

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**ADJUDICATION ORDER NO. AO/SG-VS/EAD/69/2017**

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**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 Vinay Agrawal**  
**(PAN No – AFTPA8990H)**  
C/o Vinod Agrawal,  
Kings Sports, 99 Tilak Marg,  
Burhanpur.  
PIN – 450331

**In the matter of M/s ING Vysya Bank Limited**

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**FACTS OF THE CASE**

1. Securities and Exchange Board of India (hereinafter referred as 'SEBI') conducted an examination of buying, selling and dealing in the shares of M/s ING Vysya Bank Limited (hereinafter referred as 'ING') for the period from August 26, 2011 to May 20, 2013. The shares of ING were listed on BSE Limited (hereinafter referred as 'BSE').
2. Upon perusal of the trading details of Shri Vinay Agrawal (hereinafter referred as 'Noticee'), then Zonal Head – Cluster Banking Business, ING by a department of SEBI (hereinafter referred as 'ISD'), following transactions were observed:

Date	Gross Buy Volume	Gross Sell Volume	Net Traded Volume	Gross Traded Volume	Gross Buy Value (₹)	Gross Sell Value (₹)
26-08-2011	1000	0	1000	1000	297000.00	0.00
16-09-2011	0	1000	-1000	1000	0.00	289171.05
17-10-2011	750	0	750	750	238495.50	0.00
18-10-2011	0	750	-750	750	0.00	252708.10
16-01-2012	1000	0	1000	1000	318584.00	0.00
17-01-2012	1000	0	1000	1000	314352.40	0.00
18-01-2012	0	2000	-2000	2000	0.00	622232.75
02-05-2013	0	1428	-1428	1428	0.00	861060.65
03-05-2013	0	5482	-5482	5482	0.00	3249466.95

3. From the above, it was observed by ISD that Noticee upon buying and selling the shares of ING during the period mentioned in the said table, the change in shareholding of the Noticee exceeded ₹ 5 lakh in value on January 17, 2012, January 18, 2012, May 02, 2013 and May 03, 2013.
4. It was alleged that Noticee being an officer of ING, upon buying and selling the shares of ING leading to change in the shareholding for more than ₹ 5 Lakh in value, was required to make the disclosures to ING and to BSE in accordance with the provisions of regulation 13(4) read with regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred as 'PIT Regulations') within two working days from the date of transactions, which Noticee has failed to do. Therefore, it was alleged that Noticee had violated the provisions of regulation 13(4) read with regulation 13(5) of PIT Regulations.
5. It was further observed by ISD that on 3 occasions, the Noticee had entered into opposite transactions, the details of which are as under:
  - I. On August 26, 2011, the Noticee purchased 1,000 shares of ING and on September 16, 2011 the Noticee sold 1,000 shares of ING.
  - II. On October 17, 2011, the Noticee purchased 750 shares of ING and on October 18, 2011 the Noticee sold 750 shares of ING.
  - III. On January 17, 2012 the Noticee purchased 1,000 shares of ING and on January 18, 2012 the Noticee sold 2,000 shares of ING.
6. Therefore it was alleged that Noticee being an officer of ING upon entering into opposite transactions on aforesaid 3 occasions had acted in violation of the clause 4.2 of the Model Code of Conduct specified in Part A of Schedule I read with Regulation 12(1) of PIT Regulations.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

7. Shri Jayanta Jash was appointed as the Adjudicating Officer (hereinafter referred to as 'AO') vide order dated April 09, 2014 under section 15-I of the Securities and Exchange Board of India, 1992 (hereinafter referred to as 'SEBI Act, 1992') and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'AO

Rules') to inquire and adjudge under Section 15A(b) and Section 15HB of the SEBI Act, 1992, the alleged violations committed by the Noticee. Consequent upon the transfer of Shri Jayanta Jash, the undersigned was appointed as AO vide Order dated June 22, 2015.

#### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

8. A Show Cause Notice (hereinafter referred to as "SCN") in terms of the provisions of Rule 4 of AO Rules was issued to the Noticee by the previous AO on September 05, 2014. The said Notice of hearing was sent at "708-7, Ved Vihar, Near Ved Bhavan, Kothrud, Pune, Maharashtra - 411035" through registered post and the same returned undelivered with remark 'unclaimed'.
9. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the AO Rules, the Noticee was granted an opportunity of personal hearing on January 05, 2016, vide notice of hearing dated December 08, 2015 at SEBI, Head Office, Mumbai. The copy of the SCN dated September 05, 2014 was also enclosed along with the said notice of hearing and was sent at the address "C/o Vinod Agrawal, Kings Sports, 99 Tilak Marg Burhanpur, Burhanpur - 450 331". The same was delivered as per India Post tracking details. However, the Noticee failed to appear for the hearing and also no reply to the SCN was received from him.
10. Further, the Noticee was provided with another opportunity of hearing on July 01, 2016 vide notice of hearing dated May 31, 2016 and yet another opportunity of hearing on November 04, 2016 vide Notice of hearing dated October 14, 2016. Both the Notices were sent at the address mentioned at para 9 above through speed post and the proof of delivery of both the Notices is on record. However, the Noticee failed to appear for hearing on both the aforesaid opportunities granted to him.
11. However, on the date of hearing, the Noticee vide his email dated November 04, 2016 enclosed the notice of hearing dated October 14, 2016 and stated, "I got

*attached letter for the first time , during Diwali Vacation as I am based out of Pune . I have no idea about the context of the same. .... However as I didn't get leave for today not able to come in person , pls let me know what information / Documents required and can I call you ..".* In view of the same, vide email dated November 04, 2016, the Noticee was advised to provide his current address for correspondence. In response, the Noticee vide his email dated November 04, 2016 submitted his 'present office address' as "*Kotak Mahindra Bank 3<sup>rd</sup> Floor Sheetal Plaza Model Colony next to ambassador hotel 411016*". However, I note that the Noticee did not mention the name of the city for the said correspondence address.

12. Further, a supplementary Notice to the SCN (hereinafter referred to as 'supplementary SCN') was issued to the Noticee on January 27, 2017 under Rule 4 of AO Rules calling upon him to show cause as to why an inquiry should not be held against him in terms of Rule 4 of AO Rules read with section 15-I of SEBI Act and penalties be not imposed under section 15A (b) and 15HB of SEBI Act, 1992 for the alleged violations by the Noticee. Vide the said supplementary SCN, the Noticee was advised to reply to SCN dated September 05, 2014 in conjunction with the supplementary SCN within 15 days from the date of receipt of the same. The said supplementary SCN along with a copy of the SCN dated September 05, 2014 was sent vide speed post at the address provided by the Noticee vide his email dated November 04, 2016 as mentioned at para 11 above to Pune and the same was delivered on January 30, 2017. Also a copy of supplementary SCN along with a copy of the SCN dated September 05, 2014 was sent vide speed post to "*Kings Sports, 99 Tilak Marg Burhanpur, Burhanpur – 450 331*" and a copy of the same was also sent to the email ID of the Noticee which he had provided on November 04, 2016. The proof of delivery of the said documents at both the aforesaid addresses is on record.
13. Further, in the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the AO Rules, the Noticee was granted an opportunity of personal hearing on June 23, 2017, vide notice of hearing dated May 29, 2017. The said hearing notice along with a copy of the SCN dated September 05, 2014 and a copy of the Supplementary SCN dated January 27, 2017 was sent vide the

speed post at the 2 addresses mentioned at para 12 above. Vide the said notice of hearing, the Noticee was advised to submit a reply to the SCN including supplementary SCN on or before June 19, 2017. The same was delivered at the address "*Kings Sports, 99 Tilak Marg Burhanpur, Burhanpur – 450 331*" and the proof of delivery is on record. However, the copy of the notice sent at "*Kotak Mahindra 3<sup>rd</sup> Floor Sheetal Plaza Model Colony next to ambassador hotel Pune 411016*" returned undelivered. The copy of the notice was also mailed to the email address of the Noticee referred at the para above. However, the delivery of the same failed.

14. Here it is pertinent to note that the Notice of hearing, SCN, Supplementary SCN were duly served to the Noticee at his Burhanpur address and copy returned from his office address provided by the Noticee himself. On a query, Kotak Mahindra Bank Limited (hereinafter referred as 'Kotak') vide its email dated June 09, 2017 stated that the Noticee had left their Bank on February 27, 2017 and provided another email address and correspondence address of Noticee as available with it i.e. "*131-3B, Kalpatro, Auro Ghatkopar, Mumbai – 400 086 India*". In view of the same, a letter dated June 09, 2017 enclosing a copy of the notice of hearing dated May 29, 2017 and SCN dated September 05, 2014 and Supplementary SCN dated January 27, 2017 was sent to the Noticee at "*131-3B, Kalpataru Aura, Nityanand Nagar, Ghatkopar West, Mumbai, Maharashtra – 400086 India*" vide speed post. A copy of the same was also sent vide hand delivery to the address indicated by Kotak "*131-3B, Kalpatro, Auro Ghatkopar, Mumbai – 400 086 India*" as well as to the email address of the Noticee provided by Kotak. However, the said letter returned undelivered from both Ghatkopar addresses. With respect to the same sent to the email ID, no reply was received from the Noticee. It is pertinent to note that all the Notices served upon the Noticee specifically advised him to inform the AO immediately if there was any change in his address during the period of Adjudication Proceedings. However, the Noticee has failed to inform his change of address after he left Kotak.
15. I note that the SCN, Supplementary SCN are duly served on the Noticee on January 30, 2017 at the address provided by him vide his email dated

