

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AK/AO- 167/2013]**

**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 Sunil Gokhale

PAN No. AHPPG9709A

In the matter of

M/s. Bajaj Finance Ltd

FACTS OF THE CASE IN BRIEF

1. SEBI received a reference from Bajaj Finance Ltd (hereinafter referred to as "The Company") that one of its employee Shri Sunil Gokhale, General Manager-HR of the company (hereinafter referred to as "The Noticee"), who had resigned and was on notice period, last working date being 04.08.2012, had sold 4,702 shares of the company from the shares allotted to him, upon exercise of stock options granted to him. It was *inter alia* informed therein that by the aforesaid sale of shares, the Noticee had violated the requirement of obtaining pre-clearance for the said sale of shares from the company's compliance officer, as also, the requirement of making disclosure to the company and the

stock Exchanges of the change in shareholding exceeding the prescribed limit within two days.

2. Analysis was conducted by SEBI with regard to the trading activities in the scrip of the company from 01.06.2012 to 31.08.2012. It was observed that the Noticee, who was the employee in the company till 04.08.2012 as per the company's aforesaid letter, had sold 4702 shares between 30.07.2012 to 03.08.2012 resulting in the Noticee shareholding exceeding Rs. 5 lacs in value since the last disclosure. The shares of the company were listed at Bombay Stock Exchange (hereinafter referred to as '**BSE**') and National Stock Exchange (hereinafter referred to as '**NSE**').
3. Investigation observed that the Noticee was under an obligation to make disclosures under Regulation 13(4) read with 13(5) of SEBI (Prohibition of Insider Trading) (hereinafter referred to as '**PIT Regulations**'). However allegedly no such disclosure was made by the Noticee under Regulation 13(4) read with 13(5) of PIT Regulations. It was therefore alleged that through the aforesaid act, the Noticee has violated Regulation 13(4) read with 13(5) of PIT Regulations. Consequently, the Noticee was liable for penalty under Section 15 A(b) of SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

4. Smt. Barnali Mukherjee was appointed as Adjudicating Officer on 17.04.2013 under section 15-I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**SEBI Rules**') to inquire into and adjudge the alleged violations committed by the Noticee.
5. Consequent upon the transfer of Smt. Barnali Mukherjee, I was appointed as the Adjudicating Officer, vide order dated 08.08.2013, under Section 15-I of the SEBI Act read with rule 3 of SEBI Rules to inquire into and adjudge under Section 15A(b) of the SEBI Act for the alleged violation of PIT Regulations committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A Show Cause Notice (hereinafter referred to as “SCN”) Ref. No. EAD/BM/VRP/10502/2013 dated 03.05.2013 was issued to the Noticee under rule 4(1) of SEBI Rules communicating the alleged violation of PIT Regulations as detailed below.

Date of sale of shares	Qty Sold at BSE	Qty Sold at NSE	Total Qty Sold at BSE & NSE	Average sell price at BSE Rs.	Average sell price at NSE Rs.	Total sale value Rs.	Remarks
30.07.12	Nil	1300	1300	N.A.	1045.19	13,58,747	Change exceeding Rs. 5 lacs in value
31.07.12	102	200	302	1043.92	1040.40	3,14,559.84	Change exceeding Rs. 5 lacs in value
01.08.12	300	400	700	1041.67	1042.05	7,29,321	
02.08.12	326	1174	1500	1043.35	1044.64	15,66,539.46	Change exceeding Rs. 5 lacs in value
03.08.12	150	750	900	1042	1042.86	9,38,445	Change exceeding Rs. 5 laics in value

7. From the above, it becomes apparent that the Noticee had violated Regulation 13(4) read with 13(5) of the PIT Regulations on 4 occasions. The Noticee was called upon to show cause as to why an inquiry should not be initiated against it and penalty be not imposed under Section 15 A(b) of the SEBI Act for the alleged violations.

8. The Noticee vide reply dated 12.05.2013 to the SCN has submitted that he had to take the difficult decision to leave the organization due to health reasons. The Noticee has further *inter alia* stated that there was an inadvertent contravention of the code of conduct for prevention of insider trading of the company from his side during the last 6 days of his tenure at the organization, and, that he had submitted an apology letter to the compliance officer of the company, once the same was brought to his notice. The Noticee has further *inter alia* stated that at the time of sale of the said securities, he was not privy to any price sensitive information, as his replacement was in place in April 2012, and, he had handed over all his responsibilities to him long before. The Noticee has *inter alia* further also submitted that he had exercised 9,401 options vested in him during the short window, thus, costing approximately Rs. 68 laacs and had taken loan against shares from HDFC Bank and Axis Bank for about Rs. 53.50 lacs, hence, the entire sale of 4,702 shares for about Rs. 49.10 lacs was done with a single point agenda to repay all the loans before stepping out of employment.
9. In the interest of natural justice and in terms of rule 4(3) of the SEBI Rules, the Noticee was granted an opportunity of hearing on 02.09.2013 vide notice dated 14.08.2013 and the said notice was duly acknowledged by the Noticee. Accordingly, the Noticee appeared in person and reiterated the submissions made vide reply dated 12.05.2013. Further, the Noticee vide letter dated 05.09.2013 provided a copy of company's letter dated 25.07.2012 accepting the Noticee's resignation. The Noticee *inter alia* vide his aforesaid letter dated 05.09.2013 further submitted date wise details in respect of stock options granted, when vested, when exercised, exercise price, etc. The details of shares purchased and sold from the time of submission of resignation letter to the company, along with the mode of such acquisition/sale, was also submitted along with the aforesaid reply. Further the Noticee vide email dated 10.10.2013 has stated that he has never been in a situation so as to be covered under SAST Regulation 1997 & 2011, and, so far as PIT Regulation is concerned, the Noticee vide the said email has confirmed that there has

been violation only once, which is under discussion, and, the circumstance were submitted in the replies and during the hearing at SEBI Head Office.

