

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SM/DD/2021-22/13871]

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) RULES, 1995

In respect of

Shri. A.Rathinappan
PAN: ADLPR8177K

In the matter of Titan Company Limited

FACTS OF THE CASE IN BRIEF:

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received a letter from Titan Company Limited (hereinafter referred to as '**Company/Titan/TCL**') wherein the Company intimated SEBI about contravention of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations**') and Company's Code of Conduct for Prevention of Insider Trading by some of its designated persons/employees.
2. Thereafter, SEBI conducted an investigation in the scrip of Titan and observed several non-compliances of PIT Regulations during the period April 01, 2018 to March 31, 2019 (hereinafter referred to as '**Investigation Period/IP**') by employees and designated persons of TCL including Mr. A.

Rathinappan(hereinafter referred to as '**Noticee/ by Name**'). Therefore, SEBI initiated adjudication proceedings against Noticee under the provisions of Section 15A (b) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') for alleged violation of Regulation 7(2) (a) of PIT Regulations by Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide order dated March 02, 2021, SEBI appointed the undersigned as Adjudicating Officer under Section 15I of the SEBI Act read with Section 19 of the SEBI Act and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of Section 15A (b) of SEBI Act, the aforesaid alleged violation by Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A show-cause notice dated July 06, 2021 (hereinafter referred to as '**SCN**') was issued to Noticee under Rule 4 of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against Noticee and penalty, if any, not be imposed upon him under the provisions of Section 15A (b) of SEBI Act for the violation alleged to have been committed by him.

5. The allegations against Noticee in the SCN are as under:

- a. *SEBI observed that Noticee was one of the employee of the Company during the IP.*

b. During the course of investigation, it was observed that Noticee has traded in the shares of the Titan during the Investigation Period. Details of him trading are as under:-

Table – 1

Calendar Quarter	Traded value at NSE Cash segment (Rs.)	Traded value at NSE Derivatives segment (Rs.)	Traded value at BSE cash segment (Rs.)	Total traded value (BSE +NSE) (Rs.)
April-June 2018	0	13,89,000	0	13,89,000
July- September 2018	0	25,34,100	0	25,34,100

- c. It is observed from the table above that on the two (2) Calendar Quarter ending on June 30, 2018 and September 30, 2018, total traded value of the securities traded by the Noticee, in the scrip of Titan, was Rs. 13.89 Lakh and Rs. 25.34 lakh respectively. In terms of the Regulation 7(2) (a) of PIT Regulations, the Noticee, being an employee/ Designated Person of the Company, had to file the disclosures to the company within two trading days of such transactions, if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified. It was observed that total traded value of the securities traded by Noticee exceeded Rs. Ten Lakh on two occasions for which Noticee was required to make disclosure in terms of Regulation 7(2) (a) of PIT Regulations on each of those two (2) occasions. In this regard, TCL vide email dated October 28, 2020, has confirmed that it had not received any disclosures as required in terms of aforesaid regulations, from the Noticee.
- d. In view of the above observations, it is alleged that Noticee has violated Regulation 7(2) (a) of PIT Regulations, on two (2) occasions by not making disclosures as required in terms of aforesaid Regulations.....

6. The SCN was sent to Noticee through Speed Post Acknowledgement due (herein after referred to as '**SPAD**') on July 06, 2021 and digitally signed email dated July 08, 2021. The SCN was duly served on Noticee and he was given fifteen (15) days' time to make his submissions in respect of the allegations made in the SCN. Noticee, vide email dated July 14, 2021 and letter dated August 12, 2021, submitted his reply to the SCN. The submissions of Noticee are as summarized hereunder:

- a) Noticee admitted his trading in the shares of Titan.*
- b) He had traded in the shares of Titan for investment purpose.*
- c) He is currently working as a Machine Operator*
- d) He was not aware that employees of the company i.e. Titan are not permitted to trade in the group of shares and derivative segments*
- e) He do not have any information to Price Sensitive Data.*
- f) He is neither from top management nor a designated person.*
- g) In future he will not transact in the scrip of Titan.*
- h) Noticee requested not to take any action him.*

7. Thereafter, in the interest of natural justice, vide hearing notice dated July 30, 2021, served on Noticee through digitally signed email dated August 02, 2021 as well as by SPAD, Noticee was granted an opportunity of personal hearing before the undersigned on August 09, 2021. However Noticee failed to attend the hearing on the aforementioned date. In the interest of natural justice, Noticee was granted another opportunity of personal hearing before the undersigned on September 14, 2021, vide hearing notice dated August 31, 2021, served on Noticee through digitally signed email dated September 01, 2021 as well as by SPAD. On the aforesaid date of hearing, Noticee attended the hearing and reiterated the contents of his replies. Due to difficulties in view of Covid-19 pandemic, hearing was conducted through video conferencing.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

8. I have carefully perused the charges levelled against Noticee, replies/submissions filed by Noticee and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

1) Whether Noticee has violated Regulation 7(2) (a) of PIT Regulations?

2) Does the violation, if any, attract monetary penalty under Section 15A (b) of SEBI Act?

3) If the answer to issue no. 2 is in affirmative, then what should be the quantum of monetary penalty?

9. Before moving forward, it is pertinent to refer to the relevant provision of the PIT Regulations which was in force at the time of impugned transactions, which are reproduced as under:

Relevant provisions of PIT Regulations:

Disclosures by certain persons.

7(2) continual disclosure.

(a). Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;

Issue No.1. Whether Noticee has violated Regulation 7(2) (a) of PIT Regulations?

