

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. BS/AO/62/2018-19]

UNDER SECTION 23-I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956, READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of:

Ms. Anjana Gupta,
PAN: AHCPG7242H
9/9 South Patel Nagar,
New Delhi – 110 006

In the matter of IFL Promoters Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted investigation into the alleged irregularities in the scrip of IFL Promoters Ltd. (hereinafter referred to as '**the company/IFL**') for the possible violation of the provisions of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as PIT Regulations) by Ms Anjana Gupta (hereinafter referred to as the

Noticee) during the period January 04, 2010 to September 30, 2010 (hereinafter referred to as the Investigation Period).

2. It was observed that the Noticee entered into an opposite transaction within 6 months of prior transaction which is violation of Clause 4.2 Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified in Part A of Schedule I read with Regulation 12(1) of the PIT Regulations read with Regulation 12 of the PIT Regulations, 2015.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri S.V. Krishnamohan was appointed as the Adjudicating Officer vide order dated August 08, 2016 to inquire and adjudge under Section 15HB of SEBI Act, the violation of Clause 4.2 Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified in Part A of Schedule I read with Regulation 12(1) of the PIT Regulations read with Regulation 12 of the PIT Regulations, 2015 alleged to have been committed by the Noticee.
4. Subsequently, vide order dated September 15, 2017, the undersigned was appointed as the Adjudicating Officer in the place of Shri S.V. Krishnamohan.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show Cause Notice dated August 30, 2016 (hereinafter referred to as '**SCN**') was issued to the Noticee in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the **Rules**) read with Section 15I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as SEBI Act) for the violations as specified in the SCN.
6. The SCN issued to the Noticee was delivered, however, the Noticee did not reply to the SCN.

7. Subsequently vide Hearing Notice dated March 18, 2017, Noticee was granted an opportunity of being heard on June 03, 2018. However Noticee did not appear for the aforesaid hearing. Considering the fact that the Noticee failed to file any reply to the SCN, nor availed the opportunity of hearing granted to her, I am constrained to proceed with the inquiry on the basis of the material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully examined the material available on record. The issues that arise for consideration in the present case are :
- a. Whether Noticee has violated Clause 4.2 Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified in Part A of Schedule I read with Regulation 12(1) of the PIT Regulations read with Regulation 12 of the PIT Regulations, 2015?
 - b. Does the violation, if established, attract monetary penalty under Section 15HB of SEBI ACT?
 - c. If yes, then what should be the quantum of penalty?

FINDINGS

9. Before I proceed with the matter, it is pertinent to mention the relevant legal provisions which are reproduced below:

“Clause 4.2 Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified in Part A of Schedule I

4.2 All directors/ officers/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction. All directors/

officers/ designated employees shall also not take positions in derivative transactions in the shares of the company at any time.

In the case of subscription in the primary market (initial public offers), the above mentioned entities shall hold their investments for a minimum period of 30 days. The holding period would commence when the securities are actually allotted.

Code of internal procedures and conduct for listed companies and other entities.

12. (1) All listed companies and organisations associated with securities markets including:

(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;

(b) the self-regulatory organisations recognised or authorised by the Board;

(c) the recognised stock exchanges and clearing house or corporations;

(d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and

(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies, shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same.”

10. Noticee has neither replied to the SCN nor attended the hearing. In this context, the silence on the part of the Noticee in this inquiry clearly indicates that the Noticee does not want to answer any inquiry in respect of the alleged violation stated in the SCN.
11. Further, reliance can be placed upon the judgment of the Hon'ble Securities Appellate Tribunal in the matter of Classic Credit Limited Vs. SEBI (Appeal No. 68 Of 2003, Date of Decision December 8, 2006) regarding the significance of filling reply to the SCN,

observed as follows *“the appellant did not file any reply to the second show cause Notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them.”*

12. I also observe that the Hon'ble Securities Appellate Tribunal in the matter of Sanjay Kumar Tayal & Ors. v SEBI (Appeal 68 of 2013 dated February 11, 2014) inter alia observed that:

“...appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices...”

13. In the present case, Noticee who is also a Director of the Company purchased 40810 shares and sold 28414 shares of IFL Promoters Ltd clearly indicating opposite transaction carried out during the period of investigation. The Noticee, after the first transaction of 454 shares on January 06, 2010, entered into both, sell and buy transactions on 25 days in 8 months.
14. Further, in the extant case, since the Noticee, who is also a Director of the Company, had sold 454 shares on January 06, 2010, hence, as per Clause 4.2 of the Model Code of Conduct, she could not have entered into a buy transaction for six months following January 06, 2010. Thus, the earliest the Noticee could have dealt in the shares of the company was July 06, 2010.
15. In addition to being opposite transactions within a span of six months, many such trades have taken place on the same day. For example on 17/03/2010, the noticee bought 10000 shares and the same day sold 10525 shares. Same pattern of trading can be seen on 21/04/2010, 27/04/2010, 18/08/2010, 17/09/2010, 20/09/2010, 21/09/2010, 23/09/2010, 27/09/2010 and 28/09/2010. The details of the transactions are mentioned below:

