

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: AO/SBM/EAD-3/29/2016)

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:

Gautam Anand
PAN: AEGPA7780R

Vice President (Hotel Division) of ITC Limited,
H-904, Central Park- 1,
Sector No 42, Golf Course,
Gurgaon - 122002
Haryana

In the matter of
M/s ITC Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') during the course of examination observed that Shri Gautam Anand (hereinafter referred to as '**Noticee**') had entered into an opposite transaction within six months following his previous transaction, in the shares of ITC Limited (hereinafter referred to as '**ITC**' or '**Company**'). The examination by SEBI during the period January 2013 to March 2013 revealed that the Noticee, employed with the Company as Vice President of the Hotel Division and also one of the 'designated employees' of the Company within the meaning of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**'), had purchased 193 shares of the Company on January 23, 2013 and further purchased 300 shares of the Company on February 11, 2013. Subsequently, on March 21, 2013, Noticee sold 493 shares of the Company.

2. The aforementioned transactions involving purchase and sale of the shares of the Company were placed by the Noticee through his stock broker and contract notes were also issued to the Noticee by his stock broker in respect of these transactions. It was therefore observed that Noticee, being a 'designated employee' of the Company, by entering into opposite transactions i.e purchase and sale of shares of the Company within a period of six months following his previous transaction in the shares of the Company had allegedly violated the provisions of Clause 4.2 of the Model Code of Conduct for prevention of Insider Trading, as specified in Part A of Schedule I read with Regulation 12(1) of the PIT Regulations. SEBI has, therefore, initiated adjudication proceedings under the provisions of Section 15 HB of the SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**') to inquire into and adjudge the alleged violation of the provisions of law by the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri D. Ravikumar was appointed as Adjudicating Officer, vide Order dated October 03, 2013 under Section 15-I of the 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 the provisions of Section 15HB of the SEBI Act for the alleged violation of Clause 4.2 of the Model Code of Conduct specified in Part A of Schedule 1 read with Regulation 12 (1) of the PIT Regulations by the Noticee. Subsequently, upon the transfer of Shri D Ravikumar, I have been appointed as Adjudicating Officer in the present matter vide Order dated June 22, 2015.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice ref No. EAD-3/DRK/JP/27229/2013 dated October 23, 2013 (hereinafter referred to as '**SCN**') was issued to the Noticee in terms of Rule 4 (1) of the Adjudication Rules requiring to show cause as to why an inquiry should not be held against the Noticee and penalty, if any, should not be imposed on him under the provisions of Section 15HB of the SEBI Act for the alleged violation of the aforementioned provisions of law by the Noticee. The SCN issued to the Noticee *inter-alia* mentioned the following:

- a. On January 23, 2013, Noticee purchased 193 shares of the Company. Thereafter, on February 11, 2013, Noticee further purchased 300 shares of the Company.
 - b. On March 21, 2013, Noticee had sold 493 shares of the Company. Therefore, it was alleged that Noticee's sale of 493 shares of the Company was within a period of six months of the previous transactions executed by him in the scrip of the Company.
 - c. It was therefore alleged that Noticee being a 'designated employee' of the Company within the meaning of the PIT Regulations had executed the opposite transaction in the scrip of the Company in less than a period of six months from his previous transactions i.e his previous transaction involving purchase of the shares of the Company.
 - d. In view of the above, it was alleged that Noticee has violated the provisions of Clause 4.2 of the Model Code of Conduct for prevention of Insider Trading as specified in Part A of Schedule I read with Regulation 12(1) of the PIT Regulations.
 - e. Adjudication proceedings were initiated against the Noticee under the provisions of Section 15HB of the SEBI Act.
5. Vide letter dated November 7, 2013, Noticee submitted his reply to the SCN. The Noticee admitted to all the facts mentioned in the SCN and mentioned that due to inadvertence on his part, he sold 493 shares of the Company within a period of 6 months from the date of purchase of these shares. It was also mentioned by the Noticee that upon realization of the lapse on his part, he had informed the Company on April 10, 2013. Noticee's main submissions in respect of the allegations levelled in the SCN are mentioned as under :
- a) *I have two demat accounts - (i) one with JM Financial Services Limited (demat account no. IN302927/10161927) where I was holding 1,42,549 shares of ITC, allotted upon exercise of Options under the ITC Employee Stock Option Schemes and another (ii) with ICICI Trading account (demat account no. IN302902/ 46984926).*
 - b) *On 23rd January 2013, over a hasty dialogue with my Agent, over the telephone, he picked up a bouquet of shares, which inter alia included 193 shares of ITC (@ Rs. 291.90 per share) under demat account no. IN302902/ 46984926.*