November 04, 2016. I also note that the SCN, Supplementary SCN and Notice of hearing dated May 29, 2017 were also duly served on the Noticee at his address at “C/o Vinod Agrawal, Kings Sports, 99 Tilak Marg Burhanpur, Burhanpur – 450 331”, the address which the Noticee vide his email dated November 04, 2016 had acknowledged the receipt of the earlier notice of hearing dated October 14, 2016 but the Noticee has failed to submit any reply to the same.

16. Further, although the Notice of hearing dated May 29, 2017 was duly served upon Noticee as detailed at para 13 above, the Noticee has failed to appear for the hearing on June 23, 2017.
17. In view of the aforesaid steps taken, as per rule 4(7) of the AO Rules, if any person fails, neglects or refuses to appear as required by sub-rule (3) before the AO, he may proceed with the inquiry in the absence of such person after recording the reasons therefor. Noting further that despite having been given the opportunities, the Noticee has failed to reply to the SCN including Supplementary SCN and has failed to avail the opportunity of hearing, I am therefore proceeding with the matter based on the material available on record.

#### **ISSUES FOR CONSIDERATION**

18. After perusal of the material available on record, I have the following issues for consideration viz.
  - I. Whether the Noticee has violated the provisions of regulation 13(4) read with regulation 13(5) of PIT Regulations?
  - II. Whether the Noticee has acted in violation of clause 4.2 of the Model Code of Conduct specified in Part A of Schedule I read with Regulation 12(1) of PIT Regulations?
  - III. Whether the Noticee is liable for monetary penalty under Section 15A (b) and/or 15HB of the SEBI Act?
  - IV. If so, what quantum of monetary penalty should be imposed on the Noticee?

## FINDINGS

19. 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 I: Whether the Noticee has violated the provisions of regulation 13(4) read with regulation 13(5) of PIT Regulations?***

20. I note that the provisions of regulation 13(4) read with regulation 13(5) of PIT Regulations read as under:

***Initial Disclosure***

*13. (1)...*

*...*

*(4) Any person who is a director or officer 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 and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) 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.*

*(4A)...*

*(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.*

21. In this regard, I further note the following observation made by Hon'ble Securities Appellate Tribunal (hereinafter referred as 'SAT') in the matter of Sundaram Finance Limited vs. SEBI (Appeal No. 69 of 2010 decided on September 16, 2010):

*"3. ....*

*The term "officer of a company" has been defined in Clause (g) of Regulation 2 of the Regulations to mean any person as defined in clause (30) of Section 2 of the Companies Act, 1956 including an auditor of the company. We are not concerned with an auditor in this case. Clause (30) of Section 2 of the Companies Act defines an 'officer' in the following words:-*

*"Officer includes any director, manager or secretary or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act".*

....

*A reading of the aforesaid definition makes it clear that it is an inclusive definition. Apart from what the word 'Officer' means, it includes all that is stated therein. In other words, the definition does not exhaust all persons who otherwise come within its ambit or scope. While the definition says that it includes the persons specified therein, it doesn't say who are all the persons who will come within the term. We are of the view that an 'Officer' means a person holding an appointment to an office which carries with it an authority to give directions to other employees. Thus, an 'Officer' as distinct from a mere employee is a person who has the power of directing any other person or persons to do anything whereas an employee is one who only obeys. Any person who occupies a position of responsibility in a company will be an 'Officer' and this has been clarified by the Department of Company Affairs, government of India as per its letter dated October 7, 1963."*

