

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/AO/96/2012]**

**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.**

Against

Smt. Kanaka Durga Ketineni

[PAN – AICPK6997L]

In the matter of

Innovative Tech Pack Ltd.

Background

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted a preliminary investigation into the dealing in the shares of Innovative Tech Pack Ltd. (hereinafter referred to as 'ITPL') and into the possible violations of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "Act") and various Rules and Regulations made there under for the period from March 31, 2010 to July 30, 2010. It was revealed that Smt. Kanaka Durga Ketineni (hereinafter referred to as the 'Noticee') was holding 6.80% capital of ITPL as on April 01, 2010 which got reduced to 4.18% as on June 11, 2010, and she did not make disclosures as required under Regulation 13 (3) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'PIT Regulations').

Appointment of Adjudicating Officer

2. In view of the above, SEBI vide order dated March 22, 2012 initiated adjudication proceedings under Section 19 read with section 15I of the Act and rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudicating Rules') and appointed Shri Satya Ranjan Prasad as the Adjudicating Officer (AO) to inquire into and adjudge under Section 15 A (b) of the Act for the alleged violation of the Noticee as mentioned above. Thereafter, SEBI vide order dated May 22, 2012 appointed the undersigned as the AO in the instant matter.

Show cause Notice, Reply and Personal Hearing

3. The AO issued a Show Cause Notice dated April 10, 2012 (SCN) under rule 4 of the Adjudicating Rules to the Noticee to show cause as to why an inquiry should not be held against her and penalty be not imposed under Sections 15 A (b) of the Act, for the alleged violation of Regulation 13 (3) of the PIT Regulations. The Noticee vide letter dated June 21, 2012 submitted her reply to the SCN
4. After considering the reply submitted by the Noticee, I decided to conduct an inquiry in the matter and accordingly granted an opportunity of personal hearing on September 18, 2012 vide hearing notice dated September 04, 2012. The Noticee vide her letter dated September 09, 2012 requested me to proceed with the matter based on her written submissions as she was unable to incur the travel expense to Mumbai and stated that it was

never her intention to violate any laws or Rules and Regulations made under the SEBI Act.

5. The Noticee inter alia submitted that she was neither aware of the existence of such requirement which mandates a disclosure on her part whenever she trades in a listed entity beyond the prescribed threshold limit nor was she informed by her stock broker. Trading in the scrip was suspended by BSE in the year 2002 and owing to the suspension there was blockage of funds until it was revoked in the year 2010. The Noticee sold her shares in order to regain money as soon as she was aware that trading had resumed in the scrip. She also purchased few shares from the market as on those days it was trading below the previous day's close. It was never the Noticee's intention to violate any law (s) or Rules and Regulations under the SEBI Act or any other prevailing laws for that matter. She is a responsible and a law abiding citizen, who would have complied with the law if she had knowledge of the same.
6. In view of the above, I am proceeding with the inquiry taking into account the submissions made by the Noticee, documents and material as available on record.

Consideration of Issues, Evidence and Findings

7. I have carefully perused the charges made against the Noticee as mentioned in the SCN and the documents available on record. In the instant matter the following issues arise for consideration and determination:
 - a. **Whether the Noticee has violated Regulation 13 (3) of the PIT Regulations?**
 - b. **Whether the Noticee is liable for monetary penalty**

prescribed under Section 15 A (b) of the SEBI Act for the aforesaid violation?

c. If, yes what should be the quantum of monetary penalty?

8. Before proceeding, I would like to refer to the relevant provisions of the PIT Regulations which reads as under:

Insider Trading Regulations

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

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Continual disclosure.

(3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company 49[in Form C] the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

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9. It is alleged in the SCN that the Noticee did not make disclosures upon sale of her shares of ITPL even though it resulted in a change of more than 2% in the total shareholding of the Noticee as required under regulation 13 (3) of the PIT Regulations.
10. I find from annexure II to the SCN that the Noticee was holding 466, 712 shares constituting 6.80% share capital/voting rights in ITPL as on April 01, 2010 and following various purchases and sales her shareholding decreased to 2.66% as on August 20, 2010 as detailed below:

