BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/HG/2022-23/20794]

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

Mr. Nagesh Kumar Gautam

[PAN: AFEPG9171K]

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. The securities of Titan are listed on Bombay Stock Exchange Limited (**BSE**) and the National Stock Exchange of India Ltd (**NSE**) (both collectively called 'exchanges').

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 / designated persons of TCL including Mr. Nagesh Kumar Gautam (hereinafter referred to as '**Noticee/by name'**). Pursuant to investigation, 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 August 09, 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 aforesaid violation alleged to have been committed by him.

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

   a) During the course of investigation, it was observed that Noticee had traded in the securities of the Titan during the Investigation Period. Details of his trading are as under:

Name of Noticee	**Total Traded Value (BSE+NSE) (in Rs.)**			**No. of occasions on which traded value exceeded Rs. 10 lakh**
	Apr – June 2018	**July – Sep 2018**	**Oct – Dec 2018**	
Mr. Nagesh Kumar Gautam	56,54,919	12,11,588	72,25,650	10

   b) It was observed from the table above that in the calendar quarters ending on June 2018, September 2018 and December 2018, the total traded value of the securities traded by Noticee in the scrip of Titan was Rs 56,54,919/-, Rs. 12,11,588/- and Rs. 72,25,650/- respectively. It was also observed that on 10 occasions in the aforesaid calendar quarters, Noticee's traded value of securities exceeded rupees ten lakhs. Therefore, for the aforesaid transactions, which were in excess of the limit specified in Regulation 7(2)(a) of PIT Regulations, Noticee was required to make disclosure in terms of the aforesaid regulation. In this regard, in reply to a query by SEBI, TCL vide email dated October 28, 2020, confirmed that it had not received any disclosures from Noticee.

c) In view of the above observations, it was alleged that Noticee has violated Regulation 7(2)(a) of PIT Regulations on 10 occasions by not making disclosures as required in terms of aforesaid regulation.

6. The SCN was sent to Noticee through Speed Post Acknowledgement due (herein after referred to as '**SPAD**') on August 09, 2021, and digitally signed email dated August 13, 2021 and was duly served on Noticee. Noticee was given fourteen (14) days' time to make his submissions in respect of the allegations made in the SCN. Vide email dated August 15, 2021 and letter dated September 01, 2021, Noticee submitted his reply to the SCN.

7. Thereafter, in the interest of natural justice, vide hearing notice dated September 19, 2022, Noticee was granted an opportunity of personal hearing before the undersigned on October 10, 2022. The aforesaid hearing notice was sent to Noticee through SPAD and also through digitally signed email and was duly served upon him. Noticee appeared for hearing on the scheduled date and reiterated the submissions by him vide his earlier email/letter. Due to difficulties in view of the Covid-19 pandemic, hearing was conducted through video conferencing.

8. The submissions by Noticee are summarized hereunder: -
    a. He was working as an assistant manager of quality control in Titan Jewellery, Jaipur.
    b. He was a lower level management employee and he was not in possession of any price sensitive information at any point of time while trading in the shares of Titan.
    c. He had done the trading without knowing about the rules and regulations to be followed by company persons while trading in company stocks.
    d. He had traded in F&O and as a result the amount is showing high.

e. He had incurred losses in these trades.

f. He accepted his mistakes.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

9. 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:

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

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

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

10. 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. I- 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 Titan at the relevant time. While in employment of Titan, Noticee had transacted in

securities of Titan as seen from the details extracted from the trade log obtained from exchanges, which are given below:-

Date	Segment	Buy Qty	Buy Value/Sum of Notional Day Buy Value (Rs.)	Sell Qty	Sell Value/Sum of Notional Day Sell Value (Rs.)	Gross Value/Gross Notional Value (Notional Day Buy Value + Notional Day Sell Value) (Rs.)	Cumulative Value (Rs.)
04-04-18	FUTSTK	-	-	1,500	13,66,500	13,66,500	13,66,500
05-04-18	FUTSTK	1,500	13,82,250	-	-	13,82,250	27,48,750
06-04-18	FUTSTK	-	-	1,500	14,14,650	14,14,650	41,63,400
05-06-18	Cash	100	86,434	-	-	86,434	42,49,834
06-06-18	Cash	-	-	100	87,334	87,334	43,37,169
20-06-18	FUTSTK	750	6,66,750	-	-	6,66,750	50,03,919
27-06-18	FUTSTK	-	-	750	6,51,000	6,51,000	56,54,919
Total		**2,350**	**21,35,434**	**3,850**	**35,19,484**	**56,54,919**	
21-09-18	FUTSTK	750	6,02,888	-	-	6,02,888	6,02,888
24-09-18	FUTSTK	-	-	750	5,92,763	5,92,763	11,95,650
Total		**750**	**6,02,888**	**750**	**5,92,763**	**11,95,650**	
03-10-18	FUTSTK	750	5,98,500	-	-	5,98,500	5,98,500
04-10-18	FUTSTK	750	5,87,813	750	5,80,500	11,68,313	17,66,813
05-10-18	FUTSTK	750	5,93,250	750	6,07,838	12,01,088	29,67,900
08-10-18	FUTSTK	-	-	750	6,03,750	6,03,750	35,71,650
09-10-18	FUTSTK	750	5,91,600	-	-	5,91,600	41,63,250
10-10-18	FUTSTK	-	-	750	5,93,850	5,93,850	47,57,100
17-10-18	FUTSTK	-	-	750	5,96,250	5,96,250	53,53,350
19-10-18	FUTSTK	750	5,93,250	-	-	5,93,250	59,46,600
07-11-18	FUTSTK	750	6,37,800	-	-	6,37,800	65,84,400
09-11-18	FUTSTK	-	-	750	6,41,250	6,41,250	72,25,650
Total		**4,500**	**36,02,213**	**4,500**	**36,23,438**	**72,25,650**	

