

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/AA/AR/2019-20/3801)**

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 BY ADJUDICATING OFFICER) RULES, 1995.

In respect of:

**Mr. Sidharth C.A.
(PAN: CRAPS1970C)**

In the matter of

8K Miles Software Services Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted a preliminary examination into the dealings in the scrip of 8K Miles Software Services Limited (hereinafter referred to as ('**8K Miles**'/ '**the Company**')) for the period from January 4, 2012 to September 28, 2012, on observing unusual price movement in the scrip on the Bombay Stock Exchange (hereinafter referred to as '**BSE**'). Based on the findings of preliminary examination, an interim order dated April 18, 2013 was passed by SEBI and the directions issued vide aforesaid interim order were confirmed by SEBI through confirmatory order dated December 30, 2013.
2. Pursuant to interim order, SEBI conducted an investigation into the dealings of several entities in the scrip of 8K Miles for the period January 04, 2012 to September 28, 2012 (hereinafter referred to as '**Investigation period** / '**IP**' / '**relevant time**') and also examined the Code of Conduct adopted by 8K Miles for prevention of insider trading. Based on the observations made in the Investigation Report (hereinafter referred to as '**IR**'), it was, *inter-alia*, observed

that 8K Miles had failed to adopt a Code of Conduct for the Prevention of Insider Trading for Listed Companies, as near thereto the Model Code of Conduct (hereinafter referred to as '**MCC**') specified in Part-A of Schedule-I stipulated under Regulation 12(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**'). Mr. Sidharth C.A (hereinafter referred to as '**Noticee**') was the compliance officer of 8K Miles at the time of adoption of the aforesaid Code of Conduct by 8K Miles. It is further observed that the directors of 8K Miles and the Noticee, in his capacity of being Compliance Officer of 8K Miles, failed to supervise the adoption and implementation of the Code of Conduct for Prevention of Insider Trading for Listed Companies, as near thereto the MCC. Therefore, in addition to 8K Miles and its directors, the Noticee is also alleged to have violated the provisions of Clause 1.2 of the code of conduct specified under Part A of the Schedule-I stipulated under Regulation 12(1) of PIT Regulations.

3. In view of the above observations, adjudication proceedings were initiated against the Noticee under the provisions of section 15HB of the SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**').
4. I note that the adjudication proceedings w.r.t. the Company and its directors for their failure to adopt a Code of Conduct in prescribed manner have already been disposed of by the previous Adjudicating Officer (hereinafter referred to as '**AO**') vide Adjudication Order dated June 30, 2018.

APPOINTMENT OF ADJUDICATING OFFICER

5. Shri Suresh B. Menon was appointed as the Adjudicating Officer under Section 15-I of the SEBI Act read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of Section 15 HB of the SEBI Act, the alleged violation of the relevant provisions of the PIT Regulations by the Noticee. Pursuant to the transfer of Shri Suresh B. Menon to another department, I was

appointed as an AO in the present matter vide communique of appointment of AO dated March 25, 2019.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A Show Cause Notice ref. A&E/EAD3/SBM-ASR/21337/2/2016 dated August 08, 2016 (hereinafter referred to as '**SCN**') was issued to the Noticee in terms of Rule 4 of the Adjudication Rules, 1995 to show cause as to why inquiries should not be initiated and penalties, if any, be not imposed on him under Section 15HB of the SEBI Act, for the alleged contravention of the provisions of Clause 1.2 of Model code of conduct contained in Part A of Schedule-I read with Regulation 12(1) of PIT Regulations, by the Noticee.
7. The SCN was delivered to the Noticee at the address of 8K Miles. However, no reply was received from the Noticee to the SCN. Subsequently, vide letter dated April 27, 2017, another letter was issued to the Noticee wherein a copy of SCN was provided to the Noticee and he was also advised to appear for hearing before the AO on May 24, 2017. The aforesaid letter was once again served on the Noticee at the address of 8K Miles. However, no reply was received from the Noticee. Thereafter, one more letter was issued to the Noticee along with the SCN on June 29, 2018. The aforesaid letter was delivered to the Noticee through email dated July 04, 2018. Thereafter, the Noticee vide its letter dated August 02, 2018 submitted his reply to the SCN. A brief of the major submissions made by the Noticee are mentioned below:
 - a. *At the outset, I would like to present before your good office, that I have not been in receipt of any notices or any other kind of communication in this regard from your end as I relocated to another place by virtue of my profession and am no longer in Chennai where the Corporate office of the company in the subject matter is situated.*
 - b. *I have exercised diligence and care in performing my duties as a Company Secretary of the Company and have fulfilled the responsibilities with utmost care and quality as can be evidenced from the compliances of the Company during my tenure.*