- c) *Vide a second transaction on 11th February, 2013, another bouquet of shares was purchased, which included 300 shares of ITC (@ Rs. 299.05 per share), thus taking my total shareholding in ITC in the aforesaid demat account to 493 shares.*
- d) *On 21st March, 2013, the Agent, alongwith shares of other companies in the bouquet, inadvertently also sold the aforesaid 493 shares of ITC. In the process, I entered into opposite transaction within a period of six months of my earlier purchase.*
- e) *I fully realised this while filing the Annual Declaration of disclosure of ITC Shares in the month of April, 2013, when I once again thoroughly read the ITC Code of Conduct for Prevention of Insider Trading, which is circulated frequently by our compliance officer. I then immediately informed the Company of this lapse on 10th April. 2013.*
- f) *I work in the Hotels Division of the Company and am not privy to any inside information.*
- g) *The sale transaction was done inadvertently, and involved only 493 shares. You will observe that, as stated earlier, I was also holding 1,42,549 shares of ITC which were allotted to me upon exercise of Options under the ITC Employee Stock Option Schemes. To re-iterate, the sale of 493 shares was purely an error.*
- h) *After I informed the Company, I have already been levied a penalty of Rs. 2,521/- by ITC Limited, which has been paid vide cheque no. 036052 dated 23rd May, 2013 drawn on State Bank of India, New Delhi, in favour of the 'ITC Rural Development Trust'.*
- i) *In addition, I was restricted to sell any ITC Shares up to 10th August, 2013 i.e. upto 6 months from the date of the last purchase of ITC shares on 11th February, 2013. I was also restricted to purchase any ITC shares up to 20th September, 2013 i.e. up to 6 months from the date of the last sale of ITC shares on 21st March, 2013. (This has been complied with)*
- j) *On no occasion in the past have I violated either the ITC Code of Conduct for Prevention of Insider Trading or the SEBI Regulations. In this regard, I have assured the Company that in future such non-adherence will not occur.*

6. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, the Noticee was granted an opportunity of personal hearing on July 22, 2014. The Noticee along with his Authorised Representatives viz. Shri Dhruv Dewan & Shri Kostubh Devnami from Amarchand Mangaldas (hereinafter referred to as '**Authorised Representative**') attended the personal hearing on the scheduled date and reiterated the submissions made by the Noticee vide his earlier letter dated

November 7, 2013. Thereafter, vide letter dated July 29, 2014, the Authorised Representative on behalf of the Noticee made additional submissions in the matter. The following additional submissions were made vide letter dated July 29, 2014 :

- a) *The Noticee is employed with ITC Limited ("the Company") as the Vice President of the Hotel Division of the Company. The Company has eleven independent business divisions of which, the Hotels Division is one.*
- b) *In view of the said contravention of the ITC Code of Conduct for Prevention of Insider Trading ("Code of Conduct") framed by the Company under Regulation 12(1) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 ("PIT Regulations"), the Company levied a penalty of Rs. 2,521/- on the Noticee, which amount represents the total profit which endured to the Noticee (after reckoning brokerage and taxes incidental to the purchase and sale of the shares of the Company). By way of further penalty, the Company restricted the Noticee from (a) selling any shares of the Company till August 10, 2013 i.e., till 6 months from the date of the last purchase of the Company's shares and (b) purchasing shares of the Company till September 20, 2013 i.e., till 6 months from the date of the last sale of the Company's shares.*
- c) *The Noticee has duly paid the penalty and has also complied with the transaction restrictions imposed on him by the Company.*
- d) *It is relevant to consider the scheme of the PIT Regulations pertaining to the Model Code of Conduct (MCC). Reg. 12(1) of the PIT Regulations requires listed companies to frame a Code of Conduct for its 'designated employees' in terms of the MCC. As per Reg. 12(3), listed companies are required to put in place appropriate mechanism and procedures for compliance with such Code of Conduct. It is respectfully submitted that once a listed company has put in place its Code of Conduct, its 'designated employees' are governed by the Code of Conduct and not the MCC. In the instant case, the Company has found the Noticee in violation of its Code of Conduct, and has already imposed penalties in terms thereof on the Noticee. In these circumstances, it is not open to SEBI to impose penalty against the Noticee for the purported contravention of the MCC.*
- e) *Even assuming for the sake of argument that the SEBI can penalize the Noticee for the violation of the MCC, it is submitted that the contravention of MCC is punishable by the Company and not SEBI. Clauses 6.1 and 6.2 of the MCC categorically provide that the powers to penalize for trading in securities in contravention of the MCC lies only with the concerned company. Furthermore, Regulation 12(1) also provides that listed company (i.e. ITC in the present case) "shall ensure compliance" of the MCC. It is submitted that the Noticee has not been charged for any violation of any PIT Regulations other than Clause 4.2 of the MCC. It is respectfully submitted that SEBI cannot seek the benefit of Reg. 12(4) of the PIT Regulations or Clause 6.3 of the MCC. Reg. 12(4) and/ or Clause 6.3 merely reserve SEBI's power to initiate proceedings in the event a violation*

