

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO.SP/AO/02/2017]**

**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
**M/s. Covidh Technologies Limited (PAN: AACCL1189J)
(Formerly Aptus Industries Limited)**

In the matter of
**M/s. Covidh Technologies Limited
(Formerly Aptus Industries Limited)**

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed that there was a change in shareholding of the promoters of M/s. Covidh Technology Limited (formerly Aptus Industries Limited), a company listed on the stock exchange (BSE), for the quarters ending March 2013, June 2013 and September 2013. The promoters of M/s. Covidh Technologies Limited namely Shri Puppala Obul Reddy, Shri Veeranajaneyulu Chirumamilla and Shri Alokam Prabhakara Rao had sold 8,25,000, 3,00,000 and 3,10,000 shares respectively. It was alleged that M/s. Covidh Technologies Limited (hereinafter referred to as '**Company**' / '**Noticee**') failed to comply with the relevant provisions of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**') in connection with these transactions.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer on December 09, 2014 under section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under Section 15A (b) of the SEBI Act for the alleged violation of Regulation 13(6) of the PIT Regulation by the Company.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. SEBI observed that there was a change in the shareholding of the company, but the Noticee failed to make disclosures to the stock exchange(s) under the provisions of Regulations 13(6) of the PIT Regulations.

4. Accordingly, a Show Cause Notice (hereinafter referred to as '**SCN**') Ref. No. SEBI-HLO/SP/DT/8082/2015 dated March 17, 2015 was issued to the aforesaid Noticee under rule 4(1) of Adjudication Rules communicating the alleged violations of PIT Regulations. The Noticee was called upon to show cause within 14 days from the date of receipt of the SCN as to why an inquiry should not be initiated against it and penalty be not imposed under Section 15A(b) of the SEBI Act for the alleged violation of PIT Regulations.
5. The Company / Noticee, vide letter and e-mail dated April 10, 2015 submitted its reply to the SCN dated March 17, 2015. Vide the aforesaid letters, the Noticee has *inter alia* submitted as under:
 - a. *That the statement given by SEBI is true and the disclosure was not submitted within the prescribed time.*
 - b. *That all the said shares were kept under pledge and obtained funds and invested the same in the company as working capital.*
 - c. *That the alleged promoters could not repay the loan and as a result the said pledged shares were sold without their intimation.*
 - d. *That however, the shareholding was sent to the Exchanges as per Clause 35 of the Listing Agreement of every quarter and also the yearly disclosure in terms of Regulation 30(2) of SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011 has been filed by the promoters.*
 - e. *That after the non-disclosure under Regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulation, 1992 pertained to July 2013 and August 2013 as mentioned in the notice, the Company has promptly submitted the applicable disclosures under Regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulation, 1992 and listing compliances as and when required without any failure as the company has due regards for laws of land.*
 - f. *That the non-disclosure was never the intention nor was any undue advantage or gain was made out of the non-disclosure or caused any loss or damage to the interest of the investors.*
 - g. *That SEBI is requested to kindly pardon the company for this time for delay in submission of disclosures and take a lenient view on the same and the company assures SEBI that henceforth the company will not repeat the same.*
6. In the interest of natural justice and in terms of Rule 4(3) of the Adjudication Rules, the Noticee vide hearing notice No. SEBI-HLO/SP/DT/19068/2015 dated July 07, 2015, was granted an opportunity of hearing on July 24, 2015.
7. On the scheduled date viz. July 24, 2015, Authorized Representative (AR) of the Noticee, appeared on its behalf and reiterated the submissions made by the Noticee vide letters dated April 10, 2015. The AR stated that additional written submissions will be filed by August 07, 2015.
8. Subsequently, the Noticee, vide letter dated August 12, 2015 informed that it was submitting consent application in terms of SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2017, for settlement in the adjudication matter initiated vide show cause notice No. SEBI-HLO/SP/DT/8098/2015, dated March 17,

2015. Subsequently, vide letter dated July 02, 2016, the company withdrew the consent application. Thereafter, vide letter dated May 16, 2017 the Noticee was advised to confirm whether any additional submissions are to be made, including an opportunity of hearing. Subsequently, the Company, vide letter and e-mail dated June 09, 2017 submitted its reply to the letter dated May 16, 2017. Vide the aforesaid letter and e-mail, the Noticee has *inter alia* submitted as under:

