BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/PM/NK/2019-20/3795]

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

Naishadh P. Desai (PAN: AAGPD9423L)

In the matter of

Financial Technologies (India) Limited (now known as 63 Moons Technologies Limited)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (**hereinafter referred to as SEBI**) conducted an investigation into the trading in the scrip of Financial Technologies (India) Limited (hereinafter referred to as "**Company/FTIL**") (now known as 63 Moons Technologies Limited) for the period of April 27, 2012 to July 31, 2013 (hereinafter referred to as the "**Investigation Period**"). SEBI investigation alleged that Mr. Naishadh P. Desai (hereinafter referred to as the "**Noticee/Mr. Desai"**) was Senior Vice President & Company Secretary of FTIL during March 24, 2008 to September 26, 2013 and as per the Code of Conduct for Prevention of Insider Trading of FTIL, he was "Officer" of FTIL. Accordingly, Mr. Desai was required to obtain/take pre-clearance of trades before dealing in the securities of the Company, FTIL. Investigation alleged that Mr. Desai had traded in the securities of FTIL without obtaining/taking pre-clearance of trades in accordance with the Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified under Schedule I of Part A (hereinafter referred to as "**Model Code of**

Conduct") read with Regulations 12(1) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**SEBI (PIT) Regulations, 1992**") and Regulation 12 of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as " **SEBI (PIT) Regulations, 2015**").

2. In view of the above, it was alleged that the Noticee had allegedly violated the provisions of Clause 3.3.1 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified under Schedule I of Part A (hereinafter referred to as "**Model Code of Conduct**") read with Regulations 12(1) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**SEBI (PIT) Regulations, 1992**") and Regulation 12 of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as " **SEBI (PIT) Regulations, 2015**").

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act, 1992"**) read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') to inquire into and adjudge under section 15HB of the SEBI Act,1992 for the alleged violations of the provisions of Clause 3.3.1 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified under Schedule I of Part A read with Regulations 12(1) of SEBI (PIT) Regulations, 1992 and Regulation 12 of SEBI (PIT) Regulations, 2015.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice no. EAD/ADJ/PM/AA/OW/31697/2017 dated December 15, 2017 (hereinafter referred to as "SCN") was issued to the Noticee under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15HB of the SEBI Act, 1992 for the alleged violations specified in the SCN.

5. It was alleged in the SCN that the Noticee was Senior Vice President & Company Secretary of FTIL during March 24, 2008 to September 26, 2013 and as per the Code of Conduct for Prevention of Insider Trading of FTIL, he was “Officer” of FTIL. Further, as per clause 9(b)(i) of the said Code of Conduct for Prevention of Insider Trading of FTIL *"all directors/officers/designated employees and their dependents who* intend *to deal in the securities of the company exceeding the minimum threshold limit of 5,000 shares in a calendar month shall obtain pre-clearance of the transaction(s) from the compliance officer before entering into the transaction"*. Further, Clause 3.3.1 specified in Part A of Schedule I of Model Code of Conduct provides that all directors/officers/designated employees of the company and their dependents as defined by the company who intend to deal in the securities of the company above a minimum threshold limit to be decided by the company should pre-clear the transaction as per the pre-dealing procedure described therein.

6. It was alleged in the SCN that the Noticee bought and sold 12,000 shares of FTIL during the Investigation period without obtaining /taking pre-clearance of trades in accordance with Clause 3.3.1 specified in Part A of Schedule I of Model Code of Conduct. The details of trades of Noticee is given in the table below:

Date	**Buy Quantity**	**Buy value**	**Sell Quantity**	**Sell Value**
22.06.2012	1,000	6,84,000	1,000	6,87,000
25.06.2012	1,000	7,11,000	1,000	7,12,747
26.06.2012	1,000	7,20,000	1,000	7,31,342
28.06.2012	1,000	7,20,000	1,000	7,26,000
29.06.2012	1,000	7,32,997	1,000	7,36,987
Total (June)	**5,000**	**35,67,997**	**5,000**	**35,94,076**
02.07.2012	1,000	7,45,000	1,000	7,55,020
03.07.2012	2,000	15,29,994	2,000	15,35,673
05.07.2012	1,000	7,56,000	1,000	7,48,650
06.07.2012	1,000	7,51,596	1,000	7,43,900
09.07.2012	1,000	7,52,941	1,000	7,45,900
11.07.2012	1,000	7,77,000	1,000	7,74,776
Total (July)	**7,000**	**53,12,531**	**7,000**	**53,03,919**
Grand Total (June + July)	**12,000**	**88,80,528**	**12,000**	**88,97,995**

