

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref No.: EAD-2/SS/VS/2019-20/2653]

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:

Mr. K Narasimhan
(PAN No.: AEPPN8046J)
H1A, Sunshine Apartments,
72, Jones Road, Saidpet, Chennai,
Tamilnadu-600015

In the matter of
Allsec Technologies Limited

1. Allsec Technologies Limited (hereinafter referred to as 'the Company/ATL') is a company having its shares listed on the Bombay Stock Exchange Limited (BSE) and National Stock Exchange of India Limited (NSE). During investigation into the irregularity in trading in the shares of the Company it was observed by SEBI that:-
 - a) On November 05, 2015, after market hours, the Company announced its quarterly financial results for September 2015 that its net profit after tax (NPAT) increased from ₹81 lac to ₹461 lac and its earning per share (EPS) increased from ₹0.53 to ₹3.
 - b) On November 06, 2015, the price of scrip of the Company opened at ₹81.25 from previous close price of ₹73.90 i.e. up by 9.95% and closed at a day's high of ₹81.25. The Company had, vide its email dated April 25, 2016 submitted that the preparation of financial statement of the quarter September 2015 started on October 20, 2015 which was an unpublished price sensitive information (UPSI). It also provided the details of persons including Mr. K. Narasimhan (Vice President-Finance and Accounts) who had access to the said UPSI for the quarter September 30, 2015.

- c) On further analysis of trading in scrip of the Company by the Key Management Personals (KMPs), it was observed that Mr. K. Narasimhan being one of the KMP/designated employees of the Company, had traded in the scrip on October 20, 2015 and had also entered into opposite transaction/contra trade within six months following the prior transaction. The details of his transactions are as follows:

Date	Gross Buy Vol	Gross Sell Vol	Net Trd Vol	Weighted Avg. Buy Price	Weighted Avg. Sell Price	Gross Buy Value	Gross Sell Value
30/09/2015	100	0	100	70.85	0	7085.00	0
07/10/2015	150	0	150	63.33	0	9500.00	0
09/10/2015	100	0	100	63.75	0	6375.00	0
20/10/2015	100	0	100	71.00	0	7100.00	0
26/11/2015	0	100	-100	0	138.675	0	13867.50
07/12/2015	0	100	-100	0	147.00	0	14700.00
11/12/2015	0	100	-100	0	131.75	0	13175.00
24/12/2015	0	100	-100	0	139.10	0	13910.00
30/12/2015	0	50	-50	0	147.75	0	7387.00
	450	450		66.80	140.09	30060.00	63040.00
Contra Trades= 450				Profit= ₹32,980			
08/04/2016	50	0	50	130.00	0	6500.00	0
26/05/2016	50	0	50	183.50	0	9175.00	0
13/06/2016	75	0	75	183.00	0	13725.00	0
29/06/2016	0	150	-150	0	273.50	0	41025.00
	175	150		168.0	273.50	25200.00	41025.00
Contra Trades= 150				Profit= ₹15,825			

- In terms of the provision of section 12A (d) and (e) of SEBI Act read with regulation 4(1) and clause 10 of the Code of Conduct under Schedule B read with regulation 9(1) and 9(2) of the SEBI (Prohibition of Insider Trading) Regulation, 2015 (hereinafter referred to as 'PIT Regulations'), Mr. K. Narasimhan was under obligation to not to trade in the shares of the Company as above.
- In view of the above, SEBI felt satisfied that there are sufficient grounds to inquire and adjudicate upon the aforesaid violation of section 12A (d) and (e) of SEBI Act read with regulation 4(1) of PIT Regulations and clause 10 of the Code of Conduct under Schedule B read with regulation 9(1) and (2) of PIT Regulations by Mr. K. Narasimhan. The relevant provisions of the SEBI Act and PIT Regulations are as follows:

Relevant provision of SEBI Act:

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

(a).....

(d) engage in insider trading;

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;

Relevant provision of PIT Regulations

Trading when in possession of unpublished price sensitive information.

4. (1) No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information:

Provided that the insider may prove his innocence by demonstrating the circumstances including the following: —

(i) the transaction is an off-market inter-se transfer between promoters who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision;

(ii) in the case of non-individual insiders: —

(a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and

(b) appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;

(iii) the trades were pursuant to a trading plan set up in accordance with regulation 5.

NOTE: When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession. The reasons for which he trades or the purposes to which he applies the proceeds of the transactions are not intended to be relevant for determining

whether a person has violated the regulation. He traded when in possession of unpublished price sensitive information is what would need to be demonstrated at the outset to bring a charge. Once this is established, it would be open to the insider to prove his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition.

Code of Conduct.

9. (1) The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.

NOTE: It is intended that every company whose securities are listed on stock exchanges and every market intermediary registered with SEBI is mandatorily required to formulate a code of conduct governing trading by its employees. The standards set out in the schedule are required to be addressed by such code of conduct.