- c. My tenure with the Company as a Company Secretary was for a brief period of 8 months (15th June 2011 to 07th February 2012 including the notice period)*
 - d. During my service period, I was facing certain operational challenges with the management while executing my job and hence had to take a career decision of putting forth my resignation papers on 11th January 2012.*
 - e. I have not taken any undue advantage or made any undue gain as a result of the said non-disclosures committed by the management without my knowledge.*
 - f. I have not caused any loss or damage to the interest of investors or other shareholders.*
 - g. I have never earlier violated any regulations prescribed by SEBI*
 - h. I have never indulged in any trading of shares or stocks of any Companies and also not held any demat account.*
8. In the interest of natural justice, the Noticee was provided with opportunity of personal hearing in the matter on August 09, 2018. The Noticee appeared for hearing on the scheduled day and reiterated the submissions made by him vide his letter dated August 02, 2018. The Noticee was given time till August 20, 2018 to file additional reply in the matter. Subsequently, the Noticee vide his email dated August 20, 2018 informed that he has filed his consent application with SEBI.
9. Pursuant to my appointment as the AO in the matter, the concerned department of SEBI informed on May 13, 2019, that the Noticee has withdrawn his settlement application in the matter. Therefore, in the interest of natural justice, Noticee was provided with another opportunity of personal hearing before the AO on July 23, 2019. The Noticee appeared for hearing on scheduled date and reiterated his earlier submissions made vide letter dated August 02, 2018 before the previous AO. Subsequently, the Noticee also submitted another letter dated July 30, 2019, wherein he reiterated his earlier submissions in the matter.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

10. I have carefully perused the replies and submissions of the Noticee and documents available on record. The issues that arise for consideration in the present case are-

- A. Whether Noticee, in his capacity of being the Compliance Officer of 8k Miles, failed to supervise adoption of Code of Conduct for Prevention of Insider Trading for Listed Companies, as near thereto the Model Code of Conduct specified in Part-A of Schedule-I of the PIT Regulations?**
- B. Does the violation, if any, attract monetary penalty under section 15HB of the SEBI Act, as applicable?**
- C. If so, what would be the monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15 J of the SEBI Act?**

11. Before moving forward, it is pertinent to refer to the relevant provisions of the PIT Regulations, which reads as under:-

SEBI (Prohibition of Insider Trading) Regulations, 1992

Code of internal procedures and conduct for listed companies and other entities.

12. (1) *All listed companies and organisations associated with securities markets ...*

...shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same:

SCHEDULE I [Under regulation 12(1)]

PART A

MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES

1.2 The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing; of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.

12. On perusal of the material available and having regard to the submissions made by the Noticee, I record my findings hereunder, with regard to the issues framed:

A. Whether the Noticee, in his capacity of being the Compliance Officer of 8k Miles, failed to supervise adoption of Code of Conduct for Prevention of Insider Trading for Listed Companies, as near thereto the Model Code of Conduct specified in Part-A of Schedule-I of the PIT Regulations?

13. I observe from the perusal of the provision of Clause 4.2 of the Model Code of Conduct specified in Part A of Schedule -1 of the PIT Regulations that it stipulates a restriction of six months on the directors/ officers/ designated employees of a listed companies on entering into an opposite transaction. The text of Clause 4.2 of Model Code of Conduct is as given below:

"4.2. All directors/ officers/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction. All directors/ officers/ designated employees shall also not take positions in derivative transactions in the shares of the company at any time."

14. From the text of the clause 4.2 referred above, I note that it is clearly mentioned that once the directors, officers or designated employees of a company have entered into a transaction of shares of their company, they cannot enter into an opposite transaction to their first transaction for at least six months. I note from

the replies submitted by the Noticee that he has not raised any contention regarding the objective of the Clause 4.2 of the Code of Conduct. I have also perused the Model Code of Conduct adopted by 8K Miles under the supervision of the Noticee. The text of the Model Code of Conduct adopted by 8K Miles on August 13, 2011 is given below:

“4.2. All directors/ officers/ designated employees shall hold their investment in securities for a minimum period of 30 days in order to be considered as being held for investment purpose. The holding period shall also apply to subscription in the primary market (IPOs). In the case of IPOs, the holding period would commence when the securities are actually allotted.”

15. From the perusal of the text of the Model Code of Conduct adopted by 8K Miles, it is clear that the restriction of not entering into opposite transactions on directors/ officers/ designated employees of the company was diluted to 30 days instead of six months as prescribed under PIT Regulations. A bare perusal of the various provisions stipulated under the Model Code of Conduct for Listed Companies under the PIT Regulations, will make it clear that these provisions are intended to prevent the possible abuse of unfair insider practices by the Company's management/officers/employees etc. Therefore, it is imperative for a listed company to adopt a Model Code of Conduct in the strictest possible manner. Any dilution while adopting Model Code of Conduct will provide opportunities for the persons having unpublished insider information regarding the company to take unlawful advantage of such information for making illegitimate gains.

