

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-12/ AO/SM/125-127/2017]**

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of:

1. Mr. M L Nagda (PAN: AAOPN7420K)
2. Mr. A R Shingewar (PAN: AABPS3329R)
3. Mr. Madangopal Murlidhar Mundhra (PAN: AKBPM2697N)

In the matter of M/s. Coromandel International limited (earlier known as "Liberty Phosphates Ltd")

Facts of the case:

1. Securities and Exchange Board of India ("SEBI") had conducted an investigation in the scrip of **Coromandel International Limited** ("CIL") for possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 ('Act') and various Rules and Regulations made thereunder during the investigation period between September 5, 2012 to January 24, 2013 (hereinafter referred to as the 'IP').

Analysis of Code of Conduct adopted by the company for Prevention of Insider Trading for Listed Companies under SEBI (PIT) Regulations, 1992

2. On analysis, it was observed that in response to SEBI's query on adoption of Code of conduct prescribed for SEBI (Prohibition of Insider Trading) Regulations, 1992 ("PIT Regulations") by CIL prior to November 11, 2011, CIL replied vide letter dated February 4, 2014 as follows-

"The Board of Directors had adopted the Code of Conduct for Prevention of Insider Trading in terms of Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 1992 in its meeting held on 11th November, 2011. Hence, there was no code of conduct prior to that date. Accordingly, we are unable to submit copy of the same".

Further in response to SEBI's query on adoption of clause 4.2 of Part A of Schedule I (Amended in the year 2008) under Regulation 12(1) of PIT Regulations 1992, CIL vide letter dated March 07, 2014, submitted that *"it has adopted the amended clause 4.2, on April 17, 2013"*.

3. *The following was alleged*

3.1 though Schedule I, Part A of Model Code of Conduct for Prevention of Insider Trading for Listing Companies under Regulation 12(1) of PIT Regulations, 1992 came into effect from February 20, 2002 and CIL being listed company with BSE since May 22, 1995, CIL did not adopt a Code of Conduct till November 11, 2011 (the date on which the code of conduct was approved and adopted by the Board of Directors of CIL).

3.2 On further analysis of the Code of Conduct adopted by CIL, it was noted that CIL under point no. 3 under the head 'Other Restrictions' adopted the code as *"All the directors/officers/designated employees shall hold their investments in securities for a minimum period of 30 days_in order to be considered as being held for investment purposes"*. Whereas amended Clause 4.2 of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies under SEBI (PIT) Regulations, 1992 says *"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."* Hence, CIL had failed to adopt clause 4.2 of Part A of Schedule I (Amended in the year 2008) under 12(1) of PIT Regulations 1992, until April 17, 2013.

4. Further, Clause 1.2 in Part A of Schedule I of the PIT Regulations, 1992, of the model code of conduct states the following:

"The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of " Price Sensitive Information", pre-clearing; of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company".

5. Thus it was alleged that CIL and its Compliance Officers and Directors (other than Independent Directors) had failed in their responsibilities to implement and supervise the

adoption of Code of Conduct for Prevention of Insider Trading for Listed Companies under PIT Regulations, 1992.

6. *In this order wherever SEBI (Prohibition of Insider Trading) Regulations, 1992 ("PIT Regulations, 1992") is mentioned it should be referred to as PIT Regulations, 1992 read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations, 2015").*

Appointment of Adjudicating Officer

7. SEBI had initiated adjudication proceedings against CIL, Compliance officers of CIL viz., M.L. Nagda, Mukesh Jain, Madangopal Murlidhar Mundhra, Suresh Kumar Kothari, Rehanuma Khan and Directors of CIL viz. A.R. Shingewar, Dilip Kumar Gadia, B.B. Mohanty, Zafar Ullah Khan, Abdul Mannan, Anil Kumar Sethia, Anisha Raoof Dhanani, Tuntun Singh, Raoof Razak Dhanani, Shakil Zakaria Memon, Abdul Mabood Shaikh and Firoz Asgar Khambati (collectively referred to as "entities") and appointed Shri D Sura Reddy as Adjudicating Officer ("AO") vide order dated December 1, 2014 under Section 15 I of the Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules') to inquire into and adjudge under 15HB of the Act for the alleged violation of the provisions of law by the entities. Pursuant to the transfer of the case, I have been appointed as AO vide order dated May 18, 2017.
8. Based on the findings made during the investigation, show cause notice was issued to the entities mentioned above. Pursuant to issuance of SCN, erstwhile AO had passed order against Firoz Asgar Khambati on March 30, 2016.
9. The entities namely CIL, Mukesh Jain, Suresh Kumar Kothari, Rehanuma Khan, Dilip Kumar Gadia, B.B. Mohanty, Zafar Ullah Khan, Abdul Mannan, Anil Kumar Sethia, Anisha Raoof Dhanani, Tuntun Singh, Raoof Razak Dhanani, Shakil Zakaria Memon, Abdul Mabood Shaikh had filed settlement application under Settlement Regulations and the undersigned had passed settlement order on October 31, 2017.
10. The adjudication proceedings against remaining entities viz., M L Nagda, Madangopal Murlidhar Mundhra and A R Shingewar are being dealt in this Order.

