

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: AO/SBM/EAD-3/130 /2018)

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:

Shri B. V. S. Jogarao
PAN: AEPPB6102H
No 21, Jupiter Colony, Sikh Colony
SECUNDERABAD 500 006

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 the examination of the trades in the scrip of ITC Limited (hereinafter referred to as '**ITC**' or '**Company**'), in the month of December, 2012, observed that Shri B. V. S. Jogarao (hereinafter referred to as '**Noticee**') had entered into an opposite transaction within six months following his previous transaction, in the scrip of the company. The examination conducted by SEBI revealed that the Noticee, who was employed with ITC Limited as Divisional Head (Commercial) 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 sold 20,000 shares of the Company on December 06, 2012 and subsequently, on December 13, 2012, he purchased 22,200 shares of the Company. It was also alleged that Noticee had failed to make the necessary disclosures required under the PIT Regulations to the Company and Stock Exchange regarding the aforementioned transactions done by him in the scrip of the company, which resulted in change in his shareholding in the Company by more than Rs. 5 lakh in value.

2. The above mentioned transactions of the Noticee involving sale and purchase of the shares of the Company were placed by the Noticee through his stock broker within the period of six months and the total value of the shares sold and then purchased by the Noticee was more than Rs. 5 lakh. It is alleged that Noticee, being a 'designated employee' of the Company, by entering into opposite transactions in the scrip of the company i.e. sale and purchase of the shares of the Company within a period of six months following his previous transaction in the scrip 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.
3. Further, as the above mentioned transactions of the Noticee had resulted in change in his shareholding in the Company by more than Rs. 5 lakh in value, it is alleged that Noticee had failed to make the necessary disclosures to the company and stock exchange under Regulation 13(4) read with 13(5) of the PIT Regulations.

4. In view of the above observations/allegations, adjudication proceedings were initiated against the Noticee under the provisions of Sections 15 A(b) and 15 HB of the SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER

5. 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 sections 15A(b) & 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 and Regulations 13(4) read with 13(5) of the PIT Regulations by the Noticee. Subsequently, upon the transfer of Shri D Ravikumar, I have been appointed as the Adjudicating Officer in the matter, vide Order dated June 22, 2015.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. Show Cause Notice ref No. EAD-3/DRK/JP/27225/2013 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 sections 15 A(b) and 15HB of the SEBI Act for the aforementioned alleged violation of the provisions of law by the Noticee. The SCN issued to the Noticee, *inter-alia*, mentioned the following:
 - a. On December 06, 2012, Noticee sold 20,000 shares of the Company.

- b. On December 13, 2012, Noticee had purchased 22,200 shares of the Company. Therefore, it was alleged that Noticee's purchase of 22,200 shares of the Company for a value of Rs. 65,34,600/- was within a period of six months of the previous transaction 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 transaction i.e. his previous transaction involving sale of the 20,000 shares of the Company on December 6, 2012.
- d. It is alleged that Noticee had failed to make the necessary disclosures to the Company and Stock Exchange about the change in his shareholding, which took place by virtue of the aforesaid purchase of 22,200 shares of the Company, which was more than Rs. 5 lakh in value. Following are the details of the transactions that were executed by the Noticee in the scrip of the Company during the relevant period.

Date	Gross Buy Volume	Gross Sell Volume	Gross Buy Value (Rs.)	Gross Sell value (Rs.)	Provisions under which disclosures were required to be made
06-Dec-2012	0	20,000	0	60,40,000	Regulation 13(4) read with 13(5) of the PIT Regulations
13-Dec-2012	22,200	0	65,34,600	0	Regulation 13(4) read with 13(5) of the PIT Regulations

- e. 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 and Regulation 13(4) read with 13(5) of the PIT Regulations.