Trade Date	Buy Qty	Sell Qty
06/01/2010	0	454
03/03/2010	1200	0
17/03/2010	10000	10525
01/04/2010	0	300
05/04/2010	0	375
21/04/2010	4470	4470
22/04/2010	500	0
27/04/2010	300	500
11/05/2010	0	255
17/06/2010	0	45
13/08/2010	500	0
16/08/2010	5100	0
17/08/2010	0	1000
18/08/2010	1000	1300
19/08/2010	0	1000
23/08/2010	1928	0
25/08/2010	4500	0
08/09/2010	0	1100
09/09/2010	0	2500
14/09/2010	8550	0
17/09/2010	100	750
20/09/2010	1492	1500
21/09/2010	200	200
23/09/2010	10	1000
27/09/2010	820	1000
28/09/2010	140	140

16. Hence, it is pertinent to mention that on ten occasions, the opposite transactions were entered into, on the same day itself.
17. Further, as per Clause 6C(v) the Code of Conduct of IFL Promoters Ltd., Noticee being a Director of the company was prohibited from entering into an opposite transaction within 6 months. The said clause states the following:

"All directors/ officers/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy

any number of shares during the next six months following the prior transaction. All directors/ officers/ designated employees shall also not take positions in derivative transactions in the shares of the company at any time."

18. The said provisions i.e., clause 6c(v) of the code of conduct for IFL Promoters is on the basis of prohibition contained in clause 4.2 of the code of conduct prescribed under the PIT Regulations. In the absence of any evidence to the contrary, I am inclined to conclude from the material available on record that Noticee has violated Clause 4.2 Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified in Part A of Schedule I read with Regulation 12(1) of the PIT Regulations read with Regulation 12 of the PIT Regulations, 2015.

19. Hon'ble Securities Appellate Tribunal (SAT) in the matter of Manmohan Shetty vs SEBI (Appeal No 132 of 2010) - wherein Hon'ble SAT has observed the following:

"We are of the considered view that the only possible conclusion that can be arrived at is that the code of conduct prescribed by the company for prevention of insider trading as mandated by the Regulations for all practical purposes is to be treated as a part of the Regulations and any violation of the code of conduct can be dealt with by the Board as violation of the Regulations framed by it."

"We are, therefore, of the considered view that violation of the Code of Conduct, as framed by the Company in accordance with the mandates prescribed in the Regulations, is nothing but part of the Regulations and any violation thereof is punishable by the Board also as violation of the Regulations in addition to such action that may be taken by the Company. Any other view taken in the facts and circumstances of the case will defeat the very purpose of the Regulations in question"

20. It is pertinent to mention that the Noticee mentioned above did not file any reply to the allegations in the SCN nor availed the opportunities for personal hearing. Silence on the part of the Noticee indicated that she does not have any explanation to offer in respect of the violations alleged in the SCN.

(b) Does the non-compliance, if any, attract monetary penalty under Section 15HB of SEBI Act?

21. The aforesaid violations attract penalty under Section 15 HB of SEBI Act which reads as under:-

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 may extend to one crore rupees.

22. In this context, it is relevant to quote the judgment of Supreme Court in the matter of SEBI vs. Shri Ram Mutual Fund wherein it was inter alia held that “*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow.*”
23. Provisions of Section 15J of SEBI Act and rule 5 of the 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.

24. No details are available on record to take into account the above factors in determining the quantum of penalty. No specific loss to any investor and no past action against the Noticee has been brought out in the investigation report. However, taking into account the legal mandate in enforcing such prohibition as part of the code of conduct, it is felt that the violation committed by the Noticee have to be viewed seriously and penalty is warranted for the same.

ORDER

25. After taking into consideration the nature and gravity of the charges established as discussed in the preceding paragraphs and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Rules, I hereby impose a penalty of Rs. 10,00,000/- (Rupees Ten Lakhs only) under Section 15 HB for the violation of Clause 4.2 Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified in Part A of Schedule I read with Regulation 12(1) of the PIT Regulations read with Regulation 12 of the PIT Regulations, 2015.
26. The amount of penalty shall be paid either by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or by e-payment in the account of “SEBI - Penalties Remittable to Government of India”, A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to “The Chief General Manager (Enforcement Department-1 – DRA- 2), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.”

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)	

27. In terms of rule 6 of the Rules, copy of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Place: Mumbai

DATE: 26.06.2018

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ADJUDICATING OFFICER