<i>equity capital of the Company</i>						6,865,000
<i>date</i>	<i>Opening balance</i>	<i>gross buy</i>	<i>gross sale</i>	<i>net vol</i>	<i>closing balance</i>	<i>% of equity capital</i>
1-Apr-10	466,712	0	0	0	466,712	6.80
5-May-10	466,712	0	14532	14532	452,180	6.59
10-May-10	452,180	10000	0	10000	462,180	6.73
12-May-10	462,180	4000	0	4000	466,180	6.79
14-May-10	466,180	0	2000	-2000	464,180	6.76
17-May-10	464,180	0	1771	-1771	462,409	6.74
18-May-10	462,409	0	2000	-2000	460,409	6.71
20-May-10	460,409	0	5000	-5000	455,409	6.63
25-May-10	455,409	0	9775	-9775	445,634	6.49
26-May-10	445,634	0	16605	16605	429,029	6.25
28-May-10	429,029	10000	18535	-8535	420,494	6.13
31-May-10	420,494	1500	0	1500	421,994	6.15
1-Jun-10	421,994	100	0	100	422,094	6.15
1-Jun-10	422,094	0	9018	-9018	413,076	6.02
2-Jun-10	413,076	300	0	300	413,376	6.02
3-Jun-10	413,376	300	0	300	413,676	6.03
8-Jun-10	413,676	0	4165	-4165	409,511	5.97
9-Jun-10	409,511	0	34662	34662	374,849	5.46
10-Jun-10	374,849	21269	61731	40462	334,387	4.87
11-Jun-10	334,387	13894	61455	47561	286,826	4.18
14-Jun-10	286,826	0	13003	13003	273,823	3.99
21-Jun-10	273,823	0	15682	15682	258,141	3.76
26-Jul-10	258,141	0	9493	-9493	248,648	3.62
27-Jul-10	248,648	0	14626	14626	234,022	3.41
28-Jul-10	234,022	0	18510	18510	215,512	3.14
2-Aug-10	215,512	0	14005	14005	201,507	2.94
3-Aug-10	201,507	0	29	-29	201,478	2.93
9-Aug-10	201,478	0	7731	-7731	193,747	2.82
12-Aug-10	193,747	0	3324	-3324	190,423	2.77
17-Aug-10	190,423	0	5899	-5899	184,524	2.69
20-Aug-10	184,524	0	1691	-1691	182,833	2.66

11. According to Regulation 13 (3) of the PIT Regulations, any person who holds more than 5% shares for voting rights in any listed company is required to disclose, the number of shares or voting rights held by it or change in the voting rights to the company, even if the shareholding falls below 5% and also if there is a change in share holding from the last disclosure made

by it to the company under sub-regulation (1) of Regulation 13 of the PIT Regulations when the change exceeds 2% of the total shareholding or voting rights in the company. In this case the Noticee was holding 6.80% share holding which reduced to 4.18% upon the sale of the share holding. The sale of the shares has resulted in a change of more than 2% in the Noticee's share holding, which requires the Noticee to disclose the details of such change to ITPL. It is an admitted fact that the Noticee did not make disclosures to ITPL as required under the PIT Regulations.

12. It is established beyond doubt that the Noticee failed to make disclosures to the company upon her sale of shares which resulted in a change in her shareholding of ITPL by more than 2% disposal of shares, as required under the PIT Regulations and has therefore violated Regulation 13 (3) of the PIT Regulations warranting imposition of monetary penalty as per the provisions of Section 15 A (b) of the Act.
13. The Hon'ble Supreme Court of India in the matter of ***SEBI v. Shri Ram Mutual Fund*** [2006] 68 SCL 216(SC) *inter alia* held: ***“once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow.”***

14. Section 15 A (b) of the Act reads as follows:

15A. Penalty for failure to furnish information, return, etc. -

If any person, who is required under this Act or any rules or regulations made thereunder,-

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(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to 37[a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less];

15. While imposing monetary penalty it is important to consider the factors stipulated in section 15J 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.”*

16. The available records did not indicate the amount of disproportionate gain or unfair advantage, if any, made by the Noticee or the amount of loss caused to an investor or group of investors as a result of the default or whether the default is repetitive in nature.

17. The basic purpose of disclosure requirement inherent in the PIT Regulations is to bring about transparency in the securities market and to keep the market informed about substantial acquisition or sale of share holding in a listed company. The Hon'ble SAT in the matter of ***Milan Mahindra Securities Pvt. Ltd. Vs, SEBI (Appeal No. 66 of 2003 and order dated November 15, 2006.)***, ***regarding the importance of disclosures, has observed that “the purpose of these disclosures is to bring about transparency in the transactions and assist the regulator to effectively monitor the transactions in the market”. Thus any violation of the disclosure requirements has to be view seriously.***

Order

18. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15-I (2) of the SEBI Act, 1992, I hereby impose a monetary penalty of ₹ 1,00,000/- (Rupees One Lakh Only) under Section 15 A (b) on the Noticee. I am of the view that the said penalty is commensurate with the violations committed by the Noticee.
19. The penalty shall be paid by way of demand draft drawn 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 shall be forwarded to Division Chief, Integrated Surveillance Department (ISD), Securities and Exchange Board of India, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

20. In terms of the provisions of Rule 6 of the Adjudicating Rules the copies of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Date: November 06, 2012

Place: Mumbai

P. K. KURIACHEN

ADJUDICATING OFFICER