- f. Adjudication proceedings were initiated against the Noticee under the provisions of sections 15 A (b) and 15HB of the SEBI Act.
7. Vide letter dated January 21, 2014, 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 did not realize that his purchase of 22,200 shares of the Company on December 13, 2012 would result in an opposite transaction within a period of six months from his previous transaction that was executed by him in the scrip on December 06, 2012 when he had sold 20,000 shares of the Company. It was also mentioned by the Noticee that he is neither a director nor an officer of the Company within the meaning of the PIT Regulations and therefore, there was no obligation on his part to make the disclosures under Regulation 13(4) r/w 13(5) of the PIT Regulations. The excerpts of the submissions made by the Noticee are as under :

- a) *I was planning a vacation to Australia with my family and other relatives (numbering 6) from 15th December 2012 to 2nd January 2013 and accordingly booked tickets and made all other arrangements through a travel agency for the purpose. Since there were a number of family members travelling, the total budget for the holiday was quite large. Accordingly, on 6th December 2012, I sold 20,000 shares of ITC in order to pay the travel agency. Thereafter, I received their share of the cost for the Australia trip from my other relatives. Instead of leaving this money idle, on 13th December 2012, I advised my broker to buy back 22,200 ITC shares from the market, when the Trading Window of the Company was open. Later on, I realized that I inadvertently entered into an opposite transaction.*
- b) *I retired from the services of the Company in August 2012 and am presently working as a Retainer*

c) *I would also humbly submit that:*

- i. *Being a manager of the Paperboards & Specialty Papers Division of the Company, located at Secunderabad, I was not aware of or party to any inside information.*
- ii. *I have already been penalized by ITC Limited and have paid Rs.1,04,313/- by cheque No. 592383 dated 8th April, 2013, drawn on HDFC Bank "Limited, Secunderabad, in favour of the 'ITC Rural Development Trust'. I would sincerely request you to condone my lapse and not to impose any further penalty, also considering my retired status.*

8. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, Noticee was granted an opportunity of personal hearing on November 26, 2014. The Authorised Representatives of the Noticee viz. Ms. Ananya Ghosh & Shri Kostubh Devnami from Amarchand Mangaldas (hereinafter referred to as 'ARs') attended the personal hearing on the scheduled date and reiterated the submissions made by the Noticee vide his earlier letter dated January 21, 2014. Thereafter, vide letter dated December 05, 2014, Noticee made additional submissions, details of which are mentioned as under:

- a) *At the relevant point of time, the Noticee was the Divisional Head - Commercial of the Paperboards and Specialty Papers Division of the Company. Paperboards and Specialty Papers Division is one of the eleven business divisions of the Company. In addition to the Noticee, the Paperboards and Specialty Papers Division had three other divisional heads i.e. the Divisional Head - Finance, the Divisional Head - Human Resources and the Divisional Head - Marketing.*
- b) *On December 6, 2012, the Noticee had sold 20,000 shares of the Company for a sum of Rs. 60,40,000 to finance a trip to Australia that he was proposing to take along with five other family members. Upon receipt of the monies spent by him towards the bookings of his relatives from them on December 13, 2012, inadvertently, the Noticee had purchased 22,000 shares of the Company for a sum of Rs. 65,34,600. It*

is submitted that the purchase of the shares of the Company on December 13, 2012 was entirely inadvertent and a bona fide accidental lapse on the part of the Noticee.

- c) Finding this transaction to be in contravention of the ITC Code of Conduct framed by the Company under Regulation 12(1) of the PIT Regulations, the Company, by way of letter dated April 8, 2013 imposed a penalty of Rs. 1,04,313 on the Noticee being the entire profit made by the Noticee in the transaction (after reckoning brokerage and taxes incidental to the purchase and sale of the shares of the Company). A copy of the said letter was also forwarded to SEBI by the Company. The Noticee duly paid the said penalty on April 19, 2013. A copy of the letter issued by the Company imposing penalty, a copy of the cheque issued by the Noticee depositing the penalty levied by the Company and the receipt issued by the ITC Rural Development Trust were handed over during the course of the oral hearing.*
- d) It is evident from a bare perusal of the above that Regulation 12(1) of the PIT Regulations requires listed companies to frame a code of conduct in terms of the Model Code of Conduct (MCC) and ensure compliance of the same. Regulation 12(3) requires the listed company to adopt appropriate mechanism and procedures for compliance with such code of conduct.*
- e) The SCN has invoked Regulation 12(1) against the Noticee read with the Clause 4.2 of the MCC to impose a penalty under Section 15HB of the SEBI Act. In this regard, it is submitted that Regulation 12(1) has no application to an employee of a listed company, inasmuch as, the same is directed solely at the listed company and other entities specifically mentioned therein, which does not include employees of a listed company. Consequently, Regulation 12(1) of PIT Regulations cannot be pressed into service against the Noticee.*
- f) At any rate, it is respectfully submitted that once a listed company has put in place its code of conduct, its directors/officers/designated employees are governed by the said code of conduct and not the MCC. Thus, with the Company having formulated the ITC Code of Conduct, its employees' conduct is governed only by such code only.*
- g) The PIT does not empower SEBI to additionally penalize an employee of a listed company for the contravention of the said company's code of*

