

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PKB/AO-55/2011]

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:

Ashok Hiralal Shah

(PAN - ACTPS7672M)

In the Matter of: Platinum Corporation Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) conducted investigations relating to buying, selling or dealing in the shares of Platinum Corporation Limited (hereinafter referred to as “the Company”). Investigation, *inter-alia*, had revealed that certain persons were holding shares of the Company but did not disclose their shareholdings and change in shareholding in compliance with SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “PIT Regulations”) and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as “SAST Regulations”).
2. It was observed that Ashok Hiralal Shah (hereinafter referred to as the “Noticee”) was having a beneficiary account with Depository Participant (hereinafter referred to as “DP”), Shah Investor’s Home Limited having BOID: 10279975. The transactions in the beneficiary account revealed that the Noticee was holding more than 5% of the equity shares of the Company. It was observed that on January 19, 2004, a credit of 40 lac shares was received from Shankarlal Patel, thereby increasing shareholding of the Noticee to 7.00%. It was also observed that subsequently the Noticee transferred all these shares to Robinson Worldwide Trade Ltd.

3. It was observed that the Noticee transacted substantially in the shares of the Company, but failed to make disclosure about change in shareholding. In view of the Noticee's actions and omissions in this matter, it was alleged that the Noticee had violated the provisions of Regulation 13(3) of PIT Regulations.
4. The undersigned was appointed as the Adjudicating Officer vide Order dated March 23, 2011 and the said appointment was conveyed vide proceedings of the Whole Time Member dated July 04, 2011 to inquire into and adjudicate under Section 15 A (b) of the SEBI Act, 1992, the alleged violation of provisions of Regulation 13(3) of PIT Regulations.

SHOW CAUSE NOTICE, HEARING & REPLY

5. A Show Cause Notice (hereinafter referred to as "SCN") in terms of the provisions of Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") was issued to the Noticee on July 29, 2011, calling upon the Noticee to show cause why an inquiry should not be held against him under Rule 4(3) of the Adjudication Rules for the alleged violations.
6. The aforesaid SCN was duly delivered to the Noticee on August 04, 2011. Subsequently, vide letter dated August 31, 2011, the Noticee acknowledged the receipt of the SCN and sought additional time to submit reply. Vide letter dated September 02, 2011, the Noticee was informed that the time limit for submission of reply to the SCN was extended to September 26, 2011. Thereafter, vide letter dated September 21, 2011, the Noticee once again sought additional time to submit reply.
7. Since no reply was received from the Noticee, Notice of Inquiry dated September 30, 2011 was issued under Rule 4(3) of the Adjudication Rules vide which an opportunity of personal hearing was given to the Noticee which was scheduled for October 21, 2011. However, the Noticee failed to appear for personal hearing on the scheduled date. The Noticee submitted his reply vide letter dated October 14, 2011 and *inter alia* made the following submissions:
 - *Firstly, at that time I was not a director in Vashi Construction Pvt. because I had resigned from the director post since back.*

- *And because of my resignation from that co. I was not aware about the company's transactions and other dealings.*
- *And also I was also not knowing the other entities and not acting in concert at all.*
- *For my individual acquisition through off market on 19th January, 2004, I made a proper disclosure to the company, i.e., PCL on 21st January, 2004, Ahmedabad Stock Exchange and complied with the regulations. (Annexure)*
- *Further, I would like to submit also that I got these shares from off market only and not traded in the market.*

So, I would like to request you to keep me aside from this matter as I was not a director at all and made all required disclosures as per the rules and regulations which show that the proceedings against me should be dropped.

8. Thereafter, vide Notice of Inquiry dated October 25, 2011, another opportunity of personal hearing was granted to the Noticee and the Noticee was informed that he had not made any submissions regarding the alleged violation of provisions of Regulation 13(3) of PIT Regulations as alleged in the SCN. The Noticee vide letter dated November 10, 2011 requested for another hearing date in the next week which was acceded to and accordingly the personal hearing of the Noticee was rescheduled to November 15, 2011. However, the Noticee once again requested for another hearing date on November 17, 2011 which was also acceded to and accordingly the personal hearing of the Noticee was rescheduled to November 17, 2011. Ms. Ragini Chokshi, Authorised Representative of the Noticee appeared for hearing on November 17, 2011 and reiterated the submissions previously made by the Noticee vide letter dated October 14, 2011. It was once again informed that in the SCN that the Noticee has been alleged to have violated provisions of Regulation 13(3) of PIT Regulations in response to which he had not made any submissions in his reply dated October 14, 2011. It was stated that submissions would be made by November 21, 2011. However, I note that till date, the Noticee has not made any further submissions before me in addition to his reply dated October 14, 2011. Hence, I am proceeding with the inquiry taking into account the material available on record.

ISSUES FOR CONSIDERATION

9. After perusal of the material available on record, I have the following issues for consideration, viz.,

- A. Whether the Noticee has violated provisions of Regulation 13(3) of PIT Regulations?
- B. Whether the Noticee is liable for monetary penalty under Section 15 A (b) of the SEBI Act, 1992?
- C. What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

FINDINGS

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

ISSUE 1: Whether the Noticee has violated provisions of Regulation 13(3) of PIT Regulations?

