BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/DD/2022-23/18492]

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

Ms. Soma Bhattacharya

PAN: AKBPB6180D

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 Ms. Soma Bhattacharya (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 Section15A (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 her 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-Jun 2018	
Ms. Soma Bhattacharya	10267356	3

   b) It was observed from the table above that in the calendar quarter ending on June 2018, the total traded value of the securities traded by Noticee in the securities of Titan was Rs. 1,02,67,356/-. It was also observed that on 3 occasions in the aforesaid calendar quarter, Noticee’s traded value of securities exceeded rupees ten lakhs. Therefore, for the aforesaid three (3) 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 three (3) 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 through SPAD. Noticee was given fifteen (15) days' time to make her submissions in respect of the allegations made in the SCN. Vide emails dated September 14, 2021, Noticee submitted her reply to the SCN.

7. Thereafter, in the interest of natural justice, vide hearing notice dated October 21, 2021, Noticee was granted an opportunity of personal hearing before the undersigned on November 16, 2021. The aforesaid hearing notice was sent to Noticee through SPAD and also through digitally signed email on October 21, 2021, and was duly served upon her. Noticee appeared for hearing on the scheduled date and reiterated the submissions by her vide her earlier email. Due to difficulties in view of the Covid-19 pandemic, hearing was conducted through video conferencing.

8. Thereafter, since six months had elapsed since the last hearing held, vide email dated July 15, 2022, Noticee was given another opportunity of submitting additional reply to the SCN, if any. Vide email dated August 08, 2022, Noticee made further submissions in the matter.

9. The submissions by Noticee are summarized hereunder:-
    a. Noticee did not give any intimation of the trading to Titan due to *bonafide* mistake on her part rather than any malicious or fraudulent intent.

b. Noticee also stated that, although there was a breach of provision of the regulation it was not done with a malafide intent to accrue undue benefit rather it was done in a tranche while doing intraday transactions which included not only the securities of this company but many other companies as well.
c. Noticee had not gained any benefit accrued from those transactions as per our code of conduct and as soon as the Noticee was informed of the violation the Noticee had immediately given the details asked by the compliance officer.
d. Moreover, time and again judicial pronouncements have pardoned genuinely bonafide mistakes as they are done not with a view to abuse the market position and accrue undue benefits. Noticee has relied on the judgement of "***Kotak Mahindra Life Insurance Company Limited, In the matter of selective disclosure of unpublished price sensitive information by Manappuram Finance Ltd., ADJUDICATION ORDER NO. Order/VV/JR/2020-21/7501"***
e. In the present matter also the UPSI did not motivate the decision to trade as it is clearly reflected from the records that the transactions were done in lieu of intraday trading along with other securities. Moreover, any trading with a UPSI information is done intentionally to procure benefit not accrue losses as has been the case in the present matter. Thus, the present matter cannot be covered as a matter of insider trading as the motivation of decision to trade is missing.
f. The Noticee did not accrue any illegal profit by the alleged non-disclosure and no individual suffered any loss or detrimental consequences owing to the error. It is also submitted that there was no intention on the part of the Noticee to deliberately avoid disclosure and dispose shares of the Company. No proceedings have earlier been initiated against the Noticee for disclosure violation. Noticee relied on the judgement of ***Bhagat Ram v. State of Himachal Pradesh [(1983) ILJ 1 SC], Ranjit Thakur v. Union of India [AIR 1987 SC 2386], Reliance Industries Limited v. SEBI [SAT Appeal No. 39/2002], Akbar Badrudin Jiwani v. Collector of Customs Bombay [AIR 1990 SC 1579], Director of Enforcement v. MCTM Corporation Pvt. Ltd. [AIR 1996***

SC 1100], Hindustan Steel Ltd. v. State of Orissa [AIR 1970 SC 253], Bajrang Oil Mills v. Income Tax Officer [(2007) 295 ITR 314 (Raj)] wherein it has been held that the breach of law arose from a bona fide error in the instant case and therefore, the Adjudicating Officer is not bound to impose penalty just because the relevant provisions under PIT Regulations prescribe.