7. The Noticee did not reply to the SCN. The Noticee vide letter dated August 3, 2018 was given an opportunity of personal hearing on August 21, 2018. The said letter returned undelivered. Thereafter another hearing opportunity was granted to the Noticee on

September 21, 2018 vide letter dated September 10, 2018 which was delivered at the alternate address provided by the Noticee. The Noticee requested to postpone the scheduled hearing on September 21, 2018 which acceded to and another opportunity was provided on September 27, 2018. The Noticee attended the scheduled hearing and admitted to the violations alleged in the SCN and submitted that he will apply for settlement as per the SEBI (Settlement) Regulations. The Noticee applied for settlement under the SEBI (Settlement) Regulations. The said settlement application was rejected by SEBI and the undersigned informed accordingly vide internal communication dated July 8, 2019.

8. The Noticee was therefore, granted another opportunity to present his case before me on July 18, 2019. The Noticee vide email requested for postponement of the aforesaid scheduled hearing. The same was acceded to and one more opportunity was given to him on July 23, 2019. The Noticee appeared on the scheduled date for the personal hearing. The Noticee during the hearing submitted that he was company secretary of FTIL and not the compliance officer. Further, the Noticee admitted that he traded in the scrip of FTIL without obtaining pre-clearance of trades. The above, was not deliberate and intentional but was an inadvertent error on the part of the Noticee. The Noticee further stated that he wants to submit additional reply in the matter which was acceded to.

9. The Noticee vide letter dated submitted further reply to the SCN vide letter dated July 29, 2019 which is reproduced are as follows:

   - *The undersigned was working with FTIL as Sr. Vice President – Legal and Company Secretary for the period from March 2008 till Sept. 2013. During my tenure with the Company I was* ***not designated as Compliance Officer*** *at any point of time.*
   - *It is to be noted that during my entire work experience of more than 20 years, there is not a single case of non-compliance against me. During my tenure as Company Secretary, I have complied with all the compliances on behalf of the Company and there were no non-compliance issues either from SEBI or exchanges during the tenure of my services. Further I've filed diligently all the declaration regularly to the Company which is required to file either periodically or annually.*

- *While carrying out investigation by SEBI in the scrip of FTIL for the period of April 27, 2012 to July 31, 2013, it came to light that my stock broker Eureka Securities ("broker") had carried out the transactions inadvertently as stated in SCN and the undersigned came to know of such transactions much later.*
- *In the month of June and July 2012, i.e. in free period, the transaction carried out inadvertently by the broker exceeded the threshold limit of 5000 shares in a calendar month for which requires a preclearance from compliance officer which could be not obtained as stated above as the undersigned was not aware about the transaction when it was concluded.*
- *The inadvertent transactions happened only in two months as stated above by the broker and made a meager profit of around Rs. 13K. However, it would be noted that there is no non-compliance from my side as I was unaware about the said transaction at the time of execution.*
- *The administrative unintentional non-compliance with regards to model of conduct is only for the transactions carried out pursuant to clause 9(b)(i) which could not be complied though I wish to comply but I came to know at much later date about the inadvertent transactions carried out and concluded by the broker.*
- *I further would like to mention that during the transaction carried out inadvertently by the broker, there was valid trading window (i.e. free period - in which the employee can conduct all dealings in the securities of FTIL), I was not aware or possessing any unpublished price sensitive information or confidential information. It is further to be noted that the Insider Trading matter has already been concluded by SEBI that there is no insider trading issue in the case of undersigned in the scrip of FTIL.*
- *Considering the above stated facts and presently I'm not in best of health as I had undergone multiple angioplasty in the recent past which has affected my earnings significantly as I'm not able to work full time therefore, I sincerely wish to pray to your good selves:*
- *To condone the non-compliance which were done inadvertently / unknowingly for the first time in entire career of 28 years; or*
- *Take lenient view by passing an order on administrative unintentional one non-compliance.*

10. In view of the above, I am convinced that the Noticee was given sufficient opportunity to present his case before me and that the principle of natural justice have been complied with respect to the Noticee's matter.