22. In this regard, I note from the material available on record that, with respect to the period of alleged violation by the Noticee, the Noticee held the position of 'Regional Head – Business Banking' in ING for the period from August 26, 2011 till June 20, 2012, reported by 50 officials. Further, the Noticee held the position of 'Zonal Head, Cluster Business Banking' for the period from June 21, 2012 till October 10, 2013 having two divisions under him.
23. Therefore, from the above, I note that the Noticee held a position of responsibility along with authority of directing his subordinates. In view of the above, I conclude that the Noticee was an 'officer' of ING for the purpose of PIT Regulations.
24. In view of the conclusion arrived at para 23 above, I note that, upon buying and selling the shares of ING leading to change in the shareholding for more than ₹ 5 Lakh in value on January 17, 2012, January 18, 2012, May 02, 2013 and May 03, 2013, the Noticee was required to make the disclosures to ING and to BSE in accordance with the provisions of regulation 13(4) read with regulation 13(5) of PIT Regulations within two working days from the date of transactions. I note that there is no material available on record with respect to the disclosure/non-disclosure under the aforesaid regulations by the Noticee to ING. It is however noted that no disclosure was made by the Noticee to BSE in accordance with the



provisions of regulations 13(4) read with regulation 13(5) of PIT Regulations and therefore, I conclude that the Noticee has violated the provisions of provisions of regulation 13(4) read with regulation 13(5) of PIT Regulations.

***ISSUE II. Whether the Noticee has acted in violation of clause 4.2 of the Model Code of Conduct specified in Part A of Schedule I read with Regulation 12(1) of PIT Regulations?***

25. It is noted that on 3 occasions as detailed at para 5 above, the Noticee had entered into opposite transactions within 6 months. With regard to the same, I note the following Provisions of PIT Regulations:

***PIT Regulations***

***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.*

***SCHEDULE I***

*[Under regulation 12(1)]*

***PART A***

***MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES***

***4.0 Other restrictions***

***4.1 ...***

***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.*

26. From the conclusion arrived at para 23 above, the Noticee being an ‘officer’ of ING, clause 4.2 of the Model Code of Conduct specified in Part A of Schedule I read with Regulation 12(1) of PIT Regulations was applicable to him. However, upon entering into opposite transactions on 3 occasions as detailed at para 5 above, I conclude that the Noticee has acted in violation of clause 4.2 of the Model Code of Conduct specified in Part A of Schedule I read with Regulation 12(1) of PIT Regulations.

***ISSUE III. Whether the Noticee is liable for monetary penalty under Section 15A (b) and/or 15HB of the SEBI Act?***

27. I note the provisions of Section 15A(b) and Section 15HB of SEBI Act as applicable to the facts and circumstances of the case read 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 thereunder,—*

*(a) .....*

***(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;*

*(c) .....*

***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.”*

28. From the conclusions arrived at paras 24 and 26 above, I further conclude that the Noticee is liable for penalty under section 15A(b) and section 15HB of the SEBI Act.

***ISSUE IV: If so, What quantum of monetary penalty should be imposed on the Noticee?***

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

***SEBI Act***

***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 a group of investors as a result of the default ;*
- c) the repetitive nature of the default*

30. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors as a result of the Noticee's failures. From the documents available on record, it is noted that no prior default is on record.

31. In view of the abovementioned conclusion and after considering the factors under Section 15J of the SEBI Act, I hereby impose a penalty of ₹ 6,00,000/- (Rupees Six Lakh only) on the Noticee under Section 15A (b) of the SEBI Act, 1992 for the violation of regulation 13(4) read with regulation 13(5) of PIT Regulations and a penalty of ₹ 3,00,000/- (Rupees Three Lakh only) on the Noticee under Section 15HB of the SEBI Act, 1992 for the violation of clause 4.2 of the Model Code of Conduct specified in Part A of Schedule I read with regulation 12(1) of PIT Regulations which is appropriate in the facts and circumstances of the case.

**ORDER**

32. In exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board

of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby impose a consolidated penalty of ₹ 9,00,000/- (Rupees Nine Lakh only) on Shri Vinay Agrawal in terms of the provisions of Section 15A(b) and 15HB of the Securities and Exchange Board of India Act, 1992 for the violation of regulation 13(4) read with regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 and for the violation of clause 4.2 of the Model Code of Conduct specified in Part A of Schedule I read with regulation 12(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 by him.

33. Shri Vinay Agrawal shall remit / pay the said amount of penalty within 45 days of receipt of this order either through e-payment facility into the Bank Account, the details of which are given below:

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

or by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai.

34. Shri Vinay Agrawal shall forward the following details / confirmation of penalty so paid to the Chief General Manager, Enforcement Department, SEBI Mumbai :

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:	Penalty

35. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, a copy of this order is being sent to Shri Vinay Agrawal C/o Vinod Agrawal, Kings Sports, 99 Tilak Marg, Burhanpur- 450331 and also to the Securities and Exchange Board of India, Mumbai.

**Place: MUMBAI**

**Date: SEPTEMBER 21, 2017**

**SURESH GUPTA  
ADJUDICATING OFFICER**