conduct, which power is solely vested in the listed company in terms of Regulation 12(1) read with Regulation 12(3). Regulation 12(3) requires listed companies to adopt measures to ensure compliance with the internal code of conduct. Clauses 6.1 and 6.2 of the MCC prescribe the measures that may be implemented in the event of contravention of the internal code of conduct. In the present case, the Company has found the Noticee in violation of the ITC Code of Conduct (as applicable at the relevant time), and has already imposed penalties in terms thereof on the Noticee. Therefore, the present action against the Noticee, whereby SEBI seeks to additionally punish the Noticee for opposite transactions in contravention of Clause 4.2 of the MCC is not maintainable.

- h) *It is respectfully submitted that SEBI cannot seek the benefit of Regulation 12(4) of the PIT Regulations or Clause 6.3 of the MCC to sustain the present proceedings. Regulation 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. Regulation 12(4) and/or Clause 6.3 do not empower SEBI to prosecute an employee for violation of the MCC or the applicable code of conduct.*
- i) *It is apparent from a bare perusal of Regulation 13(4) (of PIT Regulations) that the obligation there under is only upon a 'director' or an 'officer' of a listed company. The Noticee is not a director of the Company. Therefore, the issue is whether the Noticee is an "officer" of the Company within the meaning of the aforesaid provisions of the PIT Regulations and the Companies Act, 1956 (as applicable on the date of the Noticee's appointment).*
- j) *The Hon'ble SAT in Shri Mahendra Pandey Maitri v. SEBI (Appeal No. 178/2011 - Order dated December 22, 2011) ("Maitri"), while clarifying the scope of the definition of "officer" in the context of Regulation 13(4) of the PIT Regulations, held that it is for the Ld. Adjudicating Officer to bring on record necessary material to establish that the concerned employee is either a director or an officer of the company, while proceeding against him for contravention of Regulations 13(4) of the PIT Regulations.*
- k) *A bare perusal of the SCN indicates that it has been issued against the Noticee on the sole allegation that the Noticee is the "Divisional Head of ITC Ltd.". It is factually incorrect to allege that the Noticee is the*

divisional head of the Company, since there is no such position in the Company's hierarchy. That apart, the SCN has failed to even allege, much less affirmatively prove how the Noticee is an "officer" or "director" for the purposes of applicability of Regulation 13(4) of the PIT Regulations. On this ground itself, the proceedings commenced pursuant to the SCN are liable to be closed.

- l) However, without prejudice to the above, it is respectfully submitted that on an objective review of the position and functions being discharged by the Noticee at the relevant time, the Noticee was not an "officer" of the Company.*
- m) The Company is a multi-business conglomerate with eleven business divisions, spreading across FMCG, paperboards and packaging, tobacco, lifestyle retailing, hotels etc. including the "Paperboards and Specialty Papers". The Board of Directors at the apex, as trustee of the shareholders, carries the responsibility for strategic supervision of the Company. The strategic management of the Company rests with the Corporate Management Committee ("CMC") comprising the whole time Directors and members drawn from senior management. The executive management of each business division is vested with the Divisional Management Committee ("DMC"), headed by the Chief Executive Officer for the said division.*
- n) The Noticee as the Divisional Head - Commercial, reported to the Chief Executive Officer of "Paperboards and Specialty Papers" and worked as per the instructions received from the Chief Executive Officer. As the Divisional Head - Commercial, the Noticee was responsible only for procurement of raw material and consumable, inventory management and warehousing and storage of such materials. The pricing for procurement and sales of the products fell within the domains of the Divisional Head - Finance and Divisional Head - Marketing for the "Paperboards and Specialty Papers" division. Thus, there were, at least, three other personnel at level equivalent to the Noticee, in the same business division, i.e., the Divisional Head - Finance, the Divisional Head - Human Resources and the Divisional Head - Marketing. The procurement to be undertaken was predetermined by the yearly plan prepared by the DMC and sanctioned by the CMC and was communicated to the Noticee for his necessary actions by the Chief Executive Officer. Barring this limited role of procurement, acting as a conduit of communication for effective procurement, the Noticee has no*

other role in the affairs of the Company. Given the limited nature of his functions and his position in the hierarchy of the Company, it would clearly be impossible to conclude that the Noticee is in the "management of the whole, or substantially the whole, of the affairs of the Company...."