- 11. The provisions of Regulation 13(3) of PIT Regulations read as under:

SEBI (Prohibition of Insider Trading) Regulations, 1992

Continual Disclosure

- 13 (3)** *Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company 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.*

- 12. I note that Regulation 13(3) of PIT Regulations, *inter alia*, requires a person holding more than 5% shares in any listed company to disclose to the company the number of shares or voting rights held and change in shareholding, if there has been change in such holdings from the last disclosure made under Regulation 13(1) of PIT Regulations or Regulation 13(3) of PIT Regulations; and such change exceeds 2% of total shareholding in the company.
- 13. I note that the Noticee was having beneficiary account with the DP Shah Investor's Home Limited having BOID: 10279975. From the beneficiary account statement (Demat statement) of the Noticee (enclosed with the SCN as "Annexure II") I note that on January 19, 2004, the Noticee bought/received 40,00,000 shares of the Company taking his total shareholding in the Company to 75,00,000 shares (representing 7.00% of the equity capital of the Company). I also note that on August 17, 2005 the Noticee

sold/transferred 75,00,000 shares reducing his shareholding to 0. Relevant transactions of the Noticee in the aforesaid beneficiary account was as follows:

Date	Description	Credit	Debit	Balance	Balance % to equity
01/01/04	Opening Balance			35,00,000	3.27%
19/01/04	By STOCK HLDG CORP OF I LTD / 30202902	40,00,000	0	75,00,000	7.00%
17/08/05	To INDIA INFOLINE LIMITED / 10357128	0	50,00,000	25,00,000	2.33%
17/08/05	To INDIA INFOLINE LIMITED / 10357128	0	25,00,000	0	0%

14. From the above it is evident that the Noticee was holding more than 5% of the equity capital of the Company. It is also evident that there was a change in the shareholdings of the Noticee as he had sold/transferred 75,00,000 shares of the Company on August 17, 2005 which reduced his shareholding from 7.00% to 0, i.e., a change exceeding 2% of the shareholding in the Company. Hence, the Noticee was under obligation to make disclosure under Regulation 13(3) of PIT Regulations to the Company. However, no such disclosure had been made by the Noticee under the aforesaid regulation.

15. I note that the Noticee vide letter dated October 14, 2011 has submitted that *“For my individual acquisition through off market on 19th January, 2004, I made a proper disclosure to the company, i.e., PCL on 21st January, 2004, Ahmedabad Stock Exchange and complied with the regulations.”* I also note that the Noticee has annexed copies of letters submitted by him to the Company and the Ahmedabad Stock Exchange vide which he had made disclosures under Regulation 13(1) of PIT Regulations & Regulation 7(1) of SAST Regulations for his acquisition of shares of the Company on January 19, 2004. However, the Noticee has neither made any submissions nor has he submitted any documentary evidence which could suggest that he had made necessary disclosure under Regulation 13(3) of PIT Regulations to the Company for the sale/transfer of shares on August 17, 2005.

16. In view of the above, I hold that the Noticee was under an obligation to make the required disclosure under Regulation 13(3) of PIT Regulations to the Company, which the Noticee failed to do. Therefore, the Noticee has violated the provisions of Regulation 13(3) of PIT Regulations.

ISSUE 2: Whether the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992?

17. The provisions of Section 15 A(b) of the Act reads,

“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;”

18. As already observed, the Noticee failed to make disclosure as required under Regulation 13(3) of PIT Regulations. Therefore, I find that the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992.

ISSUE 3: What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the Act?

19. While imposing monetary penalty it is important to consider the factors stipulated in Section 15J of the 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.”

20. In the absence of material on record, the amount of disproportionate gain or unfair advantage made as a result of the default and the amount of loss caused to the investors due to the said default cannot be quantified. However, by virtue of the failure on part of the Noticee to make the necessary disclosure on time and by not complying with the regulatory obligation of making the disclosure, the Noticee had not provided the vital information which is detrimental to the interest of investors in securities market.

21. In the forgoing paragraphs it is now established that the Noticee failed to make necessary disclosure under Regulation 13(3) of PIT Regulations. Considering the facts and circumstances of the case and the violation committed by the Noticee, I find that imposing a penalty of ₹ 1,00,000/- (Rupees One Lakh only) on the Noticee would be commensurate with the violations committed by him.

ORDER

22. Considering the facts and circumstances of the case, in terms of the provisions of Section 15A(b) of the SEBI Act, 1992 and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹ 1,00,000/- (Rupees One Lakh only) on Ashok Hiralal Shah for not making necessary disclosure under Regulation 13(3) of PIT Regulations.
23. 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 Ms. Anita Kenkare, General Manager, Investigation Department, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.
24. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this Order are being sent to the Noticee and also to Securities and Exchange Board of India.

Date: November 28, 2011
Place: Mumbai

P. K. Bindlish
Adjudicating Officer