

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD/KS/MKG/AO/173/2018-19]

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

Surinder Jagannath Aggarwal
[PAN: AADPA6714A]

FACTS OF THE CASE IN BRIEF:

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an examination in the scrip of Kisan Mouldings Limited (hereinafter referred to as '**KML/Company**'), which is listed on BSE. It was noted that Surinder Jagannath Aggarwal (hereinafter referred to as the '**Noticee**') who is promoter of the Company, has sold his shares in the Company during the period April, 2016 to May, 2017 (hereinafter referred to as "Period of examination"). In this regard, it was observed that the Noticee had failed to make relevant disclosures to the Company as required under the relevant provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations**').

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI, vide communication order dated May 24, 2018, appointed the undersigned as Adjudicating Officer under Section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**'), read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under Section 15A(b) of SEBI Act, the alleged violation of the provisions of law by Noticee.

Show Cause Notice, Reply and Personal Hearing

3. A show-cause notice (hereinafter referred to as 'SCN') no. SEBI/EAD/KS/MKG/17409/2018 dated June 18, 2018 was issued to the Noticee under rule 4 of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against Noticee and penalty not be imposed upon it under section 15A(b) of SEBI Act respectively for the alleged violations specified in the said SCN. The Noticee was given 15 days of time to make its submission in respect of the allegations made in the SCN.
4. It is observed in the SCN that the Noticee, who is Promoter of KML has sold shares of the Company during the period of examination and few transactions made by the Noticee during the period December, 2016 to February, 2017 have triggered disclosures in terms of PIT Regulations. The transactions which gave rise to the alleged violation/ non-compliance are as given below:

Table - 1

Sr. No.	Date / Period of transaction	Transaction Volume- no. of shares	Calendar Quarter	Value of Transaction (Rs.)
1	December 19, 2016	25,753	Oct.-Dec., 2016	19,59,288.24
2	January 3 to February 7, 2017	18,149	Jan.-March, 2017	12,96,132.95
3	February 17, 2017	25,000	Jan.-March, 2017	17,82,250.00
4	February 20, 2017	14,864	Jan.-March, 2017	11,72,918.24

It was alleged in the SCN that as value of shares sold mentioned at serial No. 1 to 4 of the above table was above Rs. 10 lakhs quarterly and the Noticee is a promoter of the company, the Noticee was required to make disclosure to the Company once in Calendar quarter of October – December, 2016 and three times in Calendar quarter of January – March, 2017 in terms of provisions of Regulation 7(2)(a) of PIT Regulations within two working days. However, it is alleged that the Noticee has failed to make disclosure to the Company in this regard.

5. SCN was duly served on the Noticee on June 22, 2018. The Noticee, vide email and letter dated July 09, 2018, sought one month time for filing reply to the aforesaid SCN. Considering the principles of natural justice, an opportunity of personal hearing was provided to the Noticee on July 26, 2018 vide hearing notice dated July 12, 2018. Further, vide aforesaid hearing notice, the Noticee was also advised to file its reply to the SCN by July 23, 2018. The Authorized representative of the Noticee Mr. Balveer Singh Choudhary (hereinafter referred to as “AR”) attended the hearing on scheduled date and time. During the hearing AR also submitted reply to the SCN dated July 24, 2018 and *inter-alia* made the following submissions:

- i. *This is with reference to Show Cause Notice no. SEBI/EAD/KS/MKG/17411/2018 dated June 18, 2018 (herein after referred to as 'said SCN') received by Surinder jagannath Aggarwal (hereinafter referred to as 'Surinder'/'Noticee1') & Surinder Jagannath Aggarwal HUF (hereinafter referred to as 'Surinder HUF'/'Noticee2') (hereinafter referred together as 'Noticees'/'our'/'we'/'us') issued for alleged violations of SEBI (Prohibition of Insider Trading) Regulations, 2015, (hereinafter referred to as 'TIT Regulations') while dealing in the scrip of Kisan Mouldings Ltd. (hereinafter referred to as 'KML'/'the company').*
- ii. *It has been alleged in the SCN that we were the promoters of KML and that we have failed to disclose change in shareholding as required under PIT Regulations for the trades carried out by us in the scrip of KML during the investigation period. In view of the same, it has been alleged that we have violated Regulation 7(2)(a) of PIT Regulations.*
- iii. *We have further been called upon to show cause as to why an inquiry be not held against us in terms of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') read with Section 15-1 of the SEBI Act, 1992 and penalty be not imposed under Section 15A (b) for the alleged violation.*
- iv. *At the outset, it is submitted that we do not accept or admit anything stated in the Notice except where the same is expressly admitted by in this reply. Nothing stated herein shall be deemed to be admitted by us merely on account of non-traverse and unless the same is specifically admitted by us.*
- v. *As per SCN, the transactions which we are alleged to have violated Regulation 7(2)(a) of PIT Regulations are as follows :*

