

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER No.: Order/KS/VC/2019-20/4152)

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of:

Kadiresan M Muthiah
(PAN: AQTPK5113B)

In the matter of

Bodhtree Consulting Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received an alert regarding trading in the scrip of Bodhtree Consulting Limited (hereinafter referred to as '**BCL**'/'**Company**'). In view of same, SEBI requested Bombay Stock Exchange (**BSE**) to examine the matter *inter-alia* for violations of provisions of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations**'), if any, in the dealings in the scrip of the company. BSE accordingly carried out the examination for the period from January-2017 to March-2018 and submitted its final report dated August 30, 2018 to SEBI.
2. In view of this BSE report, SEBI conducted examination in the scrip of BCL for the period of January 02, 2017 to March 26, 2018 (hereinafter referred to as '**examination period**') to examine whether the Directors and Designated persons had prima-facie violated the Code of Conduct prescribed under PIT

Regulations. During the course of examination, it was observed by SEBI that Mr. Kadiresan M Muthiah (hereinafter referred to as '**Noticee**') had entered into multiple contra trades within prohibition period i.e. within 6 months of earlier trades.

3. Therefore, it was alleged that the Noticee, by entering contra trades within 6 months, has violated the provisions of Clause 10 of Code of Conduct mentioned at Schedule II read with Regulation 9(1) of PIT Regulations. In view of this, adjudication proceedings were initiated against the Noticee under the provisions of section 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer, vide Order dated June 14, 2019 under Section 19 read with Section 15-I(1) of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**'), to inquire into and adjudge under the provisions of section 15HB of the SEBI Act the alleged failure on the part of the Noticee to comply with the relevant provisions of PIT Regulations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

5. A Show Cause Notice ref. SEBI/HO/EAD-8/KS/VC/18108/2019 dated July 17, 2019 (hereinafter referred to as '**SCN**') was issued to the Noticee under the provisions of Rule 4(1) of the Adjudication Rules, to show cause as to why an inquiry should not be held against him and why penalty, if any, should not be imposed on him under the provisions of section 15HB of the SEBI Act for alleged violation of the relevant provisions of PIT Regulations.
6. The details in respect of alleged violation by the Noticees are as given below:
 - a. *SEBI conducted examination in the scrip of BCL for the period of January 02, 2017 to March 26, 2018 (hereinafter referred to as 'examination period') to examine whether the Directors and Designated persons had prima-facie violated the Code*

of Conduct prescribed under PIT Regulations. It is observed that the Noticee was Non-Executive - Independent Director during the examination period.

- b. During the course of Examination, it was observed that the Noticee had entered into the following trades in the scrip of BCL:

Table 1

<i>Date of Acquisition/ Sale</i>	<i>No. of shares acquired</i>	<i>No. of Shares Sold</i>	<i>Sale/ Acquisition Value</i>	<i>Balance No. of shares held</i>
29-Mar-2017	500		19,050.00	500
18-Apr-2017	2,000		76,200.00	2,500
25-Apr-2017		100	4,375.00	2,400
12-May-2017		1,000	44,650.00	1,400
16-May-2017		1,000	46,999.00	400
02-Jun-2017		400	18,360.00	0
20-Jun-2017	1,000		74,900.00	1,000
08-Aug-2017	1,000		63,000.00	2,000
09-Aug-2017	500		31,025.00	2,500
10-Aug-2017	500		29,375.00	3,000
11-Aug-2017	500		27,650.00	3,500
21-Aug-2017	54		3,180.60	3,554
30-Aug-2017		254	16,256.00	3,300
31-Aug-2017		300	19,830.00	3,000
01-Sep-2017		300	20,820.00	2,700
07-Sep-2017	500			3,200
08-Sep-2017	500			3,700
11-Sep-2017	600			4,300
12-Sep-2017	700			5,000
13-Sep-2017	300			5,300
14-Sep-2017	580			5,880
19-Sep-2017	33			5,913
29-Sep-2017	200			6,113
11-Oct-2017		113	7,842.20	6,000
12-Oct-2017		100	6,905.00	5,900
22-Dec-2017		100	7,600.00	5,800
26-Dec-2017		200	15,800.00	5,600
28-Dec-2017		100	8,290.00	5,500
04-Jan-2018		200	15,520.00	5,300
05-Jan-2018		200	15,800.00	5,100
08-Jan-2018		300	24,630.00	4,800
09-Jan-2018		100	8,300.00	4,700

10-Jan-2018		100	8,500.00	4,600
15-Jan-2018		400	42,000.00	4,200
09-Feb-2018		300	31,000.00	3,900
14-Feb-2018		200	21,000.00	3,700

