

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER Ref. No. ORDER/NH/RJ/2023-24/30188]

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

Mr. Rajesh Daga
PAN ADRPD8616P

In the matter of suspected insider trading activity of certain entities in the scrip of Electrosteel Castings Limited

A. BACKGROUND

1. Electrosteel Castings Limited (hereinafter referred to as '**ECL**'/ '**company**') is a public company whose shares are listed on BSE Limited (hereinafter referred to as '**BSE**') and National Stock Exchange of India Limited (hereinafter referred to as '**NSE**').
2. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had conducted an investigation with regard to the trading activities of promoter/promoter group entities of ECL, in the scrip of ECL prior to the public announcement about the proposed amalgamation of Srikalahasthi Pipes Limited (hereinafter referred to as '**SPL**') with ECL. The period of investigation (hereinafter referred to as '**IP**') was considered from May 17, 2020 to January 06, 2021.
3. Pursuant to the investigation, it was alleged that Mr. Rajesh Daga (hereinafter referred to as '**Noticee**') has allegedly violated Clauses 4, 6 and 10 of Schedule B of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Designated Persons read with Regulation 9 (1) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations**').

Adjudication Order in respect of Mr. Rajesh Daga in the matter of suspected insider trading activity of certain entities in the scrip of Electrosteel Castings Limited

B. APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer (hereinafter referred to as '**AO**') vide communique dated August 10, 2023 under Section 19 read with Section 15-I of Securities and Exchange Board of India, 1992 (hereinafter referred to as '**SEBI Act**') and under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under Section 15HB of the SEBI Act for the alleged violations committed by Noticee as mentioned above.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice (hereinafter referred to as '**SCN**') bearing No. SEBI/HO/EAD2/NH/RJ/2023/48149 dated November 30, 2023, was issued to the Noticee under Rule 4 of Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against the Noticee under Section 15HB of SEBI Act for the aforesaid alleged violations.
6. The SCN dated November 30, 2023, *inter alia*, alleged the following:

" ...

- *It is mentioned in the said report that the Noticee vide email dated December 11, 2022 has submitted that he was one of the designated persons of ECL during the IP.*
- *Hence, it is alleged that Noticee was a designated person of ECL during the IP.*

Trading by Noticee during IP

- *From the investigation report, it was observed that the Noticee had executed transactions in the scrip of ECL during the IP and in the period outside the IP. The relevant details in this regard is tabulated below:*

Date	Buy Qty.	Buy Value (in Rs.)	Sell Qty.	Sell Value (in Rs.)
June 16, 2020	10,000	1,27,000	0	0
June 19, 2020	0	0	10,000	1,38,500
June 26, 2020	16,552	2,63,177	0	0
July 07, 2020	5,000	73,750	16,552	2,84,694
July 07, 2020	5,000	81,500	0	0
July 08, 2020	5,000	73,250	0	0
July 28, 2020	0	0	5,000	82,000
August 21, 2020	10,000	2,16,000	0	0
October 08, 2020	5,000	1,03,250	0	0
November 14, 2020	5,000	1,09,500	0	0
November 20, 2020	5,318	1,24,973	5,318	1,29,227
December 08, 2020	6,599	1,55,077	0	0
December 10, 2020	10,000	2,24,500	10,000	2,24,612
December 18, 2020	30,000	6,36,000	30,000	6,31,513
December 24, 2020	10,000	2,09,000	11,599	2,40,424
Total	1,23,469	23,96,977	88,469	17,30,970

- Further, Nirmal, the broker of Noticee through which the alleged trades were executed had, inter alia, informed SEBI that the said orders were placed online by the Noticee.
- **Compliance with Code of Conduct regarding Pre-Clearance:**
 - In terms of Clause 6 of Schedule B of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Designated Persons read with Regulation 9 (1) of PIT Regulations, 2015, trading by designated persons shall be subject to pre-clearance by the compliance officer if the value of the proposed trades is above such thresholds as the board of directors may stipulate.
 - In this regard, it was observed that paragraph 12 of the then Code of Conduct of ECL inter alia provided as under:

“12.1 All Designated Persons within and their immediate relatives, who intend to trade in the securities of the Company when the trading window is open, and if the value of the proposed trade is above Rupees 10 lacs (market value) in one transaction or in a series of transactions, over a period of one calendar month/quarter should pre-clear the as per the pre-trading procedure described hereunder. ...”

- *In this regard, it is alleged that Noticee, who was the then designated person of ECL, had bought and sold shares in excess of the threshold of Rs.10,00,000/- (Rupees Ten Lakhs) stipulated in the Code of Conduct of ECL in December 2020. The details of the said alleged transactions undertaken by the Noticee are tabulated below:*

Date of Transaction	Buy Qty.	Buy Value (in Rs.)	Sell Qty.	Sell Value (in Rs.)
December 08, 2020	5,318	1,25,079.36	5,318	1,29,121.04
December 10, 2020	6,599	1,55,386.653	0	0
December 18, 2020	10,000	2,24,700	10,000	2,24,411.85
December 24, 2020	30,000	6,36,600	30,000	6,30,912.9
December 29, 2020	10,000	2,09,200	11,599	2,40,157.4316
	Total buy value	13,50,966	Total sell value	12,24,603.222

- *Further, it is observed in the investigation report that the Noticee, in his email dated December 11, 2022, has inter alia stated that pre-clearance from ECL was not taken for the aforesaid trades.*
- *Therefore, it is alleged that the Noticee has violated Clause 6 of Schedule B of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Designated Persons read with Regulation 9 (1) of PIT Regulations while trading in the scrip of ECL.*

○ **Trading during the Trading Window Closure Period**

- *In terms of Clause 4 of Schedule B of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Designated Persons read with Regulation 9 (1) of PIT Regulations, 2015, designated persons and*

their immediate relatives shall not trade in securities when the trading window is closed.

