

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PKB/AO-57/2011]

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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:

Bipin Kumar Ratilal Shah  
(PAN - AWMP55368K)

In the Matter of: Platinum Corporation Limited

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**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 more than 5% of equity capital of the Company but did not disclose their shareholdings to the Company in compliance with Regulation 13(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992. Investigation also revealed that they did not disclose change in shareholding in compliance with Regulation 13(3) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT Regulations**”). Investigation further revealed that they did not disclose their shareholdings in compliance with Regulation 7(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as “**SAST Regulations**”).
2. It was observed that Bipin Kumar Ratilal Shah (hereinafter referred to as the “**Noticee**”) was having four beneficiary accounts with Depository Participant (hereinafter referred to as “**DP**”), SHCIL BOID: 30306386 (Bipin Ratilal) & BOID: 30308113 (Shah Bipin Kumar), DP, Indiabulls Securities, BOID: 10892340 (BipinKumar Ratilal Shah) and DP, India Infoline, BOID: 10446391 (BipinKumar Ratilal Shah). It was observed that in each account, the Noticee was holding shares less than 5% of

equity, but by aggregating shareholding in all the accounts, shareholding of the Noticee exceeded more than 5% of equity capital of the Company.

3. It was observed that holdings of the Noticee exceeded 5% of paid up capital on January 05, 2005 as the Noticee increased his shareholding to 7.47% of equity capital of the Company. The shareholding of the Noticee got reduced by more than 2% on September 19, 2005, whereon shareholding was reduced to 5.42%. Thereafter, shareholding of the Noticee went up by more than 2%, i.e., to 7.94% on January 30, 2006 and subsequently was reduced to 2.16% by July 12, 2006.
4. It was further observed that the Noticee had distributed his shareholdings in different beneficiary accounts having different names, in order to escape attention of shareholders / Regulatory / Investigating authorities, which suggested his deliberate intention to cheat other innocent shareholders of the Company by not disclosing true shareholdings. It was observed that the Noticee was summoned vide summons dated July 16, 2010, to submit relevant information and also to appear before Investigating Authority on July 27, 2010. However, the Noticee neither submitted the information nor appeared before the Investigating Authority to explain the transactions and provide necessary evidence in compliance with the said Regulations.
5. It was observed that the Noticee transacted substantially in the shares of the Company, but failed to make disclosures about his initial shareholding and change in shareholding to the Company and also to the Stock Exchanges as required under the PIT Regulations and SAST Regulations. 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(1) and 13(3) of PIT Regulations and Regulation 7(1) of SAST Regulations.
6. 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(1) and 13(3) of PIT Regulations and Regulation 7(1) of SAST Regulations.

## SHOW CAUSE NOTICE, HEARING & REPLY

7. 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 15, 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.
8. The aforesaid SCN was duly delivered to the Noticee. Subsequently, vide letter dated August 02, 2011, the Noticee acknowledged the receipt of the SCN and sought additional time to submit reply. Vide letter dated August 18, 2011, the Noticee was informed that the time limit for submission of reply to the SCN was extended to August 31, 2011. Thereafter, vide letter dated August 31, 2011, the Noticee once again requested for 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.
9. 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 18, 2011 and *inter alia* made the following submissions:
  - *I used to do the business of money lending during the period when these transactions were executed.*
  - *The persons from whom I received the shares viz. Suketu Patel, Ashok Purushottambhai, Mahendra Patel, Parag Shah & others, do not know them personally.*
  - *But, I lent money to them on the instruction of Mr. Nagin Patel and as a security against money I received those shares in my demat a/c from the said persons.*
  - *When I have received instruction from Mr. Nagin Patel, I sold these shares as recovery of money and transferred some of shares to other persons. But, I do not know them and their place.*
  - *Further, when I received the shares from them, I was not aware of the transactions of my family members.*

- *I have neither received nor acquired any shares as PAC (Persons Acting in Concert) of my family members. My dealing was based only on my individual decision even my family members were also not aware of my transactions.*
- *Even for lending money also I have not borrowed anything from my family members. As I am living apart from my family.*
- *This reply is to be treated as individual and as a director of Pratik Minerals Pvt. Ltd. And Parvati Minerals Pvt. Ltd.*
- *So, the allegation labeled against me is false and not sustainable.*

10. Thereafter, another opportunity of personal hearing was granted to the Noticee on November 24, 2011 vide Notice of Inquiry dated October 25, 2011. However, 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 14, 2011. Mr. Ashok Jain, Authorised Representative of the Noticee appeared for hearing on November 14, 2011 and reiterated the submissions previously made by the Noticee vide letter dated October 18, 2011.