g. As soon as Noticee came to know about the violation from the compliance officer of Titan, she promptly provided each and every detail.

h. Noticee accepted that she failed to make the relevant disclosures required under the aforesaid Regulation 7(2) (a) of PIT Regulations.

i. No individual suffered any loss or detrimental consequences owing to the error. Such non-disclosure was unintentional.

j. Noticee did not have access to any financial data or sensitive information of the company.

k. She suffered losses in the trading which would not have happened if she had any information on this.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

10. 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?

11. 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>?

12. I note from the available records that Noticee was one of the employees of Titan. While in employment of Titan, Noticee had transacted in securities of Titan as seen from the details extracted from the trade log obtained from NSE, 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
17-May-18	Cash	1,000	9,41,000	1,000	9,42,850	18,83,850	18,83,850
18-May-18	Cash	2,000	18,76,000	2,000	18,82,000	37,58,000	56,41,850
21-May-18	Cash	2,500	23,34,000	2,500	22,91,506	46,25,506	1,02,67,356
		5,500	**51,51,000**	**5,500**	**51,16,356**	**1,02,67,356**	

13. On perusal of the trading details of Noticee for the quarter April to June 2018, I note that on May 17, 2018, the total value of securities of Titan traded by Noticee was Rs. 18,83,850/- which was in excess of rupees ten lakhs. Similarly, I note that on May 18, 2018, the total value of securities of Titan traded by Noticee was Rs. 37,58,000/- which was in excess of rupees ten lakhs. Further, I note that on May 21, 2018, the total value traded by Noticee in the securities of Titan was Rs. 46,25,506/- which was in excess of rupees ten lakhs.

14. Therefore, I observe that the value of total transactions by Noticee on each of the aforesaid three (3) occasions exceeded rupees ten lakhs. On perusal of the

submissions made by Noticee, I note that she has not disputed the impugned transactions by her in the scrip of Titan as specified above.

15. 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.

16. In her reply, Noticee has contended that she not have access to any financial data or sensitive information of the company and the UPSI did not motivate the decision to trade as it is clearly reflected from the records that the transactions were done in lieu of intraday trading along with other securities. Noticee has also stated that she did not accrue any illegal profit by the alleged non-disclosure and no individual suffered any loss or detrimental consequences owing to the error. I find that these submissions by Noticee are not relevant to the allegations of her 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 her submissions that she has accepted the default on her part, stating it to be due to *bonafide* mistake on her part.

17. In view of the above, I conclude that the allegation that Noticee has violated Regulation 7(2)(a) of PIT Regulations on three (3) occasions, stands established.

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

18. Noticee in her reply has relied on the judgments of *Bhagat Ram. V.s State of Himachal Pradesh*, ***Bhagat Ram v. State of Himachal Pradesh [(1983) ILJ 1 SC], Ranjit Thakur v. Union of India [AIR 1987 SC 2386], Reliance Industries Limited v. SEBI [SAT Appeal No. 39/2002], Akbar Badrudin Jiwani v. Collector of Customs Bombay [AIR 1990 SC 1579], Director of Enforcement v. MCTM Corporation Pvt. Ltd. [AIR 1996 SC 1100],***

Hindustan Steel Ltd. v. State of Orissa [AIR 1970 SC 253], Bajrang Oil Mills v. Income Tax Officer [(2007) 295 ITR 314 (Raj)] for not imposing any penalty.

19. 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."*

20. I also 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, 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:

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 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. Noticee has submitted that she has not derived any undue benefit or illegal profit from such non-disclosure. I find that 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) of PIT Regulations on three 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. Ms. Soma Bhattacharya, 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 - 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)	

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. Ms. Soma Bhattacharya and also to SEBI.

Place: Mumbai **SOMA MAJUMDER**

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