Closure of the trading window from July 01, 2020, till August 15, 2020

- It was observed in the course of the investigation that the trading window of ECL was closed for all designated persons and their immediate relatives from July 01, 2020 till August 15, 2020. During this period, Noticee is alleged to have purchased 5,000 shares of ECL each on July 07, 2020, July 08, 2020 and July 28, 2020, respectively. Further, he is alleged to have sold 16,552 shares of ECL on July 07, 2020. The said details are tabulated below:*

Date	Buy Qty.	Buy Value (in Rs.)	Sell Qty.	Sell Value (in Rs.)
July 07, 2020	0	0	16,552	2,84,197.0112
July 07, 2020	5,000	73,850	0	0
July 08, 2020	5,000	81,663	0	0
July 28, 2020	5,000	73,396.5	0	0

Closure of trading window from 11 A.M. of September 30, 2020 till November 14, 2020

- It was also observed that the trading window of ECL was closed for all designated persons and their immediate relatives from 11 A.M. of September 30, 2020 till November 14, 2020.*
- In this regard, it is alleged in the investigation report that Noticee had purchased 10,000 and 5,000 shares of ECL respectively on October 08, 2020 and November 14, 2020, when the trading window of ECL was closed. The relevant details are tabulated below:*

Date	Buy Qty.	Buy Value (in Rs.)
October 08, 2020	10,000	2,16,432
November 14, 2020	5,000	1,03,456.5

- It is alleged that Noticee, in his emails dated December 07 and 12, 2022, has, inter alia, stated that notice of closure of the trading window was communicated to him from time to time including during the IP and he was aware of the code of conduct.*

- *In this context, it is alleged that the Noticee has traded during the Trading Window Closure period and thereby allegedly violated Clause 4 of Schedule B of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Designated Persons read with Regulation 9 (1) of PIT Regulations, 2015.*

○ **Execution of Contra Trade**

- *Clause 10 of Schedule B read with Regulation 9 (1) of PIT Regulations, 2015, inter alia, does not allow the designated persons to enter into opposite positions in the scrip within a period of 6 months from the date when the trades were executed.*
- *In this regard, it is alleged that Noticee, being a designated person of ECL, had allegedly executed contra trades in the scrip of the ECL during the IP. It is alleged that the alleged contra trades executed by Noticee had generated a gross profit of Rs. 1,28,820/- (Rupees One Lakh Twenty-Eight Thousand Eight Hundred Twenty), calculated as per the First in First Out (hereinafter referred to as 'FIFO') method, during the IP. The relevant details of the said contra trades are tabulated below:*

Date	Buy Qty.	Buy Value (in Rs.)	Sell Qty.	Sell Value (in Rs.)	Profit (in Rs.)	Remarks
June 16, 2020	10,000	1,27,254	0	0	10,969	First trade in IP was on June 16, 2020
June 19, 2020	0	0	10,000	1,38,223		
June 26, 2020	16,552	2,63,703.1536	0	0	20,493.86	Same amount of shares were sold on July 07, 2020 which were purchased on July 26, 2020
July 07, 2020			16,552	2,84,197.0112		
July 07, 2020	5,000	73,850	0	0		
July 08, 2020	5,000	81,663	0	0		
July 28, 2020	5,000	73,396.5	0	0		
August 21, 2020	0	0	5,000	8,1836	7,986	Value of 5,000 shares purchased on July 07, 2020 is

Date	Buy Qty.	Buy Value (in Rs.)	Sell Qty.	Sell Value (in Rs.)	Profit (in Rs.)	Remarks
						<i>taken under FIFO method</i>
October 08, 2020	10,000	2,16,432	0	0		
November 14, 2020	5,000	103456.5	0	0		
November 20, 2020	5,000	109719	0	0		
December 08, 2020	5,318	1,25,079.36	5,318	1,29,121.04	42,789.80	<i>Value of 5,000 shares purchased on July 08, 2020 and 318 shares on July 28, 2020 is taken under FIFO method</i>
December 10, 2020	6,599	1,55,386.653	0	0		
December 18, 2020	10,000	2,24,700	10,000	22,4411.85	40,581.55	<i>Value of the remaining 4,682 shares purchased on July 28, 2020 and 5,318 shares on October 08, 2020 is taken under FIFO method</i>
December 24, 2020	30,000	6,36,600	30,000	6,30,912.9	(40,167.56)	
December 29, 2020	10,000	2,09,200	11,599	2,40,157.4316	(1,422.10)	
Total	1,23,469	24,00,440.1666	88,469	17,28,859.2328	1,28,820*	*Gross profit

- Therefore, it is alleged that the Noticee, as mentioned above, had entered into contra trades and made gross profit of Rs. 1,28,820/- (Rupees One Lakh Twenty-Eight Thousand Eight Hundred Twenty) from contra trades. Therefore, the Noticee is alleged to have violated Clause 10 of Schedule B of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Designated Persons read with Regulation 9 (1) of PIT Regulations while trading in the scrip of ECL for December 2020.
- In light of the above, Noticee is alleged to have violated Clauses 4, 6 and, 10 of Schedule B of Minimum Standards for Code of Conduct to Regulate, Monitor and

Report Trading by Designated Persons read with Regulation 9 (1) of the PIT Regulations, 2015 while trading shares of ECL.