- a. *That the Company has withdrawn the consent application for settlement vide letter dated 2nd July 2016.*
- b. *That also the Company would like to bring to SEBI's notice the following facts of the case:*
 - i. *That the promoters of the Company i.e. Mr. Obul Reddy P, Mr. A Prabhakara Rao & Mr. Ch Veeranjanyulu have transacted in shares of Covidh Technologies Ltd. (Formerly Aptus Industries Ltd.) between 4th July 2013 to 14th August 2013.*
 - ii. *That with regard to transactions, above said promoters have complied with SEBI (SAST) Regulations, 2011 by submitting required documents. Compliance under PIT regulations was delayed by the promoters to the Company & stock exchange.*
 - iii. *That for compounding of the delayed filing and in response to the notice received on 17th March 2015, 2 promoters (Mr. A Prabhakara Rao & Mr. Ch Veeranjanyulu) along with the Company has filed consent application for settlement under (Settlement of Administrative & civil proceedings) Regulations, 2013.*
 - iv. *That since the delay in filing was from promoter's end, the Company realized its error in filing consent application instead of representation the case with adjudicating authority. The Company has withdrawn its consent application vide letter dated 2nd July 2016.*
 - v. *That there was delay in filing of documents under PIT regulations by the promoters to the Company & stock exchange which was mentioned in their respective consent applications for settlement.*
 - vi. *That the Company is enclosing copies of Form A submitted to SEBI highlighting the same.*

CONSIDERATION OF ISSUES AND FINDINGS

9. I have examined the submissions made by the Noticee in its replies to the SCNs and during the personal hearing and other documents available on record. I observe that the allegation against the Noticee is that it failed to make the relevant disclosures under Regulations 13(6) of the PIT Regulations.
10. The issues that, therefore, arise for consideration in the present case are:
 - a. Whether the Noticee failed to make the relevant disclosures under Regulation 13(6) of the PIT Regulations?
 - b. Do the violations, if any, attract monetary penalty under Section 15A (b) of SEBI Act?
 - c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

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

Regulations 13 Disclosure by company to stock exchange

(1)...

(2)...

(6) Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations 1, 2, 2A, 3, 4, 4A of SEBI (Prohibition of Insider Trading) Regulations, 1992 in the respective formats specified in schedule III.

12. It is observed that 13 sale transactions have been undertaken by the promoters of the Company. Details of the same are given below –

Name of entity	Transaction date/ type/ quantity*	Date of receipt by company#	Due date for compliance by the company	Delay (days)@
Shri Obul Reddy Puppala	22/7/13 – sale – 1,25,000	24/7/13	26/7/13	242
Shri Obul Reddy Puppala	16/7/13 – sale – 1,00,000	18/7/13	22/7/13	246
Shri Obul Reddy Puppala	16/7/13 – sale – 1,00,000	18/7/13	22/7/13	246
Shri Obul Reddy Puppala	11/7/13 – sale – 3,00,000	12/7/13	16/7/13	252
Shri Obul Reddy Puppala	03/7/13 – sale – 1,00,000	05/7/13	09/7/13	259
Shri Obul Reddy Puppala	03/7/13 – sale – 1,00,000	05/7/13	09/7/13	259
Shri Ch Veeranjanyulu	7/8/13 – sale – 1,00,000	09/8/2013	13/8/13	224
Shri Ch Veeranjanyulu	14/8/13 – sale – 2,00,000	16/8/13	20/8/13	217
Shri A. Prabhakara Rao	8/7/13 – sale – 25,000	10/7/13	12/7/13	256
Shri A. Prabhakara Rao	9/7/13 – sale – 35,000	10/7/13	12/7/13	256
Shri A. Prabhakara Rao	4/7/13 – sale – 1,00,000	07/7/13	09/7/13	259
Shri A. Prabhakara Rao	5/7/13 – sale – 1,00,000	07/7/13	09/7/13	259
Shri A.	6/7/13 – sale –	07/7/13	09/7/13	259

Name of entity	Transaction date/ type/ quantity*	Date of receipt by company[#]	Due date for compliance by the company	Delay (days)[@]
Prabhakara Rao	50,000			

[#]taken as the date of intimation to the company as brought out in the letters of the entities to company (copy provided by the company to SEBI vide e-mail dated March 12, 2014) and in the absence of any additional information in this regard

[@]date of reporting to the stock exchanges – March 25, 2014

*total sale quantity 14,35,000 shares aggregating 14.7% of the total shareholding

13. I note from the submissions made that the promoters of the Company, Shri Veeranjanyulu Chirumamilla, Shri Alokam Prabhakara Rao and Shri Obul Puppala Reddy have transacted in shares of Covidh Technologies Ltd. (formerly Aptus Industries Ltd.) between July 04, 2013 and August 14, 2013 and have made the disclosures to the company.
14. Accordingly, as a company whose shares are listed on the stock exchange(s), the Noticee was required to make disclosures to the stock exchanges(s) within 2 working days of receipt with respect to information received under sub-regulation 1, 2, 2A, 3, 4 and 4A of the PIT Regulations.
15. As per the records available, it is apparent that the promoters made timely disclosure to the company under the PIT Regulations. However, it is seen from the SCN / annexures and other information on record that while filings were made under the SAST Regulations by the Company, disclosures under the PIT Regulations were not filed with the stock exchange by the Company. The Company vide its response dated March 24, 2014 to SEBI, admitted that the disclosures were not made at the relevant time since the company secretary was not holding office and further, that the Company would be making the relevant disclosures under PIT Regulations on that day (viz. March 24, 2014). Even in its letter dated April 10, 2015, the Company admitted as follows
- “The statement made by SEBI through the SCN is true and the disclosures were not submitted within the prescribed time. Further, after the non-disclosure in the instant matter, which was never the intention of the Company, the applicable disclosures were promptly submitted subsequently. Also, as no undue advantage or gain was made out of the non-disclosure nor was any loss or damage caused to the interest of the investors, the Company had sought a lenient view / pardon in the instant matter.”*
16. There is no evidence on record to show that disclosures were made under Regulation 13(6) of PIT Regulations, 1992 within the stipulated time. Further, as per the website of the BSE, these disclosures are seen to have been made on March 25, 2014, despite the requirement of making the same within 2 working days of the transactions dated i.e. in July 2013 and August 2013.
17. As the violation of the statutory obligation under Regulation 13(6) of PIT Regulations, 1992 has been established, I hold that the Noticee is liable for monetary penalty under section 15A (b) of SEBI Act, which reads as under-