of the Code of Conduct of a Company leads to a violation of any other substantive provision of the PIT Regulations. Reg. 12(4) and/ or Clause 6.3 do not empower SEBI to prosecute a 'designated employee' for violation of the MCC or the applicable Code of Conduct. Accordingly, it is respectfully submitted that the SCN is not maintainable insofar as it seeks to penalize the Noticee for violation of the MCC.

- f) It is respectfully submitted that the Noticee had entered into the alleged opposite transaction by inadvertence. The sale of shares on March 21, 2013 was unintentional. It is further submitted that the alleged transaction had been the result of a mere miscommunication and was not a deliberate or intentional attempt on the part of the Noticee to garner windfall profits by contravening the restrictions on opposite transactions. In fact, the Noticee had made a net profit of Rs. 2,521 from the entire transaction and has paid an equal amount by way of penalty imposed by the Company for violation of its Code of Conduct. It is respectfully submitted that in view of these facts the transaction was but a technical breach of the Code of Conduct which is completely venial in nature.*
- g) Additionally, the bona fide of the Noticee is firmly established by the fact that he informed the Company without any undue delay on April 10, 2013 and thereafter complied with the transaction restrictions issued by the Company and paid the penalty levied.*
- h) Further, the shares involved in the alleged opposite transaction amount to mere 493 shares which is a miniscule amount in contrast to the shares of the Company, traded in the market on a day-to-day basis. The Noticee endured no disproportionate gain or unfair advantage on account of the purported contravention.*
- i) It is most respectfully submitted that no harm has been caused to the interests of the investors in any manner whatsoever and considering the diminutive amount of shares inadvertently sold, the present matter does not call for any penalty on the Noticee. Further, the charge of violation in the present SCN is a solitary instance of non-compliance against the Noticee.*

7. The undersigned, after being appointed as Adjudicating Officer in the present matter, also gave an opportunity of hearing to the Noticee on April 25, 2016. Ms. Ananya Ghosh and Ms. Reena Choudhary from Amarchand Mangaldas appeared as Authorized Representatives on behalf of the Noticee for the hearing on the stipulated date. Thereafter, the Authorised Representative on behalf of the Noticee also made written submissions vide its letter dated May 11, 2016 and reiterated its earlier submissions made vide letter dated July 29, 2014.

CONSIDERATION OF ISSUES AND FINDINGS:

8. I have carefully perused the documents available on record and also the written submissions made by the Noticee. It was alleged in the SCN that the Noticee being one of the 'designated employees' of the Company had entered into an opposite transaction in the scrip of the Company within six months following his previous transaction in the scrip of the Company and thereby violated the provisions of Clause 4.2 of the Model Code of Conduct specified in Part A of Schedule I read with Regulation 12 (1) of the PIT Regulations.
9. In terms of Regulation 12 of the PIT Regulations, all listed companies are required to frame a Code of Conduct as near to the Model Code of Conduct prescribed under the PIT Regulations. The Company had framed a Code of Conduct prescribing various provisions, including the requirement that its 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 of the Company during the next six months following the prior transaction in the scrip of the Company. 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/officials/employees etc. In the instant matter, I observe that the Noticee has admitted to the fact that he had inadvertently entered into an opposite transaction in the scrip of the Company within six months of his previous transaction in the shares of the Company and therefore, there was non-compliance of the Model Code of Conduct prescribed under Regulation 12 (1) of the PIT Regulations by the Noticee.
10. Before moving forward, it is pertinent to refer to the relevant provisions of the PIT Regulations, which reads as under:

PIT Regulations

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

12. (1) All listed companies and organizations associated with securities markets including:

(a)...

...

(e)..
..

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.

(2) The entities mentioned in sub-regulation (1), shall abide by the Code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.

(3) All entities mentioned in sub-regulation (1), shall adopt appropriate mechanisms and procedures to enforce the codes specified under sub-regulations (1) and (2).

(4) Action taken by the entities mentioned in sub-regulation (1) against any person for violation of the code under sub-regulation (3) shall not preclude the Board from initiating proceedings for violation of these Regulations.