CONSIDERATION OF ISSUES AND FINDINGS

11. I have carefully perused the charges levelled against the Noticee in the SCN, reply to the SCN, and other material/documents available on record. In the instant matter, the following issues arise for consideration and determination:-

1) Whether the Noticee has violated the provisions of Clause 3.3.1 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified under Schedule I of Part A read with Regulations 12(1) of SEBI (PIT) Regulations, 1992 and Regulation 12 of SEBI (PIT) Regulations, 2015?

2) Do the violations, if any, on the part of the Noticee attract monetary penalty under Section 15HB of the SEBI Act, 1992?

3) If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

12. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI (PIT) Regulations, 1992 and SEBI (PIT) Regulations 2015 which reads as under:-

Securities And Exchange Board Of India (Prohibition Of Insider Trading) Regulations, 1992

[SCHEDULE I

[Under regulation 12(1)]

PART A

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

3.3 Pre-clearance of trades

3.3.1 *All directors/officers/designated employees of the company [and their dependents as defined by the company] who intend to deal in the securities of the company (above a minimum threshold limit to be decided by the company)*

should pre-clear the transaction as per the pre-dealing procedure as described hereunder.

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]

Securities And Exchange Board Of India (Prohibition Of Insider Trading) 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.

Issue 1) - *Whether the Noticee has violated the provisions of Clause 3.3.1 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified under Schedule I of Part A read with Regulations 12(1) of SEBI (PIT) Regulations, 1992 and Regulation 12 of SEBI (PIT) Regulations, 2015?*

13. The first issue for consideration is whether the Noticee has violated the provisions of Clause 3.3.1 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified under Schedule I of Part A read with Regulations 12(1) of SEBI (PIT) Regulations, 1992 and Regulation 12 of SEBI (PIT) Regulations, 2015. I note that clause 3.3.1 of the model code of conduct for prevention of insider trading for listed companies specified under Schedule I of Part A read with Regulations 12(1) of SEBI (PIT) Regulations, 1992 and Regulation 12 of SEBI (PIT) Regulations, 2015 requires that all directors/officers/designated employees of the company [and their dependents as defined by the company] who intend to deal in the securities of the company (above a minimum threshold limit to be decided by the company) should pre-clear the transaction as per the pre-dealing procedure as described hereunder. I note from the material available on

record that the Noticee was a senior officer of the company and therefore, a key managerial personnel (KMP). The Noticee in view of the aforesaid position in the company was an officer or a designated employee in terms of aforesaid clause 3.3.1 of Model Code of Conduct for Prevention of Insider Trading as mentioned above.

14. I note that the Noticee was an employee of FTIL which is a listed company falling in the category of Key Managerial Personnel/Designated Employee/Officer in accordance with Clause 3.3.1 specified in Part A of Schedule I of Model Code of Conduct. Therefore, being an officer of a listed company, an obligation was cast upon him under the SEBI (PIT) Regulations, to obtain pre-clearance in respect of his trades in the scrip of the company (FTIL). I note that the Noticee has executed intraday trades in the scrip of FTIL wherein he has bought and sold 10000 shares (1000 shares bought and 1000 shares sold on each day) on 5 trading days in June 2012 and 14000 shares (1000 shares bought and 1000 shares sold on each day on 5 days and 2000 shares bought and 2000 shares sold on 1 day) on 6 trading days in July 2012. I further note from the material available on record that the threshold limit decided by the company was 5000 shares in a calendar month which was breached by the employee during the investigation period.