...

7. The SCN along with annexures was served upon the Noticee in the following manner as mentioned below:

Table 1

Sr. No.	Mode of Delivery of SCN	Address/ Email ID*	Remarks
1.	Digitally signed SCN delivered through E-mail	la...@gmail.com	Digitally Signed SCN duly delivered on December 04, 2023.
2.	Delivered through Speed Post with Acknowledgment Due	Floor.....157	Delivered on December 11, 2023 as per the consignment tracking on India Post.

**Email ID and address excised for confidentiality*

8. The receipt of the SCN was duly acknowledged by the Noticee vide email dated December 19, 2023. Vide the said email dated December 19, 2023, Noticee requested for further time to submit reply to the SCN. In the interest of natural justice, the request of the Noticee was allowed by the undersigned and the Noticee was advised to submit his reply by January 05, 2024.
9. Thereafter, Noticee, vide email dated January 04, 2024, requested for inspection of documents in the instant case. In the interest of natural justice, an opportunity of inspection was granted to the Noticee on January 12, 2024. Mr. Arka Saha, authorized representative of the Noticee conducted inspection of the document on January 12, 2024. Pursuant to the completion of the inspection, Noticee was advised to submit his reply by January 23, 2024.
10. From the record, I note that Noticee, vide letter dated January 25, 2024, *inter alia*, submitted as under:

“ ...

- *The Noticee joined ECL in 1996 as Manager. During the year, 2020 the Noticee was holding the post of Senior Vice President (Sales and Marketing). In the year 2022, taking into consideration the hard work and contribution of the Noticee, he was promoted to the post of President-Pan India. The Noticee's track record during his employment history has been spotless during his time with ECL.*
- *The details of the trades placed by Noticee/ his son on his behalf in the scrip of ECL during the IP is given below:*

Sr. No.	Date	Buy	Sell
1.	June 16, 2020	10,000	0
2.	June 19, 2020	0	10,000
3.	June 26, 2020	16,552	0
4.	July 07, 2020	5,000	16,552
5.	July 8, 2020	5,000	0
6.	July 28, 2020	5,000	0
7.	August 21, 2020	0	5,000
8.	October 8, 2020	10,000	0
9.	November 14, 2020	5,000	0
10.	November 20, 2020	5,000	0
11.	December 8, 2020	5,318	5,318
12.	December 10, 2020	6,599	0
13.	December 18, 2020	10,000	10,000
14.	December 24, 2020	30,000	30,000
15.	December 29, 2020	10,000	11,599
Total		1,23,469	88,469

- *With respect to the first allegation in the SCN pertaining to failure to take pre-clearance for his trades, it is submitted that the Noticee was under the impression that only when a particular transaction exceeds the threshold of Rs. 10,00,000/-, pre-clearance would be required. Given that none of the individual transaction exceeded the threshold of Rs. 10,00,000/-, no pre-clearance was obtained.*
- *With respect to the second allegation in the SCN in respect of the contra trades, it is submitted that the same was inadvertently done by the Noticee. In this*

regard, it is pertinent to note that the management of ECL directed the Noticee to deposit a sum of Rs. 1,22,820/- (Rupees One lakh twenty-two thousand eight hundred twenty only) to SEBI's Investor Protection and Education Fund in compliance of the ECL's code of conduct for prevention of insider trading. In compliance of the direction of the management of ECL, the Noticee has accordingly made the said payment.

- *With respect to the allegation of trading during trading window closures, it is submitted that the number of shares traded and the value during such period are miniscule. Such trades were carried out by the Noticee's son on the Noticee's behalf inadvertently and without any intention to violate any law.*

Submissions

- *In view of the foregoing, it is submitted that all of the alleged violations were technical and venial breaches, and were not done with an intent to violate any law. However, as soon as the Noticee became aware of such issues pertaining to his transactions, he adhered to all necessary corrective steps and engaged in taking all possible compliance measures, as required.*
- *The Noticee submits that necessary disciplinary action has also been taken against him by ECL whereby he has disgorged profits. In view thereof, it is urged that imposition of further penalty is not warranted in the facts of the present case. In this regard, reliance is placed on the case of Gautam Anand (decided on July 20, 2016) and Marksans Pharma Limited (decided on October 31, 2018) wherein, the SEBI adjudicating officer appreciated the fact that the company had imposed adequate penalty over the noticees and therefore did not subject the noticees to any further penalty. It is humbly requested that a similar view be taken in the present case as well. Reference is further drawn to the decision of the Hon'ble Securities Appellate Tribunal in the case of Snehlata R Tiwari vs. SEBI (Decided on April 28, 2021 in Appeal no. 175 of 2020), wherein taking into consideration the miniscule profit made out of the contra trade, it was held that the impugned order of the adjudicating officer cannot be sustained. The Noticee submits that a similar view be taken in the present case as well.*

- *It is submitted that since the Noticee was admittedly not in possession of any UPSI, his inadvertent mistakes did not have any detrimental impact on the Company or its investors even in terms of the PIT Regulations. It is further submitted that the Noticee will ensure that such alleged lapses are not repeated by him again, and that he will take utmost care while dealing in the securities market in the future.*
...”

