

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. EAD/SR/SM/AO/56/2017-18]**

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

In respect of

**Ms. Kokilaben Patel**

(Address – No. 2/3/4, Ghanshyam Park Society,  
Ashwamegh Bunglow, 132 feet Ring Road,  
Satelite Road, Ahmedabad – 380015)  
(PAN - ABHPP4060H)

In the matter of Popular Estate Management Limited  
(CIN - L65910GJ1994PLC023287)

---

**BACKGROUND**

1. Investigating Authority (hereinafter referred to as **IA**), of Securities and Exchange Board of India (hereinafter referred to as **SEBI**) conducted an investigation in the matter of trading activities of certain entities in the scrip of Popular Estate Management Limited (hereinafter referred to as **Popular/Company**), which is listed at Bombay Stock Exchange (BSE). The period of investigation was from January 01, 2012 to November 16, 2012 (hereinafter referred to as investigation period). As per findings of the IA, Ms. Kokilaben Patel (hereinafter also referred to as **Noticee**) was a promoter during the investigation period. IA observed that during the period of investigation, there was a change in shareholding of the Noticee in the Company during the quarter ending July – September, 2012. However, the Noticee, being a promoter of the Company failed to make relevant disclosures pursuant to the change in her shareholding to the Company and BSE regarding the change in shareholding as prescribed under SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **PIT Regulations, 1992**). It was observed by IA that the Noticee has violated the provisions of regulation 13(4A) of PIT Regulations, 1992 read with (r/w) regulation 13(5) of PIT Regulations, 1992.

---

Adjudication Order in respect of Ms. Kokilaben Patel in the matter of Popular Estate Management Limited

## **APPOINTMENT OF ADJUDICATING OFFICER**

2. In view of the said findings of IA, a department of SEBI initiated adjudication proceedings against the Noticee, to inquire into and adjudge under section 15A(b) of the Securities and Exchange Board of India, 1992 (hereinafter referred to as the **SEBI Act, 1992**) for alleged violations of provisions of regulation 13(4A) of PIT Regulations, 1992 r/w regulation 13(5) of PIT Regulations, 1992. The adjudication proceedings were approved by the Competent Authority. Shri Nagendraa Parakh was appointed as the Adjudicating Officer under Section 15-I of the SEBI Act, 1992 read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **Adjudication Rules, 1995**) to inquire into and adjudge under section 15A(b) of the SEBI Act, 1992 for the alleged violation of the provisions of regulation 13(4A) r/w regulation 13(5) of PIT Regulations, 1992 by the Noticee. Subsequent to the promotion of Shri Nagendraa Parakh, I was appointed as Adjudicating Officer vide order dated July 10, 2017.

## **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

3. A Show Cause Notice no. EAD/AO-NP/VVK/29693/1/2016 dated October 27, 2016 (hereinafter referred to as SCN) was issued to the Noticee in terms of Rule 4 of the Adjudication Rules, 1995 requiring the Noticee to show cause as to why an inquiry should not be held against it for the alleged violations of provisions of regulation 13(4A) r/w 13(5) of PIT Regulations, 1992. The SCN was issued through speed post acknowledgement due (SPAD) and the same was delivered to the Noticee as seen from proof of delivery available on record.
4. It was alleged in the SCN that the Noticee was one of the promoters of Popular. There was a change in Noticee's shareholding in the Company during the quarters ending July-September, 2012. The details of change in shareholding of the Noticee are tabulated below:-

Quarter End	No. of shares	% of Shareholding
June 30, 2012	623200	4.45
September 30, 2012	653200	4.67
December 31, 2012	653200	4.67

During the quarter ending July-September, 2012, IA observed that shareholding of the Noticee changed to 6,53,200 shares of Popular from 6,23,200 shares of Popular constituting 4.67% of total shares of the Company which exceeded 25,000 shares on August 10, 2012. It is alleged in the SCN that the change in shareholding casts an obligation on the Noticee to disclose the change in number of shares or voting rights held by the Noticee if the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights whichever is lower, within two days of the becoming promoter or part of the promoter group, to the Company and BSE under the provision of regulation 13(4A) r/w 13(5) of PIT Regulations, 1992. However, the Noticee failed to make disclosures to the Company and BSE within the prescribed time.