Model Code of Conduct prescribed in SCHEDULE I under Regulation 12 (1) of the PIT Regulations

Clause 4.0 other restrictions

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. In the case of subscription in the primary market (Initial Public Offers), the above mentioned entities shall hold their investments for a minimum period of 30 days. The holding period would commence when the securities are actually allotted.

Clause 6.0 - Penalty for contravention of code of conduct

6.1. Any employee/officer/director who trades in securities or communicates any information for trading in securities in contravention of the code of conduct may be penalised and appropriate action may be taken by the company.

6.2. Employees/officers/directors of the company who violate the code of conduct shall also be subject to disciplinary action by the company, which may include wage freeze, suspension, ineligible for future participation in employee stock option plans, etc.

6.3. The action by the company shall not preclude SEBI from taking any action in case of violation of SEBI (Prohibition of Insider Trading) Regulations, 1992.

The relevant provisions of Section 15 HB of the SEBI Act, which reads as under:

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

11.I note that the following observations made based on the submissions of the Noticee and the Company are relevant in the context of the present proceedings:

- a. Noticee is presently employed with ITC Limited as the Vice President of the Hotel Division of the Company. Noticee joined the services of the Company on March 16, 1994.
- b. On January 23, 2013, Noticee had through his agent purchased 300 shares of the Company along with shares of various other companies such as Hindustan Unilever, United Phosphorus, and Chambal Fertilizers. Thereafter, on February 11, 2013, Noticee further purchased 193 shares of the Company along with shares of various other companies. Due to some communication issues with his stock broker, Noticee had given instructions to his stock broker to sell 493 shares of the Company along with instructions to sell the shares of various other companies. The said transaction to sell 493 shares of the Company was executed by the Noticee's stock broker on March 21, 2013. The sale of 493 shares of the Company resulted in Noticee executing an opposite transaction in the scrip of the Company within a period of six months of his previous transaction in the scrip of the Company. The Noticee admitted to the fact that the sale of 493 shares of the Company by him was entirely inadvertent and a bonafide accidental lapse on his part. Upon realization of the opposite transaction carried out by the Noticee, he voluntarily informed the Company of the same on April 10, 2013.
- c. ITC in its communication to SEBI mentioned that in view of the non-adherence of the ITC Code of Conduct for Prevention of Insider Trading occasioned by the sale of 493 shares of ITC by the Noticee on March 21, 2013, a penalty of Rs 2,521/- was imposed on the Noticee by the Company. Further, the Company had also restrained the Noticee from selling any ITC shares for upto six months from the date of the last purchase of the shares of ITC by the Noticee i.e w.e.f 11.02.2013. The Noticee was also restrained from purchasing shares of ITC for a period upto six months from the date of his last sale of the shares of ITC i.e w.e.f 21.03.2013.
- d. As per confirmation received from the Company, Noticee had complied with the trading restrictions imposed on him by the Company from buying/selling

shares of ITC for a period of 6 months and also paid the penalty amount of Rs 2,521/-. ITC in its communication addressed to SEBI also confirmed that Noticee has not committed any other violation of the ITC Code of Conduct for Prevention of Insider Trading other than the aforementioned violation.

- e. The net profit of Rs 2,521/- made by the Noticee from the entire transactions in the scrip of the Company was paid as penalty by the Noticee vide cheque drawn in favour of ITC Rural Development Trust on May 23, 2013. The penalty imposed on the Noticee by the Company i.e Rs 2,521/- was the net monetary gain made by the Noticee from the alleged transactions in the shares of the Company after reckoning the brokerage and taxes. Noticee mentioned that there was no intention on his part to garner profits by contravening the restrictions on the opposite transactions.
- f. During the period of the alleged transactions in the scrip of the Company by the Noticee, the transaction statements submitted by the Noticee indicated that Noticee was already holding 1,42,549 shares of the Company. The said shares were allotted to the Noticee upon exercise of Options under the ITC Employee Stock Option schemes.
- g. It was also confirmed by the Noticee that apart from the present proceedings, no other enforcement actions have been initiated by SEBI against him in the past and there has been no other instance of any action initiated against him by the Company as regards his dealings in the shares of ITC.

12. In respect of the allegation levelled against the Noticee, I observe that the Noticee has not disputed the transactions or the allegations levelled against him. On the contrary, he has admitted to the inadvertent lapse on his part in executing the opposite transaction involving the sale of 493 shares of the Company within a period of six months prior to his purchase transaction in the scrip of the Company. I also observe that the Noticee has assured the Company that such instances of non-adherence of the Code of Conduct will not occur in future. In the instant matter, I am of the view that the Noticee has been adequately penalized by the Company for his lapses, which resulted in the violation of the Model Code of Conduct by the Noticee prescribed under the PIT

Regulations. I observe that apart from payment of Rs 2,521/- as penalty to the Company, Noticee has also undergone debarment from buying or selling the shares of the Company for a period of six months. I am therefore of the view that the penalty imposed by the Company on the Noticee is commensurate with the violations committed by him.