11. In consonance with the Adjudication Rules, an opportunity of hearing on March 18, 2024 was granted to the Noticee. Mr. Tomu Francis and Ms. Ankita Ray (Authorized Representatives of the Noticee) attended the hearing through videoconferencing and reiterated the submissions made by the Noticee in its letter dated January 25, 2024.

12. It is noted that the SCN along with the annexures and the Hearing Notice were duly served on the Noticee. The Noticee was granted sufficient opportunities to make submissions in reply to the SCN and of personal hearing. Thus, the principles of natural justice were adhered to.

D. CONSIDERATION OF ISSUES AND FINDINGS

13. After careful perusal of the material on record, I note that the issues that arise for consideration in the present case are as follows:

- I. Whether Noticee has violated Clauses 4, 6 and 10 of Schedule B of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Designated Persons read with Regulation 9 (1) of PIT Regulations?
- II. Does the violation, if any, on the part of Noticee attract a monetary penalty under Section 15HB of the SEBI Act?

III. If so, what would be the monetary penalty that can be imposed upon Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act?

14. The relevant extracts of the provisions of law, allegedly violated by Noticee, are mentioned under:

PIT Regulations

“9. (1) The board of directors of every listed company and the board of directors or head(s) of the organisation of every intermediary shall ensure that the chief executive officer or managing director shall formulate a code of conduct with their approval to regulate, monitor and report trading by its designated persons and immediate relatives of designated persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B (in case of a listed company) and Schedule C (in case of an intermediary) to these regulations, without diluting the provisions of these regulations in any manner.

Schedule B of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Designated Persons

4.(1) Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.

(2) Trading restriction period shall be made applicable from the end of every quarter till 48 hours after the declaration of financial results. The gap between clearance of accounts by audit committee and board meeting should be as

narrow as possible and preferably on the same day to avoid leakage of material information.

(3) The trading window restrictions mentioned in sub-clause(1) shall not apply in respect of –(a)transactions specified in clauses(i) to (iv) and (vi) of the proviso to sub-regulation (1) of regulation 4 and in respect of a pledge of shares for a bonafide purpose such as raising of funds, subject to pre-clearance by the compliance officer and compliance with the respective regulations made by the Board; (b)transactions which are undertaken in accordance with respective regulations made by the Board such as acquisition by conversion of warrants or debentures, subscribing to rights issue, further public issue, preferential allotment or tendering of shares in a buy-back offer, open offer, delisting offer or transactions which are undertaken through such other mechanism as may be specified by the Board from time to time.

...

6. When the trading window is open, trading by designated persons shall be subject to pre-clearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate.

...

10. The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.”

...”

E. CONSIDERATION

I. Whether Noticee has violated Clauses 4, 6 and 10 of Schedule B of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Designated Persons read with Regulation 9 (1) of PIT Regulations?

15. In the SCN, it was alleged that Noticee was a designated person of ECL as per PIT Regulations during the IP. In this context, the following is alleged against the Noticee:

- i. Noticee had traded during the IP without complying with the Code of Conduct regarding Pre-Clearance.
- ii. Noticee had executed trades during the Trading Window Closure period.
- iii. Noticee had entered into contra trades and made a gross profit of Rs. 1,28,820/- (Rupees one lakh twenty-eight thousand eight hundred twenty only).

16. At the foremost, I note that the fact that the Noticee was a designated person of ECL during the IP as per PIT Regulations has not been disputed. Thus, the Noticee being a designated person, Schedule B read with Regulation 9(1) of PIT Regulations will apply to the Noticee.

i. Compliance with Code of Conduct regarding Pre-Clearance

17. In the SCN, it has been alleged that Noticee has executed series of trades in the month of December 2020 without complying with the Code of Conduct of ECL regarding Pre-Clearance.

18. In terms of Clause 6 of Schedule B of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Designated Persons read with Regulation 9 (1) of PIT Regulations, trading by designated persons is subject to pre-clearance by the compliance officer if the value of the proposed trades is above such thresholds as the board of directors may stipulate.

19. It is noted that paragraph 12 of the then Code of Conduct of ECL, *inter alia*, provided as under:

“12.1 All Designated Persons within and their immediate relatives, who intend to trade in the securities of the Company when the trading window is open, and if the value of the proposed trade is above Rupees 10 lacs (market value) in one transaction or in a series of transactions, over a period of one calendar month/quarter should pre-clear the as per the pre-trading procedure described hereunder. ...”

20. Thus, it is clear from a plain reading of the above paragraph that trades of Rs. 10,00,000/- (Rupees ten lakhs) in one or series of transaction in a period of one calendar month/quarter needs pre-clearance.