Show Cause Notice, Reply and Personal Hearing

M L Nagda ("Nagda")

11. Nagda was issued SCN on May 12, 2015 for his above stated violation. Vide said SCN, Nagda was show caused as to why inquiry should not be held and penalty should not be imposed under section 15HB of the Act.
12. In response, Nagda vide his letter dated May 25, 2015 made the following submissions:
 - 12.1 *I have been appointed as Company Secretary in CIL in the earlier of year 2003 and had resigned during the month of August or September 2003 (Actual date of appointment and cessation is not available with me as well as on BSE & ROC also).*
 - 12.2 *The violation of code of conduct for Insider Trading as per SEBI Regulation for Listed Company has been took place during the September 04, 2012 to January 24, 2013, but after my resignation in the year 2003, I was not associated in any manner with the said company, CIL.*
 - 12.3 *It is mentioned in item no.6 of notice that prior the November 2011 there was no code of conduct for insider trading as SEBI guidelines has been adopted but as far as concern no violation has been observed and mentioned in notice also.*
 - 12.4 *I also does not fall under any category of any designated employee, connected person or compliance officer during the period in which violation of Rules has took place.*
13. In the interest of natural justice, an opportunity of personal hearing was granted on November 18, 2015 vide notice dated October 23, 2015. In response, M/s. Vishal Manish & Associates sent a mail dated November 23, 2015 stating that they had been appointed to represent before SEBI and sought for adjournment. Accordingly, another opportunity of hearing was granted on December 11, 2015. On said date, Mr. Manoj Anubhavane of M/s. Vishal Manish & Associates appeared before the erstwhile AO and reiterated the submissions made vide letter dated May 25, 2015 and requested for submission of additional documents by December 16, 2015.

14. Accordingly, vide letter dated December 16, 2015 Mr. Manoj Anubhavane submitted the following documents in support of the claim that Nagda was neither a compliance officer nor associated with CIL in any capacity during the period September 5, 2012 to January 14, 2013 and requested to close the adjudication proceedings.
- a) Master data of CIL during the period of investigation
 - b) Photocopies of minutes of meetings of shareholders, directors held during the period of alleged violation
 - c) Form D duly submitted by CIL to SEBI during the period of alleged violation
 - d) Annual reports of CIL for the periods from FY 2001-02 to FY 2006-07.
15. Pursuant to the appointment of the undersigned as AO, an opportunity of personal hearing was granted on September 28, 2017. Even though the said notice was served as per postal records available before me, Nagda had neither appeared nor made any written submissions. Hence, I construe the submissions made by Nagda vide his letter dated May 25, 2015 as his final submissions and hence proceed further in the matter.

Madangopal Murlidhar Mundhara ("Mundhra")

16. Mundhra was issued SCN on May 12, 2015 for above stated violations. Vide said SCN, Mundhra was shown caused as to why inquiry should not be held and penalty should not be imposed under section 15A (b) of the Act. In response to the said SCN, Mundhra vide his letter dated May 24, 2015 stated that he had joined as Company Secretary on June 28, 2006 and was with CIL upto September 30, 2008. Further, he submitted that code of conduct in relation to prohibition of Insider Trading regulations, was in force in CIL during the above period. Further, concerned persons were properly explained and assistance was given whenever required. In support of his submissions that Managing Director, members of the Board and the senior management personnel have affirmed compliance with code of conduct of the CIL, submitted relevant portions of Annual report of CIL for FY 2007-8, FY 2006-07. Further, he had stated that he had fully retired from service and related works for the last six years.
17. In the interest of natural justice, an opportunity of personal hearing was granted on November 18, 2015 vide notice dated October 23, 2015. In response, Mundhra vide letter dated

November 3, 2015 he had reiterated his submissions made in response to SCN and stated that due to his age he was unable to move out of his home and hence not able to attend the personal hearing.

18. Pursuant to the appointment of the undersigned as AO, an opportunity of personal hearing was granted on September 28, 2017. However, the said notice was returned undelivered.
19. In terms of Rule 7(d) of AO Rules, detail of the notice was published in the New Delhi Edition of Times of India and Bikaner edition of Rajasthan Patrika on November 18, 2017 and also made available on SEBI website. Vide said publication, one more opportunity of hearing before the undersigned was provided to Mundhara on November 30, 2017. However, Mundhara did not appear on the said date.

