

SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/GR/KG/2019-20/5735]

**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) RULES, 1995**

**In respect of Mr. Vinay Sharma
(PAN: AHBPS7555E)**

In the matter of S. Chand & Company Limited

FACTS OF THE CASE IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) had received a reference dated November 29, 2018 from S Chand and Company Ltd (hereinafter referred to as the “Company”) regarding alleged violation of Code of Prohibition of Insider Trading of the Company by Mr. Vinay Sharma (hereinafter referred to as the “Noticee”), an employee of the Company. The aforesaid reference *inter-alia* stated that the Noticee, being one of the insiders of the company, being the Business Head of Safari Digital Education Initiatives Pvt. Ltd. (a wholly owned subsidiary of the company) had traded in the securities of the company during the time of closure of trading window from July 31, 2018 to August 10, 2018 (the trading window was closed to consider and approve financial results for the quarter ended June 30, 2018.)
2. It was also observed that the transaction of the client had exceeded Rs 10 Lakhs in the quarters ending December 2017 and September 2018 triggering disclosure requirement under regulation 7(2)(a) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations 2015 (hereinafter referred to as “PIT Regulations”). However, no such disclosures were made.

APPOINTMENT OF ADJUDICATION OFFICER

3. The undersigned was appointed as the Adjudicating Officer (**AO**) by SEBI, vide order dated August 7, 2019, under Section 19 read with Section 15-I (1) of the Securities and Exchange
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Adjudication Order against Mr. Vinay Sharma in the matter of S. Chand & Company Limited

Board of India Act, 1992 (hereinafter, referred to as “SEBI Act”) and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter, referred to as “SEBI Adjudication Rules”) to enquire into and adjudicate the alleged violations of Regulation 7(2)(a) of the PIT Regulations by the Noticee, in the manner specified under Rule 4 of the SEBI Adjudication Rules, 1995 read with Section 15-I (1) and (2) of the SEBI Act, and if satisfied that penalty is liable for the violation of Regulation 29(1) read with Regulation 29(3) of the SEBI (SAST) Regulations, 2011, to impose such penalty deemed fit in terms of Rule 5 of the SEBI Adjudication Rules 1995 and Section 15A(b) of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice dated September 5, 2019 (hereinafter, SCN) was issued to the Noticee under Rule 4 of the Rules, calling it to show cause as to why an inquiry should not be held against it in terms of Rule 4 of the Rules, read with section 15-I of SEBI Act and penalty be not imposed on it under Section 15A(b) of the SEBI Act for allegedly not filing disclosures with the company under Regulation 7(2) (a) of the PIT Regulations for crossing the value of Rs. 10 Lacs by selling shares of the company on two occasions. The Noticee vide letter dated October 9, 2019, *inter alia* stated as follows:

“I was under the assumption that the value of transactions has not crossed the limit of Rs. 10.00 Lakhs and due to this inadvertence, disclosure under Regulation 7(2) (a) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 [“PIT Regulations”] was not made by me to the company.

In this respect I would like to further state that my intention was never to hide any information from the Company or violate the PIT Regulations but due to misunderstanding with respect to amount of shares sold this inadvertent non-compliance has occurred.”

5. An opportunity of personal hearing was provided to the Noticee on November 14, 2019 vide hearing notice dated October 30, 2019. The Noticee had attended the hearing in person through video conference from the SEBI-NRO. The Noticee reiterated his submissions already made vide letter dated October 9, 2019 and further stated that the requisite disclosures under Regulation 7(2) of the PIT Regulations had not been made by him to the Company till that date

in the prescribed format. Subsequently, vide email dated November 18, 2019, the Noticee informed that he had made the requisite disclosures to the company in the prescribed format on November 15, 2019 and had also attached a copy of the duly filled Form-C filed with the Company.