#### **ISSUES FOR CONSIDERATION**

11. 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(1) and 13(3) of PIT Regulations and Regulation 7(1) of SAST 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**

12. 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(1) and 13(3) of PIT Regulations and Regulation 7(1) of SAST Regulations?***

13. The provisions of Regulation 13(1) and 13(3) of PIT Regulations and Regulation 7(1) of SAST Regulations read as under:

## **SEBI (Prohibition of Insider Trading) Regulations, 1992**

### ***Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure.***

- 13 (1)** Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 4 working days of : –  
(a) the receipt of intimation of allotment of shares; or  
(b) the acquisition of shares or voting rights, as the case may be.

### ***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.

## **SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997**

### ***Acquisition of 5 per cent and more shares or voting rights of a company***

- 7(1):** Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

14. I note that the requirement of Regulation 13(1) of PIT Regulations is to disclose to the company by any person who holds more than 5% shares or voting rights in any listed company; and such disclosure has to be made within four working days of receipt of intimation of allotment of shares or acquisition of shares or voting rights, as the case may be. I also note Regulation 13(3) of PIT Regulations requires a person holding more than 5% shares for voting rights in any listed company to disclose to the company the number of shares or voting rights held and change in shareholding or voting rights, 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 or voting rights in the company.

15. I note that the Noticee was having beneficiary accounts with DP SHCIL BOID: 30306386 (Bipin Ratilal) & BOID: 30308113 (Shah Bipin Kumar), DP, Indiabulls Securities, BOID: 10892340 (BipinKumar Ratilal Shah) and DP, India Infoline, BOID: 10446391 (BipinKumar Ratilal Shah). From the beneficiary account statements (Demat statements) of the Noticee (enclosed with the SCN as "Annexure II") I note that on

January 05, 2005, the Noticee bought/received 40,00,000 shares of the Company taking his total shareholding in the Company to 80,00,000 shares (representing 7.47% of the equity capital of the Company). Subsequently, the Noticee sold/transferred shares and by September 19, 2005 shareholding of the Noticee was reduced to 58,08,150 shares (representing 5.42% of the equity capital of the Company). Thereafter, the Noticee once again bought/received shares of the Company taking his total shareholding in the Company to 84,97,650 shares by January 30, 2006 (representing 7.94% of the equity capital of the Company). The Noticee then sold/transferred shares and by July 12, 2006, shareholding of the Noticee was reduced to 23,15,476 shares (representing 2.16% of the equity capital of the Company). Relevant transactions of the Noticee in the aforesaid beneficiary accounts were as follows:

Account No.	Date	Description	Credit	Debit	Balance	Balance % to equity
		Opening balance			0	0%
30306386	29/12/04	By STOCK HLDG CORP OF I LTD / 30201612	10,00,000	0	10,00,000	0.93%
30306386	20/12/04	By STOCK HLDG CORP OF I LTD / 30201803	30,00,000	0	40,00,000	3.73%
30308113	05/01/05	By STOCK HLDG CORP OF I LTD / 30200440	35,00,000	0	75,00,000	7.00%
30308113	05/01/05	By STOCK HLDG CORP OF I LTD / 30200255	5,00,000	0	80,00,000	7.47%
30308113	14/09/05	To CM GALAXY BROKING LTD. ,ROLLING MKT LOT / 0506117	0	4,00,000	76,00,000	7.10%
10892340	14/09/05	To CM INDIABULLS SECURITIES LIMITED ,ROLLING MKT LOT / 0506117	0	7,00,000	69,00,000	6.44%
10892340	16/09/05	To INDIABULLS SECURITIES LTD / 10131283	0	7,00,000	62,00,000	5.79%
10892340	19/09/05	To INDIABULLS SECURITIES LTD / 10131283	0	3,91,850	58,08,150	5.42%
10892340	30/09/05	By INDIABULLS SECURITIES LTD / 10131283	7,00,000	0	65,08,150	6.08
10446391	30/01/06	By STOCK HLDG CORP OF I LTD / 30308068 / Offmarket	19,89,500	0	84,97,650	7.94%
10446391	10/03/06 to 14/03/06	To CM INDIA INFOLINE LIMITED	0	4,39,483	80,58,167	7.53%
10892340	22/03/06	To INDIABULLS	0	8,00,000	72,58,167	6.78%

		SECURITIES LTD / 10890887				
10446391	04/04/06 to 11/05/06	To CM INDIA INFOLINE LIMITED	0	9,42,691	63,15,476	5.90%
30306386	12/07/06	To CDS / 1203350200014271	0	20,00,000	43,15,476	4.03%
30306386	12/07/06	To MARWADI SHARES & FINANCE LIMITED / 10681664	0	10,00,000	33,15,476	2.94%
30306386	12/07/06	To KIFS SECURITIES PRIVATE LIMITED / 10283742	0	10,00,000	23,15,476	<b>2.16%</b>