A R Shingewar

20. Shingewar was issued SCN on May 12, 2015 for the violations as stated above. Vide said SCN, Shingewar was show caused as to why inquiry should not be held and penalty should not be imposed under section 15HB of the Act. Even though the said SCN was served as per the postal records available before me, Shingewar had not submitted any reply. In the interest of natural justice, an opportunity of personal hearing was granted on November 19, 2015 and December 11, 2015 which were returned undelivered. In terms of Rule 7(c) of AO Rules, common Hearing notices dated December 29, 2015 and February 18, 2016 were affixed at "Pathan Banglow, Nr Patel High School, Bellary, Hospet – 583201", the last known address of the entity as per SEBI records, on January 15, 2016 and February 23, 2016 respectively.
21. Pursuant to the appointment of the undersigned as AO, an opportunity of personal hearing was granted on September 28, 2017. However, the said notice was returned undelivered with a remark "Address not available".
22. As an abundant caution, in terms of Rule 7(d) of AO Rules, detail of the notice was published in the Bangalore edition of Times of India and Vijayavani on November 18, 2017 and also made available on SEBI website. Vide said publication, one more opportunity of hearing

before the undersigned was provided to Shingewar on November 30, 2017. However, Shingewar did not appear on the said date.

23. In view of the attempts made by SEBI in serving the Notices to Mundhra and Shingewar, I am convinced that sufficient opportunities have been granted to the entities and I deem it appropriate to decide the matter on the basis of material available on record and hence I proceed further.

Consideration of Issues, Evidence and Findings

24. I have carefully perused the charges levelled against the entities in the SCN and written submissions made in response to SCN and all the documents available on record. In the instant matter, the following issues arise for consideration and determination:

- I. Whether Nagda, Mundhra and Shingewar have violated Regulation 12(1) read with clause 1.2 of code of conduct specified under Part A of Schedule I of PIT Regulations, 1992?
- II. Does the violation, if any, on the part of Nagda, Mundhra and Shingewar attract monetary penalty under Section 15 HB of the Act?
- III. If so, what would be the quantum of monetary penalty that can be imposed on the entities taking into consideration the factors mentioned in Section 15J of the Act?

25. Before proceeding further, I would like to refer to the relevant provisions of the SEBI Act, PIT Regulations, 1992 and PIT Regulations, 2015. The provisions referred above are reproduced as under:

SEBI (PIT) Regulation, 1992:-

CHAPTER IV

POLICY ON DISCLOSURES AND INTERNAL PROCEDURE

FOR PREVENTION OF INSIDER TRADING

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

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

(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds;

(b) the self-regulatory organisations recognised or authorised by the Board;

(c) the recognised stock exchanges and clearing house or corporations;

(d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and

(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies, 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.

Schedule I of SEBI (PIT) Regulation, 1992:-

SCHEDULE I

[Under regulation 12(1)]

PART A

MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES

INSIDER TRADING FOR LISTED COMPANIES

1.0 Compliance Officer

1.1 The listed company has appointed a Compliance Officer senior level employee who shall report to the Managing Director/Chief Executive Officer.

1.2 The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing; of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.

Explanation : For the purpose of this Schedule, the term 'designated employee' shall include :—

- (i) officers comprising the top three tiers of the company management;*
- (ii) the employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct.*

Regulation 12 of SEBI (PIT) Regulations, 2015:-

Repeal and Savings.

12. (1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.

(2) Notwithstanding such repeal,—

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and

(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(3) After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

Findings

- 26. From the records available, I am satisfied with the efforts taken by SEBI in serving the notices to Mundhara and Shingewar in providing them sufficient opportunity to defend the allegations levelled against them.
- 27. From the reply of CIL to SEBI that it is clearly established that CIL had not adopted the code of conduct till November 11, 2011 and that the amendment which came into effect from November 19, 2008 in the Model Code of Conduct specified in Part-A of Schedule I of SEBI

(PIT) Regulations 1992 was adopted by it on April 17, 2013. CIL in its volition has accepted that this omission was purely unintentional and due to oversight. Hence, the allegations levelled against Nagda, Mundhra and Shingewar stand established.

28. Out of the three entities being dealt with in this order, only two entities namely Nagda and Mundhra had submitted their reply to defend the allegations levelled against them.