CONSIDERATION OF ISSUES AND FINDINGS

6. It is noted from the submissions of the Noticee as detailed above, that he has already admitted the fact that he had indeed sold the shares of the company on two occasions when the sale value of the shares had exceeded Rs. 10 lacs on each of such occasions and had not made the disclosure stipulated under Regulation 7(2) of the PIT Regulations. Therefore, none of the facts pertaining to the sale of shares of the company by the Noticee beyond the value of Rs. 10 Lacs on two quarters without making requisite disclosure under PIT Regulations, as alleged in the SCN have been controverted by the Noticee.
7. On the basis of the details of transaction and holdings in the scrip of the Company by the Noticee and the day-wise trading details of the Noticee on the stock exchange, a summary of the transactions of the Noticee is provided herein below:

Date	Txn Type	Buy Qty	Sell Qty	Buy value (in Rs)	Sell Value (in Rs)	Closing Holdings (no. of shares)	Disclosure requirement	Date of Disclosure to company	Date of Disclosure to Exchanges
01-Jan-2017	Opening Holdings					0			
25-Jul-2017	CA*	16280	0	8,139,186		16280	Reg 7(2)(a) of SEBI PIT regulation 2015	27-Jul-2017	31-Jul-2017

16-Oct-2017	ON MKT	0	250		115,568	16030			
23-Oct-2017	ON MKT	0	250		115,225	15780			
24-Oct-2017	ON MKT	0	100 0		481,993	14780			
30-Oct-2017	ON MKT	0	500		241,735	14280			
02-Nov-2017	ON MKT	0	230		114,788	14050	Reg 7(2)(a) of SEBI PIT regulation 2015	Not Disclosed	Not Disclosed
04-Jan-2018	ON MKT	0	100		52,333	13950			
08-Jan-2018	ON MKT	0	100		52,352	13850			
11-Jan-2018	ON MKT	0	100		52,811	13750			
15-Jan-2018	ON MKT	0	200		103,541	13550			
17-Jan-2018	ON MKT	0	200		100,348	13350			
29-Jan-2018	ON MKT	0	100		48,347	13250			
30-Jan-2018	CA*	10360	0	4,756,79 4		23610	Reg 7(2)(a) of SEBI PIT regulation 2015	1-Feb-2018	2-Feb-2018
16-Feb-2018	ON MKT	0	100		47,283	23510			

20-Feb-2018	ON MKT	0	100		46,202	23410			
26-Feb-2018	ON MKT	0	100		46,542	23310			
12-Mar-2018	ON MKT	0	100		42,800	23210			
19-Mar-2018	ON MKT	0	100		42,329	23110			
28-Mar-2018	ON MKT	0	200		83,750	22910			
21-Jun-2018	ON MKT	0	100		36,007	22810			
22-Jun-2018	ON MKT	0	200		70,781	22610			
29-Jun-2018	ON MKT	0	100		34,650	22510			
09-Jul-2018	ON MKT	0	200		69,226	22310			
10-Jul-2018	ON MKT	0	200		71,600	22110			
11-Jul-2018	ON MKT	0	100		36,818	22010			
12-Jul-2018	ON MKT	0	100		37,150	21910			
16-Jul-2018	ON MKT	0	200		70,650	21710			
18-Jul-2018	ON MKT	0	200		72,803	21510			

23-Jul-2018	ON MKT	0	200		72,001	21310			
25-Jul-2018	ON MKT	0	200		72,000	21110			
27-Jul-2018	ON MKT	0	200		71,857	20910			
30-Jul-2018	ON MKT	0	210		76,997	20700			
31-Jul-2018	ON MKT	0	200		72,632	20500			
06-Aug-2018	ON MKT	0	200		70,250	20300			
07-Aug-2018	ON MKT	0	200		70,445	20100			
24-Aug-2018	ON MKT	0	200		65,034	19900			
28-Aug-2018	ON MKT	0	200		64,901	19700			
10-Sep-2018	ON MKT	0	200		61,811	19500	Reg 7(2)(a) of SEBI PIT regulation 2015	Not Disclosed	Not Disclosed
11-Sep-2018	ON MKT	0	200		61,796	19300			
14-Sep-2018	ON MKT	0	200		61,327	19100			
03-Dec-2018	ON MKT	0	500		110,682	18600			

06-Dec-2018	ON MKT	0	500		112,516	18100			
07-Dec-2018	ON MKT	0	500		113,587	17600			

*allotment of shares under ESOPs scheme.