o) From the above, it is also evident that Noticee is not in any way a "... person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act".

p) Without prejudice to the above, it is respectfully submitted that in the event the Ld. Adjudicating Officer finds the Noticee to be in contravention of the PIT Regulations, it is respectfully submitted that the Noticee had erroneously and inadvertently engaged in opposite transactions. It is most respectfully submitted that no harm has been caused to the interests of the investors in any manner whatsoever on account of the transaction and the present matter does not call for any penalty on the Noticee. Further, the present SCN is a solitary instance of non-compliance against the Noticee. The Noticee has no disproportionate gain or unfair advantage on account of the opposite transaction and non disclosure. The Noticee has also been penalized by the Company to the tune of the entire profit made by the Noticee on account of the opposite transaction, which has been duly paid. The Noticee, who is around 60 years old, has not been keeping good health and is suffering from cardiac disorders, is formally superannuated from his position with the Company.

q) In so far as his failure to file Form D within the timeframe specified in Regulation 13(5) is concerned, it is submitted that the same was a technical and venial breach, occasioned by his genuine and bon fide belief that he was not an "officer" of the Company and was not required to make any such filings. As a matter of fact, upon receipt of the SCN and while responding to the same, the Noticee has filed the Form D, without prejudice to his submissions. Additionally, none of the factors provided for in Section 15-J of the SEBI Act,

9. Pursuant to my appointment as Adjudicating Officer in the present matter, another opportunity of hearing was granted to the Noticee on April 25, 2016. Ms. Ananya Ghosh and Ms. Reena Choudhary from Amarchand Mangaldas appeared as Authorized Representatives (ARs) on behalf of the Noticee for

the hearing on the stipulated date. Thereafter, the Noticee made additional submissions vide his letter dated May 11, 2016 and reiterated the earlier submissions made by him in the said matter.

CONSIDERATION OF ISSUES AND FINDINGS:

10. I have carefully perused the documents/material on record and also the submissions (oral and written) made by the Noticee during the course of the proceedings. It is alleged that Noticee being one of the 'designated employees' of the Company had entered into an opposite transaction in the scrip of the Company within a period of 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. Further, it is alleged that Noticee had failed to make the relevant disclosures required under Regulation 13(4) read with 13(5) of the PIT Regulations, to the company and the stock exchange, pertaining to his transactions in the scrip of the company, which had exceeded Rs 5 lakh in value.
11. In the instant matter, the following issues arise for consideration and determination:-
 - a. Whether the Noticee has failed to comply with 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?.
 - b. Whether the Noticee has failed to comply with the provisions of Regulation 13(4) read with 13(5) of the PIT Regulations?.
 - c. Whether the Noticee is liable for penalty under the provisions of Sections 15 A (b) and 15HB of the SEBI Act?.

d. If yes, what should be the quantum of penalty to be imposed on the Noticee?

12. Before moving forward, it is pertinent to refer to the relevant provisions of the PIT Regulations and the SEBI Act, which reads as under:

PIT Regulations

Continual Disclosures

Reg 13(4)- Any person who is a director or officer 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 person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds Rs 5 lakh in value or 25,000 shares or 1% of the total shareholding or voting rights, whichever is lower.

Reg 13(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*

Definition under PIT Regulations

2. *In these regulations, unless the context otherwise requires:—*

(g) *“officer of a company” means any person as defined in clause (30) of section 2 of the Companies Act, 1956 (1 of 1956) including an auditor of the company;*

Companies Act, 1956

DEFINITIONS

2. *In this Act, unless the context otherwise requires, -*

30. "officer" includes any director, manager or secretary or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act

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

Reg.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.*

SEBI Act

Penalty for contravention where no separate penalty has been provided

15A. *Penalty for failure to furnish information, return, etc. - 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 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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

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*

13.I now proceed to deal with the issues/allegations made in the SCN against the Noticee and record my observations/findings as under –

(a) Whether the Noticee has failed to comply with 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?