21. From the material on record, I note that Noticee, a designated person of ECL, had bought shares to the value of Rs. 13,50,966/- (Rupees thirteen lakhs fifty thousand nine hundred sixty-six) and sold shares to the value of Rs. 12,24,603.22/- (Rupees twelve lakhs twenty-four thousand six hundred three and twenty-two paise) in the month of December 2020. This is above the threshold of Rs. 10,00,000/- (Rupees ten lakhs) as stipulated in the Code of Conduct of ECL. The details of the transactions undertaken by the Noticee in the scrip of ECL during the month of December 2020 are tabulated below:

Table 2

Date of Transaction	Buy Qty.	Buy Value (in Rs.)	Sell Qty.	Sell Value (in Rs.)
December 08, 2020	5,318	1,25,079.36	5,318	1,29,121.04
December 10, 2020	6,599	1,55,386.653	0	0
December 18, 2020	10,000	2,24,700	10,000	2,24,411.85
December 24, 2020	30,000	6,36,600	30,000	6,30,912.9
December 29, 2020	10,000	2,09,200	11,599	2,40,157.4316
	Total buy value	13,50,966	Total sell value	12,24,603.22

22. From the reply of the Noticee, it is noted that the Noticee has not disputed the execution of the said trades. Further, it is an admitted fact that no pre-clearance was taken by the Noticee for the aforesaid trades.

Observations on the submission of Noticee

- **Pre-clearance would be required only when a particular transaction exceeds the threshold of Rs. 10,00,000/-**

22.1. In this regard, the Noticee has, *inter alia*, contented that “*Noticee was under the impression that only when a particular transaction exceeds the threshold of Rs. 10,00,000/-, pre-clearance would be required. Given that none of the individual transaction exceeded the threshold of Rs. 10,00,000/-, no pre-clearance was obtained.*” From the perusal of the abovementioned paragraph 12 of the then Code of Conduct of ECL, there lies no iota of doubt that the Noticee was duty bound to take pre-clearance if the value of the proposed trade executed in one transaction or in a series of transactions, over a period of one calendar month/quarter, was above Rs. 10,00,000/- (Rupees ten lakhs) (market value).

22.2. Therefore, the submission of the Noticee cannot be accepted.

23. In this context, I find that since the value of the trades executed by the Noticee in the month of December, 2020 exceeded the threshold limit prescribed by the company, the Noticee was required to take pre-clearance from the compliance officer which admittedly was not taken.

24. Consequently, it is established that the Noticee, by not taking pre-clearance for the trades as mentioned in Table 1, has violated Clause 6 of Schedule B of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Designated Persons read with Regulation 9 (1) of PIT Regulations.

ii. **Trading during the Trading Window Closure Period**

25. In the SCN, it was alleged that the Noticee had executed trades during the closure of trading window from July 01, 2020 to August 15, 2020 and from September 30, 2020 to November 14, 2020.
26. It is an accepted fact that the trading window was closed from July 01, 2020 to August 15, 2020 and from September 30, 2020 to November 14, 2020.
27. In terms of Clause 4(1) of Schedule B of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Designated Persons read with Regulation 9 (1) of PIT Regulations, designated persons shall not trade in securities when the trading window is closed.
28. It is an admitted fact that the trading window of ECL was closed for all designated persons from July 01, 2020 to August 15, 2020 and from September 30, 2020 to November 14, 2020.
29. I note that the Noticee, in his email dated December 07, 2022, has, *inter alia*, stated that notice of closure of the trading window was communicated to him from time to time including during the IP. Thus, it is noted that Noticee was aware of the closure of the trading window from July 01, 2020 to August 15, 2020 and from September 30, 2020 to November 14, 2020.
30. From the material on record and the submission of the Noticee, I find the Noticee had executed the following trades in the period from July 01, 2020 to August 15, 2020 and from September 30, 2020 to November 14, 2020. The said details are tabulated below:

Table 3

Date	Buy Qty.	Buy Value (in Rs.)	Sell Qty.	Sell Value (in Rs.)
Closure of the trading window from July 01, 2020 till August 15, 2020				
July 07, 2020	0	0	16,552	2,84,197.0112
July 07, 2020	5,000	73,850	0	0
July 08, 2020	5,000	81,663	0	0
July 28, 2020	5,000	73,396.5	0	0
Closure of trading window from 11 A.M. of September 30, 2020 till November 14, 2020				
October 08, 2020	10,000	2,16,432	0	0
November 14, 2020	5,000	1,03,456.5	0	0

31. Therefore, I note that the Noticee has executed six trades during the trading window closure period i.e. four trades during the trading window closure period from July 01, 2020 till August 15, 2020 and two trades during the trading window closure period from September 30, 2020 to November 14, 2020.

Observations on the submissions of Noticee

32. I note that Noticee has, *inter alia*, submitted various grounds in its defense which are discussed under different headings for brevity:

- **Number of shares traded and the value during such period are miniscule**

32.1. The Noticee has submitted that *“the number of shares traded and the value during such period are miniscule.”*

32.2. In this regard, I note that Clause 4(1) of Schedule B of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Designated Persons, specifically prohibits designated persons from trading in securities during the closure of the trading window. I note that Hon’ble SAT in the matter of **Premchand Shah**

and Others v. SEBI¹, *inter alia*, held as under: "...When a law prescribes a manner in which a thing is to be done, it must be done only in that manner..."

