BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/DD/2022-23/18449]

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. GANESH KUMAR K

[PAN: AHMPG8793M]

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 BSE Ltd (**BSE**) and the National Stock Exchange of India Ltd (**NSE**).

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. Ganesh Kumar K (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 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**
	July-Sep 2018	**Oct-Dec 2018**	**Jan-Mar 2019**	
Mr. Ganesh Kumar K	24,28,275	21,20,483	13,29,386	5

   b) It was observed from the table above that in the calendar quarter ending on September 2018, the total traded value of the securities traded by Noticee in the scrip of Titan was Rs 24,28,275/-, in the calendar quarter ended December 2018, the total traded value of the securities traded by Noticee in the scrip of Titan was Rs. 21,20,483/- and in the quarter ended March 2019, the total value securities traded by Noticee was Rs. 13,29,386/-. It was also observed that on 5 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 five 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 12, 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 26, 2021, Noticee submitted his reply to the SCN.

7. Thereafter, in the interest of natural justice, vide hearing notice dated February 22, 2022, Noticee was granted an opportunity of personal hearing before the undersigned on March 30, 2022. The aforesaid hearing notice was sent to Noticee through SPAD and also through digitally signed email on February 23, 2022 and was duly served upon him. Noticee appeared for hearing on the scheduled date and reiterated the submissions by him vide his earlier email. 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 not aware of regulations regarding PIT Regulations.
    b. He did not get any profit rather incurred losses in these transactions.
    c. He was not part of senior management team of Titan and did not have access to any confidential information regarding sales or profit figures.
    d. He used to trade in other company shares, same way he traded in Titan too.

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:

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?

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:

<u>Relevant provisions of PIT Regulations:</u>

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;

<u>Issue No.1- Whether Noticee has violated Regulation 7(2)(a) of PIT Regulations</u>?

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	Sell Qty	Sell Value/Sum of Notional Day Sell Value	Gross Value/Gross Notional Value (Notional Day Buy Value + Notiona Day Sell Value)	Cumulative Value
10-Jul-18	Cash	53	44,034	33	27,485	71,518	71,518

Date	Segment	Buy Qty	Buy Value/Sum of Notional Day Buy Value	Sell Qty	Sell Value/Sum of Notional Day Sell Value	Gross Value/Gross Notional Value (Notional Day Buy Value + Notiona Day Sell Value)	Cumulative Value
11-Jul-18	Cash	340	2,75,885	340	2,75,538	5,51,423	6,22,941
12-Jul-18	Cash	270	2,19,501	250	2,03,610	4,23,111	10,46,052
13-Jul-18	Cash	105	87,121	105	86,834	1,73,955	12,20,007
16-Jul-18	Cash	22	18,171	22	18,279	36,449	12,56,457
17-Jul-18	Cash	10	8,541	10	8,522	17,062	12,73,519
18-Jul-18	Cash	10	8,422	10	8,530	16,952	12,90,471
2-Aug-18	Cash	-	-	40	36,546	36,546	13,27,017
3-Aug-18	Cash	10	9,185	10	9,250	18,435	13,45,452
7-Aug-18	Cash	1	927	1	928	1,855	13,47,307
9-Aug-18	Cash	10	9,140	10	9,148	18,288	13,65,595
20-Aug-18	Cash	5	4,619	-	-	4,619	13,70,213
21-Aug-18	Cash	5	4,553	-	-	4,553	13,74,766
23-Aug-18	Cash	10	9,130	5	4,630	13,760	13,88,526
24-Aug-18	Cash	10	8,953	-	-	8,953	13,97,479
28-Aug-18	Cash	2	1,754	2	1,766	3,520	14,00,999
30-Aug-18	Cash	11	9,700	11	9,736	19,435	14,20,434
31-Aug-18	Cash	25	22,047	25	22,100	44,147	14,64,581
3-Sep-18	Cash	15	13,665	30	27,226	40,891	15,05,472
4-Sep-18	Cash	32	28,843	32	28,535	57,377	15,62,849
5-Sep-18	Cash	8	6,901	-	-	6,901	15,69,750
6-Sep-18	Cash	-	-	10	8,700	8,700	15,78,450
7-Sep-18	Cash	46	39,915	36	31,319	71,234	16,49,684
10-Sep-18	Cash	10	8,620	-	-	8,620	16,58,304
11-Sep-18	Cash	9	7,421	-	-	7,421	16,65,724
12-Sep-18	Cash	41	33,623	41	33,828	67,451	17,33,175
14-Sep-18	Cash	105	88,705	115	97,112	1,85,818	19,18,992
17-Sep-18	Cash	30	24,747	-	-	24,747	19,43,739
18-Sep-18	Cash	60	49,781	60	50,126	99,906	20,43,645
19-Sep-18	Cash	25	20,000	34	27,632	47,632	20,91,277
21-Sep-18	Cash	40	32,981	-	-	32,981	21,24,258
24-Sep-18	Cash	40	31,420	120	94,092	1,25,512	22,49,771
27-Sep-18	Cash	24	19,687	24	19,909	39,596	22,89,367
28-Sep-18	Cash	-	-	8	6,517	6,517	22,95,883
	Total	**1,384**	**11,47,990**	**1,384**	**11,47,893**	**22,95,883**	
4-Oct-18	Cash	24	18,448	24	18,486	36,934	36,934
13-Nov-18	Cash	515	4,55,199	515	4,56,362	9,11,561	9,48,495
21-Dec-18	Cash	70	63,264	70	63,093	1,26,357	10,74,852
24-Dec-18	Cash	220	1,93,612	220	1,93,633	3,87,245	14,62,097
26-Dec-18	Cash	50	44,511	50	44,482	88,992	15,51,089
28-Dec-18	Cash	7	6,478	7	6,449	12,927	15,64,016
31-Dec-18	Cash	300	2,77,668	300	2,78,800	5,56,468	21,20,483