- (i) 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 (MCC) prescribed under the PIT Regulations. It is noted that the company has 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 previous transaction executed in the scrip of the company. A bare perusal of the various provisions stipulated under the Model Code of Conduct for Listed Companies in terms of 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 entered into an opposite transaction in the scrip of the Company within six months of his previous transaction in the scrip and therefore, there was non-compliance of the Model Code of Conduct prescribed under the PIT Regulations by the Noticee.
- (ii) I observe that during the relevant period i.e December 2012, Noticee was employed with the company and was the Divisional Head - Commercial of the Paperboards and Specialty Papers Division of the Company. I also observe that the Noticee has since retired from the services of the Company.

- (iii) I find that on December 6, 2012, Noticee had sold 20,000 shares of the Company for a sum of Rs. 60,40,000 to finance a trip to Australia that he was proposing to undertake along with his family members. Upon receipt of the monies spent by him towards the bookings of his relatives from them on December 13, 2012, Noticee mentioned that he purchased 22,200 shares of the Company on December 13, 2012 for a sum of Rs. 65,34,600. I find that the said transaction involving the purchase of 22,200 shares of the Company was executed by the Noticee through his stock broker on December 13, 2012 and the purchase of these shares had 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. I also find that Noticee has admitted to the fact that he had entered into an opposite transaction in the scrip of the company within six months of his previous transaction in the scrip and termed it as inadvertent and a bonafide accidental lapse on his part.
- (iv) From the material/records made available, I find that ITC in its communication to SEBI had mentioned that in view of the non-adherence of the ITC Code of Conduct for Prevention of Insider Trading occasioned by the purchase of 22,200 shares of the company by the Noticee on December 13, 2012, a penalty of Rs 1,04,313/- was imposed on the Noticee by the Company. I observe that the Noticee had paid the said penalty amount of Rs 1,04,313/-, as directed by the Company. Further, I note that ITC in its communication to SEBI also confirmed the fact that Noticee has not committed any other violation of the ITC Code of Conduct for Prevention of Insider Trading other than the aforementioned violation.
- (v) I find that the Noticee remitted the profit earned by him to the tune of Rs 1,04,313/- as a result of the above transactions to ITC Rural Development

Trust. In this regard, I observe that Noticee had issued a cheque for the above mentioned amount in favour of ITC Rural Development Trust on April 08, 2013, which was also acknowledged by the company.

- (vi) The penalty imposed on the Noticee by the Company i.e. Rs. 1,04,313/- 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 malafide intention on his part to garner profits by contravening the restrictions on the opposite transactions.
- (vii) I have also examined the trading pattern of the Noticee, which shows that the Noticee had sold and bought 20,000 and 22,200 shares of the company during the relevant period i.e. from December 06, 2012 to December 13, 2012. The aforementioned transactions had resulted in the violations committed by the Noticee and the proceedings initiated against him. I find that nothing has been brought on record either in the examination report or in the SCN to show that Noticee was privy to any price sensitive information relating to the Company, which could have motivated him to sell and buy the shares of the company during the examination period. I also observe that immediately prior to the aforementioned transactions in the scrip of the company, Noticee was holding sizable quantities of shares of ITC i.e he was holding 3,28,000 shares of the company. I am of the view that if the Noticee had any manipulative intent behind these transactions, then his transactions in the scrip of the company would have been on a larger scale. I find that there are no adverse observations made on record to indicate that Noticee had indulged in any kind of 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 above observations and the fact that Noticee has been adequately penalized by the

company for his lapses, in my view, the mitigating effects of the observations/facts made above come to the aid of the Noticee and no penalty on the Noticee under the provisions of Section 15 HB of the SEBI Act is merited in the facts and circumstances of the case. In view of the above, I hereby dispose of the proceedings initiated against the Noticee under section 15HB of the SEBI Act for his violation of 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.

(b) Whether the Noticee has failed to comply with the provisions of Regulation 13(4) read with 13(5) of the PIT Regulations?

