BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/HG/2022-23/20799]

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. Baskar G

[PAN: AIAPB3360L]

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. Baskar G (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**
	July – Sep 2018	**Oct – Dec 2018**	**Jan – Mar 2019**	
Mr. Baskar G	12,48,000	24,31,163	66,83,025	7

   b) It was observed from the table above that in the calendar quarter ending on September 2018, December 2018 and March 2019, the total traded value of the securities traded by Noticee in the scrip of Titan was Rs 12,11,588/-, Rs. 24,31,163/- and Rs. 66,83,025/- respectively. It was also observed that on seven 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 seven 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.

7. Thereafter, in the interest of natural justice, vide hearing notice dated September 06, 2022, Noticee was granted an opportunity of personal hearing before the undersigned on September 14, 2022. The aforesaid hearing notice was sent to Noticee through SPAD and also through digitally signed email and was duly served upon him. Authorized representative of Noticee (herein after referred to as '**AR**') appeared for hearing on the scheduled date and requested for an adjournment of hearing. The request was acceded and the date of personal hearing was rescheduled to September 22, 2022. Vide letter dated September 21, 2022, Noticee submitted his reply to the SCN. AR appeared for hearing on the scheduled date and reiterated the submissions by Noticee vide his earlier 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 a workman in Tool Room Department in Titan.
    b. He was not having company email id and all the information about the company will be disseminated to workman like him by way of displaying it in the notice board. However, TCL code of conduct (herein after referred to as '**TCoC**') has been circulated only to employees having company

email id and it was not displayed in notice board as well as not provided to him.

c. The company has made a distinction between ‘employees’ – as those who carry on desk work, are provided with company email ids and are located in the offices of the company who are likely to have access to ‘Unpublished Price Sensitive Information’ (herein after referred to as ‘**UPSI**’) as against ‘workman’ who are employed in the factory of the company and by no stretch of imagination can have any access to UPSI.

d. He was only a workman and has not been provided with the TCoC has no means of knowing the requirements under TCoC and cannot be expected to make disclosures under the provision of Regulation 7(2)(a) of PIT Regulations.

Non-applicability of Regulation 7(2)(a) of PIT Regulations

e. As per the provisions of Regulation 7(2)(a) of PIT Regulations, “*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.”*

f. He was a workman and not an employee of the company to whom company did not deem fit to communicate the TCoC. Therefore, the said provision for disclosure is not applicable to him.

g. Further, he had traded in the ‘Options’ of the company and the aggregate of the ‘Buy Value’ and the ‘Sell Value’ is Rs. 51,225/- and Rs. 52,087.50/- respectively. Traded value indicates the value at which the trading was carried out by a person.

h. The term “trading” defined in PIT Regulations in sub-regulation (l) of Regulation 2 as means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and "trade" shall be construed accordingly. There is no meaning for traded value and hence one would have to construe that the term “traded” is a grammatical variation of the term “trading” and thereby the past tense of the defined term “trading”.

i. Similarly, there is no definition given for the word “value”, either in the PIT Regulations or SCRA, Companies Act or Depositories Act. Hence, one would have to construe the dictionary meaning for the term “value”.

j. The Hon’ble Supreme Court has in *State of Bihar Vs. Radpa Krishan Singh (1983) 3 SCC 118* has cited with approval the decision of *the Privy Council in Coca Cola Co of Canada, Ltd Vs Pepsi Cola Co of Canada Ltd* AIR 1942 PC 40, 202 IC 203, 15 RPC 23 wherein it was stated that dictionaries can always be referred to in order to ascertain not only the meaning of a word, but also the general sue of it. Similarly, the Supreme Court has in *Kernani Properties Ltd Vs. Augustine* AIR 1957 SC 309, p. 312 stated that when a word is not defined in the act, it must be taken to have been used in its ordinary meaning.

k. As per the Black’s Law Dictionary Ninth Edition at page 1690, meaning of the term “value” is 1. The significance, desirability or utility of something, 2. The monetary woth or price of something; the amount of goods, services or money that something commands in an exchange.

l. As per the Webster Comprehensive Dictionary International Edition, meaning of the term “value” is 1. the desirability or worth of a thing; intrinsic worth; utility. 2. *Often pl.* something regarded as desirable, worth or right as belie, standard or precept: the value of a democratic society 3. The rate at whicha commodity is potentially exchangeable for others; a fair price in service goods, etc.: worth in money; market price; also the ratio of utility to price; a bargain.

