

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AA/MG/2019-20/4571]

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

Onward Network Technologies Private Limited (PAN: AAACO0641A)

In the matter of Onward Technologies Limited

BACKGROUND OF THE CASE

1. The Bombay Stock Exchange (herein after referred to as '**BSE**') vide letter dated July 22, 2014 informed the Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') that shareholding of a few of the promoters of the listed Company viz. Onward Technologies Limited (hereinafter referred to as '**OTL/ Company**') in the OTL has changed substantially. However, they have not made required disclosures in terms of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations, 1992**") read with Regulation 12 of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "**PIT Regulations, 2015**"). Thereafter, the SEBI conducted an examination, in the scrip of OTL for the period April 01, 2014 to September 30, 2014 (hereinafter referred to as '**Examination Period / EP**'). The Company is listed on the BSE and the National Stock Exchange (hereinafter referred to as '**NSE**').

2. SEBI observed that certain entities including Onward Network Technologies Private Limited, (hereinafter referred to as '**Noticee/ by name**'), who was also a promoter of the OTL at the relevant time, has dealt in shares of the company during the Examination period. Further, it is observed that various transactions made by the Noticee during the period of examination has triggered disclosures in terms of PIT Regulations, 1992. However, SEBI observed that the Noticee did not make the required disclosures. In view of the same, SEBI has initiated adjudication proceedings under Section 15A(b) of the SEBI Act, 1992 (hereinafter referred to as 'SEBI Act'), against the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer vide order dated April 18, 2019 under section 19 read with section 15I(1) of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties By Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**AO Rules**") to conduct the adjudication proceedings in the manner specified under Rule 4 of the Adjudication Rules and if satisfied that penalty is liable, impose such penalty as deemed fit in terms of Rule 5 of the Adjudication Rules and Section 15A(b) of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice SEBI/EAD/AA/MKG/17410/2019 dated July 10, 2019 (herein after referred to as '**SCN**') was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed upon the Noticee under Section 15A(b) of the SEBI Act for the violations alleged to have been committed by the Noticee.

5. The details in respect of the alleged violation by the Noticee are as given below:

- a) *The details in respect of the alleged violation by the It is observed that the Noticee, who is a promoter of the company (as per Quarterly Promoter Shareholding available on BSE website for the year 2014) has dealt in shares of the company during the Period of examination. Further, it is observed that various transactions made by the Noticee during the period of examination have triggered disclosures in terms of PIT Regulations, 1992. Details of these transactions are tabulated in Table – 1-*

Table – 1

Date	Shares Acquired	Value (₹)	Shares Disposed	Value (₹)	As a % of paid-up capital	Disclosures required in terms of PIT Regulations, 1992	Remarks
01/04/2014	-		-		54.56	-	
03/04/2014	4000	190621.5	0	-	54.59	No	Cumulative change exceeds ₹ 5 lakh in value.
09/04/2014	4000	192565.8	0	-	54.62	No	
10/04/2014	14000	684528	0	-	54.72	13 (4A)	
29/05/2014	3000	138750	0	-	54.74	No	Cumulative change exceeds ₹ 5 lakh in value.
05/06/2014	5000	234857.6	0	-	54.78	No	
06/06/2014	1000	48274.25	0	-	54.78	No	
09/06/2014	5000	248120	0	-	54.82	13 (4A)	
19/06/2014	0		140000	NA	53.83	13 (4A)	Change Exceeds 25000 shares
20/06/2014	78500	2642337.3	1000	69780	54.38	13 (4A)	Change Exceeds 25000 shares
24/06/2014	32980	2254730	0	-	54.61	13 (4A)	Change Exceeds 25000 shares
26/06/2014	0		70000	NA	54.12	13 (4A)	Change Exceeds 25000 shares
04/07/2014	22000	1453886	0	-	54.27	13 (4A)	Change Exceeds ₹ 5 lakh in value.

- b) *As brought out in Table – 1, the Noticee was required to make disclosure on 7 occasions, to the Exchanges and Company in terms of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, 1992. However, it is alleged that the Noticee has failed to make aforesaid disclosures.*

c) *In view of the above facts and observations, it is alleged that Noticee has violated Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, 1992 by not making required disclosures to the Company and Stock Exchanges.*

6. The SCN issued to the Noticee was duly delivered to the Noticee. The Noticee vide letter dated July 29, 2019 requested for additional 15 days' time, to file a reply to the SCN. The request of the Noticee was acceded to and vide email dated July 31, 2019, the Noticee was granted an opportunity of personal hearing on August 23, 2019, in the interest of principles of natural justice. The Authorized Representative of the Noticee (herein after referred to as '**AR**') vide email dated August 09, 2019 requested to reschedule the hearing. The request of the AR was acceded to and the Noticee was granted final opportunity on August 19, 2019, vide email dated August 09, 2019.

7. The AR vide letter dated August 08, 2019 submitted the reply to the SCN and *inter alia* made the following submissions:

The non-disclosure under the PIT Regulations, by the Noticee, has occurred only due to ignorance and oversight, with no malafide intention.

8. The AR attended the hearing on the scheduled date & time and reiterated the contents of letter dated August 08, 2019. The Company vide email dated August 21, 2019 submitted copies of letters dated August 20, 2019 addressed to BSE and NSE. On perusal of the aforesaid letter, it is noted that the OTL has made disclosures in terms of Regulation 13(6) of PIT Regulations, 1992 to the BSE and NSE.

CONSIDERATION OF ISSUES

9. I have carefully perused the charges leveled against the Noticee, its reply and the documents / material available on record. The issues that arise for consideration in the present case are:

- (a) Whether the Noticee has violated Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, 1992 on various occasions?
- (b) Does the violation, if any, attract monetary penalty under Section 15A(b) of the SEBI Act?
- (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?

