

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PKB/AO - 52/2011]

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:

Shri Anand Ramanlal Trivedi

(PAN - AEGPT1120C)

In the Matter of: Platinum Corporation Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) conducted investigations relating to buying, selling or dealing in the shares of Platinum Corporation Limited (hereinafter referred to as “the Company”). Investigations, *inter-alia*, had revealed that certain persons were holding shares of the Company but did not disclose their shareholdings and change in shareholding in compliance with SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “PIT Regulations”) and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as “SAST Regulations”).
2. It was observed that Shri Anand Ramanlal Trivedi (hereinafter referred to as the “Noticee”) was having beneficiary account with Depository Participant (hereinafter referred to as “DP”), Shah Investor’s Home Ltd. having BOID: 10263667. It was observed that the shareholding of the Noticee exceeded more than 5% of equity shares of the Company. Relevant transactions in the aforesaid beneficiary account were as follows:

Date	Description	Credit	Debit	Balance	Balance % to equity
01/01/04	Opening balance			35,76,570	3.34%
06/04/05	By off-market credit from Lakshya Securities	72,24,980	0	1,08,01,550	10.09%

28/06/05	To Off-market transfer to Pratik R. Shah	0	1,00,00,000	8,01,550	0.74%
01/07/05	By off-market credit from Pratik R. Shah	1,00,00,000	0	1,08,01,550	10.09%
10/08/05	To CM- Galaxy Broking	0	10,00,000	98,01,550	9.15%
12/08/05	To off-market transfer to Bharatkumar Shah		15,00,000	83,01,550	7.75%
23/08/05	To off-market transfer to Bharat Kumar Shah	0	40,468	82,61,082	7.72%
23/08/05	To off-market transfer to Pratik Minerals Pvt. Ltd.	0	13,000	82,48,082	7.70%
26/08/05	To off-market transfer to Robinson Worldwide Trade Ltd.	0	80,00,000	2,48,082	0.23%

3. It was observed that on April 06, 2005, a credit of 72.24 lac shares was received by the Noticee from Lakshya Securities, increasing his shareholding to 10.09%. However, on account of transfer of 1 crore shares to Mr. Pratik Shah on June 28, 2005, the shareholding of the Noticee got reduced to 0.74% and the shareholding once again went up to 10.09% on return of shares by Pratik R. Shah. On August 12, 2005, the shareholding of the Noticee got reduced by more than 2% to 7.75% on account of 10 lac shares sold through Galaxy Broking and transfer of 15 lac shares to Bharatkumar Shah. Thereafter, on account of transfer of 80 lac shares to Robinson Worldwide Trade Ltd., the shareholding of the Noticee got reduced to 0.23% on August 26, 2005.

4. It was observed that the Noticee was summoned vide summons dated July 06, 2010 to submit relevant information and also to appear before Investigating Authority on July 14, 2010. The Noticee sent a letter seeking 3 weeks time to submit information sought in the summons. However, the Noticee failed to appear before the Investigating Authority. It was also observed that another opportunity was given to the Noticee by way of summons dated July 16, 2010 to submit and appear before Investigating Authority on July 27, 2010. It was further observed that the Noticee failed to appear before the Investigating Authority but submitted information vide letter dated July 30, 2010, wherein the Noticee produced copies of letters submitted to the Company in compliance to SAST Regulations and PIT Regulations but did not submit any evidence which suggest that the Noticee had submitted the required disclosures to Stock Exchanges.

5. It was observed that the Noticee transacted substantially in the shares of the Company, but failed to make disclosures as required under the SAST Regulations. In

view of the aforesaid it was alleged that the Noticee violated the provisions of Regulation 7 (1) of SAST Regulations.

6. The undersigned was appointed as the Adjudicating Officer vide Order dated March 23, 2011 and the said appointment was conveyed vide proceedings of the Whole Time Member dated July 04, 2011 to inquire into and adjudicate under Section 15 A (b) of the SEBI Act, 1992, the alleged violation of provisions of Regulation 7 (1) of SAST Regulations.