10. The first issue for consideration is whether Noticee has violated Regulation 7(2) (a) of PIT Regulations.

11. I note from the available records that Noticee was one of the employees of the Company. While in employment of Titan, Noticee had transacted in securities of Titan on two occasions in the calendar quarter ending on June 30, 2018 and September 30, 2018 as per details given below:-

Table – 2

Calendar Quarter	Traded value at NSE Cash segment (Rs.)	Traded value at NSE Derivatives segment (Rs.)	Traded value at BSE cash segment (Rs.)	Total traded value (BSE +NSE) (Rs.)
April-June 2018	0	13,89,000	0	13,89,000
July- September 2018	0	25,34,100	0	25,34,100

12. On perusal of the trading details of Noticee during the period May 29, 2018 to May 30, 2018 (i.e. calendar quarter April to June 2018), I note that on May 30, 2018, on a cumulative basis, the total value traded by Noticee in the scrip of Titan was Rs.13,89,000/- which was in excess of rupees ten lakhs. Similarly on perusal of trading details of Noticee during the period July 11, 2018 to July 12, 2018(i.e. calendar quarter July to September 2018), I note that on July 12, 2018, on a cumulative basis, the total value traded by Noticee in the scrip of Titan was Rs. 18,18,525/-, which was in excess of rupees ten lakhs.

13. From the submissions made by Noticee, I note that Noticee had admitted to his transactions in the shares of Titan. In this context, I would like to rely on judgement of Hon'ble Supreme Court in the matter of Nagindas Ramdas v. Dalpatram Ichharam alias Brijram (1974 AIR 471, 1974 SCR (2) 544) wherein it was observed that “..... *Admissions, if true and clear are by far the best proof*

of the facts admitted. Admissions in pleadings or judicial admissions, admissible under section 58 of the evidence act, made by the parties or their agent at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions is fully binding on the party that makes them and constitutes a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions, which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.”

14. Therefore, I find that in one occasion each in calendar quarters ending on June 30, 2018 and September 30, 2018, Noticee had traded in the scrip of Titan with total value of transactions in excess of rupees Ten Lakhs.
15. In terms of requirement of aforesaid provision of PIT Regulations, requisite disclosures are to be made based on every event of either acquisition or disposal of securities in excess of the limits specified therein in terms of number/value/percentage. In the instant matter, in terms of Regulation 7(2) (a) of PIT Regulations, disclosure requirements were triggered on account of Noticee's transactions exceeding ten lakh rupees traded value.
16. In terms of Regulation 7(2) (a) of PIT Regulations, Noticee, being an employee of the company, was required to make disclosures to Titan, for each of the aforesaid transactions within two (2) working days. However, there is no evidence available on record to show that Noticee had made any disclosures in terms of aforesaid regulation for the above two transactions.
17. I note that in his reply Noticee has contended that he was not aware of the PIT Regulations. In this regard, I would like to quote the legal maxim "*ignorantia juris non excusat*", ignorance of law is no excuse and everyone is presumed to know the law of the land. Therefore, I do not find merit in aforesaid contention of Noticee. Noticee has also contended that he is not from top management of the

company. I note that in terms of Regulation 7(2) (a) of PIT Regulation as applicable at the time of impugned transactions, prescribed disclosure obligations are applicable to employees of the company irrespective of their designation or position in the company. Since at the time of impugned transactions, Noticee was an employee of the company, this contention of Noticee is not tenable.

18. In view of the above, I conclude that the allegation that Noticee has violated Regulation 7(2) (a) of PIT Regulations on two (2) occasions, stands established.

Issue No. 2- Does the violation attract monetary penalty under Section 15A (b) of SEBI Act?

19. In this regard, I place my reliance on the order of the Hon'ble SAT in the matter of Virendrakumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014 order dated October 14, 2014), wherein Hon'ble SAT held that “..... *obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation.*”

20. I note that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that “*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established.....*”.

21. Therefore, for the above violations, as brought out in the foregoing paragraphs, I find that Noticee would be liable for monetary penalty under Section 15A (b) of the SEBI Act. The text of Section 15A(b) of the SEBI Act is reproduced below:

SEBI Act

Penalty for failure to furnish information, return, etc.

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

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

Issue No.3:- What should be the quantum of monetary penalty?

22. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the factors as stipulated in Section 15J of the SEBI Act, which reads as under:-

SEBI Act

Factors to be taken into account by the adjudicating officer.

Section 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.

Explanation- For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

23. In view of the charges established, the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15-J of the SEBI Act, stated as above. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the default of Noticee in making disclosures or the consequent loss caused to investors as a result of the default.

24. However, with respect to the disclosure violations by Noticee, I note that the purpose of these disclosures is to bring about transparency in the transactions of Directors/ Promoters/Acquirers/ employees and assist the Regulator to effectively monitor the transactions in the market. Hon'ble SAT in the case of **M/s. Coimbatore Flavors & Fragrances Ltd. & Ors vs. SEBI (Appeal No. 209 of 2014 order dated August 11, 2014)**, has held that "*Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same.*" Hon'ble SAT, in the aforesaid order, has articulated the importance of true and timely disclosures. Further, I find that Noticee has violated the provisions of Regulation 7(2) (a) on two (2) occasions.

ORDER

25. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs. 1,00,000/- (Rupees One Lakh only) on Noticee i.e. Shri. A. Rathinappan, under the provisions of Section 15A (b) of SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee.

26. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through 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. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

27. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - III, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	

7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	
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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 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticee.

29. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee viz. A.Rathinappan and also to SEBI.

Place: Mumbai

SOMA MAJUMDER

Date: October 25, 2021

ADJUDICATING OFFICER