“15A. Penalty for failure to furnish information, return, etc. - If any person, who is required under this Act or any rules or regulations made there under,-

a)...

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 a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”

18. While determining the quantum of penalty under sections 15A (b), 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.

[Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses(b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]¹”

19. Thus, I find that in the extant case, as per Section 15A(b) of the SEBI Act, the Noticee is liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Further, under Section 15-J of the SEBI Act, the Adjudicating Officer has to give due regard to certain factors which have been stated as above while adjudging the quantum of penalty. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticee. Further, from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticee. However, I note that the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Komal Nahata Vs. SEBI (Date of judgment-January 27, 2014) has also observed that-

“Argument that no investor has suffered on account of non-disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non-

¹ Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Part II Section 1 dated March 31, 2017, w.e.f. April 26, 2017

compliance of...and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non-disclosure."

20. In the matter, I also note that in ***Appeal No. 78 of 2014 of Akriti Global Traders Ltd. Vs. SEBI, the Hon'ble Securities Appellate Tribunal (SAT) vide Order dated September 30, 2014*** had observed that-

"...Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay."

21. In view of the aforesaid judgments of SAT, the argument put forth by the Noticee that delay in reporting has not caused any loss to investors nor has the Noticee made any gain from delay in reporting is not relevant for the given case.

22. Obligation to make disclosures under PIT Regulations arises as soon as the same is received by the company from the promoter(s) / director(s) under Regulation 13(3), 13(4), 13(4A) read with Regulation 13(5) of the PIT Regulations. The argument advanced by the company that the disclosures were not made on account of there being no company secretary to hold office also cannot be accepted since this does not obviate the responsibility of the company to make necessary disclosures under Regulation 13(6) of the PIT Regulations.

23. In the instant matter, there were in all 13 individual sale transactions, involving total of 14.35 lakh shares aggregating 14.7% of the total shareholding of the company over a time period of one and half months. Each individual transaction was required to be disclosed to the exchange in a time bound manner by the Noticee. Thus, it is felt that, since there is failure on various occasions on the part of the Noticee to make disclosure to the exchange, the same has to be considered as repetitive.

24. The Company vide its subsequent letter dated June 09, 2017, during the adjudication proceedings, has tried to defend itself by stating that the promoters have delayed the filing of requisite information with it. However, perusal of the filings as available on BSE website brings out the fact that the Company has indeed delayed making the disclosures to stock exchange and has admitted the same in detail vide its response email dated March 24, 2014 and letter dated April 10, 2015.

25. The e-mail response of the company dated March 24, 2014 as referred to above specifically highlights that the Company did receive the relevant disclosures from the promoters on time, but it was disclosed only subsequently. It is seen from the stock exchange website that these disclosures were made on March 25, 2014. As seen from the tabulation at point 12, there are delays, ranging from 217 days to 259 days, by the Company in making the filings to the stock exchange.

26. It is important to note that securities market operates on a disclosure based regime and hence true and timely disclosure of information, as prescribed under the statute, is an important regulatory tool intended to serve a public purpose. The Noticee, whose promoters' shareholding has come down by 14.7%, by its failure to make requisite disclosure under PIT Regulations, 1992 has prevented dissemination of valuable information to investors at the relevant point of time. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decision.

ORDER

27. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee (both oral and written), as aforesaid, 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, hereby impose a penalty of Rs 8,00,000/- (Rupees Eight Lakhs only) on the Noticee under the provisions of Section 15A (b) of the SEBI Act for the failure on the part of the Noticee to make timely disclosures under the provisions of Regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulations, 1992. I am of the view that the said penalty is commensurate with the default committed by the Noticee.

28. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

29. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager (Enforcement Department), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C-4A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under:

Case Name:	
Name of Payee:	
Date of payment:	
Amount Paid:	

Transaction No:	
Bank Details in which payment is made:	
Payment is made for: (like penalties /disgorgement/recovery/Settlement amount and legal charges along with order details)	

30. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, a copy of this order is being sent to the Noticee viz. M/s. Covidh Technologies Ltd. (formerly Aptus Industries Ltd.) and also to Securities and Exchange Board of India, Mumbai.

Date: October 13, 2017

Place: Mumbai

Sanjay Purao

Adjudicating Officer