(2) Every other person who is required to handle unpublished price sensitive information in the course of business operations shall formulate a code of conduct to regulate, monitor and report trading by employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.

NOTE: This provision is intended to mandate persons other than listed companies and market intermediaries that are required to handle unpublished price sensitive information to formulate a code of conduct governing trading in securities by their employees. These entities include professional firms such as auditors, accountancy firms, law firms, analysts, consultants etc., assisting or advising listed companies, market intermediaries and other capital market participants. Even entities that normally operate outside the capital market may handle unpublished price sensitive information. This provision would mandate all of them to formulate a code of conduct.

SCHEDULE B

[See sub-regulation (1) and sub-regulation (2) of regulation 9]

Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders

10. The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such

restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.

4. By a *communication-order* dated February 27, 2019, the undersigned has been appointed as Adjudicating Officer to inquire into and adjudge under section 15G and 15HB of the SEBI Act for the alleged violations by Mr. K. Narasimhan.
5. Accordingly, a notice to show cause (hereinafter referred to as 'SCN') No. EAD-2/SS/VS/7032/2019 dated March 18, 2019 was issued to Mr. K. Narasimhan (the Noticee) in terms of Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudication Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') read with section 15I of the SEBI Act, with regards to violations of provision of section 12A(d) and (e) of the SEBI Act read with regulation 4(1) of PIT Regulations and clause 10 of the Code of Conduct under Schedule B read with regulation 9(1) and (2) of PIT Regulations.
6. The Noticee vide his letter dated March 23, 2019 *inter alia* submitted following reply to the SCN and waived off the opportunity of personal hearing:
 - a. He was aware that being a designated employee/KMP he should not be involved in any trades of ATL shares and he had also not traded in ATL shares during the trading window closure. He believes that the trading window for the quarter ended September 2015 started only from October 21, 2015 which is 16 days ahead of the board meeting date. If the Board Meeting was on November 5, 2015, then the 14 days before that would be only October 21 and not October 20. The transaction dated October 20, 2015 was one off transaction in his entire career with ATL. The transaction was for mere 100 shares and he would not have gained anything substantially out of this purchase of 100 shares @ ₹71/- valuing ₹7100/- (maximum price of ATL reached was ₹520/- and profit would be only ₹45000/- at that price).
 - b. He has admitted that being a designated employee / KMP, he was not aware of the provisions about opposite transaction/contra trade within 6 months and he had made

some transactions in violation. However, he had paid the entire profit out of the contra trades totaling ₹48505/- to SEBI's Investor Protection and Education Fund.

7. I have considered the allegations against the Noticee, his the aforesaid submissions and the relevant material available on record. In this case the charges against the Noticee is of two fold. One, acquisition of 100 shares on October 20, 2015 in contravention of provisions of section 12A(d) and (e) of the SEBI Act read with regulation 4(1) of the PIT Regulations which prohibit insider trading. The other is opposite transaction/ contra trades by the Noticee in violation of clause 10 of the Code of Conduct under Schedule B read with regulation 9(1) and (2) of PIT Regulations.
8. With regard to first charge, it is noted that in order to attract the prohibitions under section 12A(d) and (e) of the SEBI Act read with regulation 4(1) of the PIT Regulations, the person should be an '*insider*', he should be in possession of UPSI and he should trade in shares of the concerned company while in possession of the said UPSI. In this case it is admitted fact that the Noticee was an '*insider*' at relevant time, the preparation of financial statement of the company for the quarter September 2015 was the UPSI and it came into existence on October 20, 2015. ATL vide its letter dated April 25, 2016 had confirmed that the Noticee was in possession of the UPSI on October 20, 2015 and this fact has not been disputed by the Noticee. Thus, it is established that he purchased 100 shares of the company on October 20, 2015 while he was in the possession of the said UPSI. The contention of the Noticee that the transaction in question was off market is not acceptable since the transaction in question is not of the nature of any of the trades those are listed in proviso to regulation 4(1) of the PIT Regulations. Further, the prohibitions under these provisions are not limited to the trading window closure.
9. Now, with respect to the allegation of contra trades, it is noted that in terms of Regulation 9(1) of the PIT Regulations, all listed companies and market intermediaries are obligated to frame a Code of Conduct as near to the Model Code of Conduct as set out in Schedule B to the PIT Regulations. This regulation casts obligation on a listed company and not on an insider who trades in violation of code of conduct so framed. The Note of clause of this sub-regulation further emphasises this intent. The similar obligation under Regulation 9(2) is intended for persons other than listed companies and market intermediaries. In this case,

ATL being a listed company, the allegation of non-compliance of Regulation 9(2) does not sustain.