32.3. I, further, note that the instant submission of the Noticee in no manner absolves him from the fact that the trades were executed during the closure of the trading window.

32.4. Therefore, the submission of the Noticee cannot be accepted.

- **Trades were carried out by the Noticee's son**

32.5. With regard to the submission that "*Such trades were carried out by the Noticee's son on the Noticee's behalf inadvertently and without any intention to violate any law.*", I note that no material has been adduced by the Noticee to substantiate this submission. Further, the Noticee cannot abdicate his responsibility by, merely, averring that "*Such trades were carried out by the Noticee's son on the Noticee's behalf inadvertently.*" Here, I refer to the order of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT**'), in **Pragnesh Vishnubhai Patel v. SEBI**² wherein it was, *inter alia*, held as under:

"We also find that admittedly the appellant allowed another noticee Lalit Amritlal Shah to use his trading account and if his trading account was misused, the appellant himself is to be blamed and for this blunder, the appellant cannot escape the liability for violating the SEBI laws." (Emphasis supplied)

32.6. Therefore, this submission of the Noticee cannot be accepted.

33. From the previous paragraphs, I note that no justifiable reason has been brought on record by Noticee in this regard. Given the above discussions and reasoning, I find that it is a fact that the Noticee has traded during the closure of trading window from July 01, 2020 till August 15, 2020 and from September 30, 2020 till November 14, 2020.

34. Hence, the Noticee has violated Clause 4(1) of Schedule B of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Designated Persons read

¹ Appeal No. 192 of 2010 dated February 21, 2011.

² Appeal No. 268 of 2020 dated September 15, 2020.

with Regulation 9 (1) of PIT Regulations, by trading during the closure of the trading window.

iii. **Execution of Contra Trade**

35. In the SCN, it was alleged that the Noticee had allegedly executed contra trades in the scrip of the ECL and had generated a gross profit of Rs. 1,28,820/- (Rupees one lakh twenty-eight thousand eight hundred twenty only), calculated as per the First in First Out (hereinafter referred to as '**FIFO**') method vide such trades during the IP.

36. In this regard, I note that as per Clause 10 of Schedule B of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Designated Persons of PIT Regulations, the designated persons shall not enter into opposite positions in the scrip within a time span of six months, which means that designated person cannot enter into contra trades within a period of six months.

37. I note that Noticee has not denied the fact that he had executed contra trades during the IP. The following table gives the list of contra trades executed by the Noticee in the scrip of ECL during the IP:

Table 4

Date	Buy Qty.	Buy Value (in Rs.)	Sell Qty.	Sell Value (in Rs.)	Profit (in Rs.)	Remarks
June 16, 2020	10,000	1,27,254	0	0	10,969	First trade in IP was on June 16, 2020
June 19, 2020	0	0	10,000	1,38,223		
June 26, 2020	16,552	2,63,703.1536	0	0	20,493.86	Same amount of shares were sold on July 07, 2020 which were purchased on July 26, 2020
July 07, 2020			16,552	2,84,197.0112		
July 07, 2020	5,000	73,850	0	0		
July 08, 2020	5,000	81,663	0	0		
July 28, 2020	5,000	73,396.5	0	0		
August 21, 2020	0	0	5,000	8,1836	7,986	Value of 5,000 shares purchased on July 07, 2020 is

Date	Buy Qty.	Buy Value (in Rs.)	Sell Qty.	Sell Value (in Rs.)	Profit (in Rs.)	Remarks
						taken under FIFO method
October 08, 2020	10,000	2,16,432	0	0		
November 14, 2020	5,000	103456.5	0	0		
November 20, 2020	5,000	109719	0	0		
December 08, 2020	5,318	1,25,079.36	5,318	1,29,121.04	42,789.80	Value of 5,000 shares purchased on July 08, 2020 and 318 shares on July 28, 2020 is taken under FIFO method
December 10, 2020	6,599	1,55,386.653	0	0		
December 18, 2020	10,000	2,24,700	10,000	22,4411.85	40,581.55	Value of the remaining 4,682 shares purchased on July 28, 2020 and 5,318 shares on October 08, 2020 is taken under FIFO method
December 24, 2020	30,000	6,36,600	30,000	6,30,912.9	(40,167.56)	
December 29, 2020	10,000	2,09,200	11,599	2,40,157.4316	(1,422.10)	
Total	1,23,469	24,00,440.1666	88,469	17,28,859.2328	1,28,820*	*Gross profit

38. From the table above, it is noted that the Noticee, as mentioned above, had entered into contra trades and made a gross profit of Rs. 1,28,820/- (Rupees one lakh twenty-eight thousand eight hundred twenty) during the IP.