28.1 In respect of defence put forth by Nagda that he was the compliance officer of CIL during the period earlier 2003 to August/ September 2003 only and hence he was not with CIL during the period of investigation ie., September 5, 2012 to January 24 2013 is not acceptable since he being the compliance officer during his tenure with CIL it was his duty to ensure adoption of 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. However, from the submissions of CIL that the code of conduct was adopted in its meeting held on November 11, 2011 and from the submission of Nagda that he was in the services of CIL during 2002-2003, it is clear that he was associated with CIL during the period that 2002 to 2003 when the code of conduct was not adopted. Hence, I conclude that Nagda had violated Regulation 12(1) read with Part A of Schedule I of PIT Regulations, 1992.

28.2 In respect of Mundhra, even though Mundhra had stated that with his best efforts look after the works very carefully and properly, since he was compliance officer during the period June 28, 2006 to September 30, 2008 and during this period CIL had not adopted the code of conduct, I conclude that he had violated Regulation 12(1) read with Part A of Schedule I of PIT Regulations, 1992

28.3 In respect of Shingewar, having satisfied with the efforts taken by SEBI in serving the notices and opportunities given to defend his case, in the absence of any response from him, I am inclined to rely on the observation of *Hon'ble SAT in the matter of Sanjay Kumar Tayal & Ors. Vs. SEBI (in appeal No. 68/2013) decided on February 11, 2014 wherein SAT has held 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”, I conclude that Shingewar had violated the Regulation 12(1) read with Part A of Schedule I of PIT Regulations, 1992.

Does the violation, if any, on the part of the entities viz, Nagda, Mundhra and Shingewar attract monetary penalty under Section 15 HB of the Act ?

29. Having concluded that Nagda, Mundhra and Shingewar had violated Regulation 12(1) read with Part A of Schedule I of PIT Regulations, 1992, they are liable for penalty under Section 15 HB of the Act.
30. Relevant portions of Extant Section 15 HB of the Act are reproduced as under:

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision 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.*

31. While determining the quantum of penalty under Section 15HB, it is important to consider the factors stipulated in Section 15J of the Act, which read 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.

32. I consider the following while determining the quantum of penalty to be levied on Nagda, Mundhra and Shingewar for violating Regulation 12(1) read with Schedule I of PIT Regulations, 1992, I would like to place the emphasis on the objective of code of conduct ie.,

the objective of framing a Code of Conduct under the PIT Regulations, 1992 is to prevent insider trading and prevent misuse of the price sensitive information which undermines the confidence of the investors. It is, thus, a preventive measure rather than a post facto remedial action. Hence, I find that the quantum of penalty cannot primarily depend upon the disproportionate gain or unfair advantage made by the entities or the monetary loss to the investors. On the contrary, it will largely be guided by the conduct of the entities in complying with the relevant regulations.

33. Having established the offence committed by the entities, by relying on the Order of the Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)* 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..."*, I conclude that the entities viz., Nagda, Mundhra and Shingewar are liable for penalty.

ORDER

34. After considering all the facts, circumstances of the case and case laws mentioned above, I exercise the powers conferred upon me under Section 15-I of the Act and Rule 5 of Rules and hereby impose the following a monetary penalties which in my view are commensurate with the default committed by the entities:

Entity	Provisions of law violated	Penalty levied under Section	Quantum of penalty in Rs.
Mr. M L Nagda	Regulation 12(1) read with Clause 1.2 of Part A of Schedule I of PIT Regulations, 1992	Section 15 HB of the Act	Rs.1,50,000/- (Rupees one lac and fifty thousand only) payable jointly and severally.
Mr. Madangopal Murlidhar Mundhra			
Mr. A R Shingewar			

35. The amount of penalty shall be paid within 45 days of receipt of this order either by way of
- (i) demand draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai
(or)
 - (ii) by e-payment in the account of
"SEBI - Penalties Remittable to Government of India ",
A/c No. 31465271959,
State Bank of India, Bandra Kurla Complex Branch,
RTGS Code SBIN0004380
36. The entities shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI. The Format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No.SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated should be forwarded to "The Division Chief (Enforcement Department - DRA- III), Securities and Exchange Board of India, SEBI Bhavan, Plot no C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400052 and also to e-mail ID - tad@sebi.gov.in

Date	
Department of SEBI	
Name of Intermediary/ Other Entities	
Type of Intermediary	
SEBI Registration Number (if any)	
PAN	
Amount in Rs.	
Purpose of Payment (including the period for which payment was made e.g. quarterly, annually	

Bank name and Account number from which payment is remitted	
UTR No	

37. In terms of Rule 6 of the Rules, copies of this order are sent to the entities and also to Securities and Exchange Board of India.

Date: November 30, 2017

SAHIL MALIK

Place: Mumbai

ADJUDICATING OFFICER