

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. RA/CB/140/2017]

UNDER SECTION 15-I 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. **Mr. Sandeep Bhatnagar** having address at G402, Mantri Espana, Kariyamanna Agrahara, Near Passport Office, Outer Ring Road, Bengaluru – 560 103

in the matter of *Wipro Limited*

BACKGROUND

1. Securities and Exchange Board of India (hereinafter, be referred to as the “**SEBI**”) initiated adjudication proceedings under Section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as, “the SEBI Act”) against Mr. Sandeep Bhatnagar (hereinafter be referred to as “**the Noticee**”). The Noticee was alleged to have not complied with SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter be referred to as, “the PIT Regulations”).

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI, vide order dated September 19, 2016, had appointed the undersigned as Adjudicating Officer under Section 15I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as the “Adjudication Rules”) to inquire into and adjudge under Section 15A(b) of the SEBI Act the alleged non-compliance of PIT Regulations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Accordingly, a show cause notice No. EAD/EAO/RA/CB/10919/2017 dated May 16, 2017 (hereinafter, “**the SCN**”) was issued to the Noticee under Rule 4 (1) of the Adjudication Rules wherein he was called upon to show cause as to why an inquiry should not be held against him in terms of Rule 4 of the Adjudication Rules read with Section 15I of the SEBI Act and why penalty should not be imposed on him under Section 15A(b) of the SEBI Act, for the aforesaid non-compliance of PIT Regulations.

4. The allegations levelled against the Noticee in the SCN are summarized hereunder:

- a. That the Noticee, as an employee of Wipro Limited which is listed on the Bombay Stock Exchange (hereinafter be referred to as, "the BSE") as well as the National Stock Exchange (hereinafter be referred to as, "the NSE") sought pre-clearance from Wipro Limited to sell 2300 shares of Wipro Limited on July 27, 2015, which was approved the same day.
- b. Thereafter, the Noticee sold 2237 shares of Wipro Limited on August 03, 2015. The sale value of this transaction was Rs. 12,77,998.10/-. In relation to the sale of shares of Wipro Limited, the Noticee submitted continual disclosure to Wipro Limited on August 10, 2015, which was also submitted to the BSE and NSE on August 10, 2015.
- c. Under Regulation 7(2) (a) of the PIT Regulations, every promoter, employee or director of every company is required to disclose to the company, the number of securities acquired or disposed of within two working day of such transaction if the value of securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakhs rupees or such other value as may be specified.
- d. Therefore, there was an alleged delay of 5 days in making disclosure which was in alleged violation of Regulation 7(2) (a) of the PIT Regulations, which if established, would make the Noticee liable for penalty under Section 15A(b) of the SEBI Act, which reads as under

*"15A. **Penalty for failure to furnish information, return, etc-** 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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less."

5. The aforesaid SCN was delivered to the Noticee through Speed Post AD. In respect to the SCN, the Noticee submitted its reply vide letter dated July 03, 2017. Relevant excerpts of submissions made by the Noticee vide its reply dated July 03, 2017 are reproduced hereunder:

“

.....

The main issue here has been that there was a delay in filing the form C with the company.

Reasons for delay in filing of form C

- 1. The noticee was aware that a form C was to be submitted and filed but was not aware of the same to be filed within 2 days from the date of transaction.*
- 2. August 3rd was a Monday and as per company records the date on which form C could be sent by was 6th august (Thursday) and was sent by me on 10th august. In between 8th august and 9th august was a holiday(non-working day for the company and employee).*
- 3. As such delay was only by 2 working days.*
- 4. This delay was caused as the email id of the noticee was not working from 7th august to 10th august morning and the form C required to be printed, signed, scanned and then sent by email to the corporate secretarial department because of which the form c couldn't be sent until 10th august afternoon.*
- 5. The new rules of sebi came into force from May 2015 and noticee wasn't aware of the form c regulations of submitting within 2 days (not in any manner to say that the noticee shouldn't have been aware) but a genuine miss from the notice sight..*

.....

Overall the noticee pleads to be pardoned in this case without any penalty.