Sr. No	Noticee	Name of the Noticee	Date / period of transaction	Transaction Volume - No. of shares	Calendar Quarter	Value of transaction (Rs.)
1	Noticee 1	Surinder jagannath Aggarwal	December 19, 2016	25753	Oct-Dec, 2016	1959288.24
2			January 3 to February 17, 2017	18149	Jan- March, 2017	1296132.95
3			February 17, 2017	25000	Jan- March, 2017	1782250
4			February 20, 2017	14864	Jan- March, 2017	1172918.24

5	Noticee 2	Surinder jagannath Aggarwal HUF	May 3 to May 18, 2017	20006	April - June, 2017	1771046.9 0
6			May 26, 2017	25000	April - June, 2017	2055030.7 0
7			June 29, 2017	25845	April - June, 2017	2548058.5 5

vi. The above transactions triggered the disclosure requirement under Regulation 7(2)(a) of PIT Regulations, and we were required to make disclosures to the Company in the prescribed format. Thus upon failure to make such disclosure, it has been alleged that we have violated the said provisions of Regulation 7(2)(a) of PIT Regulations, and therefore liable to penalty under Section 15A (b) of SEBI Act.

vii. Regulation 7(2)(a) of the PIT Regulations reads as under:

"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"

viii. It is inter alia submitted as under:-

- a. We deny that we were a Promoter or part of the Promoter group since beginning in KML.
- b. We were being shown as part of the Promoter group by virtue of being brother/relative of other Promoter namely Mr. Satish Jagannath Aggarwal.
- c. We have never taken any active role in the management of KML.
- d. We have OUR own independent business and have no business connection with the management of KML.
- e. We were initially holding 68,200 shares in Kisan Mouldings Limited.
- f. Pursuant to a scheme dated 5th August, 2005, M/s Gaurav Agro Plast Ltd, an entity to which I was associated, merged with Kisan Mouldings Ltd. In lieu of my shareholding at M/s Gaurav Agro Plast, I was allotted 32,511 equity shares of Kisan Mouldings Ltd.
- g. Further, Bhagirath Agro Plast Private Ltd, in which I was a shareholder and Director holding 47,700 equity shares of Rs 10 each and Kisan Extrusions Private Ltd, in which I was holding 30,300 equity shares of Rs 10 each amalgamated with Kisan Irrigations Ltd. Consequent to amalgamation, I was allotted 3900 equity shares at Kisan Irrigation Ltd in lieu of my shareholding in transferee companies.
- h. Pursuant to demerger of Roha and Silvassa undertakings of Kisan Irrigations Ltd and consequently, merging of both the entities with Kisan Mouldings Ltd, I was allotted 1,18,541 equity shares in lieu of my shareholding at Kisan Irrigation Ltd.
- i. We, both Surinder and Surinder HUF were together holding 0.47% shareholding in KML as on March 2016, which is miniscule vis-a vis total shareholding.
- j. Later on, with effect from Quarter ending June 2016, our name was not appearing in the shareholding pattern of Kisan Mouldings Ltd under Promoter group.
- k. In view of the above, we did not make any disclosure under PIT Regulations.

Hence, we deny that we have violated regulation 7(2)(a) of PIT regulation.

ix. The table above showing the transactions entered by us are all such transactions which have been entered subsequent to our reclassification from Promoter group to Public. In lieu of the same, no

allegation of any violation of PIT regulation can lie against us. A copy of the printout of shareholding pattern of the promoter group for the aforesaid period i.e. June 2016 to December 2016 as taken from BSE website is collectively annexed hereto at Annexure 1.

- x. Without prejudice to the aforesaid, we submit that non-disclosure, if any, was technical in nature, and due to inadvertence, devoid of any malafide intention. Further, no harm has been caused to any investor nor any loss has occurred due to our non-disclosure.*
- xi. We would like to invite your kind attention to order May 11, 2017 passed by learned Adjudicating Officer, SEBI in the case of Jindal Cotex Limited, wherein considering the facts and circumstances of the case the Ld. Adjudicating officer levied a nominal monetary penalty of Rs One (1) Lakh only under Section 15A(b) for alleged violation of Regulation 13(1) of SEBI (PIT) Regulations, 1992 and Regulation 29(1) read with 29(3) of SEBI (SAST) Regulations, 2011.*
- xii. We also submit that our violation, if any, is technical and venial in nature, same is unintentional. We further submit that due to not filing of relevant disclosures no gain or advantage has occurred to us, nor any loss or harm has been caused to any investors. The same was only a procedural lapse, and devoid of any malafide intention.*
- xiii. We submit that there is no allegation of synchronized trade, wash trades, price . manipulation or creation of artificial volume etc., any violation of provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 and also SEBI (Prohibition of Insider Trading) Regulations, 2015.*
- xiv. We submit and say that we have always followed all the procedures, as stipulated by any regulatory authority, followed all rules/ regulations/ instructions etc. issued by any government agency. We have never been penalized by any regulatory authority and have got clean track record till date. Further, we submit and reiterate that in this case also the intention was not to conceal any information/ detail. As already explained above, the details of promoter holding were already in public domain.*

Legal Submissions:

- xv. The judgments passed by Hon'ble Courts/ Hon'ble SAT for levying penalty are as follows:*
 - a. Case of Reliance Industries Ltd. v SEBI (SAT Appeal No. 39/2002)-
The company failed to make relevant disclosure in time under Regulation 7(1) of Takeover Regulations, and Hon'ble SAT observed that "The High Court in Cabot's case has pronounced that if a breach was merely technical and unintentional, it does not merit penal consequence. It ultimately depends on the facts of each case."*
 - b. Akbar Badrudin Badrudin Jiwani V. Collector of Customs, Bombay AIR 1990 SC 1579
It is noteworthy to mention wherein the Hon'ble Supreme Court had stated that :-Para 61:"We refer in this connection the decision of Merck Spares v. Collector of Central Excise & Customs, New Delhi, 1983 ELT 1261, Shatna Engine Valves Ltd., Bombay v. Collector of Customs, Bombay (1984) 18 ELT 533 and Madhusudhan Gordhandas & Co. v. Collector of Customs, Bombay, (1987) 29 ELT 904, wherein it has been held that in imposing penalty the requisite mensrea has to be established".*
 - c. Hindustan Steel Ltd., v State of Orissa, (1970) 1 SCR 753; (AIR 1970 SC 2563)
The Hon'ble Supreme Court held that:-" The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard to its obligation; but not, in cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute".*

- d. *SEBI in the case of Refex Industries Limited (formerly known as Refex Refrigerants Limited), wherein Hon'ble WTM did not issue any directions against the promoter and director and inter-alia held that*

"that the violation is un-intentional and not for consolidation that the violation is technical and venial in nature; and....."

xvi. *In view of the above circumstances, we submit as follows:*

- We did not have any intention to conceal the information and nor have we concealed any information.*
- No unfair advantage or gain has occurred to us, and also no harm or loss has been caused to any retail investors.*
- We deny that we have violated the Regulations 7(2)(a) of PIT Regulations, as we were neither Promoter nor part of the Promoter group in the shareholding pattern filed by the Company on BSE website.*

xvii. *Your honor is kindly requested to take a lenient view in the matter and penalty stipulated under Section 15 A (b) of SEBI Act, 1992 may not be imposed. It is further requested that the present proceedings under Show Cause Notice dated June 18, 2018 may be dropped and we should be discharged from the same and an order may be passed accordingly.*

Consideration of Issues, Evidence And Findings

6. I have carefully perused the oral and written submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :

I. Whether Noticee has violated Regulation 7(2)(a) of PIT Regulations?

II. Does the violation, if any, attract monetary penalty under Sections 15 A (b) of SEBI Act.

III. If so, what should be the quantum of monetary penalty?

7. Before moving forward, it is pertinent to refer to the relevant provisions of the PIT Regulations which read as under:

Relevant provisions of PIT Regulations:

Disclosure of interest or holding by directors, officers and substantial shareholders in a listed companies-

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;

Issue I: Whether Noticee has violated Regulation 7(2)(a) of PIT Regulations?

Findings:

8. I note from the submissions of the noticee that he has contended to be not a promoter of the company; however, he was being shown as a part of the promoter group by virtue of being brother/relative of another Promoter namely Mr. Satish Jagannath Aggarwal and with effect from Quarter ending June 2016, name of the Noticee was not appearing in the shareholding pattern of Kisan Mouldings Ltd. under the category of Promoter and Promoter group. I also find from the quarterly promoter shareholding details for the quarter ending in March, 2016, available on BSE website that the Noticee's name was appearing under the classification of Promoter and Promoter group of the company for the said quarter but in subsequent quarters the name of the Noticee was not appearing under the category of Promoter and Promoter group of the company. In this regard I note that Company vide letter dated October 13, 2017 addressed to BSE has stated that its Board of Directors in its meeting held on May 23, 2016 passed a resolution for withdrawal of name of the Noticee from the promoter category. However, BSE clarified that as per Regulation 31A of SEBI (LODR) Regulations, 2015, for the purpose of reclassification of promoter entities, company has to obtain prior approval of the Exchange for effecting such reclassification. BSE further, confirmed vide email dated January 30, 2018 that they have not received any application from the Company in this regard, till date in the instant case. Since Company has not followed prescribed process to reclassify the Noticee from promoter category to non-promoter category, the reclassification merely through a board resolution is not valid and the Noticee will be considered as a promoter of the company till completion of the said process. I also note from Form No.MGT-9 carrying the extract of annual return of the company for the financial year

ended March 31, 2016 in pursuance to Section 92(3) of the Companies Act 2013 read with The Companies (Management and Administration) Rules 2014, the Noticee has been shown as a Promoter of the Company. I note from the above that as per records the Noticee was a Promoter at the relevant point in time.

9. Upon perusal of submissions of the Noticee and other documents available on record, I find that the Noticee has transacted in the shares of the Company as shown in Table – 2 which gave rise to disclosure obligations and this fact of the matter is not disputed by the Noticee.

Table - 2

Sr. No.	Date / Period of transaction	Transaction Volume- no. of shares	Calendar Quarter	Value of Transaction (Rs.)
1	December 19, 2016	25,753	Oct.-Dec., 2016	19,59,288.24
2	January 3 to February 7, 2017	18,149	Jan.-March, 2017	12,96,132.95
3	February 17, 2017	25,000	Jan.-March, 2017	17,82,250.00
4	February 20, 2017	14,864	Jan.-March, 2017	11,72,918.24

10. I also note from records that Company vide email dated October 27, 2017 has replied to SEBI confirming non receipt of any disclosure in terms of PIT Regulations from the Noticee during the period from February 01, 2009 to September 30, 2012.
11. Further, I note that daughter of the noticee Ms. Vandana Mehra vide email dated November 28, 2017 sent from her email id vandanamehra46494@gmail.com addressed to SEBI has admitted that the Noticee has not filed any disclosure in terms of PIT Regulations during the period December 19, 2016 to February 20, 2017 in the scrip of Kisan Moulding Limited.
12. It is contended by the Noticee that it has not made any gains or unfair advantage by not making the purported disclosures, no loss was caused to the investors. Further, it didn't has any malafide intention to hide the information. In this regard, I note that Hon'ble SAT through various judgments, has consistently observed that these factors are not valid grounds for not complying with the mandatory disclosure obligations under the PIT Regulations. In the matter of Virendrakumar Jayantilal

Patel vs. SEBI (Appeal No. 299 of 2014 order dated October 14, 2014), Hon'ble SAT observed 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."*

13. I also note that the Noticee in its reply has relied , *inter alia*, on the following Orders and same was considered:-

- a) Case of Reliance Industries Ltd. v SEBI (SAT Appeal No. 39/2002)-
- b) *Akbar Badrudin Badrudin Jiwani V. Collector of Customs, Bombay AIR 1990 SC 1579*
- c) *Hindustan Steel Ltd., v State of Orissa, (1970) 1 SCR 753; (AIR 1970 SC 2563)*

14. In view of the above, I note that the Noticee who was promoter of the Company at the relevant time has transacted in the shares of the company and he was required to disclose to the Company once in Calendar quarter of October – December, 2016 and three times in Calendar quarter of January – March, 2017 in terms of Regulation 7(2)(a) of PIT Regulations but has failed. In this regard I would be guided by the ruling of the Hon'ble Supreme Court of India in the matter of SEBI v/s 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....."*

15. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under 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 there under,—*

(a)

(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 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;

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

Factors to be taken into account by the adjudicating officer.

Section 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.*

17. In view of the charges as established, the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15-J of the SEBI Act stated as above. No quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss, if any, to the investors on account of default by the Noticee. The defaults on the part of the Noticee are repetitive in nature as the Noticee has failed to make disclosures on four occasions in two quarters.

ORDER

18. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee and also 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 a penalty of Rs. 2,50,000 (Rupees Two Lakh and Fifty Thousand only) on the Noticee viz. Surinder Jagannath Aggarwal under 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.

19. 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.

20. 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 Division Chief, Enforcement Department (EFD1 – DRA I), 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)	

21. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Surinder Jagannath Aggarwal and also to the Securities and Exchange Board of India.

Date: August 28, 2018
Place: Mumbai

K SARAVANAN
ADJUDICATING OFFICER