5. The Noticee vide its letter dated November 15, 2016 requested the previous Adjudicating Officer for extension of 30 days' time to submit his reply to the SCN. Further, vide hearing notice dated May 23, 2017 an opportunity was granted to the Noticee for a personal hearing on June 14, 2017. The said hearing notice was served to the Noticee by SPAD and the delivery proof is on record. Accordingly, Shri Keyoor Bakshi, the authorized representative (AR), on behalf of the Noticee attended the hearing on the scheduled date i.e. June 14, 2017 and the hearing minutes are on record. In the hearing, Noticee was advised to submit the reply to the SCN on or before June 29, 2017 and based on the reply, another opportunity of hearing may be given to the Noticee. The Noticee vide letter dated June 27, 2017 submitted its reply to the SCN.
6. After my appointment, I granted an opportunity of personal hearing to the Noticee by issuing hearing notice dated September 05, 2017 to appear before me for personal hearing on September 22, 2017. The said hearing notice was served to the Noticee by SPAD and the proof of delivery as per website of Department of Post ([www.indiapost.gov.in](http://www.indiapost.gov.in)) is available on record. However, the Noticee did not appear for hearing in the scheduled date. Another opportunity of hearing was granted to the Noticee by issuing hearing notice dated October 03, 2017 to appear before me for personal hearing on October 24, 2017. In this regard, the Noticee vide e-mail dated October 19, 2017 requested for 15 days' time and accordingly the Noticee was given hearing on November 09, 2017 vide hearing notice dated October 30, 2017. Shri

Ronak D Doshi, the AR on behalf of the Noticee attended the hearing on the scheduled date i.e. November 09, 2017 and submitted the reply to the SCN. Also the AR requested for more time for additional submission. Accordingly, the Noticee was given time for additional submissions till November 20, 2017. Hearing minutes are on record. The Noticee submitted a reply vide letter dated November 15, 2017.

7. The Noticee in its reply dated June 27, 2017, November 08, 2017 and November 15, 2017 inter-alia submitted that *"She belongs to the promoter group of the company and he had inadvertently committed the violation of regulation 13(4A) r/w 13(5) of PIT Regulations, 1992. Also he submitted that such lapse on his part was just a mistake without any ill intension or bad motive. Also she has made disclosure on December 03, 2014 enclosing the copy of disclosures from the BSE website."*
8. After taking into account, the allegations levelled in the SCN, reply submitted by the Noticee to the SCN, and other evidences / materials available on record, I hereby, proceed to decide the case on merit.

### **CONSIDERATION OF ISSUES**

9. The issues that arise for consideration in the present case are:
  - (a) Whether the Noticee has violated the provisions of regulation 13(4A) r/w regulation 13(5) of PIT Regulations, 1992?
  - (b) Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of the SEBI Act, 1992? and,
  - (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?
10. Before proceeding further, it will be appropriate to refer to the relevant provisions of the PIT Regulations, 1992 which read as under:-

#### ***PIT Regulations, 1992*** ***Continual disclosure.***

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

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

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

---

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

### **EVIDENCES AND FINDINGS**

11. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder:
12. **Issue (a):** Whether the Noticee has violated the provisions of regulation 13(4A) r/w regulation 13(5) of PIT Regulations, 1992?
  - a) I have noted from the available records that the Noticee is a promoter of the company. Shareholding of the Noticee as on June 30, 2012 was 6,23,200 shares representing 4.45% of the share capital of the Company. Further, the shareholding of the Noticee as on September 30, 2012 was 6,53,200 shares representing 4.67% of the share capital of the Company which shows that there was an increase in shareholding of 30,000 shares (i.e. excess of 25,000 shares) of the company by the Noticee. In this regard, I note from the regulation 13(4A) r/w 13(5) of PIT Regulations, 1992 that being a promoter of the company and as the change of shareholding exceeds 25,000 shares of the company, the Noticee was required to make relevant disclosures to the Company and BSE within two working days of the allotment of the shares or acquisition of shares. However, Noticee made disclosures to the BSE on December 03, 2014 under the provision of regulation 13(4A) r/w 13(5) of PIT Regulations, 1992 with a delay of approximately more than two (2) years.
  - b) Further, as per the available record, it is noted that Popular in its letter received at SEBI on December 02, 2014 informed that the company has not received the required disclosures from the Noticee under the provision of regulation 13(4A) r/w 13(5) of PIT Regulations, 1992. Also, BSE in its e-mail dated November 20, 2014 informed that no disclosures received from the Noticee under the said provisions of PIT regulations, 1992.
  - c) In view of aforementioned observations and the admitted position by the Noticee, I conclude that by failing to make disclosures to the Company and BSE as per the said requirements prescribed under PIT Regulations, 1992, the Noticee has violated the provisions of regulation 13(4A) r/w 13(5) of PIT Regulations, 1992.

