

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO. EAD-9/SM/99-102/2018-19]**

**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 AND 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:

<b>Omkar Overseas Limited</b> <b>PAN:AAACO1827C</b>	<b>Champalal Gopiram Agarwal</b> <b>PAN:AAPPA7695A</b>
<b>Shankarlal Gopiram Agarwal</b> <b>PAN: AAPPA7694B</b>	<b>Subhashchandra Omkarmal Agarwal</b> <b>PAN:AAPPA7696D</b>

**In the matter of M/s. Omkar Overseas Limited**

**Facts of the Case:**

1. Securities and Exchange Board of India ("SEBI") pursuant to investigation into the trading activities of certain entities in the scrip of Omkar Overseas Limited (hereinafter referred to as OOL/Omkar/Company) for the period from October 01, 2009 to April 01, 2010 (hereinafter referred to as "Investigation period/IP") had observed the following based on Investigation :

**Company and its Directors (Champalal Gopiram Agarwal, Shankarlal Gopiram Agarwal and Subhashchandra Omkarmal Agarwal)**

- 1.1. had failed to disclose its quarterly results within 45 days from the end of the quarter for quarter ending September 2009, December 2009, March 2010 and June 2010 to the Stock Exchange in violation of Clauses 41(I) (c) and (d) of the Listing Agreement read with Section 21 of Securities and Contract Regulation Act (hereinafter referred to as "SCRA").
- 1.2. had failed to inform Stock Exchange regarding the board meeting which took place on October 30, 2009 and January 31, 2010 in which the financial results of Quarter ending September 2009 and December 2009 were considered as well and did not inform the outcome of those Board meeting to the Stock Exchange in violation of 41(III) (a) and (b) of the Listing Agreement read with Section 21 of SCRA.
- 1.3. had failed to ensure that code of conduct adopted was in consonance with SEBI (Prohibition of Insider trading Regulation 1992 (hereinafter referred to as "PIT Regulations"), failed to ensure prompt closure of trading window during the publication of financial results for the quarter ended September 2009 and December 2009 and failed to ensure disclosure of price sensitive information on a continuous basis thus violated Clause 3.2 of the code of conduct as specified in Part A of Schedule I read with Regulation 12(1) and 12(2) of the PIT Regulations, Clause 2.1 of Schedule II read

with Regulation 12(1) and 12(2) of PIT Regulations and Clause 1.2 of PART A of Schedule I under Regulation 12(1) and 12(2) of PIT Regulations respectively.

2. In this order wherever PIT Regulations is mentioned it should be referred to as PIT Regulations read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015.
3. All Noticee shall be collectively hereinafter referred to as Noticees.

**Appointment of Adjudicating Officer:**

4. SEBI had appointed Shri D.S. Reddy as Adjudicating Officer vide order dated May 08, 2015 under Section 19 of the SEBI Act, 1992 read Section 15-I of SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as AO Rules) and under Section 23-I of SCRA read with Rule 3 of Securities Contracts (Regulation) (Procedure For Holding Inquiry And Imposing Penalties By Adjudicating Officer) Rules, 2005 (hereinafter referred to as SCRA Rules) to inquire and adjudge under Section 15HB of SEBI Act and 23A(a) of the SCRA 1956 on Noticees for the alleged provisions of law. Subsequently, pursuant to the transfer of the case, the undersigned have been appointed as Adjudicating Officer (AO), vide order dated May 18, 2017 for the aforesaid Noticees.

**5. Show Cause Notice, Reply and Personal Hearing:**

Show Cause Notice dated July 03, 2015 (hereinafter referred to as 'SCN') was served on Noticees in terms of Rule 4 of AO Rules and SCRA Rules read with Section 15 (I) of SEBI Act, 1992 and 23(I) of SCRA calling upon the Noticees to show cause as to why an inquiry should not be held against them and penalty should be not imposed on Noticees under Section 15HB of the SEBI Act, 1992 and Section 23(A)(a) of SCRA for the alleged provisions of law.

**6. Status of the SCN:**

The SCN issued to all Noticees was delivered except Champalal. The undelivered SCN was duly affixed at the last known address of Champalal.

**7. Inspection of Documents:**

All Noticees had sought inspection of documents which was duly provided on November 05, 2015 and on July 08, 2016.

**8. Filing of Settlement Application:**

The Noticees had communicated that they had filed settlement application before SEBI. I note that the settlement application was rejected by SEBI as request of Noticees for the condonation of delay was not acceded by SEBI.

9. No reply was received from the Noticees.

**10. Personal Hearing:**

- 10.1. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Rules, Hearing Notice was issued to Noticees on January 19, 2018 granting an opportunity of personal hearing before the undersigned on February 09, 2018 along with the reminder to reply to SCN. On behalf of the Noticees, the Authorized

Representative (hereinafter referred to as "AR") appeared before me seeking an adjournment of Personal Hearing.

- 10.2. Further personal hearing opportunity was extended to the Noticees on February 26, 2018, March 20, 2018 and on both of these dates, Noticees did not appeared and had sought adjournment for medical reasons and for Inspection of documents respectively
- 10.3. An e-mail was sent to Noticees stating inspection of documents was already conducted by them on November 06, 2015 and further documents sought by them was provided on July 08, 2016.
- 10.4. Noticees through their AR finally appeared before me on April 17, 2018 and made oral submission and informed that written submission would be made soon.
- 10.5. AR on behalf of the Noticees sought for adjournment of the personal hearing for a further period of month.

11. Noticees vide letter dated April 26, 2018 broadly made the following submission:

- 11.1. *It is submitted that the delay if any, in making the stipulated disclosures was unintentional and inadvertent. Further, due to delayed disclosure, the Noticees neither got any undue benefit nor the investors incurred any loss.*
- 11.2. *it is submitted that no evidence or proof has been adduced to SCN to show that the OOL failed to disclose the results to the concerned stock exchange within the prescribed time limit for the quarters. It is submitted that the relevant Noticees have disclosed the quarterly results to BSE within the time limit prescribed in Listing Agreement. It is also submitted that OOL did inform the concerned stock exchange about the outcome of the Board Meeting but the concerned stock exchange failed to upload the same and no proof of such has been provided to the Noticees along with the SCN. Therefore, it is stated that OOL along with its non-independent director did not violate Clause 41(I)(c) & (d) and Clause 41(III) (a) and (b) of the Listing Agreement read with Section 21 of SCRA. Further, it is stated that Section 21 cannot be violated by individuals as the Listing Agreement is with the Company and not with the individuals.*
- 11.3. *It is submitted that the meaning and or the crux of Model Code of Conduct under SEBI (PIT) Regulations has to be adopted by the company and it is not necessary to write the same as verbatim. Important events in the company are first put in the Board Meeting and once approved by the Board in its meetings the results of the Board Meetings are made public. Therefore, the closure of the trading window is from the time of intimation of closure of trading window which shall not be later than the date of Board Meeting and the trading window will re-open after the outcome of the Board Meeting is made public. Therefore, Code of Conduct as adopted by OOL is definitely in line with Model code of Conduct.*
- 11.4. *It is submitted that the Noticees had not been provided with the letter or email of the concerned stock exchange stating that it received unaudited results for the quarter ending September 2009 on November 23, 2009 and for quarter ending December 2009 on July 30, 2010. Further, the Noticees are not made aware of any proof that the concerned stock exchange has submitted to SEBI Investigating Authority for making such averments. Even SCN failed to provide any such proof. It is submitted on behalf of the Noticees that the unaudited financial results were forwarded to the concerned stock exchange well within the prescribed time limit as mentioned in the listing agreement. There have always been instances wherein lapses have occurred on the part of BSE and they have failed to put it on the website. If the concerned stock exchange fails to put it on its website then the Noticees cannot be made liable for the fault of the concerned stock exchange. In the absence of any proof and communications between the concerned stock exchange and SEBI, it is submitted that the Noticees viz. OOL, Mr. Champalal Agarwal, Mr. Shankarlal Agarwal and Mr. Subhash Chandra Agarwal have not violated the provisions of Clause 1.2 and 3.2 of Code of Conduct read with Regulations 12(1) and 12(2) of SEBI (PIT) Regulations as they have very well adopted the code of conduct by keeping the trading window closed at the required time.*

11.5. *It is true that the quarterly financial results of OOL for the quarter ended September 2009 were approved in the Board Meeting held on October 30, 2009 and for the quarter ended December 2009 approved in Board Meeting held on January 30, 2010 but it not correct to say that the said results were provided to the concerned stock exchange on November 19, 2009 and July 30, 2010 respectively. The relevant Noticees forwarded the results to the concerned stock exchange (on October 31, 2009 and January 30, 2010) i.e. well within the time limit as prescribed in the listing agreement. It is further submitted that Noticees have not been provided the communication between the concerned stock exchange and SEBI and the proof that the concerned stock exchange had received the communication in this regard from the Noticees only on November 23, 2009 and July 30, 2010. It is further submitted that concerned stock exchange had received the said results but have forgotten to upload the same on its website on the day of receipt of the same and to hide its failure the concerned stock exchange would have stated these baseless averments. It is further submitted that the Noticees are not in receipt of any proof that the concerned stock exchange had provided to SEBI about the receipt of results from us on the dates alleged by the concerned stock exchange. Therefore, the burden to prove that the concerned stock exchange actually received the results on the date as alleged by the concerned stock exchanges on SEBI and the concerned stock exchange and not on the Noticees. It is therefore, submitted that consideration of period from October 30, 2009 to November 19, 2009 and January 30, 2010 to July 31, 2010 as closure of trading window by SEBI is faulty and the closure of the trading window as stated by the company is right and correct. Therefore, the question of violation of Clause 1.2 and clause 3.2 of Code of Conduct specified in Part A of Schedule I read with Regulation 12(1) of SEBI (PIT) Regulations by OOL, Mr. Champalal Agarwal, Shankarlal Agarwal, and Subhash Chandra Agarwal do not arise at all.*

#### **ISSUES FOR CONSIDERATION AND FINDINGS :**

12. I have carefully perused the replies and submissions of the Noticees and the documents available on record. The issues that arise for consideration in the present case are:

##### **Issue I: Whether the following was violated by Noticees**

- a) **Clauses 41(I)(c) and (d) and 41(III)(a) and (b) of the Listing Agreement read with Section 21 of SCRA;**
- b) **Clause 2.1 of the Code of Conduct specified in Schedule II read with Regulation 12(1) and 12(2) of PIT Regulations and Clause 1.2 of the Code of Conduct specified in Part A of Schedule I read with Regulation 12(1) and 12(2) of PIT Regulations;**
- c) **Clauses 3.2 and 1.2 of the Code of Conduct specified in Part A of Schedule I read with Regulation 12(1) and 12(2) of the PIT Regulations.**

**Issue II Does the violation, if any, attract monetary penalty under Section 15HB and 23(A)(a) on Noticees?**

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

13. Before proceeding further, I would like to refer to the relevant provisions of law.

##### **Relevant provisions of the SCRA:**

##### **Submission and Disclosure of Interim and Annual Financial Results**

**Clause 41.** *The company agrees to comply with the following provisions:*

##### ***(I) Preparation and Submission of Financial Results***

**(c)** *The company has an option either to submit audited or unaudited quarterly and year to date financial results to the stock exchange within forty-five days of each quarter (other than the last quarter), subject to the following:*

*(i) In case the company opts to submit unaudited financial results, they shall be subjected to limited review by the statutory auditors of the company (or in case of public sector undertakings, by any practicing Chartered Accountant) and a copy of the limited review report shall be furnished to the stock exchange within forty-five days from the end of the quarter.*

(ii) In case the company opts to submit audited financial results, they shall be accompanied by the audit report.  
(d) (i) In case the company opts to submit unaudited financial results for the last quarter, it shall also submit audited financial results for the entire financial year, as soon as they are approved by the Board. Such unaudited financial results for the last quarter shall also be subjected to limited review by the statutory auditors of the company or in case of public sector undertakings, by any practicing Chartered Accountant) and a copy of the limited review report shall be furnished to the stock exchange within forty-five days from the end of the quarter.

**(III) Intimation of Board Meeting**

(a) The company shall give prior intimation of the date and purpose of meetings of the Board or Committee in which the financial results will be considered under sub-clause (II)(a) or (II)(e), as the case may be, at least seven clear calendar days prior to the meeting (excluding the date of the intimation and the date of the meeting).

(b) The company shall also simultaneously issue a public notice in at least in one English daily newspaper circulating in the whole or substantially the whole of India and in one daily newspaper published in the language of the region, where the registered office of the company is situated.

**Conditions for listing.**

21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange

**Relevant Provision of 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.

**12(2)** The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations

**SCHEDULE I**

**[Under regulation 12(1)]**

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

**1.2** The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing; of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.

Explanation : For the purpose of this Schedule, the term 'designated employee' shall include :—

(i) officers comprising the top three tiers of the company management;

(ii) the employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct.

**3.2 Trading window**

**3.2.1** The company shall specify a trading period, to be called "trading window", for trading in the company's securities. The trading window shall be closed during the time the information referred to in para 3.2.3 is unpublished.

**3.2.2** When the trading window is closed, the employees/directors shall not trade in the company's securities in such period.

**3.2-5** All directors/officers/designated employees of the company shall conduct all their dealings in the securities of the Company only in a valid trading window and shall not deal in any transaction involving the purchase or sale of the company's securities during the periods when trading window is closed, as referred to in para 3.2.3 or during any other period as may be specified by the Company from time to time.

**SCHEDULE II**  
**[See under regulation 12(2)]**  
**CODE OF CORPORATE DISCLOSURE PRACTICES FOR PREVENTION OF INSIDER TRADING**

**2.0 Prompt disclosure of price sensitive information**

**2.1** Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.

**Relevant provision 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.

**Findings:**

14. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder:

14.1. In regard to the submission by the Noticees that necessary documents were not provided to rebut the allegations made against them, I note that the email of the BSE confirming the date of receipt of quarterly results from OOL was not provided to the Noticees, however, I note inspection of documents was provided to the Noticees and additional documents as sought by the Noticees were also duly provided. Here I note that Noticees were having an opportunity to access all the desired documents during inspection of documents. I note that the relevant pages of investigation report and the documents relied upon were already furnished to the Noticees at the time of inspection conducted by them on November 06, 2015 and further documents as sought by Noticees were provided on July 08, 2016. Noticees did not sought copy of the BSE email and hence I find that there is no prejudice caused to the Noticee by not furnishing of documents which Noticees never asked. I also note that Noticees have not produced any cogent document in support of their claim that all required filings were made on time. In the absence of any document to prove that filing as claimed by the Noticees were made well in time, I am inclined to take cognizance of email of BSE in this regard wherein BSE has specifically mentioned the dates on which it had received the disclosures from OOL.

14.2. In this context, it is relevant to quote the observations of the Hon'ble Calcutta High Court in the matter of Arun Kumar Bajoria (appellant) vs SEBI in Writ Petition No 331 of 2001 decided on March 27, 2001. The Hon'ble Calcutta High Court had made the observations in the context of claims and counter claims made by the parties w.r.t compliance reports claimed to have been sent by the appellant to BSE, which was not received by the Exchange. The Hon'ble Calcutta High Court had observed that "..... The agency through which the document is sent acts as the agent of the sender and if a dispute were to arise whether the said document has been received by the addressee or not, the onus would be on the sender to establish the fact by clear and cogent evidence in this regard. Admittedly, the appellant has not placed on record any acknowledgement received from the BSE in this regard to the mails that were allegedly

*sent containing the compliance reports. On the other hand, we have on record a letter from the BSE specifically stating that it had not received the compliance reports for the aforesaid quarters from the appellant.”*

- 14.3. I would also like to place reliance on the observations made by Hon’ble SAT in the matter of Mega Resources Ltd. vs SEBI wherein Hon’ble SAT, in its order dated March 19, 2002 observed that *“It is a well-accepted fact that all the letters posted need not necessarily in every case reach the addressee, though everyone would like to see that his letter reaches the addressee. There is no way to ensure the reach of the letter sent by ordinary post. That is why the postal authorities have devised several modes of postage such as registered post, etc. to meet the requirements of postal users. Those who want to ensure service of the postal article on the addressee they are at liberty to use one of these methods. In the absence of any evidence otherwise, one cannot ignore the addressee’s version of not getting the letter..... Disclose is to expose to review or knowledge anything, which before was secret, hidden or concealed. Thus the requirement is that the information should reach the person to whom it is meant. The obligation does not end by simply posting the information in a letterbox.”*

**15. Findings in respect to Clauses 41(I)(c) and (d) and 41(III)(a) and (b) of the Listing Agreement read with Section 21 of the SCRA by Noticees.**

- 15.1. I note from the investigation report that OOL had delayed in disclosing the quarterly result to BSE. The details of disclosure to BSE as under:

<b>Quarter Ending</b>	<b>30-Sep-09</b>	<b>31-Dec-09</b>	<b>31 –Mar-10</b>	<b>30 –Jun-10</b>
Date of Information to BSE (as per confirmation from BSE)	23-Nov-09	30-Jul-10	25-Aug-10	25-Aug-10
Date of Board Meeting in which results approved	Oct 30, 2009	Jan 30, 2010	June 15,2010	August 11,2010

- 15.2. From the records available before me and submission made to the Investigation Department by the company, I note that for the quarter ended September 30, 2009, December 2009, March 31 2010 and June 30 2010, the quarterly results were received by BSE on November 23, 2009, July 30, 2010, August 25, 2010 and August 25, 2010 respectively from OOL which was not within 45 days of the close of the quarter.
- 15.3. In view of the above, I conclude that Company has delayed in disclosing to BSE the quarterly result within 45 days from the end of each quarter and hence I conclude that it has violated Clause 41(1)(c ) and (d) of the Listing Agreement read with Section 21 of SCRA.
- 15.4. Further, it was alleged that the company had not given prior intimation to BSE about the Board Meeting to be held on October 30, 2009 and January 30, 2010 in which the financial results of quarter ended September 2009 and December 2009 were being considered and failed to issue public notice in the newspaper about the outcome of the Board Meeting. In this regard I note that Company has not produced any cogent evidence to substantiate its claim that it had given prior intimation to BSE about the said Board meetings and also the outcome of the said Board meeting, therefore I conclude that Company did not give intimation as per Clause 41(III)(a) and (b) of Listing Agreement read with Section 21 of SCRA.

- 15.5. Noticees has contended that violation of Section 21 of SCRA is applicable to company and not to individuals. I accept the contention and conclude that since no specific duty of disclosing the relevant information as per the listing agreement is given to Directors of the company and the requirement of complying the clauses of listing agreement lies on the company. Therefore I conclude the violation of Clause 41(1) (c ) and (d) and Clause 41(III)(a) and (b) of Listing Agreement read with Section 21 of SCRA do not stand established against Champalal, Shankarlal and Subhashchandra (Directors of OOL) and stands established against OOL and is liable for monetary penalty under Section 23A(a) of SCRA.

## 16. Findings with respect to Code of conduct prescribed under PIT Regulations:

- 16.1. Clause 2.1 of Schedule II – Code of corporate disclosure practices for prevention of insider trading clearly states that *all price sensitive information should be disclosed on a continuous basis by the listed company*. Price Sensitive Information as defined under Regulation 2(ha) *“price sensitive information” means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company*.

*Explanation.—the following shall be deemed to be price sensitive information:—*  
*(i) Periodical financial results of the company;*

- 16.2. Based on records before me, I note that Noticees has not informed BSE about the price sensitive information on time (quarterly financial results of the company on continuous basis) has resulted in violation of Clause 2.1 of Code of Conduct specified in Schedule II of PIT Regulations. Hence it is concluded that the charge in respect of Noticees stands established.

- 16.3. I note that as Clause 3.2 of Code of Conduct the company has to specify the closure of trading window during the declaration of financial results(quarterly, half yearly and annually) and the trading window shall be opened 24 hours after the information of financial results is made public. I note from the investigation report that the company had provided the date for closure of trading window for publishing the financial results for the quarter ending September 2009 and December 2009 to the Investigation Department is as follows:

Quarter Ended	Dates for preparation of Quarterly results	Date of Approval By Audit Committee	Date of Adoption in the Board Meeting	Date of Closure of Trading Window
Sep,09	30th Oct,09	30th October 2009	30th October 2009	30th October 2009 to 31st October 2009
Dec,09	30th Jan,10	30th January 2010	30th January 2010	30th January 2010 to 31st January 2010

- 16.4. However, as per the information received from BSE, the exchange had received the unaudited results for quarter ended September 2009 on November 23, 2009 vide letter dated November 19, 2009 from OOL. Further, the exchange also had informed that the results for quarter ended December 2009 was received on July 30, 2010. Considering the above, the trading window closure period should be for the quarter ending September 2009 from October 30, 2009-November 20, 2009 and for the quarter ending December 2009 from January 30, 2010-July 31, 2010.

- 16.5. In view of the above, I conclude that Noticees have violated Clause 3.2 of Code of Conduct specified in Part A of Schedule I read with Regulation 12(1) and 12(2) of PIT Regulations by not keeping the trading window closed before making the



financial results of quarter ended September 2009 and December 2009 public which was on November 19, 2009 and July 30, 2010 respectively.

17. Further, I note that in the code of conduct adopted by OOL, trading window closure provision was not in sync with the model code of conduct prescribed under PIT Regulations.

17.1. The submission made before me by the Noticee that “meaning and or the crux of Mode Code of Conduct under PIT Regulation has to be adopted by the company and it is not necessary to write the same as verbatim” is untenable. I find that Regulation 12 (1) had advised 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. However, the company has diluted Clause 3.2 of code of conduct specified in Part A of Schedule I read with Regulation 12(1) and 12(2) of the PIT Regulations and therefore, OOL has violated the Clause 3.2 of code of conduct specified in Part A of Schedule I read with Regulation 12(1) and 12(2) of the SEBI PIT Regulations and Noticee Subhashchandra being the Compliance Officer was responsible for setting forth policies, procedures of the company and adherence to the rules and implementation of the code of conduct under the overall supervision of the Board of the listed company i.e Noticee Champalal being the Chairman and Managing Director and Shankarlal being the Director of the Company and thereby Noticees-OOL, Subashchandra, Champalal and Shankarlal have violated the Clause 1.2 of the Code of Conduct specified in Part A of Schedule I read with Regulation 12(1) and 12(2) of the PIT Regulations.

**Issue II Does the violation, if any, attract monetary penalty under Section 15HB on OOL, Champalal, Shankarlal and Subashchandra and under Section 23A(a) on OOL;**

18. As concluded above, the allegation levelled against OOL and its Directors and Compliance officer stands established and hence liable for penalty under Section 15HB of the SEBI Act and violation of non-compliance of SCRA stands established against OOL and hence liable for penalty under 23A (a) of SCRA.

***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 shall not be less than one lakh rupees but which may extend to one crore rupees.*

**Relevant provisions of the SCRA:**

***Penalty for failure to furnish information, return, etc.***

**23A.** *Any person, who is required under this Act or any rules made there under,—*

*(a) to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefore in the listing agreement or conditions or bye-laws of the recognised stock exchange, 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 for each such failure;*

**Issue III: If so, what should be the quantum of monetary penalty?**

19. While determining the quantum of penalty under Section 15 HB and 23A(a) it is important to consider the factors stipulated in Section 15J of SEBI Act and 23J of SCRA , which read as under:-

*Factors to be taken into account by the adjudicating officer 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.*

20. With regard to the above factors, it may be noted that the investigation report has not quantified the profit/loss for the violations committed by the Noticees. It is not possible from the material available on record to ascertain the disproportionate gain or unfair advantage made by the Noticees or the amount of loss caused to an investor or group of investors as a result of the default. The Noticees by its failure to make true and correct disclosures, have severely impaired the integrity of the disclosure system put in place by the regulator and has deprived the investors of the significant information at the relevant time. Hence its actions warrant the imposition of penalty.

### ORDER

21. In view of the above, after considering all the facts and circumstances of the case, the material available on record, the submission made by the Noticees, in exercise of the powers conferred upon me under Section 15-I of SEBI Act, 1992 on Noticee(s) OOL, Champaklal, Shankarlal and Subashchandra and under 23-I of SCRA on Noticee –OOL

Name Of The Noticee	Violations Provisions	Penalty Provision under Section SEBI Act, 1992	Amount of Penalty (Rs.)
Omkar Overseas Ltd	Clause 41(I)(c) and (d) and Clause 41(III)(a) and (b) of Listing Agreement r/w Section 21 of SCRA,1956	Under section 23A(a) of SCRA	5,00,000 (Rs Five lakhs only)
Omkar Overseas Ltd	Clause 3.2 and Clause 1.2 of the code of conduct as specified in Part A of Schedule I read with Regulation 12(1) and 12(2) of the PIT Regulations and Clause 2.1 of Schedule II read with Regulation 12(1) and 12(2) of PIT Regulations	under Section 15HB of SEBI Act, 1992	5,00,000 (Rs Five Lakhs only) jointly and severally
Champalal Gopiram Agarwal			
Shankarlal Gopiram Agarwal			
Subhashchandra Omkarmal Agarwal			

22. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favor 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
RT GS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

23. The Noticees shall forward said Demand Draft or the details/confirmation of penalty so paid through e-payment to the General Manager (Enforcement Department - DRA- II) 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](mailto:tad@sebi.gov.in):

Date	
Department of SEBI	
Name of Intermediary/other Entity	
Type of Intermediary	
SEBI Registration Number (if any)	
PAN	
Amount (in Rs.)	
Purpose of payment (including the period for which payment was made e.g Quarterly, annually)	
Bank Name and Account Number from which payment is remitted	
UTR No	

24. In terms of Rule 6 of the Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

**Date: August 20, 2018**  
**Place: Mumbai**

**SAHIL MALIK**  
**ADJUDICATING OFFICER**