Observations on the submissions of Noticee

39. I note that Noticee has, *inter alia*, submitted various grounds in its defense which are discussed under different headings for brevity:

- **Inadvertent trade by the Noticee**

39.1. With respect to the submission of the Noticee that *“the same was inadvertently done by the Noticee”*, I note that the Noticee has not adduced any material document in this regard to substantiate his contention. I also note that Noticee, being the Vice President (Sales and Marketing) and a ‘designated officer’, ought to have known that the execution of contra trades was in gross violation of the PIT Regulations. Further, the fact that the Noticee had executed trades, as mentioned in the Table 4, which fell under the ambit of contra trades over a long period of time i.e. from June 16, 2020 to December 29, 2020, shows the repeated nature of the contra trades. Thus, these contra trades cannot be considered as inadvertent trade by the Noticee. Accordingly, this submission of the Noticee cannot be accepted.

- **Disgorgement of Gross Profit**

39.2. The Noticee has, further, submitted that *“the management of ECL directed the Noticee to deposit a sum of Rs. 1,22,820/- (Rupees One lakh twenty-two thousand eight hundred twenty only) to SEBI’s Investor Protection and Education Fund in compliance of the ECL’s code of conduct for prevention of insider trading. In compliance of the direction of the management of ECL, the Noticee has accordingly made the said payment.”* In this regard, while I take note of the submission of the Noticee, it is also to be noted that disgorgement of profit cannot absolve the Noticee from the violations as alleged in the SCN.

40. In this background, I find that the Noticee had entered into contra trades and made gross profit of Rs. 1,28,820/- (Rupees one lakh twenty-eight thousand eight hundred twenty) from the said contra trades during the IP.

41. Accordingly, it is established that the Noticee has violated Clause 10 of Schedule B of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Designated Persons read with Regulation 9 (1) of PIT Regulations while trading in the scrip of ECL for December 2020.

II. Does the violation, if any, on the part of Noticee attract a monetary penalty under Section 15HB of the SEBI Act?

III. If so, what would be the monetary penalty that can be imposed upon Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act?

42. From the previous paragraphs, it has been established that Noticee has violated Clauses 4(1), 6 and 10 of Schedule B of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Designated Persons read with Regulation 9 (1) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations.

43. In this regard, Noticee has, *inter alia*, submitted as under:

“it is submitted that all of the alleged violations were technical and venial breaches, and were not done with an intent to violate any law. However, as soon as the Noticee became aware of such issues pertaining to his transactions, he adhered to all necessary corrective steps and engaged in taking all possible compliance measures, as required.”

“... necessary disciplinary action has also been taken against him by ECL whereby he has disgorged profits. In view thereof, it is urged that imposition of further penalty is not warranted in the facts of the present case. In this regard, reliance is placed on the case of Gautam Anand (decided on July 20, 2016) and Marksans Pharma Limited (decided on October 31, 2018) wherein, the SEBI adjudicating officer appreciated the fact that the company had imposed adequate penalty over the noticees and therefore did not subject the noticees to any further penalty. It is humbly requested that a similar view be taken in the present case as well. Reference is further drawn to the decision of the Hon’ble Securities Appellate Tribunal in the case of Snehlata R Tiwari vs. SEBI (Decided on April 28, 2021 in Appeal no. 175 of 2020), wherein taking into consideration the miniscule profit made out of the contra trade, it was held that the impugned order of the

adjudicating officer cannot be sustained. The Noticee submits that a similar view be taken in the present case as well.”

44. I have perused the Adjudication Orders referred to by the Noticee. In this context, I take note of the decision of the Hon’ble Supreme Court in the matter of **The Chairman, SEBI v. Shriram Mutual Fund & Anr**³ wherein it was, *inter alia*, held:

*“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.”* (Emphasis supplied)

45. In light of the aforesaid judgment, I note that the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and accordingly, the Noticee cannot take defense that the violations were technical and venial breaches. Further, I note that in the matter of **SEBI v. Sandip Ray**⁴, Hon’ble Supreme Court, *inter alia*, held as under:

*“Learned counsel for appellant further submits that even review application filed to make a correction in the order and to justify that the order reducing the penalty below Rs. 1,00,000/-is not permissible under Section 15HB of the SEBI Act, 1992. **After we have heard learned counsel for the appellant, it clearly manifests that the Tribunal has not taken into consideration the effect and mandate of Section 15HB of the SEBI Act, 1992.** Taking into consideration the facts and circumstances of this case, there appears no justification in calling upon the respondent and we modify the order impugned dated 29.07.2022 and the penalty of Rs.75,000/-as inflicted upon noticee no.5 (Mr. Sandip Ray) and noticee no.6 (Mr. Rajkumar Sharma), as referred to in para no. 13 of the order impugned, is modified and substituted to Rs.1,00,000/-in terms of Section 15HB of SEBI Act, 1992 and with this modification the present appeals stand disposed of.”*

³ 2006 (5) SCC 361.

⁴ Civil Appeal No. 791 of 2023.

46. With regard to the order of Hon'ble SAT in the matter of **Snehlata R Tiwari v. SEBI**, I note that SEBI had preferred an appeal before the Hon'ble Supreme Court against the said order. Hon'ble Supreme Court⁵, vide its order dated August 16, 2022, has, *inter alia*, held as under:

"...In the peculiar facts and circumstances of this case, we are not inclined to entertain this Civil Appeal. However, the question of law is left open. ..."
(Emphasis Supplied)

47. I, further, note that Hon'ble Allahabad High Court in **Faujdar Singh v. State of U.P.**⁶, while considering the effect of "question of law kept open" by Hon'ble Supreme Court while dismissing SLP against the judgment and order of Hon'ble Allahabad High Court, *inter alia*, held as under:

".... What is most important is that against the said judgment S.L.P. bearing no. S.L.P.(C) CC 20655 of 2012 was filed by the State Government which was dismissed, but the question of law was kept open.