16. From the above it is evident that the Noticee was holding more than 5% of the equity capital of the Company on January 05, 2005. Hence, the Noticee was under obligation to make disclosures under Regulation 13(1) of PIT Regulations to the Company. It is also evident that by September 19, 2005, the Noticee reduced his shareholding from 7.47% to 5.42%, i.e., a change exceeding 2% of the shareholding in the Company. Further, by January 30, 2006, the shareholding of the Noticee had increased from 5.42% to 7.94%, which also depicts a change exceeding 2% of the shareholding in the Company. Subsequently, the shareholding of the Noticee was reduced to 2.16% by July 12, 2006, depicting a change exceeding 2% of the shareholding in the Company. Hence, the Noticee was under obligation to make disclosures under Regulation 13(3) of PIT Regulations to the Company. However, no such disclosures had been made by the Noticee under the aforesaid regulations.

17. I note that since the Noticee was holding more than 5% of the shares of the Company, in terms of Regulation 7(1) of SAST Regulations on January 05, 2005, the Noticee was also under obligation to disclose the aggregate of his shareholding in the Company to the Company and to the stock exchanges where shares of the Company were listed. However, no such disclosures had been made by the Noticee under Regulation 7(1) of SAST Regulations.

18. I note that the Noticee has not made any submissions in his reply regarding the issue of not making disclosures about his initial shareholding and change in shareholding to the Company and also to the Stock Exchanges as required under the PIT Regulations and SAST Regulations as alleged in the SCN. The Noticee has, vide letter dated October 18, 2011, submitted that he held the shares of the Company in his

demat account as a security against money. I observe that this pretext will not come to the rescue of the Noticee keeping in view the facts of the present case. I do not find any merit in the submissions of the Noticee as the Noticee has not been able to submit any documentary evidence which could suggest that he was not the owner of the shares of the Company which were there in his Demat accounts.

19. From the Demat statements of the Noticee, I find that he was holding these shares of the Company as a beneficial owner and nowhere any kind of pledge/encumbrance is shown in the Demat Statements of the Noticee. I note that the procedure for pledging of demat shares is clearly laid down within the bye-laws of the Depositories framed under the Depositories Act, 1996 and SEBI (Depositories and Participants) Regulations, 1996. The requirement therein is that shares pledged have to be identified separately as 'pledged' shares. I also refer to the observations made by the Securities Appellate Tribunal in Appeal No. 83 of 2010 (Liquid Holdings Pvt. Ltd. vs. SEBI, decided on 11-03-2011) – *".....The law also prescribes a mode for the creation and revocation of a pledge. The parties cannot agree to create a pledge contrary to the provisions of Regulation 58.....In the case of shares held in demat form, the Depositories Act and the Regulations framed thereunder provide the manner in which the pledge is to be created and invoked....."*.

20. In view of the above, I hold that the Noticee was under an obligation to make the required disclosures under Regulation 13(1) and 13(3) of PIT Regulations to the Company and under Regulation 7(1) of SAST Regulations to the Company and to the Stock Exchanges, which the Noticee failed to do. Therefore, the Noticee has violated the provisions of Regulation 13(1) and 13(3) of PIT Regulations and Regulation 7(1) of SAST Regulations.

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

21. 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;"***



22. As already observed, the Noticee transacted substantially in the shares of the Company, but failed to make disclosures as required under Regulation 13(1) and 13(3) of PIT Regulations and Regulation 7(1) of SAST 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?***

23. 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.”*

24. 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 the part of the Noticee to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time. In other words, by not complying with the regulatory obligation of making the disclosures, the Noticee had not provided the vital information which is detrimental to the interest of investors in securities market. As already observed in paragraph 16 of this Order, the Noticee failed to make necessary disclosures to the Company under Regulation 13(3) of PIT Regulations, the default of the Noticee is repetitive in nature on this count.

25. In the forgoing paragraphs it is now established that the Noticee failed to make necessary disclosures under Regulation 13(1) and 13(3) of PIT Regulations and Regulation 7(1) of SAST Regulations. Considering the facts and circumstances of the case and the violations committed by the Noticee, I find that imposing a penalty of ₹ 5,00,000/- (Rupees Five Lakhs only) on the Noticee would be commensurate with the violations committed by him.

## ORDER

26. 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 ₹ 5,00,000/- (Rupees Five Lakhs only) on Bipin Kumar Ratilal Shah for not making necessary disclosures under Regulation 13(1) and 13(3) of PIT Regulations and Regulation 7(1) of SAST Regulations.
27. 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.
28. 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 30, 2011**  
**Place: Mumbai**

**P. K. Bindlish**  
**Adjudicating Officer**