10. Before proceeding further, I would like to refer to the relevant provisions of the PIT Regulations, 1992 and the PIT Regulations, 2015 as below:

Relevant provisions of PIT Regulations, 1992:

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

Continual disclosure.

13.(4A) Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(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 Regulations, 2015:

Repeal and Savings.

12. (1) *The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.*

(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;*

(3) *After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.*

11. The first issue for consideration is whether the Noticee has violated the provisions of Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations, 1992. From the available records, I find that the Noticee, who was one of the promoters of the OTL at the relevant time, has bought a total of 22,000 shares of OTL during the period April 03, 2014 to April 10, 2014, the value of such transaction being Rs. 10,67,715.3. Further, during the period May 29, 2014 to June 09, 2014, the Noticee bought 14,000 shares of OTL and the total value for these transactions is Rs. 6,70,001.85. The Noticee, on June 19, 2014, sold 1,40,000 shares and on June 20, 2014, bought net 77,500 shares of OTL. Further, the Noticee, on June 24, 2014, bought 32,980 shares of OTL and on June 26, 2014 the Noticee sold 70,000 shares of OTL. In addition to that, the

Noticee on July 04, 2014 bought 22,000 shares of OTL and the total transaction value of the aforesaid purchase is Rs. 14,53,886.

12. A plain reading of Regulation 13(4A) and Regulation 13(5) of the PIT Regulations, 1992 says that any person who is a promoter of a listed company, shall disclose the number of shares held and the change in shareholding to every stock exchange where the securities are listed and to the Company, within two working days, from receipt of intimation of the allotment or acquisition or sale of shares, if there has been a change in such holdings of the person, from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower. I note that the value of the transactions of the Noticee exceeded the limit of Rs. Five lakh on three (3) occasions and on four (4) other occasions, the Noticee traded more than 25,000 shares of OTL. Therefore, the Noticee was required to make disclosures in terms of Regulation 13(4A) and Regulation 13(5) of PIT Regulations, 1992, on seven (7) occasions. However, the Noticee has failed to do so.
13. The Noticee has not disputed the facts of the case. Further, in his reply to the SCN dated August 08, 2019 (filed by the AR), the AR has admitted that the Noticee has failed to make disclosures in terms of Regulation 13(4A) and Regulation 13(5) of PIT Regulations, 1992, due to oversight and ignorance
14. The Company, vide email dated August 21, 2019 and letter dated August 22, 2019 (i.e. after hearing proceedings were concluded in the matter) submitted copies of the letters dated August 20, 2019 addressed to the BSE and the NSE, wherein the Company has submitted the information about the change in the shareholdings of its promoters and directors, including that of the Noticee in Form

D in terms of Regulation 13(6) of PIT Regulations, 1992. The said letters bear acknowledgement stamp of the BSE and the NSE. The date of the disclosures made by the promoter and directors including the Noticee, in the said Form D to the Company is not available. Further, the Noticee in its reply dated August 08, 2019, has accepted that he has not made the required disclosures to the stock exchanges and the Company. The aforesaid disclosures submitted by the Company to the stock exchanges rely and refer to the disclosures made by the Noticee to the Company, which appear to have been made subsequent to the said letter dated August 08, 2019.

15. The impugned transactions were done during the period April-July, 2014 and the Noticee was required to make disclosures to the Company and the Exchange in terms of Regulation 13(4A) and Regulation 13(5) of PIT Regulations, 1992 within two working days from the date of these transactions. Therefore, I find that the Noticee has made disclosures to the Company after a delay of more than five (5) years. Further, there is no evidence available on record to show that the Noticee has made the disclosures to the stock exchanges directly, as required in terms of Regulation 13(4A) of the PIT Regulations, 1992.
16. I observe that the Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and the penalty is imposed for the 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 had 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 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". I would further like to refer to the observations of Hon'ble SAT in the matter of Virendra kumar 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"*. The importance of disclosure obligations cannot be undermined by saying that they are merely technical in nature. Such obligations are mandated under respective regulations by SEBI in order to enable investors to take informed investment decisions.

17. Therefore, I find that the allegation of the violation of Regulation 13(4A) and Regulation 13(5) of PIT Regulations, 1992 by the Noticee stands established. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) 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..."*.

18. In view of the above, I am convinced that it is a fit case for the imposition of monetary penalty on the Noticee under the provisions of Section 15A(b) of the SEBI Act, which reads 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 therefor in the regulations, fails to file return or furnish the same within the time specified therefor 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;

19. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the relevant factors as stipulated in Section 15J of the SEBI Act which reads as under:-

Factors to be taken into account by the adjudicating officer.

15J. 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.

Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

20. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the failure of the Noticee in making disclosures or the consequent loss caused to investors as a result of the default. The Noticee has failed to make required disclosures in terms of Regulation 13(4A) and Regulation 13(5) of PIT Regulations, 1992 on seven (7) occasions as brought out above which demonstrates the repetitive nature of default on its part.

ORDER

21. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose monetary penalty of Rs. 2,00,000/- (Rs. Two Lakh only) on the Noticee viz. Onward Network Technologies Private Limited in terms of the provisions of Section 15A(b) of the SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

22. The Noticee shall remit / pay the said total amount of penalty within 45 days of receipt of this order in either of the way, such as by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

23. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD-DRA- I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in.

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/recovery/ settlement amount and legal charges along with order details)	

24. 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.
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. Onward Network Technologies Private Limited and also to the Securities and Exchange Board of India.

Date: September 26, 2019

Place: Mumbai

Dr. ANITHA ANOOP
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER