this disclosure since I am not a promoter and belong to the promoter group of the Company. Further I am only a professional director / and a Mentor and was genuinely under the belief that the disclosures were not required to be made as I am not a promoter and also not a full time director or employee of the company.*
- c. Further, I had the opinion that under the latest investor/ shareholder friendly initiative by SEBI vide circular SEBI/HO/CFD/DCR1/CIR/P/2018/85 dated May 28, 2018 the enforcement of the System Driven Disclosure Mechanism, transaction done by promoter group will already be available in public domain and thus, it is not mandatorily required to be given separately.*
- d. I have inadvertently failed to make the disclosures to the Company as mandated under the SEBI (PIT) Regulations, 2015 and there was no malaflde intention in not making this disclosure.*
7. Thereafter, In the interest of natural justice, an opportunity of hearing was provided to the Noticee on August 08, 2019 vide hearing notice dated July 24, 2019. The hearing Notice was delivered at the address of the Noticee. However, the Noticee failed to appear on the given date. Thereafter, the Noticee was provided with another opportunity of personal hearing vide hearing Notice dated August 09, 2019. Ms. Shailashri Bhaskar, Company Secretary, appeared as the Authorised Representative (**AR**) on behalf of the Noticee on August 19, 2019. The AR admitted the allegations levelled against the Noticee during the course of personal hearing.

CONSIDERATION OF ISSUES AND FINDINGS:

8. 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 failed to make the necessary disclosures under Regulation 7(2) of PIT Regulations w.r.t. his transactions in the scrip of SCL during the investigation period. In view of the above, the issues for consideration before me are:-
- a. Whether the Noticee has violated the provisions of Regulation 7(2) of PIT Regulations?
 - b. If yes, whether the Noticee is liable for penalty?
 - c. What should be the quantum of penalty that should be imposed on the Noticee?
9. 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

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;

- a. **Whether the Noticee has violated the provisions of Regulation 7(2) of PIT Regulations?**
10. In terms of the provisions of Regulation 7(2)(a) of PIT Regulations, any person, who is a promoter, employee or director of a Company, is required to disclose any change in his shareholding in the company from last disclosure if the

change in his shareholding exceeds Rs. 10 lakh in value or such other value as may be specified.

11. From the material/facts on record, I observe that the Noticee was a director of the Company during the Investigation Period. It is further observed that the Noticee was continuously buying and selling the shares of the company through market as well as off market transactions during the investigation period, details of which are mentioned as under:-

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

Sr No	Transaction Type	Date	Buy quantity	Sell quantity	Buy Value (in Rs)	Sell Value (in Rs)	Disclosure required under regulation	Date of Disclosure to company	Date of Disclosure To Exchange s by company
1	On Market	21/03/2018	3,55,391	0	63,41,953.65	0.00	7(2)(a) PIT Regulation	Not Disclosed	NA
2	On Market	22/03/2018	11,00,000	0	2,03,01,774	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
3	On Market	23/03/2018	1,79,609	0	30,90,755.25	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
4	Off Market	26/03/2018	20,00,000	0	3,45,00,000	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
5	On Market	27/03/2018	1,62,000	0	30,40,384.00	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
	Off Market	27/03/2018	2,03,000	0	36,74,300.00	0.00			
6	On Market	02/04/2018	0	2,00,000	0.00	4,16,40,000	7 (2)(a) PIT Regulation	Not Disclosed	NA
7	On Market	03/04/2018	0	15,00,000	0.00	3,11,71,992.70	7 (2)(a) PIT Regulation	Not Disclosed	NA
8	On Market	04/04/2018	0	7,80,380	0.00	1,55,95,537.65	7 (2)(a) PIT Regulation	Not Disclosed	NA
9	On Market	05/04/2018	0	5,00,000	0.00	1,00,76,471.30	7 (2)(a) PIT Regulation	Not Disclosed	NA
10	Off Market	06/04/2018	0	2,03,000	0.00	39,88,950.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
11	On Market	19/04/2018	5,30,120	0	1,04,57,492.90	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
12	On Market	20/04/2018	3,22,546	0	63,66,746.65	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
13	On Market	23/04/2018	3,87,334	0	76,45,252.35	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA

14	On Market	24/04/2018	2,66,000	0	52,90,613.95	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
15	On Market	26/04/2018	1,80,020	0	33,18,211.00	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
16	On Market	22/05/2018	1,00,000	0	13,60,000.00	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
17	On Market	23/05/2018	1,00,000	0	13,89,750.00	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
18	On Market	18/06/2018	1,00,000	0	13,95,250.00	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
19	On Market	19/06/2018	1,00,000	0	13,50,000	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
20	On Market	21/06/2018	1,00,000	0	13,59,933.65	0.00	7 (2)(a) PIT Regulation	Not Disclosed	NA
21	On Market	22/06/2018	3,000	0	39,600	0.00	NA	NA	NA
22	Off Market	29/06/2018	4,00,000	0	44,80,000	0	7 (2)(a) PIT Regulation	Not Disclosed	NA

12. From the above Table, it is clear that the Noticee purchased or sold shares of SCL in 23 different transactions on 22 different days during the Investigation Period. Out of this, there were 22 instances wherein the Noticee purchased or sold shares of SCL having traded value of more than Rs. 10 lakh. Therefore, in view of the disclosure requirements mandated under Regulation 7(2)(a) of PIT Regulations, the Noticee was required to disclose details of such change of his shareholding, which had resulted in transactions having traded value of more than Rs. 10 Lakh, to the Company and to BSE, within 2 trading days of such transactions.