10. A bare perusal of the various provisions stipulated under the Model Code of Conduct for listed companies under Regulation 9 of the PIT Regulations will make it clear that these provisions are formulated with a view to serve as a guiding charter for all concerned persons associated with the functioning of the company and their trading in its securities. For this purpose, designated employees are to be designated on the basis of their functional role ("designated persons") and are to be governed by an internal code of conduct governing dealing in securities.
11. It is also noted that Regulation 9 (3) of the PIT Regulations casts obligation on the listed company to designate a compliance officer to administer the code of conduct and monitor compliance. As explained in the Note appended to this regulation, the provision is intended that the designated compliance officer identified by the listed company has the responsibility to administer the code of conduct and monitor compliance.
12. Clause 10 of Schedule B which prescribes minimum standards for Code of Conduct to regulate, monitor and report trading by insiders requires that the Code of Conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. It further enables the compliance officer to grant relaxation from strict application of such restriction provided that such relaxation does not violate these regulations. The consequences of the violation of this stipulation of Code of Conduct is provided in clause 10 itself which provides that *"Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act."*
13. In this case, the Noticee was admittedly a designated person at the time of his impugned contra trades. It is admitted position that the Noticee had not traded in impugned shares of ATL during trading window closure as there is no charge of violation of clause 6 of the Code of Conduct. However, it is established position that he had sold 600 shares of ATL while being a designated person

within 6 months of his respective last acquisitions. The Noticee has admitted his default and the amount of ₹48, 805/- being the profit earned by him on account of his contra trades in question have been disgorged and credited to the SEBI's Investor Protection and Education Fund. In my view, considering the peculiar facts and circumstances of this case, such consequential action under clause 10 of the Code of Conduct is sufficient and commensurate with the default of the Noticee in this regard and I, therefore, do not deem this failure fit for imposition of penalty under section 15HB of the SEBI Act.

14. Coming to the adjudication with regard to the first charge under section 15G it is pertinent to mention that the penalty under this section is attracted when an '*insider*' deals in securities of a listed company '*on the basis of any unpublished price-sensitive information.*' It is settled position that when an insider deals in securities of a listed company while in possession of the UPSI, it is presumed that he dealt in such securities on the basis of the UPSI. However, such presumption is rebuttable one. In this case, it is established that the Noticee purchased 100 shares of the company on October 20, 2015 while he was in the possession of the said UPSI. Thus, presumption would be that he had purchased those 100 shares of the company on October 20, 2015 on the basis of the UPSI. But, from the trading pattern of the Noticee in the scrip of ATL prior to and post his impugned trades, it is noted that he had been buying and selling shares of ATL held by him much prior to and after October 20, 2015 and he continued to transact in those shares even after his resignation on August 31, 2016. These facts may also indicate possibly that the intermittent purchase of those 100 shares on October 20, 2015 could be a matter of coincidence.
15. Considering all the facts and circumstances brought before me during inquiry, I am not suggesting that in the strict sense, the Noticee has not failed in observing the negative command of section 12A(d) and (e) of the SEBI Act and regulation 4(1) of the PIT Regulations. But then, since the failure under section 15G is linked to penal consequences, one has to look to it in a realistic manner. Further, the penalty should be proportionate to the default.
16. In this context, it is also relevant to know the significance of the expression "*shall be liable to a penalty*" appearing in the section 15G. It is settled position that the expression "*shall be liable to a penalty*" occurring in many statutes has been held as not conveying the sense of an absolute obligation or penalty but merely imposing a possibility of such obligation or

penalty. (*The Supreme Court in Superintendent & Remembrancer of Legal Affairs to Govt. of West Bengal ; and State of WB V Abani Maity AIR1979SC 1029*). Further, in this regard, the provisions of section 15J has to be properly understood, and not to be mechanically applied.

17. In this case, having regard to the factors listed in section 15J and the guidelines issued by Hon'ble Supreme Court of India in *SEBI Vs Bhavesh Pabari Civil Appeal No(S).11311 of 2013* vide judgement dated February 28, 2019, it is noted that from the material available on record that the Noticee had sold the impugned 100 shares acquired by him in violation of section 12A (d) and (e) of the SEBI Act and regulation 4(1) of the PIT Regulations as a contra trade and the profit accrued to him on account of such sale of shares has also been disgorged as part of aforesaid profit of ₹48, 805/- and credited to the SEBI's Investor Protection and Education Fund. There is no quantifiable loss suffered by any investor on account of the solitary illegal trade of the Noticee.
18. In my view, the disgorgement of the profit gained by the Noticee would be proportionate and commensurate and in the peculiar facts and circumstances of this case the default of the Noticee does not deserve inflicting additional monetary penalty upon him under section 15G of the SEBI Act. The SCN dated March 18, 2019 is disposed of accordingly.
19. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: April 09, 2019
Place: Mumbai

Santosh Shukla
Chief General Manager &
Adjudicating Officer