13. I have also examined the trading pattern of the Noticee, which shows that the Noticee had bought and sold only 493 shares of the Company during the examination period i.e from January 2013 to March 2013, when he was already holding 1,42,549 shares of the Company during the said examination period. The solitary transaction involving the sale of 493 shares of the Company by the Noticee on March 21, 2013 i.e within a period of six months of his purchase transactions in the scrip of the Company had resulted in the violation committed by the Noticee and the proceedings initiated against him. I am of the view that the said quantity of 493 shares of the Company transacted by the Noticee during the examination period is miniscule and it seems highly improbable that Noticee was privy to any price sensitive information relating to the Company, which could have motivated him to buy and sell 493 shares of the Company during the examination period. Further, I find that there is nothing on record to indicate that Noticee has indulged in any market manipulation or made wrongful gain or caused any wrongful loss to others due to his trading in the shares of the Company during the examination period. Therefore, considering the aforesaid facts and circumstances of the matter, in my view, the mitigating effects of the observations made above and also at paras 11 and 12 above come to the aid of the Noticee and no penalty under the provisions of Section 15 HB of the SEBI Act is merited in the facts and circumstances of the case.

14. I observe that Noticee has mentioned in his reply that the contravention of the Model Code of Conduct prescribed under the PIT Regulations categorically provide that the powers to penalize any person/entity for trading in the securities of the Company in contravention of the Model Code of Conduct lies only with the concerned Company and it does not empower SEBI to prosecute a 'designated employee' for violation of the Model Code of Conduct prescribed for Listed Companies under the PIT Regulations. I find that the Noticee has further submitted that the provisions of Regulation 12 (4) of the PIT Regulations and Clause 6.3 of the Model Code of Conduct merely reserve SEBI's power to initiate proceedings in the event a violation of the Code of Conduct of a

Company leads to violation of any other substantive provisions of the PIT Regulations.

I am not in agreement with the views/submissions of the Noticee. The Code of Conduct prescribed by the Company under the PIT Regulations for all practical purposes is to be treated as a part of the PIT Regulations. Regulation 12 (1) of the PIT Regulations also prescribe the Model Code of Conduct for Listed Companies. Therefore, the violation of the Code of Conduct prescribed by the Company under the PIT Regulations by any director/employee or 'designated employee' can be independently dealt with by SEBI as a violation of the provisions of Regulation 12 (1) of the PIT Regulations. Further, it has also been clearly brought out under the provisions of Regulation 12 (4) of the PIT Regulations and also under Clause 6.3 of the Model Code of Conduct that the action taken by the Company for violation of the Code of Conduct shall not preclude SEBI from taking any action in the case of the violation of the PIT Regulations. In this regard, I would like to quote the observations of the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Manmohan Shetty Vs SEBI (Appeal No 132 of 2010) - wherein Hon'ble SAT has observed the following:

"We are of the considered view that the only possible conclusion that can be arrived at is that the code of conduct prescribed by the company for prevention of insider trading as mandated by the Regulations for all practical purposes is to be treated as a part of the Regulations and any violation of the code of conduct can be dealt with by the Board as violation of the Regulations framed by it."

"We are, therefore, of the considered view that violation of the Code of Conduct, as framed by the Company in accordance with the mandates prescribed in the Regulations, is nothing but part of the Regulations and any violation thereof is punishable by the Board also as violation of the Regulations in addition to such action that may be taken by the Company. Any other view taken in the facts and circumstances of the case will defeat the very purpose of the Regulations in question"

In view of the above, I do not find any merit in the arguments put forth by the Noticee. However, in light of the facts and circumstances of the case and the mitigating factors mentioned above, no penalty is imposed on the Noticee in the present matter.

ORDER:

15. In view of the foregoing, considering the facts and circumstances of the case and the material on record, the adjudication proceedings initiated against the Noticee vide SCN dated October 23, 2013 is accordingly disposed of.

16. In terms of the provisions of Rule 6 of the Adjudication Rules, copy of this order is being sent to the Noticee viz. Shri Gautam Anand and also to the Securities and Exchange Board of India.

Place: Mumbai
Date: July 20, 2016

SURESH B. MENON
ADJUDICATING OFFICER