13. While scrutinizing the trades of the Noticee, I find that the Noticee sold shares in 2 different transactions, one on-market transaction and one off-market transaction, on March 27, 2018. I am of the view that, since both the transactions were entered into the same trading day, so these transactions required one common disclosure under Regulation 7(2)(a) of PIT Regulations. Further, the transaction mentioned at S. No. 21 was of transaction value less than Rs. 10 lakh, so no disclosure was required on June 22, 2018 separately. However, the details of this transaction were required to be included in the disclosure for transaction mentioned at S. No. 22 as the combined transaction value of S. No.

21 and 22 crossed the threshold limit of Rs. 10 Lakh to make a disclosure under Regulation 7(2)(a) of PIT Regulations. Therefore, I am of the view that the Noticee was required to make disclosures on 21 different occasions during the Investigation Period under Regulation 7(2)(a) of PIT Regulations.

14. However, I note from the Email dated March 08, 2019 from SCL to SEBI that the Noticee failed to make disclosure under Regulation 7(2)(a) of PIT Regulations on all the 21 occasions to the Company. Further, BSE, vide its Email dated March 05, 2019, confirmed that it was not in receipt of any Email from the Noticee under PIT Regulations.

15. I note that the Noticee has contended that he was not a promoter of SCL and was only a professional director and a mentor. Therefore he was genuinely under the belief that the disclosures were not required to be made as he was not a promoter and also not a full time director or employee of the company. However, I note that, in the shareholding pattern of the company available on BSE website for the quarter ended March 2018 and June 2018, the name of the Noticee was shown under Promoter category. Further, I am of the view that Regulation 7(2)(a) of PIT Regulations uses the term 'Director'. Therefore, all directors are covered leaving no scope for differentiating between whole time director and professional director. Therefore, the provisions of this Regulation are equally applicable on the Noticee and, as a result, the contention of the Noticee is untenable.

16. In view of the above, I hold that the Noticee has failed to comply with the requirements of Regulation 7(2)(a) of the PIT Regulations.

17. In this context, I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance with the mandatory obligation. The Hon'ble SAT in its Order dated September 30, 2014, in the matter of *Akriti Global Traders Ltd. Vs SEBI* observed that-

"Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as

there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations."

18. I would further like to refer to the observations of Hon'ble SAT in the matter of Virendrakumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014 vide order dated October 14, 2014), wherein it was held that - *".. obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures."*

19. I would also like to rely on observation of Hon'ble SAT in Premchand Shah and Others V. SEBI dated February 21, 2011, wherein it was held that *".....When a law prescribes a manner in which a thing is to be done, it must be done only in that manner.....Non-disclosure of information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take informed decision while making investments....."*

b. If yes, whether the Noticee is liable for penalty?

20. As the violation of the aforementioned provision of the PIT Regulations by the Noticee has been established, I am of the view that it is a fit case to impose monetary penalty on the Noticee in terms of Section 15A(b) of the SEBI Act, which reads as under:

Penalty for failure to furnish information, return, etc

15A. *If any person, who is required under this Act or any rules or regulations made there under-*

(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.

21. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, 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 investigation report has not quantified the profit/loss for the violations committed by the Noticees. I am of the view that, by not complying with the relevant provisions of PIT Regulations, the Noticees have failed to comply with the mandatory statutory obligation. I further note that the Noticee has violated the provisions of Regulation 7(2)(a) of PIT Regulations on 21 different occasions. Therefore, I am of the view that the Noticee has repeatedly violated the provisions of law as established above.

23. Further, in the context of present proceedings, reliance is placed upon the order of The Hon'ble Supreme Court in the matter of *Chairman, SEBI Vs Shriram Mutual Fund* { [2006]5 SCC 361 } – wherein the Hon'ble Supreme Court of India 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.....”

24. I am of the view that the details of the shareholding of the directors, any change therein and the timely disclosures thereof, are 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 immensely in taking a balanced investment decision as regards their holdings in the Company. In the instant matter, the Noticee has regularly purchased and sold the shares of the company and the disclosure obligation arose as a result of these transactions of the Noticee. The timely disclosures of the same by the Noticee under the relevant provisions of PIT Regulations were of significant importance from the point of view of the investors.

ORDER

25. 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, hereby impose a penalty of Rs. 5,00,000/- (Rs. Five Lakh only) on the Noticee under Section 15A(b) of the SEBI Act for his failure to comply with the relevant provision of PIT Regulations. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

26. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

27. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest

thereon, *inter alia*, by attachment and sale of movable and immovable properties.

28. 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 Anil Kumar Agarwal and also to the Securities and Exchange Board of India.

Place: Mumbai
Date: 22.08.2019

K SARAVANAN
ADJUDICATING OFFICER