- (i) In terms of Regulation 13(4) of the PIT Regulations, any person who is a director or officer of a listed company shall disclose to the company and the stock exchanges where the securities of the company are listed in Form D, the total number of shares or voting rights held and the change in shareholding or voting rights, if there has been a change in such holdings of such persons and his dependents from the last disclosure made under Regulation 13(2) or under this sub-regulation (i.e Reg.13(4)) of the PIT Regulations, and the change in shareholding exceeds Rs 5 lakh in value or 25,000 shares or 1% of the total shareholding or voting rights, whichever is lower.
- (ii) It is evident from the above that the disclosure requirements under Regulation 13(4) of the PIT Regulations are triggered when the following two conditions are satisfied:
 - a. The transactions in question have resulted in change in the shareholding of a person and the change exceeding Rs. 5 lakh

in value or 25,000 shares or 1% of the total shareholding or voting rights, whichever is lower, and

b. The person is a Director or an officer of a listed company

(iii) While the condition mentioned at (a) above is satisfied as the value of shares traded by the Noticee on December 6, 2012 and on December 13, 2012 were above Rs 5 lakh, with regard to the condition mentioned at (b) above, I find from the material made available, including the Annual Report of the Company for the FY 2011-12, that the Noticee was not a Director of the Company during the relevant period. Therefore, for the Noticee to have violated Regulation 13(4) of the PIT Regulations, he should fall within the definition of Regulation 2(g) of the PIT Regulations read with Section 2(30) of the Companies Act, 1956, which defines the term 'Officer'.

(iv) Now, I would like to refer to the relevant definitions which read as under:

- **Regulation 2 (g) of PIT Regulations-** *“Officer of a company” means any person as defined in Clause (30) of Section 2 of the Companies Act, 1956 (1 of 1956) including an auditor of the company”*
- **Section 2(30), Companies Act 1956-** Definition of 'Officer'- *“Officer includes any director, manager or secretary or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is/ or /are accustomed to act”.*

(v) The Noticee is admittedly not an “auditor” of the Company under Regulation 2(g) of the PIT Regulations. Upon perusal of the above definition of the term “Officer”, I find that the said definition is an inclusive definition which includes any director, manager or secretary or any person in accordance with whose

directions or instructions the Board of Directors or any one or more of the directors' is/or/are accustomed to act. A plain reading of the above definition clearly shows that apart from a director, manager or secretary, any person who is in a position to direct or instruct the Board of Directors is included within the ambit of the above said definition. I find that the Noticee was the Divisional Head - Commercial of the Paperboards and Specialty Papers Division of the Company during the relevant period. The Noticee, as the Divisional Head-Commercial, reported to the Chief Executive Officer of the "Paperboards and Specialty papers" and worked as per the instructions received from the Chief Executive Officer. As the Divisional Head-Commercial, the Noticee was responsible only for the procurement of raw material and consumable, inventory management, warehousing and storage of the materials. The pricing for the procurement and the sales of the products fell within the domains of the Divisional Head- Finance and Divisional Head- Marketing of the "Paperboards and Specialty papers" division. Thus, I observe that there were, at least, three other personnel at the level equivalent to the Noticee, in the same business division, i.e, The Divisional Head – Finance, the Divisional Head- HR and the Divisional Head-Marketing. The procurement to be undertaken was predetermined by the yearly plan prepared by the Divisional Management Committee within the company and the proposals were sanctioned by another committee within the company viz. Corporate Management Committee. Thereafter, the proposals/instructions were communicated to the Noticee for his necessary action/execution by the Chief Executive Officer. Barring this limited role of procurement, the Noticee had no significant role to play in the affairs of the company.

- (vi) I note that the Paper Boards and Specialty Papers Division itself is one of the eleven business divisions within the ITC group and the Noticee was one of

the three Divisional Heads reporting to the Divisional CEO of his Division. The Noticee's responsibilities were limited to procurement and acting as a conduit of communication for effective procurement. Thus, from the above, I note that the position of the Noticee carried limited responsibilities. Therefore, given the limited nature of his functions, as explained above, it would be impossible to conclude that the Noticee is/was in the "..... *management of the whole, or substantially the whole, of the affairs of the company...*".. .

In view of the above reasons/observations, it is difficult to conclude that Noticee was a "manager" within the meaning and definition of section 2(24) of the Companies Act, 1956 and therefore, he cannot be a "manager" or "officer" within the meaning and definition of section 2(30) of the Companies Act and consequently, Regulation 2 (g) of the PIT Regulations. Further, upon perusal of the Corporate Governance Report of the Company, the Noticee has not been shown as a person in accordance with whose directions or instructions, one or more directors of the company were accustomed to act. I also note that the Company in its communication dated August 2, 2016 also confirmed the following-