16. I have also perused the provision of Clause 1.2 of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies and note that it clearly mentions that the compliance officer is, *inter-alia*, responsible for the implementation of the code of conduct under the overall supervision of the Board of the listed company. In this regard, I have already held in the previous paragraphs that the Model Code of Conduct adopted by the Company was not near thereto the Model Code of Conduct prescribed under the PIT Regulations.

From the perusal of Clause 1.2 of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies prescribed under PIT Regulations, it is clear that it was the responsibility of the Noticee, who was the compliance officer of 8k Miles to implement the Model Code of Conduct as near thereto the Model Code of Conduct prescribed under PIT Regulations. Therefore, I am of the view that the Noticee, in his capacity as the compliance officer of 8K Miles, failed in the adoption of Code of Conduct for prevention of insider trading for listed companies, as near thereto the Model Code of Conduct stipulated under relevant provisions of PIT Regulations.

17. The Noticee has submitted that he was involved in the day to day functioning of 8K Miles for a brief period of 8 months. Due to the operational challenges, he resigned from the Company and hence he was the compliance officer of 8K Miles only during the period June 15, 2011 to February 07, 2012. Although, the Noticee has submitted before me that he had repeatedly raised issues regarding the functioning of the Company and the lapses in various regulatory compliances, with the Board of 8K Miles, no evidence was placed before me in this regard. He also said that the Board of directors of 8K Miles (hereinafter referred to as '**the Board**') refused to take any corrective actions. The Noticee has produced the copies of his appointment and resignation letters. I note from the documents made available to me that Noticee was the compliance officer of the company at the relevant period of time. I further note from the observations made in the Investigation report and the SCN that the allegations have also been made against 8K Miles and its 6 directors along with the Noticee for failing to adopt and implement Code of Conduct under the PIT Regulations as prescribed. As mentioned in para 4, 8K Miles and its 6 directors have already been held liable for their failure to adopt a Code of Conduct for Prevention of Insider Trading for 8K Miles, as near thereto the Model Code of Conduct specified in Part-A of Schedule-I stipulated under Regulation 12(1) of PIT Regulations, vide Adjudication order dated July 30, 2019. A total penalty of ₹ 7,00,000/- has been imposed on 7 entities viz. 8K miles and its 6 directors.

18. Any violation pertaining to the Model Code of the Conduct is to be viewed seriously and shall be treated as violation of Regulations itself. As the violation of the statutory obligation under PIT Regulations has been established, I hold that the Noticee is liable for monetary penalty under Section 15HB of SEBI Act, which reads as under :

Section 15HB of the SEBI Act

Penalty for contravention where no separate penalty has been provided

15 HB Whoever fails to comply with any provisions of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees

19. While determining the quantum of penalty, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under :

15 J- Factors to be taken into account by the adjudicating officer

While adjudging the 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. From the material available on record, the amount of disproportionate gain or unfair advantage to the Noticee or loss caused to the investors as a result of the default committed by the Noticee is not quantifiable. Though it may not be possible to ascertain the monetary loss to the investors on account of the default by the Noticee, it is recognized that statutory requirement of compliance with the provisions of PIT Regulations is important for prevention of Insider trading. The adoption of a proper Code of Conduct is the basic responsibility expected of the Noticee for prevention of Insider Trading. I am of the view that the Company, its

directors and the compliance officer have the responsibility for the adoption of Code of Conduct for Prevention of Insider Trading as near thereto the Model Code of Conduct specified PIT Regulations. I note that a penalty of ₹ 7,00,000/- has already been imposed on 8K Miles and its 6 (six) directors for their failure to adopt a Code of Conduct for Prevention of Insider Trading for 8K Miles, as near thereto the Model Code of Conduct specified in Part-A of Schedule-I stipulated under Regulation 12(1) of PIT Regulations.

ORDER

21. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in section 15J of the SEBI Act and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹ 1,00,000/- (Rupees One lakh) on the Noticee / Mr. Sidharth C.A. under Section 15HB of the SEBI Act.
22. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee. The amount of penalty shall be paid either by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or by e-payment in the account of “SEBI - Penalties Remittable to Government of India”, A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.
23. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to “The Division Chief, Division of Regulatory Action-1, Enforcement Department (EFD1 – DRA I), Securities and Exchange Board of India, SEBI Bhavan 2, Plot No. C – 7, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051”:

1. Case Name:	
2. Name of payee:	

3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/recovery/ settlement amount and legal charges along with order details)	

24. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in: ENFORCEMENT ->Orders->Orders of AO ->PAY NOW.

25. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are being sent to Mr. Sidharth C.A and also to the Securities and Exchange Board of India.

Date: July 31, 2019
Place: Mumbai

Dr. ANITHA ANOOP
CHIEF GENERAL MANAGER
& ADJUDICATING OFFICER