- c. *In view of Table 1, it is observed that the Noticee had entered into 36 contra trades, 16 on the buy side and 20 on the sell side during the examination period and had earned a profit of Rs. 73,413/- by those trades. The Noticee has not denied entering in the above said transactions. Further, the Noticee, vide Email dated March 12, 2019, has informed SEBI that he has remitted the profits made out of contra trades i.e. Rs.73,413/- to SEBI-Investors Protection and Education Fund A/c.*
- d. *In view of this, it is alleged that the Noticee had entered into multiple contra trades within prohibition period i.e. within 6 months of earlier trades. Therefore, it is alleged that the Noticee, by entering contra trades within 6 months, has violated the provisions of Clause 10 of Code of Conduct mentioned at Schedule II read with Regulation 9(1) of PIT Regulations.*
7. I note that the Noticee, vide his letter dated July 30, 2019, submitted his reply to the SCN wherein the Noticee, *inter-alia*, made the following submissions:
- a. *I am an employee of BCL with effect from June 2015 and act as Associate Vice President.*
- b. *To my memory goes, I might have dealt with shares of BCL, the quantum of shares acquired and sold are too meagre and the profit realized was also too low.*
- c. *As an honest and committed person and law abiding citizen, I have remitted the entire profit of Rs.73,413.00 which arose out of buy and sale trade of BCL shares to the account of SEBI Investors Protection and Education Fund Account.*
- d. *I have no intention or wanton desire to make secret profit or accumulate profit out of buy and sale trade.*
8. Further, in the interest of natural justice, an opportunity of hearing was provided to the Noticee on August 26, 2019 vide letter dated August 09, 2019. Mr.

Sethuraman Krishnamurthy, appeared as the Authorised Representative (**AR**) on behalf of the Noticee on August 26, 2019. The AR reiterated the submissions made by the Noticees in his reply dated July 30, 2019. Further, during the course of hearing, the AR also submitted a copy of a warning letter dated April 26, 2019 issued by SEBI to the Noticee which was taken on record.

CONSIDERATION OF ISSUES AND FINDINGS:

9. I have taken into consideration the facts and circumstances of the case and the material available on record. I note that the allegation levelled against the Noticee is that he had entered into contra-trades within the period of 6 months in violation of Clause 10 of Code of Conduct mentioned at Schedule II read with Regulation 9(1) of PIT Regulations during the examination period. In view of the above, the issues for consideration before me are:-
 - a. Whether the Noticee has violated the provisions of Clause 10 of Code of Conduct mentioned at Schedule II read with Regulation 9(1) of PIT Regulations?
 - b. If yes, whether the Noticee is liable for penalty and what should be the quantum of penalty that should be imposed on the Noticee?
10. Before moving forward, the relevant extracts of the provision of the PIT Regulations, allegedly violated by the Noticee, is mentioned as under-

PIT Regulations, 2015

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.*

SCHEDULE B

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.

a. Whether the Noticee has violated the provisions of Clause 10 of Code of Conduct mentioned at Schedule II read with Regulation 9(1) of PIT Regulations?

11. In terms of the provisions of Clause 10 of Code of Conduct mentioned at Schedule II of PIT Regulations, a designated person, who is declared so under PIT Regulations, shall not execute a contra trade within a period, which in any event shall not be less than six months. I note that the contra trade in this provision means any opposite transaction i.e. if a buy transaction in the scrip has been entered first then a designated person is prohibited from selling shares of the Company. Similarly, if a designated person has sold the shares of a company then he is prohibited from buying shares within 6 months from the day shares were sold.

12. I note from the reply of the Noticee that he was Associate Vice-President of BCL during the examination period. Further, the Company Secretary of BCL, vide email dated September 05, 2018, informed BSE that the Noticee falls under the list of Designated persons. Therefore, the Clause 10 of Code of Conduct applies on the Noticee.

13. It is further observed that the Noticee was continuously buying and selling the shares of BCL during the examination period, details of which are mentioned as under:-

Table 1- Transactions of the Noticee in shares of the Company

Date of Acquisition/ Sale	No. of shares acquired	No. of Shares Sold	Sale/ Acquisition Value	Balance No. of shares held
29-Mar-2017	500		19,050.00	500
18-Apr-2017	2,000		76,200.00	2,500
25-Apr-2017		100	4,375.00	2,400
12-May-2017		1,000	44,650.00	1,400
16-May-2017		1,000	46,999.00	400
02-Jun-2017		400	18,360.00	0
20-Jun-2017	1,000		74,900.00	1,000
08-Aug-2017	1,000		63,000.00	2,000
09-Aug-2017	500		31,025.00	2,500
10-Aug-2017	500		29,375.00	3,000
11-Aug-2017	500		27,650.00	3,500
21-Aug-2017	54		3,180.60	3,554
30-Aug-2017		254	16,256.00	3,300
31-Aug-2017		300	19,830.00	3,000
01-Sep-2017		300	20,820.00	2,700
07-Sep-2017	500			3,200
08-Sep-2017	500			3,700
11-Sep-2017	600			4,300
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29-Sep-2017	200			6,113
11-Oct-2017		113	7,842.20	6,000
12-Oct-2017		100	6,905.00	5,900
22-Dec-2017		100	7,600.00	5,800
26-Dec-2017		200	15,800.00	5,600
28-Dec-2017		100	8,290.00	5,500
04-Jan-2018		200	15,520.00	5,300
05-Jan-2018		200	15,800.00	5,100
08-Jan-2018		300	24,630.00	4,800
09-Jan-2018		100	8,300.00	4,700