Reasons are

- 1. Pre-clearance was obtained by noticee. This was a open trading window sale and only clearance needed to be obtained.*
- 2. Delay in filing of form C was actually 2 working days.*
- 3. Transaction value was small – 12.8 lacs*
- 4. The transaction limit till may in the company was 25 lacs. It was revised to 10 lacs from may 2015.*
- 5. Genuine miss by noticee as this was in accordance of the new rules by SEBI which were introduced by SEBI a few months before the transaction and also due to change in policy by company of revising limit from 25 lacs to 10 lacs.*
- 6. Warning letter issued by company to noticee and noticee has confirmed that he shall in future strictly comply.*
- 7. The noticee dint have any price sensitive information during this period.*

8. *The noticee is a qualified chartered accountant and is aware of his responsibilities. However keeping all of the above in mind seeks pardon from any penalties.*

I plead to the adjudicating officer and to SEBI to please pardon me without any penalties. In case an order needs to be passed I would like an opportunity to come and meet the adjudicating officer before any penalties are to be levied."

6. For the purpose of inquiry and as requested by the Noticee in its reply, an opportunity of hearing, in accordance with the principles of natural justice, was provided to the Noticee on August 01, 2017 vide hearing notice dated July 13, 2017. The hearing on August 01, 2017 was attended by the Noticee itself. At the hearing, the Noticee reiterated the submissions made by way of reply dated July 03, 2017 and further confirmed that he has not sold any more shares after the sale of shares on August 03, 2015.
7. After taking into account the allegations, written submissions of the Noticee, submissions made at the hearing by the Noticee and other evidences / material available on record, I hereby proceed to decide the case on merits.

CONSIDERATION OF ISSUES AND FINDINGS

8. The issues that arise for consideration in the present case are:
- 8.1 Whether the Noticee has violated provisions of Regulation 7(2) (a) of the PIT Regulations?
- 8.2 Whether the violation, if any, attracts monetary penalty under Section 15A(b) of the SEBI Act?
- 8.3 If so, what would be the monetary penalty that can be imposed against the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act read with Rule 5(3) of the Adjudication Rules?

Issue 8.1

9. I have carefully perused the allegations, submissions of the Noticee in its reply and the evidences / material available on record. Before dealing with the issues, I find it pertinent to refer to relevant provisions of PIT Regulations which reads as under:

Relevant provision of PIT Regulations:

"

SEBI (Prohibition of Insider Trading) Regulations, 2015

Disclosure 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;.”

10. From the material available on record, I note that the Noticee, after seeking pre-clearance from Wipro Limited on July 27, 2015, sold 2237 shares of Wipro Limited on August 03, 2015. I also note that the trade value of these 2237 shares was Rs. 1277998.10/-. Since the traded value was in excess of ten lakh rupees, the Noticee ought to have made disclosures to the Wipro Limited within two trading days of sale of shares, i.e. by August 05, 2015 in terms of Regulation 7(2) (a) of the PIT Regulations. However, disclosure of the aforesaid sale of shares was made by the Noticee on August 10, 2015.
11. In respect of the allegation that the Noticee has not disclosed the sale of shares during sale dated August 03, 2015, I note that the Noticee has not disputed alleged delay in disclosure. However, in its reply dated July 03, 2017, the Noticee contended that the alleged delay is of four days in total (from August 06, 2015 to August 10, 2015) and in between these dates, August 08, 2015 and August 09, 2015 being Saturday and Sunday, were non-working days for employee. It also submitted that the Noticee was unable to access its e-mail id from August 07, 2015 to August 10, 2015. Lastly, the Noticee contended that the PIT Regulations came into force in May 2015 and the Noticee was not aware the requirement of disclosure in terms of Regulation 7 of the PIT Regulations.
12. I note that the sale of shares was made on August 03, 2015. Therefore, in terms of Regulation 7(2) (a) of the PIT Regulations, a disclosure was to be made within two trading days of such sale of shares, i.e. by August 05, 2015. The Noticee itself has admitted that it filed disclosure on August 10, 2015. However, since Regulation 7(2) (a) of the PIT Regulations requires a disclosure of transaction to be made within 2 trading days of the transaction, I partially agree with the contention of the Noticee that the delay was for four days and not five days. Therefore, I am of the view that the Noticee has delayed the disclosure of his sale of shares amounting to Rs. 12,77,998.10/- by four days.