12. From the above table, I note that during the quarter ended June 2018, the value of trades by Noticee in the securities of Titan on April 04, 2018, April 05, 2018 and April 06, 2018 amounted to Rs. 13,66,500/-, Rs. 13,82,250/- and Rs. 14,14,650/- respectively. I further note that the value of trades by Noticee in the securities of Titan from June 05, 2018 to June 27, 2018, on a cumulative basis, amounted to Rs. 14,91,519/- on June 27, 2018. Further, I note that during the quarter ended September 2018, the value of trades by Noticee in the securities of Titan from September 21, 2018 to September 24, 2018, on a cumulative basis, amounted to Rs. 11,95,650/- on September 24, 2018. Similarly, I note that during the quarter

ended December 2018, the value of trades by Noticee in the securities of Titan on October 04, 2018 and October 05, 2018 amounted to Rs. 11,68,313/- and Rs. 12,01,088/- respectively. I further note that the value of trades by Noticee in the securities of Titan from October 08, 2018 to October 09, 2018, on a cumulative basis, amounted to Rs. 11,95,350/- on October 09, 2018. I also note that the value of trades by Noticee in the securities of Titan from October 10, 2018 to October 17, 2018, on a cumulative basis, amounted to Rs. 11,90,100/- on October 17, 2018 and the value of trades by Noticee in the securities of Titan from October 19, 2018 to November 07, 2018, on a cumulative basis, amounted to Rs. 12,31,050/- on November 07, 2018.

13. Therefore, from the aforesaid transactions, I observe that the value of total transactions by Noticee on each of the aforesaid ten occasions exceeded rupees ten lakhs. I also observe that for the quarter ended September 2018, the cumulative traded value as mentioned in SCN differs slightly from the details of his trades as depicted in trading details extracted from the trade log obtained from exchanges, which has also been provided to Noticee as an annexure to the SCN. However, from the submissions made by Noticee, I note that he has not disputed the impugned transactions by him in the scrip of Titan as specified above. In any case, I note that his transactions on each of the aforesaid ten occassions exceeded rupees ten lakhs.

14. I note that it has been alleged in the SCN, that abovementioned trading of Noticee as the employee of Titan, in calendar quarters ending on June 2018, September 2018 and December 2018 had resulted in violation of Regulation 7(2)(a) of the PIT Regulations by Noticee. In this context, I find it pertinent to refer to Regulation 7(2)(a) of the PIT Regulations, as it stood during the relevant time, which is reproduced hereunder:

"7(2) Continual Disclosures.

(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."

15. In this regard, I note that the term "employee" in the aforementioned provision was substituted with "designated employee" by Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2018. I also note that the amendment came into effect from April 01, 2019. By virtue of the amendment, the obligation to make disclosures under Regulation 7(2)(a) of the PIT Regulations no longer lies on every employee of the company but is restricted to designated employees only. In this context, I find it pertinent to quote a recent decision of Hon'ble Securities Appellate Tribunal (hereinafter referred to as **'SAT'**) in Sudhir Bapusaheb Devkar & Anr v SEBI in the matter of (Date of Decision: 10.10.2022, Appeal No. 654 of 2022; Appeal No. 655 of 2022); wherein Hon'ble SAT has held as under:

"*In view of the aforesaid, coupled with the fact that no disproportionate gain or unfair advantage resulted to any party for the default committed by the appellants, coupled with the fact that no loss was caused to the investors, as a result of the aforesaid default, we are of the opinion that without going into the controversy as to whether the appellants had in fact acquired or disposed of the shares through intra-day trading and whether the appellants have in fact violated the provisions of Regulation 7(2)(a) of the PIT Regulations, and <u>in view of the decision of the Hon'ble Supreme Court in Commissioner of Income Tax (supra), the amendment made in Regulation 7(2)(a) with effect from April 1, 2019 would apply retrospectively. We are of the opinion that the amendment was a beneficial piece of legislation and the benefit was conferred for the entire community as a whole. As such, even though the amendment came into effect from April 1, 2019, the amended provision would apply with retrospective effect to the transactions made by the appellants."</u>*

16. From the above, I note that Hon'ble SAT in its aforementioned decision has laid down that amendment to Regulation 7(2)(a) of PIT Regulations which came into effect on April 1, 2019, would apply with retrospective effect i.e. benefit of amendment would go to "employees" for the trades done by them prior to amendment. Considering the principle laid down in the aforementioned judgment and the fact that Noticee was not designated employee of the company at the time

of impugned trades, I find that for his trades done in calendar quarters ending on June 2018, September 2018 and December 2018, Noticee would not be liable for violation of Regulation 7(2)(a) of the PIT Regulations. Therefore, I find allegation in SCN that Noticee has violated Regulation 7(2)(a) of the PIT Regulations does not stand established.

17. Since the alleged violation against Noticee is not established, I find that the Issues No. II and III requires no further consideration.

ORDER

18. Accordingly, taking into account the aforesaid findings and in exercise of powers conferred upon me under Section 15-I of SEBI Act read with Rule 5 of the Adjudication Rules, the Adjudication proceedings against Noticee i.e. Mr. Nagesh Kumar Gautam, initiated vide SCN dated August 09, 2021, stands disposed of without imposition of any penalty.

19. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee viz. Mr. Nagesh Kumar Gautam and also to SEBI.

Place: Mumbai **SOMA MAJUMDER**

Date: October 27, 2022 **ADJUDICATING OFFICER**