

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER/SS/AKS/18/28/2018-19]

**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:

Puppala Obul Reddy
(PAN No. AFKPR4332K)
D.No. 1293/5 BC Colony,
Aganampudi, Gajuwaka,
Vishakhapatnam – 530046

In the matter of Covidh Technologies Limited

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an examination in the scrip of Covidh Technologies Limited (hereinafter referred to as 'the company') formerly known as Aptus Industries Limited, a company having its shares listed on the Bombay Stock Exchange (hereinafter referred to as 'BSE'), Ahmedabad Stock Exchange (hereinafter referred to as 'ASE') and Madras Stock Exchange (hereinafter referred to as 'MSE'), during the period October 01, 2014 to March 31, 2015. During such examination, it was observed that Puppala Obul Reddy (hereinafter referred to as 'the Noticee'), one of the promoters of the company had sold 30,150 shares of the company on January 10, 2014 which was in excess of threshold limit of 25,000 shares as stipulated in Regulation 13(4A) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'the PIT Regulations').
2. Vide email dated April 01, 2015, BSE had informed SEBI that as per exchange record, no disclosures were received from the Noticee under the PIT Regulations for the aforesaid transaction. In view of the same, SEBI observed that with regard to aforesaid transactions the Noticee had failed to make disclosures as required under regulation 13(4A) of PIT Regulations.
3. The Whole Time Member, SEBI *prima facie* felt satisfied that there are sufficient grounds to adjudicate upon the alleged violations by the Noticee in respect of the provisions of regulation 13(4A) read with 13(5) of PIT Regulations and appointed Shri Suresh Gupta, Chief General Manager, as Adjudicating Officer (AO) vide order dated January 31, 2017 to adjudge under rule 5 of SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 and under section 15A (b) of the SEBI Act, for the said violations by the Noticee. After the AO remitted back the matter to the concerned

department in SEBI, it conducted further inquiry wherein vide e-mail dated October 10, 2017, the company stated that ‘company has not received any intimation from Puppala Obul Reddy about the change in holdings; hence the company could not intimate the same to stock exchanges’.

4. Subsequently, by a common communication- order dated April 02, 2018, this case has been transferred to me with advise that except for the change of the Adjudicating Officer the other terms and conditions of the original orders ‘shall remain unchanged and shall be in full force and effect’ and that the “Adjudicating Officer shall proceed in accordance with the terms of reference made in the original orders”. Accordingly, in terms of Rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act and terms of reference as advised in above communication- order dated April 02, 2018 the notice to show cause no. EAD/SS/GSS/12623/1/2018 dated April 25, 2018 (hereinafter referred to as ‘the SCN’) was issued to the Noticee, calling upon to show cause as to why an inquiry should not be held against her in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15 A(b) of the SEBI Act for the alleged violation of provisions of regulation 13(4A) read with regulation 13(5) of the PIT Regulations. The relevant provisions of PIT Regulations charged in this case and consequent penalty provided in section 15A (b) of the SEBI Act are reproduced hereinafter:

PIT Regulations, 1992

Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure

13. (4A) Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such persons from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of :

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

Penalties and Adjudication

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.

5. The SCN sent by prescribed mode on the address provided on record was returned undelivered. Thereafter, the SCN was forwarded at other available address of the Noticee on May 14, 2018. The SCN was duly served upon the Noticee but no reply was received from the Noticee. In terms of Rule 4 (3) of the Adjudication Rules, an opportunity of personal hearing was granted to the Noticee on June 08, 2018. The notice of hearing was duly served upon her but the Noticee did not availed the opportunity. In the interest of principles of natural justice, another opportunity of personal hearing was granted to the Noticee on July 09, 2018, but the Noticee again did not avail this opportunity either. It is noted that till date, no reply / communication has been received from the Noticee. Vide the said SCN it was clearly indicated that in case of failure to submit reply the case would be proceeded with *ex-parte* on the basis of the material available on record.
6. It is noted that the Noticee has neither filed any reply nor has availed the opportunity of personal hearing despite service of notices upon her. In the facts and circumstances of this case, I am of the view that the Noticees has nothing to submit and in terms of rule 4(7) of the Adjudication Rules the matter can be proceeded *ex-parte* on the basis of material available on record. In absence of any response from the Noticee to the SCN, I presume that the Noticee has admitted the charges levelled against her. In this regard, it is pertinent to note that the Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Classic Credit Ltd. vs. SEBI* (Appeal No. 68 of 2003 decided on December 08, 2006) has, *inter alia*, observed that, "*.....the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them*". Further, the Hon'ble SAT in the matter of *Sanjay Kumar Tayal & Others vs SEBI* (Appeal No. 68 of 2013 decided on February 11, 2014), has also, *inter alia*, and observed that: "*..... appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices...*"
7. I have considered the allegation levelled in the terms of reference and the relevant material brought on record. In this case, in absence of any response from the Noticee and any material suggesting contrary to the charges/allegation the only possible conclusion is that the allegations and charges have been admitted by the Noticee and it is established that till date, the Noticee has not made disclosures to BSE and the company under regulation 13(4A) read with regulation 13(5) of the PIT Regulations with regard to the aforesaid sell transaction 30,150 shares of the company on January 10, 2014.

8. For the purpose of adjudicating the aforesaid default under the provisions of section 15A(b) of the SEBI Act it is mandatory to consider the factors stipulated in Section 15J of the Act, 1992 which reads as follows:-

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;*

9. It is commonly accepted that after the amendment in section 15J of the SEBI Act, vide Part VIII of Chapter VI of the Finance Act, 2017 which was brought after Judgement of Hon’ble Supreme Court in the case of Roofit Industries, while the adjudging the quantum of penalty the adjudicating officer has discretion and such discretion should be exercised having regard to the factors specified in section 15J. It is also settled position that the words "shall be liable to" used in the context of "penalty in any statute, do not convey an absolute imperative; they are merely directory and leave it to the discretion of the Authority to impose any penalty or not. Further, from the ratio of the Judgement of Hon’ble SAT in the matter of *M/s. Ushdev Trade Ltd. vs. SEBI (SAT Appeal No 106 of 2010- Order dated 14.9.10)*, it is noted that the adjudicating officer is not bound to be always within the specified range while imposing the penalty on a delinquent and he must exercise his discretion in imposing any penalty having regard to the factors listed in section 15J.
10. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default is not brought on record and is unascertainable. As per record, this is first such default by the Noticee. The quantity 30,150 shares – 0.29%) sold by the Noticee was marginally (0.05%) above the stipulated threshold. The transaction in question is more than 4 years old. There is no material to indicate any deliberate design of suppression of true fact to defraud investors. However, considering the fact that the Noticee has not made disclosures till date and default is continuing, the matter does not deserve complete leniency as a no penalty case. The fact remains that no disclosure has been made in public domain about such sell transaction in the stipulated format till date. Such non disclosures as in this case would, thus, create information asymmetry, at relevant times.

11. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 50,000./- (Rupees fifty thousand only) on the Noticee viz. Puppala Obul Reddy under section 15A(b) of SEBI Act. In my view, the said penalty is commensurate with the violation committed by the Noticee in this case.
12. 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 e-payment facility into Bank Account the details of which are given below-

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

13. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD-DRA-I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1	Case Name	
2	Name of the 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)	

14. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: August 06, 2018

Place: Mumbai

Santosh Shukla

Adjudicating Officer