Date	Segment	Buy Qty	Buy Value/Sum of Notional Day Buy Value	Sell Qty	Sell Value/Sum of Notional Day Sell Value	Gross Value/Gross Notional Value (Notional Day Buy Value + Notiona Day Sell Value)	Cumulative Value
	Total	**1,186**	**10,59,179**	**1,186**	**10,61,304**	**21,20,483**	
7-Jan-19	Cash	50	47,265	50	47,545	94,810	94,810
31-Jan-19	Cash	50	49,450	50	49,740	99,190	1,94,000
1-Feb-19	Cash	50	49,598	50	49,690	99,288	2,93,288
4-Feb-19	Cash	100	1,03,700	100	1,04,750	2,08,450	5,01,738
5-Feb-19	Cash	190	2,02,469	190	2,00,050	4,02,518	9,04,256
6-Feb-19	Cash	200	2,12,200	200	2,12,930	4,25,130	13,29,386
	Total	**640**	**6,64,681**	**640**	**6,64,705**	**13,29,386**	

12. From the above table, I note that during the period July 10 to July 12, 2018, on a cumulative basis, the value of trades by Noticee in the securities of Titan amounted to Rs 10,46,052/- on July 12, 2018. On perusal of trades of Noticee for the period from July 13, 2018 to September 19, 2018, I note that on a cumulative basis, Noticee traded in the securities of Titan for a value of Rs.10,45,225/- on September 19, 2018. Similarly, on perusal of trades of Noticee for the period from October 04, 2018 to December 21, 2018, I note that Noticee traded in the securities of Titan for Rs.10,74,852/- on a cumulative basis as on December 21, 2018 and during December 24, 2018 to December 31, 2018, I note that on a cumulative basis, Noticee traded in the securities of Titan for a value of Rs.10,45,632/- on December 31, 2018. Similarly, on perusal of trades of Noticee for the period from January 07, 2019 to February 06, 2019, I note that Noticee traded in the securities of Titan for Rs.13,29,386/- on a cumulative basis as on February 06, 2019.

13. Therefore, I observe that the value of total transactions by Noticee on each of the aforesaid five occasions exceeded rupees ten lakhs. On perusal of 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.

14. In terms of the 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 the aforesaid regulation for the above transactions. Further, from the available records, I note that

Titan vide email dated October 28, 2020, has confirmed that it had not received any disclosures from Noticee.

15. In his submissions, Noticee has contended that he was not aware of the provisions of PIT Regulations. In this regard, I note that in terms of Regulation 7(2)(a) 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, disclosure requirements in terms of Regulation 7(2)(a) of PIT Regulations were triggered because the total traded value of Noticee's transactions in the securities of Titan exceeded ten lakh rupees on the aforesaid five occasions. The statement that Noticee was ignorant of the regulatory provisions is not justified. As postulated by legal maxim "*ignorantia juris non excusat*", ignorance of law is no excuse and everyone is presumed to know the law of the land. A person cannot defend his illegal actions by stating that he was not aware his actions were illegal, even if he honestly believed that they were not breaking the law. Therefore, I do not find any merit in this contention of Noticee.

16. In his reply, Noticee has also contended that he was not part of senior management of Titan nor did he possess any sensitive or confidential information in the nature of financial position of the company. I find that these submissions by Noticee are not relevant to the allegations of his failure to make requisite disclosures in terms of Regulation 7(2)(a) of PIT Regulations. Therefore, I am not inclined to consider this contention of Noticee. I also note from his submissions that he has accepted the default on his part.

17. In view of the above, I conclude that the allegation that Noticee has violated Regulation 7(2)(a) of PIT Regulations on five (5) occasions, stands established.

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

18. In this regard, I place 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."

19. 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...…".*

20. Therefore, in view of the above judgments and considering that Noticee violated Regulation 7(2)(a) of PIT Regulations, as established 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:

<u>SEBI Act</u>

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;

<u>Issue No.3 - What should be the quantum of monetary penalty</u>?

21. 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:-

<u>SEBI Act</u>

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.*

22. In view of the charges established and 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.

23. 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) of PIT Regulations on five (5) occasions.

ORDER

24. 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. Mr. Ganesh Kumar K, 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.

25. 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.

26. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - I, 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)	

27. 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.

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

Place: Mumbai **SOMA MAJUMDER**

Date: August 24, 2022 **ADJUDICATING OFFICER**