13. **Issue (b): Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of the SEBI Act, 1992?**

- a) In respect of imposition of monetary penalties, I cannot ignore the historical case of Hon'ble Supreme Court of India in the matter of The Chairman, SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) wherein it was 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"*.
- b) It is relevant to mention here that said case of Shri Ram Mutual Fund (supra) was maintained by the three judge bench of the Hon'ble Supreme Court of India in the case of Union of India vs. Dharmendra Textile Processor 2008 (13) SCC 369 decided on September 29, 2008 on the issue related to Income Tax Act. It was held by the Hon'ble Supreme Court that penalty under the provision is for breach of civil obligation is mandatory and the mens rea is not an essential element for imposing the penalty. The adjudicatory authority has no discretion to levy duty less than what is legally and statutorily leviable. The Hon'ble Supreme Court also specifically observed that the case of Shri Ram Mutual Fund (supra) has been analysed in the legal position and in the correct perspectives.
- c) Therefore, after taking into account the aforesaid entire facts / circumstance of the case and the aforesaid case laws, it is noted that the said violations of provisions of regulation 13(4A) r/w regulation 13(5) of PIT Regulations, 1992 by the Noticee attracts the imposition of monetary penalties upon the Noticee under section 15A(b) of SEBI Act, 1992, as existed at the time of commission of the alleged violations are reproduced below:

***Penalty for failure to furnish information, return, etc.***

**15A.** *If any person, who is required under this Act or any rules or regulations made thereunder,—*

- (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.*

14. **Issue (c) - If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?**

While determining the quantum of penalty under sections 15A(b) of the SEBI Act, 1992 it is important to consider the factors stipulated in section 15J Of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules, which reads as under:-

***The SEBI Act, 1992***

***Factors to be taken into account by the adjudicating officer***

**15J** -: *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."*

15. I observe, that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors due to non-disclosures under Regulation 13 (4A) r/w 13(5) of SEBI (PIT) Regulations, 1992. From the documents available on record, it is noted that the failure is not repetitive. However, it would be appropriate to refer to the observations made by the Hon'ble SAT in the matter of Akriti Global Traders Ltd. Vs. SEBI (Appeal No. 78 of 2014) decided on September 30, 2014 "*...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.*"

16. Therefore, taking into consideration the facts / circumstance of the case, I am of the view that the Noticee is liable for penalty for violating Regulation 13(4A) r/w 13(5) of SEBI (PIT) Regulations, 1992 .

**ORDER**

17. In exercise of the powers conferred under section 15-I of SEBI Act, 1992 and Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 1,00,000/- (Rupees One Lakh only) on the Noticee viz. Ms. Kokilaben Patel under section 15A(b) of SEBI Act, 1992 for the violation of provision of regulation 13(4A) r/w 13(5) of PIT Regulations, 1992. I am of the view that the said penalty is commensurate with the defaults

committed by the Noticee in terms of penalty structure provided in section 15A(b) of the SEBI Act, 1992.

18. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI – Penalties Remittable to Government of India”, payable at Mumbai, or through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

19. The Noticee 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 at e-mail ID : [tad@sebi.gov.in](mailto: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
------	--------------------	--------------------------------------	----------------------	-----------------------------------	-----	-----------------	---	---	--------

20. In terms of the Rule 6 of the Adjudication Rules, 1995, copy of this order is sent to the Noticee at its last known address and also to Securities and Exchange Board of India.

**Date: March 15, 2018**

**Place: Mumbai**

**SANGEETA RATHOD  
ADJUDICATING OFFICER**

---

Adjudication Order in respect of Ms. Kokilaben Patel in the matter of Popular Estate Management Limited