m. From the above, one can understand the meaning of the term “value” as the money worth of some goods or the price of something.

n. Given that the word “traded” is a grammatical variation of the word “trading” and the dictionary meaning of the word “value” is the money worth of some goods or the price of the goods, “traded” “value” should be construed to be the actual price that has been paid for the securities at the time of trading.

o. It is also necessary to consider the change in the usage of the word “value” in Reg. 13(4) and 13 (4A) of PIT Regulations, 1992 to the words “traded” “value” in PIT Regulations. The purpose of the same being to show that the value or the price that was paid for the “securities” at the time of “trading” is required to be considered.

p. The “traded””value” of the “securities” by the Noticee from the trades for which he has information was only Rs. 51,225/-. The other trades made by the Noticee were also in derivatives and they also did not aggregate to Rs. 10 lakhs. It is once again reiterated that only the actual premium paid for option should be construed to be the “traded””value” and not the Notional value of the underlying scrip.

q. On perusal of the definition of the term “securities” under SCRA, the term “derivatives” is included in it and the traded value should be construed to be only the premium that was paid by him for the “securities”.

r. It is once again reiterated that only the actual premium paid for the option should be construed to be the “traded” “value” and not the notional value of the underlying scrip.

s. Given that the value at which the trading was done by the Noticee is less than Rs. 10 lakhs, assuming that he is an “employee”, there was no requirement for him to make any disclosure under the provisions of Regulation 7(2)(a) of PIT Regulations.

Beneficial interpretation of the amendment to Regulation 7(2)(a) of PIT Regulations

t. SEBI by notification dated December 31, 2018 had with effect from April 1, 2019 deleted the word “employee” in Regulation 7(2)(a) of PIT Regulations and substituted it with words “designated person”, thereby requiring only those persons who are “designated person” under the PIT Regulations to make disclosures if their “traded” “value” in “securities” exceeds Rs. 10 lakhs. Given that SEBI has itself amended the regulation 7(2)(a), and since the SCN was issued only in the year 2021, which is much after the date of amendment and since Noticee is not a “designated person” in the company, he should be provided a beneficial interpretation of the amendment.

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 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.)
25-09-18	OPTSTK	750	6,05,625	750	6,05,963	12,11,588	12,11,588
Total		**750**	**6,05,625**	**750**	**6,05,963**	**12,11,588**	
05-10-18	OPTSTK	750	6,80,850	750	6,80,438	13,61,288	13,61,288
09-10-18	OPTSTK	750	5,34,750	750	5,35,125	10,69,875	24,31,163
Total		**1,500**	**12,15,600**	**1,500**	**12,15,563**	**24,31,163**	
04-02-19	OPTSTK	750	8,34,000	750	8,35,050	16,69,050	16,69,050
05-02-19	OPTSTK	750	8,36,250	750	8,36,850	16,73,100	33,42,150
07-02-19	OPTSTK	750	8,36,963	750	8,35,500	16,72,463	50,14,613
07-03-19	OPTSTK	750	8,34,750	750	8,33,663	16,68,413	66,83,025
Total		**3,000**	**33,41,963**	**3,000**	**33,41,063**	**66,83,025**	

12. From the above table, I note that during the quarter ended September 2018, the value of trades by Noticee in the securities of Titan on September 25, 2018 amounted to Rs. 12,11,588/-. On perusal of trades of Noticee, I further note that during the quarter ended December 2018, the value of trades by Noticee in the securities of Titan on October 05, 2018 and October 09, 2018 amounted to Rs. 13,61,288/- and Rs. 10,69,875/- respectively. I further note that during the quarter ended March 2019, the value of trades by Noticee in the securities of Titan on February 04, 2019, February 05, 2019, February 07, 2019 and March 07, 2019 amounted to Rs. 16,69,050/-, Rs. 16,73,100/-, Rs. 16,72,463/- and Rs. 16,68,413/- respectively.

13. Therefore, from the aforesaid transactions, I observe that the value of total transactions by Noticee on each of the aforesaid seven 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. In any case, I note that his transactions on each of the aforesaid seven 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 September 2018, December 2018 and March 2019 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 September 2018, December 2018 and March 2019, 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. Baskar G, 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. Baskar G and also to SEBI.

Place: Mumbai **SOMA MAJUMDER**

Date: October 28, 2022 **ADJUDICATING OFFICER**