'Mr Joga Rao had no interaction with the Board of Directors whatsoever in the course of his duties as Divisional Head-Commercial. Mr Joga Rao did not receive any instructions directly from the Board of Directors during the course of his duties. Mr Joga Rao was not a person on whose directions or instructions the Board of Directors or any Directors were accustomed to act'

In this context, I would like to rely upon the order of Hon'ble Securities Appellate Tribunal (SAT) while remanding the matter back to the Ld. Adjudicating Officer in the case of Shri Mahendra Pandey Maitri vs. SEBI, wherein SAT held that:

"However, I find that the definition of the term "officer" as defined under Section 2 (30) of the Companies Act, 1956 clearly mentions the persons who can be said to be the officers of the company which includes any director, manager or secretary/ or any person who can direct or influence the affairs of the company. I find that the Noticee was only the compliance officer of ASL during the relevant period and was in charge of all the affairs with regard to corporate compliances of the company. Therefore, it is difficult to conclude that the Noticee was in a position to influence or direct the affairs of the company while acting as a compliance officer."

(vii) In the present case, I find that Noticee was holding a position in the company which was very low in the chain of management and would not have had any interaction with the Board of Directors. I find that Noticee was holding a position which was only capable of giving directions or instructions to his subordinates but was not capable of issuing or giving any directions to the Board of Directors of the company or any of the Directors of the company or would not be a person on whose directions or instructions the Board of Directors or any Directors would be accustomed to act.

(viii) In this context, I also note that while remanding the matter in the case of Ms Chandana Ghosh for passing of fresh orders on merits, the Hon'ble SAT had relied upon an order dated February 26, 2015 passed by another Adjudicating Officer of SEBI against Shri A.K.Chowdhury in the same scrip. The facts and circumstances of both these cases/matters i.e Ms Chandana Ghosh and Mr A K Chowdhury were similar. I find that the Ld. Adjudicating Officer in the said order of Mr A K Chowdhury had concluded that Mr Chowdhury cannot be held as an "officer" of the company under the provisions of the Companies Act and the PIT Regulations as the position held by him in the company i.e "Head-Operations"- Education and Stationery Products Strategic Business Unit of ITC Limited was very low in the chain of the management and hence, it was concluded by the Adjudicating Officer that he would not be a person on whose instructions or directions the Board

of Directors or any Directors of the company would be accustomed to act. I find that the Noticee was at the same level as that of Mr Chowdhury, albeit in a different business division of the Company. Therefore, from the above facts, I am of the view that the same principle and ratio would apply squarely w.r.t the case of the Noticee. In view of the above observations, I am convinced that the Noticee cannot be held to be an “officer” of the company as per the Companies Act and PIT Regulations.

- (ix) In view of the above observations and considering all facts and circumstances, I conclude that Noticee cannot be held liable for violating the provisions of Regulation 13(4) r/w Regulation 13(5) of the PIT Regulations in as much as he cannot be said to be an “officer” of the Company within the meaning of section 2(30) of the Companies Act, 1956. Therefore, the allegations made against the Noticee that he has violated the aforementioned provisions of the PIT Regulations do not stand established and the proceedings initiated against the Noticee under section 15 A (b) of the SEBI Act is, accordingly, disposed of.

(c) Whether the Noticee is liable for penalty under the provisions of Sections 15 A (b) and 15HB of the SEBI Act?

(d) If yes, what should be the quantum of penalty to be imposed on the Noticee?

- (i) Since the allegations against the Noticee of not complying with 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 and Regulation 13(4) read with 13(5) of the PIT Regulations

have not been established, the Noticee is not liable for monetary penalty under sections 15 A (b) and 15HB of the SEBI Act.

14. In his reply to the SCN, the Noticee has contended 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 contended 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 inclined to accept the argument put forth by 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 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.

15. In this context, I would like to quote the observations of the Hon'ble 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"

Therefore, the contentions of the Noticee in this regard are totally misplaced and without any merit. However, in light of the facts and circumstances of the case, the factors mentioned above and importantly, the fact that Noticee was appropriately penalized by the company for the violation of the Code of Conduct, no penalty is imposed on the Noticee in the present matter.

ORDER:

16. 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.

17. In terms of the provisions of Rule 6 of the Adjudication Rules, copy of this order is being sent to the Noticee viz. Shri B. V. S. Jogarao and also to the Securities and Exchange Board of India.

Place: Mumbai
Date: February 28, 2018

SURESH B. MENON
ADJUDICATING OFFICER