SHOW CAUSE NOTICE, HEARING & REPLY

7. A Show Cause Notice (hereinafter referred to as “SCN”) in terms of the provisions of Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as “**Adjudication Rules**”) was issued to the Noticee on July 15, 2011, calling upon him to show cause why an inquiry should not be held against him under Rule 4(3) of the Adjudication Rules for the alleged violations.
8. The aforesaid SCN was duly delivered to the Noticee on July 21, 2011. Subsequently, vide a letter received by SEBI on August 03, 2011, the Noticee acknowledged the receipt of the SCN and sought 45 days time to submit his reply. Vide letter dated August 12, 2011 the Noticee was informed that the time limit for submission of his reply to the SCN was extended to August 25, 2011. Thereafter, vide letter dated August 24, 2011, the Noticee once again requested for 30 days more time to submit reply. The request of the Noticee was duly considered and vide letter dated August 25, 2011, the Noticee was informed to submit his reply on or before September 15, 2011.
9. Since no reply was received from the Noticee, Notice of Inquiry dated September 23, 2011 was issued to the Noticee under Rule 4(3) of the Adjudication Rules vide which an opportunity of personal hearing was given to the Noticee which was scheduled for October 12, 2011. However, the Noticee failed to appear for personal hearing on the scheduled date. The Noticee submitted his reply vide letter dated October 11, 2011 and made the following submissions:

- *For this SCN, I would like to inform you that for the acquisition of shares I have made disclosure to the PCL and the proof of intimation of the same is enclosed herewith.*

- *But I was not aware about the requirement of all the disclosure of SEBI and stock exchanges. And I came to know about the disclosure through this SCN only.*

10. Thereafter, another opportunity of personal hearing was granted to the Noticee on November 09, 2011, which was subsequently rescheduled to November 24, 2011. However, the Noticee vide letter dated November 09, 2011 requested for another hearing date in the next week which was acceded to and accordingly the personal hearing of the Noticee was rescheduled to November 15, 2011. Ms. Rashmi Aahuja, Authorised Representative of the Noticee appeared for hearing on November 15, 2011 and reiterated the submissions previously made by the Noticee vide letter dated October 11, 2011.

ISSUES FOR CONSIDERATION

11. After perusal of the material available on record, I have the following issues for consideration, viz.,
- A. Whether the Noticee has violated provisions of Regulation 7 (1) of SAST Regulations?
 - B. Whether the Noticee is liable for monetary penalty under Section 15A (b) of the SEBI Act, 1992?
 - C. What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

FINDINGS

12. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

ISSUE 1: Whether the Noticee has violated provisions of Regulation 7 (1) of SAST Regulations?

13. The provisions of Regulation 7 (1) of SAST Regulations read as under:

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997

Acquisition of 5 per cent and more shares or voting rights of a company

7(1): *Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every*

stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

14. I note that Regulation 7(1) of SAST Regulations is quite clear in its import and *inter-alia* requires an acquirer acquiring shares which (taken together with shares already held by him) would entitle him to more than five per cent or ten per cent of shares in a company, to disclose at every stage the aggregate of his shareholding in that company to the company and to the stock exchanges where shares of the company are listed. I note that the Noticee was having beneficiary account with the DP Shah Investor's Home Ltd. having BOID: 10263667. From the beneficiary account statement (Demat statement) of the Noticee (enclosed with the SCN as "Annexure II") I note that on April 06, 2005; the Noticee bought/received 72,24,980 shares of the Company taking its total shareholding in the Company to 1,08,01,550 shares (representing 10.09% of the equity capital of the Company). However, on account of transfer of 1 crore shares on June 28, 2005, the shareholding of the Noticee got reduced to 8,01,550 shares (representing 0.74% of the equity capital of the Company). Subsequently, on July 01, 2005; the Noticee bought/received 1,00,00,000 shares of the Company by virtue of which shareholding of the Noticee once again went up to 1,08,01,550 shares (representing 10.09% of the equity capital of the Company). Relevant transactions of the Noticee in the aforesaid beneficiary account were as follows:

Date	Description	Credit	Debit	Balance	Balance % to equity
	Opening balance			35,76,570	3.34%
06/04/05	By SHAH INVESTORS HOME LTD / 10280166	72,24,980	0	1,08,01,550	10.09%
28/06/05	To H.NYALCHAND FINANCIAL SERVICES PRIVATE LTD / 10008793	0	1,00,00,000	8,01,550	0.74%
01/07/05	By H.NYALCHAND FINANCIAL SERVICES PRIVATE LTD / 10008793	1,00,00,000	0	1,08,01,550	10.09%
10/08/05	To CM- GALAXY BROKING LTD., Rolling Mkt Lot / 0506095	0	10,00,000	98,01,550	9.15%
12/08/05	To INDIA INFOLINE LIMITED / 10337884		15,00,000	83,01,550	7.75%
23/08/05	To INDIA INFOLINE LIMITED / 10337884	0	40,468	82,61,082	7.72%
23/08/05	To H.NYALCHAND FINANCIAL SERVICES PRIVATE LTD / 10018408	0	13,000	82,48,082	7.70%
26/08/05	To INDIA INFOLINE LIMITED / 10357128	0	80,00,000	2,48,082	0.23%

15. From the above it is evident that the Noticee was holding more than 10% of the equity capital of the Company on April 06, 2005. It is also evident that on June 28, 2005, the

shareholding of the Noticee got reduced to 0.74% which once went up to 10.09% of the equity capital of the Company on July 01, 2005. Hence, under Regulation 7(1) of SAST Regulations, the Noticee was also under obligation to disclose the aggregate of his shareholding in the Company to the Company and to the stock exchanges where shares of the Company were listed. However, no such disclosures had been made by the Noticee to the stock exchanges under Regulation 7(1) of SAST Regulations.

16. I note that the Noticee vide his letter dated October 11, 2011 has submitted that he had made necessary disclosures to the Company. However, the Noticee has accepted the fact of non-submission of necessary disclosures to the stock exchanges under Regulation 7(1) of SAST Regulations by submitting that *"I was not aware about the requirement of all the disclosure of SEBI and stock exchanges. And I came to know about the disclosure through this SCN only"*.

17. In view of the above, I hold that the Noticee was under an obligation to make the required disclosures under Regulation 7(1) of SAST Regulations to the Stock Exchanges on both occasions when he acquired shares and his total shareholding in the Company entitled him to more than ten per cent of shares in the Company, which the Noticee failed to do. Therefore, the Noticee has violated the provisions of Regulation 7(1) of SAST Regulations.

ISSUE 2: Whether the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992?

18. The provisions of Section 15 A(b) of the Act reads,

"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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;"

19. As already observed, the Noticee failed to make disclosures as required under Regulation 7(1) of SAST Regulations. Therefore, I find that the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992.

ISSUE 3: What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the Act?

20. While imposing monetary penalty it is important to consider the factors stipulated in Section 15J of the Act, which reads as under:

“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.”

21. In the absence of material on record, the amount of disproportionate gain or unfair advantage made as a result of the default and the amount of loss caused to the investors due to the said default cannot be quantified. However, by virtue of the failure on the part of the Noticee to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time. In other words, by not complying with the regulatory obligation of making the disclosure, he had not provided the vital information which is detrimental to the interest of investors in securities market. Since, the Noticee has failed to make the required disclosures under Regulation 7(1) of SAST Regulations more than once, the default of the Noticee can be said to be repetitive.

22. In the forgoing paragraphs it is now established that the Noticee failed to make necessary disclosures under Regulation 7(1) of SAST Regulations. Considering the facts and circumstances of the case and the violation committed by the Noticee, I find that imposing a penalty of ₹ 1,00,000/- (Rupees One Lakh only) on the Noticee would be commensurate with the violations committed by the Noticee.

ORDER

23. Considering the facts and circumstances of the case, in terms of the provisions of Section 15A(b) of SEBI Act, 1992 and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹ 1,00,000/- (Rupees One Lakh only) on Shri Anand Ramanlal Trivedi for not making necessary disclosures under Regulation 7(1) of SAST Regulations.

24. The penalty shall be paid by way of demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this Order. The said demand draft shall be forwarded to Ms. Anita Kenkare, General Manager, Investigation Department, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.
25. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this Order are being sent to the Noticee and also to Securities and Exchange Board of India.

Date: November 21, 2011
Place: Mumbai

P. K. Bindlish
Adjudicating Officer