For ready reference the order of the Supreme Court is quoted hereinbelow:

"Delay condoned. Special leave petition is dismissed. Question of law is kept open."

Therefore, the judgment of the Division Bench in Hridesh Daysl Srivastava cannot be treated as laying down any principle of law on the issue involved herein nor does it constitute a binding precedent in this regard. This aspect of the matter appears to have skipped the attention of this court while deciding other writ petitions filed earlier i.e. in W.P. No.6264(SS) of 2013, 2496(SS) of 2009, special Appeal (defective) No.417 of 2014, upon which reliance is being placed by the petitioner...." (Emphasis supplied)

48. Therefore, I find no merit in the submission of the Noticee.

⁵ Civil Appeal No. 4652 of 2021.

⁶ 2016 SCOnline All 3877.

49. In this background, I find that the Noticee is liable for imposition under Section 15HB of the SEBI Act for the violations mentioned in the previous paragraphs. The text of the Section 15HB of the SEBI Act is reproduced below:

SEBI Act

“15HB. Penalty for contravention where no separate penalty has been provided.

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 shall not be less than one lakh rupees but which may extend to one crore rupees.”

50. While determining the quantum of penalty under Section 15HB of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act have to be given due regard:

SEBI Act

“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.”

Factors Considered While Imposing Penalty

51. The available records have not specified the loss, if any, suffered by the investors due to such violations. I note that the Noticee has made a gross profit of Rs. 1,28,820/- (Rupees one lakh twenty-eight thousand eight hundred twenty only) from contra trades during the IP. However, the amount of disproportionate gain or unfair advantage made as a result of the other defaults has not been quantified. As regard the repetitive nature

of the default, I note that the material on record has not brought to the fore any penalty imposed by SEBI in the past against the Noticee.

52. I note that the Hon'ble Supreme Court in its decision in **Adjudicating Officer, SEBI v. Bhavesh Pabari**⁷, has, *inter alia*, held that:

"We, therefore, hold and take the view that conditions stipulated in clauses (a), (b) and (c) of Section 15- J are not exhaustive and in the given facts of a case, there can be circumstances beyond those enumerated by clauses (a), (b) and (c) of Section 15-J which can be taken note of by the Adjudicating Officer while determining the quantum of penalty."

53. In this background, I take note of the following:

53.1. Noticee was holding the post of Senior Vice President (Sales and Marketing) of ECL and was a designated person during the IP.

53.2. The volume and value of the transactions executed by the Noticee during the IP. The relevant details are tabulated below:

Table 5

Buy Qty.	Buy Value (in Rs.)	Sell Qty.	Sell Value (in Rs.)
1,23,469	24,00,440.1666	88,469	17,28,859.2328

53.3. Noticee had bought and sold shares in excess of the threshold of Rs.10,00,000/- (Rupees ten lakhs) without any pre-clearance in contravention with the Code of Conduct of ECL in December 2020.

53.4. Noticee had made a gross profit of Rs. 1,28,820/- (Rupees one lakh twenty-eight thousand eight hundred twenty only) from contra trades. In this regard, Noticee has submitted that he has disgorged an amount of Rs. 1,22,820/- (Rupees one lakh twenty-two thousand eight hundred twenty only) to SEBI's Investor

⁷AIR 2019 SC 1265.

Protection and Education Fund in compliance of the ECL's code of conduct for prevention of insider trading.

53.5. Noticee had traded on six occasions during the trading window closure period i.e. on four occasions during the trading window closure period from July 01, 2020 till August 15, 2020 and on two occasions during the trading window closure period from September 30, 2020 to November 14, 2020.

53.6. Noticee has submitted that the violations will not be repeated.

54. The aforementioned factors have been taken into consideration while adjudging the penalty. The Noticee, being a senior official in the company, needs to be an example for others in the company to comply with law in letter and spirit. Inadvertence, ignorance of the laws, etc. cannot be accepted as reasons to justify violations of law.

F. ORDER

55. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in preceding paragraphs and in the exercise of powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I, hereby, impose the following penalty on Noticee:

Table 6

Noticee Name	Violations	Penalty Provision	Penalty
Mr. Rajesh Daga	Clauses 4(1), 6 and, 10 of Schedule B of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Designated Persons read with Regulation 9 (1) of PIT Regulations.	Section 15HB of the SEBI Act	Rs. 5,00,000/- (Five Lakhs only)

56. I am of the view that the said penalty is commensurate with the lapses/omissions on the part of Noticee.

57. Noticee shall remit/pay the said amount of penalty within 45 days of receipt of this order through the online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT > Orders > Orders of AO > PAY NOW.
58. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee and also to the Securities and Exchange Board of India.

Date: March 28, 2024

Place: Mumbai

**N HARIHARAN
CHIEF GENERAL MANAGER
AND ADJUDICATING OFFICER**