The aforementioned details have been obtained from the copy of the email dated May 22, 2019 received from NSE (annexed as Annexure III to the SCN) and copy of the email dated May 23, 2019 received from NSDL (annexed as Annexure IV to the SCN) .

8. On the basis of what has been stated above, it is observed that during the two calendar quarters from October 1, 2017 to December 31, 2017 and July 1, 2018 to September 30, 2018, the Noticee had sold 2,230 shares of value Rs 10,69,309 and 3,410 shares of value Rs 11,79,298 respectively. It is also observed that for the quarter September to December 2018, the total value of shares sold by the Noticee from Jul 9, 2018 to Sep 10, 2018 is Rs 10,56,175 (for 3,010 shares) which exceeded Rs 10 lacs on Sep 10, 2018. Hence the Noticee was required to make disclosure u/r 7(2)(a) of SEBI PIT regulation 2015 within 2 working days from Sep 10, 2018 ie after sale of 3,010 shares of value Rs 10,56,175. Since the value of the said transactions during each of these 2 calendar quarters exceeded Rs 10 lakhs, this had necessitated disclosures under Regulation 7(2) (a) of SEBI (PIT) Regulations, 2015 within two days from November 2, 2017 and September 10, 2018. In this regard, the text of Regulation 7(2)(a) of the PIT Regulations, 2015, is reproduced herein below:

“7(2) Continual Disclosures.

(a) Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;”

9. The only defense sought to be taken by the Noticee is that he was under the assumption that the value of transactions has not crossed the limit of Rs. 10.00 Lakhs and due to this inadvertence, disclosure under Regulation 7(2) (a) of the PIT Regulations was not made by him to the company. The Noticee has further submitted that it was never his intention to hide any information from the Company or violate the PIT Regulations but due to misunderstanding with respect to amount of shares sold, this inadvertent non-compliance has occurred. The Noticee has prayed for condonation of the said non-compliance. At this juncture, reliance is placed upon the Order of the Hon'ble Supreme Court in the matter of *Chairman, SEBI Vs Shriram Mutual Fund* {[2006] 5 SCC 361} where the Hon'ble Supreme Court of India held that:

“In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant....”

10. The aforesaid contravention of the provisions of Regulation 7(2) (a) of the PIT Regulations, 2015 make the Noticee liable for monetary penalty under Section 15A(b) of SEBI Act, 1992. Provisions of Section 15A(b) of SEBI Act, 1992 *inter-alia* read as under:

“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,—

*(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 [which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees]];”

11. While determining the quantum of penalty under Section 15 A(b) of SEBI Act as aforesaid, provisions of Section 15 J of SEBI Act would be applicable, which read as under:-

[Factors to be taken into account while adjudging quantum of penalty.]

15J. While adjudging quantum of penalty under [15-I or section 11 or section 11B, the Board or 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 [...] 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.]

12. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that the disproportionate gain made by the Noticee through such sale of shares and/or loss caused to other investors is not known. As regards the repetitive nature of the default, no prior non-compliance of the Noticee is available on record. It is also noted that the Noticee has filed the requisite disclosure in the prescribed format to the company on November 15, 2019 and the Noticee has already admitted his non-compliance of the relevant laws, which need to be considered as a mitigating factor while determining the quantum of penalty.

ORDER

13. After taking into consideration all the facts and circumstances of the case, I impose a penalty of **Rs. 1,00,000/- (Rupees One Lac only)** under Section 15 A(b) of the SEBI Act against Mr. Vinay Sharma, which will be commensurate with his non-compliances.
14. The Noticee 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 online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link.

ENFORCEMENT → Orders → Orders of AO → PAY NOW

15. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

- a) Name and PAN of the entity (Noticee)
- b) Name of the case / matter
- c) Purpose of Payment – Payment of penalty under AO proceedings
- d) Bank Name and Account Number
- e) Transaction Number

16. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings 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

17. In terms of the Rule 6 of the SEBI Adjudication Rules, copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Date: November 26, 2019

G. Ramar

Place: Mumbai

ADJUDICATING OFFICER