10-Jan-2018		100	8,500.00	4,600
15-Jan-2018		400	42,000.00	4,200
09-Feb-2018		300	31,000.00	3,900
14-Feb-2018		200	21,000.00	3,700

14. From the above Table, it is clear that the Noticee purchased or sold shares of BCL in 36 different transactions on 36 different days during the examination Period. Out of this, there were 16 instances wherein the Noticee purchased the shares of BCL and on 20 other occasions the Noticee sold the shares of BCL. I note that, on all the 36 occasions, the Noticee had entered in contra trades within 6 months of those trades.
15. I note that there is a 6 months prohibition period after every transaction in the scrip of a company during which no designated person, as named by the company, can enter into opposite trades/contra trades in the scrip of the Company unless the same is cleared by the compliance officer of the company. In this regard, it is clear from Table-1 that the Noticee had entered into contra-trades during the examination period as detailed in the above paragraphs. Further, the Noticee has failed to submit any clearance given by the compliance officer of the company to him for the said transactions.
- b. If yes, whether the Noticee is liable for penalty and what should be the quantum of penalty that should be imposed on the Noticee?**
16. In this regard, I note from table 1 that the Noticee had entered into 36 contra trades during the examination period wherein he purchased 9,467 shares in 16 different transactions and sold 5,767 shares in 20 different transactions.
17. I also note that Clause 10 of Code of Conduct provides for a remedy in case a contra trade gets executed, inadvertently or otherwise, in violation of the restriction mentioned therein. In that case, any profit made out of such trades is 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.
18. In this regard, I note that the Noticee, by entering into contra trades, has earned a profit of mere Rs. 73,413 only. I further note that the Noticee, vide his letter

dated February 12, 2019, had informed SEBI that he had remitted the profit made out of these contra trades i.e. Rs. 73,413/- in the account maintained by SEBI- Investor Protection and Education Fund. I further note that SEBI has also issued a warning letter dated April 26, 2019 to the Noticee.

19. In this regard, I also note that BCL, vide its Email dated December 01, 2018, has also undertaken to call for a set of sessions every year, in two or three batches, with all the Key Management Persons and covered stakeholders under PIT Regulations to go over the key highlights of the regulations so that the persons shall be cautious about their trading pattern and abide by the internal code of conduct to avoid discrepancies and strict disciplinary actions. BCL has also undertaken to observe the activity of 10% of the sample persons from the list of the designated persons to check whether they are included in any trading activity *vis-à-vis* the PIT Regulations.

20. I further note that there is no allegation that the act of the Noticee has violated any other provision of law. Further, the Investigation Report does not mention about any loss caused by this act of the Noticee to the general investors. In light of this, the violation of the Noticee may be termed as mere technical violation in nature. In this regard, I note the observations made by Hon'ble Securities Appellate Tribunal (**SAT**) in its order dated May 15, 2019 in the matter of Piramal Enterprises Limited vs. SEBI:

“Considering the aforesaid, we are of the opinion that the object of the Act is not only to protect the investors but also the securities market. The appellant is part of the securities market and its existence is required for the healthy growth of the securities market. SEBI is the watchdog and not a bulldog. If there is an infraction of a rule, remedial measures should be taken in the first instance and not punitive measures.” (emphasis supplied)

21. In view of SAT observations reproduced above, I note that the remedial measures, as mentioned in Clause 10 of Code of Conduct under Schedule II read with Regulation 9(1) of PIT Regulations, namely deposition of profit in SEBI- Investor Protection and Education Fund has already been done by the

Noticee and the same has been confirmed by SEBI. Further, as mentioned in pre-paragraphs, SEBI has also issued a warning letter dated April 26, 2019 to the Noticee. As a result of this, the remedial measures have been completed in the matter and I am of the view that there is no necessity of imposition of penalty on the Noticee. Therefore, I am not inclined to impose any penalty on the Noticee.

ORDER

22. After taking into consideration the facts and circumstances of the case, material/facts on record and also the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, do not impose any penalty on the Noticee under Section 15HB of the SEBI Act for his violation of relevant provisions of PIT Regulations.
23. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Shri Kadiresan M Muthiah and also to the Securities and Exchange Board of India.

Place: Mumbai
Date: 26.08.2019

K SARAVANAN
ADJUDICATING OFFICER