15. I further note that the Noticee has contended that the said trading was carried by his broker and that he came to know of it much later. I further note that the Noticee has stated that the he has hardly earned any profit (a meagre profit of Rs. 13000/- approx.) through the aforesaid trades. I note that the Hon'ble Securities Appellate Tribunal in the matter of **Port Shipping Company Ltd. vs. SEBI (decided on April 29, 2015)** observed *"…Argument of the appellant that there was no operating income, no permanent employee, no pending investor grievance, no prejudice caused to any investor and that the shares of the appellant company were not traded for more than six years, cannot be a ground to disobey the directions given by SEBI.*

16. I note that the Noticee has accepted that he bought and sold 12,000 shares of FTIL during the Investigation period without obtaining /taking pre-clearance of trades in accordance with Clause 3.3.1 specified in Part A of Schedule I of Model Code of Conduct. In this regard, I find it relevant to refer to the observation of Hon'ble Securities Appellate Tribunal

('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"

17. In view of the aforesaid discussion, I find that the Noticee violated the provisions of Clause 3.3.1 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified under Schedule I of Part A read with Regulations 12(1) of SEBI (PIT) Regulations, 1992 and Regulation 12 of SEBI (PIT) Regulations, 2015.

Issue 2) - Does the violation, if any, attract monetary penalty under section 15HB of SEBI Act?

18. By not making the disclosures, the Noticee failed to comply with their mandatory statutory obligation. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of **Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361**} wherein it was held that *"In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. ……. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."*

19. As the violation of the provisions of the provisions of Clause 3.3.1 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified under Schedule I of Part A read with Regulations 12(1) of SEBI (PIT) Regulations, 1992 and Regulation

12 of SEBI (PIT) Regulations, 2015 is established, the Noticee is liable for monetary penalty under section 15HB of SEBI Act, 1992 which, at the time of violation, read 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*

20. While determining the quantum of penalty under section 15HB of the SEBI Act, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

"15J - Factors to be taken into account by the adjudicating officer while adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default."

21. The amount of disproportionate gain or unfair advantage to the Noticee or loss caused to investors as a result of the default is not quantified in the material available on record. Considering that the Noticee has entered into a number of trades (Buy and Sell Transactions), the same is treated as repetitive in nature.

22. With respect to the non-compliance being unintentional due to lack of knowledge about SEBI Regulations, I note that Hon'ble SAT, through various judgments, has consistently observed that these factors are not valid grounds for not complying with the mandatory obligations under the SEBI Regulations. However, they are nevertheless treated as mitigating factors while arriving at the quantum of penalty. Hon'ble SAT in the matter of **Akriti Global Traders Limited vs. SEBI** (Appeal No. 78 of 2014 order dated September

30, 2014), observed that *"Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay".*

23. Further, Hon'ble Supreme Court of India in the matter of **Shriram Mutual Fund** refereed supra had observed that *"… imputing mens rea into the provisions of Chapter VIA is against the plain language of the statute and frustrates entire purpose and object of introducing Chapter VIA to give teeth to the SEBI to secure strict compliance of the Act and the Regulations."*

24. In view of all of the above I am of considered view that the Noticee has violated the provisions of Clause 3.3.1 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified under Schedule I of Part A read with Regulations 12(1) of SEBI (PIT) Regulations, 1992 and Regulation 12 of SEBI (PIT) Regulations, 2015 and that it is a fit case for imposition of penalty for violation of the aforesaid Regulations.

ORDER

25. After taking into consideration the nature and gravity of charges established, the facts and circumstances of the case as enumerated above, I, in exercise of the powers conferred upon me under Section 15I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, hereby impose a impose a monetary penalty of Rs. 12,00,000/- (Rupees Twelve Lakh Only) on the Noticee i.e. Mr. Naishadh P. Desai under section 15HB of the SEBI Act, 1992 for the violation of the provisions of provisions of Clause 3.3.1 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified under Schedule I of Part A read with Regulations 12(1) of SEBI (PIT) Regulations, 1992 and Regulation 12 of SEBI (PIT) Regulations, 2015.

26. The Noticee shall remit / pay the said total amount of penalty within 45 days of receipt of this order in either of the following way:

    a. By using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html; OR

b. By way of Demand Draft in favour of *"SEBI - Penalties Remittable to Government of India",* payable at Mumbai; OR

27. The Noticee shall forward the said Demand Draft in the format as given in table below shall be sent to "The Division Chief, Enforcement Department -DRA-II, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai - 400 051." and also to e-mail id :- tad@sebi.gov.in

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for (like penalties/ disgorgement/ recovery/Settlement amount and legal charges along with order details)	
Penalty	

28. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated 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.

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

Date: July 30, 2019
Place: Mumbai

Prasanta Mahapatra
Adjudicating Officer