13. With regard to inability of Noticee to access its e-mail id, I note that the Noticee could not produce any proof / evidence of its inability to access its e-mail during the period August 07-10, 2015. Therefore, in my view, the contention of the Noticee regarding delay in disclosure due to inability to access its e-mail id cannot be accepted.
14. I also note that the Noticee has contended that PIT Regulations came in force only in May 2015 and therefore, it was not aware of PIT Regulations being in force during August 2015. However, it is settled position of law that ignorance of law is no excuse. In fact, it is to prevent this ignorance of law that post-natal publicity is given to any rules/regulations made in the process of administrative rule making by way of notification. Therefore, I am of the considered view that the Noticee has violated Regulation 7(2) (a) of the PIT Regulations by not disclosing its sale of shares dated August 03, 2015 within two trading days of transaction.

Issue 8.2

15. I find it relevant to refer to the judgment of the Hon'ble Supreme Court in the matter of ***The Chairman, SEBI v. Shriram Mutual Fund and Anr.*** (AIR 2006 SC 2287) wherein, the Supreme Court held, "*penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.*"
16. In view of the judgment referred above and the fact that the Noticee has violated Regulation 7(2) (a) of the PIT Regulations by delaying the mandated disclosure, I am of the view that a monetary penalty needs to be imposed upon the Noticee under Section 15A(b) of the SEBI Act, which reads as under:
- "15A. Penalty for failure to furnish information, return, etc-** 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 of one lakh rupees for each

day during which such failure continues or one crore rupees, whichever is less.”

Issue 8.3

17. For determination of quantum of monetary penalty to be imposed under Section 15A(b) of the SEBI Act, I have taken into account the factors stipulated in Section 15J of SEBI Act read with Rule 5(2) of the Adjudication Rules, 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.”*

18. In the instant case, I note that no quantifiable disproportionate gains or unfair advantage made as a result of such default by the Noticee. Moreover, from the material available on record, ascertaining any monetary loss caused to an investor or a group of investors as a result of default is also not possible. I also take into account the contention of the Noticee that such a default has not occurred earlier to August 03, 2015 or later.

19. However, I note that the Hon'ble Securities Appellate Tribunal in the matter of ***Gaylord Commercial Company Limited v. Securities and Exchange Board of India*** (Appeal No. 62 of 2014 dated April 10, 2014) held that the *“the delay in making disclosures has neither caused any loss to investors nor the appellant has gained any benefits on account of delay in making disclosures do not merit consideration, because, liability to pay penalty under Section 15A(b) of SEBI Act, 1992 has to be computed on the basis of each day during which the failure to comply with the regulation has continued and liability to pay such penalty is not dependent upon the fact as to whether such failure has occurred for the first time or not. Similarly, fact that no loss has occurred to the investors or that the appellant has not gained on account of delay in making disclosures would not be a ground for the appellant to escape penalty for failure to make disclosure within the stipulated time”*.

20. Similarly, I also find it pertinent to refer to the judgment of the Hon'ble Securities Appellate Tribunal in the matter of **Akriti Global Traders Ltd. v. Securities and Exchange Board of India** (Appeal No. 78 of 2014 dated September 30, 2014) wherein it held, "*Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay*".

21. However, I also cannot ignore certain mitigating factors while adjudging the quantum of penalty, which are as follows: (a) Overall value of shares transacted (Rs. 12,77,998.10/-), (b) Delay of four days in filing disclosure of transaction to the Company, and (c) No prior or further violations by the Noticee.

22. Therefore, considering the facts of the case, cases referred and law cited, I am of the view that a monetary penalty in terms of Section 15A(b) of the SEBI Act needs to be imposed upon the Noticee to ensure full and timely compliance in future.

ORDER

23. After taking into consideration the aforesaid facts, applicable provisions and mitigating factors, I hereby impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh only) under Section 15A(b) of SEBI Act upon the Noticee, namely, Mr. Sandeep Bhatnagar. I am of the view that the aforesaid penalty would commensurate with the violation committed by the Noticee.

24. 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 e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India

Beneficiary A/c No.	31465271959
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25. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI. The format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID- tad@sebi.gov.in.

Date	Department of SEBI	Name of Intermediary / Other Entity	Type of Intermediary	SEBI Registration on Number (if any)	PAN	Amount (in Rs.)	Purpose of Payment (including the period for which payment was made eg. Quarterly, annually)	Bank name and Account Number from which payment is remitter	UTR No.

26. Copies of this order are being sent to the Noticee and the SEBI in terms of Rule 6 of the Adjudication Rules.

Date : August 29, 2017

Place : Mumbai

(RACHNA ANAND)

**General Manager and
Adjudicating Officer**