CONSIDERATION OF ISSUES

10. I have carefully perused the written submissions of the Noticee and the documents available on record. It is observed that the allegation against the Noticee is that he has failed to make the relevant disclosure under the provisions of Regulation 13(4) read with 13(5) of the PIT Regulations.
11. The issues that arise for consideration in the present case are :
 - a. Whether the Noticee has violated the provisions of Regulation 13(4) read with 13(5) of the PIT Regulations in respect of sale of 4,702 shares between 30.07.2012 to 03.08.2012?
 - b. Does the violation, if any, attract monetary penalty under Section 15 A(b) of SEBI Act?
 - c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

FINDINGS

12. Before moving forward, it is pertinent to refer to the provisions of Regulation 13(4) read with 13(5) of the PIT Regulations, which reads as under:

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

Regulation

13. (1).....

(2).....

Continual disclosure.

(3).....

(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.

(5) The disclosure mentioned in sub-regulations (3) and (4) 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.

13. The issue for consideration is whether the Noticee failed to make the relevant disclosures under Regulation 13(4) read with 13(5) of the PIT Regulations in respect of the sale of 4,702 shares between 30.07.2012 to 03.08.2012. As per Regulation 13(4) of PIT Regulations, I find that any person who is a director or officer of a listed company has to disclose to the company and the stock exchange where the securities are listed, within two working days, if change in holdings of such person from the last disclosure, exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower. I find from the company's letter dated 29.08.2012 addressed to SEBI that the Noticee was an officer of the listed company between 30.07.2012 to 03.08.2012. Further, I find from Noticee's letter dated 05.09.2013 that Noticee had in all exercised 9,401 options vested upon him (7,126 options on 24.07.2012 and 2,275 options on 30.07.2012). I further find from Noticee's aforesaid letter dated 05.09.2013, that out of the same, Noticee had sold 4,702 shares in the company from 30.07.2012 to 03.08.2012 for a total gross value of approx. Rs. 48.80 lacs. Presuming that the Noticee would have made continual disclosure under the PIT Regulations at the relevant point of time, I find that the Noticee would have been required to make disclosure on 4 occasions. I observe from records that the Noticee has failed to make any disclosure under Regulation 13(4) read with 13(5) of the PIT Regulations with respect to sale of the aforesaid shares. I further find

from Noticee's letter dated 12.05.2013 that he has admitted to have inadvertently contravened the PIT Regulations. Thus, from all of the above, it is established without doubt that the Noticee has violated the provisions of Regulation 13(4) read with 13(5) of the PIT Regulations.

14. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. 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 and hence the intention of the parties committing such violation becomes wholly irrelevant..."*. Further in the matter of *Ranjan Varghese v. SEBI* (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed *"Once it is established that the mandatory provisions of Takeover code was violated the penalty must follow."*
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:

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,—

(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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

16. While determining the quantum of monetary penalty under Section 15 A(b), I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

"15J - 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.”

17. The main objective of the PIT Regulation in respect of the disclosure norms is to bring about the transparency in the market and aim at preventing information asymmetry that may preclude any investor from equal treatment and opportunity with respect to the aforesaid information. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decisions. Thus, the cornerstone of the PIT regulations is investor protection. Continual disclosure under PIT Regulations aims to make insider trading transparent by facilitating exposure of any illegal trade, and, thereby, serving as a deterrent.
18. Further, any transaction which requires compliance of the PIT Regulations, if not complied, is always a serious matter, even if the transaction is otherwise in compliance, since the shareholders/ investors are deprived of the information. As per Section 15A (b) of the SEBI Act, the Noticee is liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Further, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticee. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticee. Also, the Noticee has

confirmed that there has not been any non-compliance with respect to any disclosure requirements under SAST and PIT Regulations by the Noticee in the past.

19. In addition to the aforesaid factors, I have also considered market capitalization of the company, the Noticee's trading percentage vis-à-vis the trading in the company's shares during the relevant period, and, the number of occasions that the Noticee would have been required to make disclosure under the alleged regulation in the present matter, as some of the mitigating factors while adjudging the quantum of penalty amount.
20. I find that the market capitalization of the company during the said period was approx. Rs. 4,000 crore. I further find that a total of 40,283 shares were traded on Exchanges BSE and NSE taken together, during the relevant period from 30.07.2012 to 03.08.2012, hence, the Noticees trading to the total traded quantity on BSE and NSE during the relevant period is approx. 11%. Further, presuming that the Noticee would have made continual disclosure under the PIT Regulations at the relevant point of time, the Noticee would have been required to make disclosure on 4 occasions. However, I find that the Noticee has failed to make the relevant disclosure under PIT Regulations on each such occasion that he was required to due to sale of 4,702 shares of the company from 30.07.2012 to 03.08.2012.

ORDER

21. After taking into consideration all the facts and circumstances of the case, I impose a penalty of **Rs. 2,00,000/- (Rupees Two lacs only)** under Section 15 A(b) on the Noticee Shri Sunil Gokhale which will be commensurate with the violations committed by the Noticee.
22. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Integrated

Surveillance Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

23. In terms of rule 6 of the Rules, copy of this order is sent to the Noticee, Shri Sunil Gokhale and also to the Securities and Exchange Board of India.

Date: 29.11.2013	ANITA KENKARE
Place: Mumbai	ADJUDICATING OFFICER