BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/HG/2022-23/21360]

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. Samik Ghosh
[PAN: ATOPG2047E]

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**) (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. Samik Ghosh (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 and under Section 15HB of the SEBI Act for the alleged violation of Clause 4 of Schedule B read with Regulation 9(1) of PIT Regulations, Clause 6 of Schedule B read with Regulation 9(1) of PIT Regulations and Clause 10 of Schedule B read with Regulation 9(1) 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 alleged violation of Regulation 7(2)(a) of PIT Regulations and under Section 15HB of the SEBI Act, the alleged violation of Clause 4 of Schedule B read with Regulation 9(1) of PIT Regulations, Clause 6 of Schedule B read with Regulation 9(1) of PIT Regulations and Clause 10 of Schedule B read with Regulation 9(1) of PIT Regulations by Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A show-cause notice dated August 24, 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) and Section 15HB of SEBI Act for the aforesaid violations 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:

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.)
July- September 2018	0	28,96,875	0	28,96,875
January– March 2019	427,979	31,60,725	22,354	36,11,058

b) It was observed from the above table that in the two (2) Calendar Quarters ending on September 2018 and March 2019, total traded value of the securities traded by the Noticee, in the scrip of Titan, had exceeded Rs. 10 Lakh. It is alleged that the Noticee was required to make disclosure in terms of Regulation 7(2)(a) of PIT Regulations on Four (4) occasions to the company. In this regard, TCL vide email dated October 28, 2020, has confirmed that it had not received any disclosures from the Noticee. Accordingly, it is alleged that Noticee has violated Regulation 7(2)(a) of PIT Regulations.

c) It was observed that TCL vide email dated October 21, 2020 had provided the details of trading window closure period and the details of the trading window closure period are as given below:

Trading Window Closure	
From	**To**
25th March 2018	12th May 2018
22nd June 2018	5th August 2018
23rd September 2018	11th November 2018
23rd December 2018	3rd February 2019
24th March 2019	10th May 2019

d) It was further observed that Noticee (who was a designated person of TCL at relevant time) traded on March 27, 2019, which falls into trading window closure period of March 24, 2019 to May 10, 2019. The trading details of Mr. Samik Ghosh in this respect are provided as below:

Name of the entity	Quarter	Date	Segment	Exchange	Buy Qty	Buy Value	Sell qty	Sell value
Samik Ghosh	Q4	27-03-2019	Cash	BSE	20	22,354	-	-

e) It was observed from the above table that Noticee has bought 20 shares of TCL on March 27, 2019 i.e. during trading window closure period. Clause 4 of Schedule B read with Regulation 9(1) of PIT Regulations states - "*Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed*". TCL vide its emails dated October 28, 2020, November 05, 2020 and letter dated November 09, 2020 has *inter-alia* mentioned as – "*Mr. Ghosh was a Designated Person however during some part of the year Mr. Ghosh was handling matters pertaining to the Subsidiary of the Company and was not part of Titan related work. Considering the fact that Mr. Ghosh was handling subsidiary company related activities for some time of the year within the corporate finance team of the company, he may not have had access to UPSI pertaining to company, even though classified as a designated person. There is no documentary proof to show Mr. Ghosh's allocation of work to subsidiaries, nor the exact period. There is no documentary evidence to show Mr. Ghosh was not part of the designated person"*. Accordingly, it is alleged that Noticee has violated Clause 4 of Schedule B read with Regulation 9(1) of PIT Regulations.

f) It was further observed that in case of Noticee (who was a designated person in Titan), cumulative value of trades in the shares of TCL exceeded Rs 10 lakhs i.e. above threshold level defined in TCL's code of conduct during the financial year 2018-19. The trading details of Noticee are provided as below: -

Name of the entity	Quarter	Date	Segment	Exchange	Buy Qty	Buy Value	Sell qty	Sell value
Samik Ghosh	Q2	06-08-18	OPTSTK	NSE	1,500	14,37,713	-	-
		07-08-18	OPTSTK	NSE	-	-	1,500	14,40,000
		Total Buy + Sell value = 28,77,713						
	Q3	20/11/2018	Cash	BSE	50	45,618		
		21/11/2018	Cash	NSE			50	46,300
		Total Buy + Sell value = 91,918						
	Q4	04-02-19	FUTSTK	NSE	750	7,74,188	-	-
		05-02-19	FUTSTK	NSE	-	-	750	7,77,000
		12-03-19	FUTSTK	NSE	750	8,04,600	750	8,04,938
		12-03-19	Cash	NSE	200	2,14,339	200	2,13,640
		27-03-19	Cash	BSE	20	22,354	-	-
		Total Buy + Sell value =36,11,058						
	Cumulative Trading value = 65,80,689							

g) It was observed from the above table that cumulative trading done by Noticee is exceeding trade value of Rs. 10 lakhs during the FY 2018-19. In this regard, it was observed that Clause 6 of Schedule B read with Regulation 9(1) of PIT Regulations states - "*When the trading window is open, trading by designated persons shall be subject to pre-clearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate*". Further, Code of conduct of TCL dated May 14, 2015 inter alia states – "*every designated person shall obtain a pre-trading approval as per the procedure prescribed hereunder for any trading in the Securities of the Company proposed to be undertaken by such designated person/his/her immediate relatives. Such pre trading approval would be necessary, only if cumulative trading (including trading in derivatives of Securities) whether in one transaction or a series of transaction in any financial year exceeds Rs 10 lakhs (market value).*". It was observed that TCL vide email dated November 05, 2020 and letter dated November 09, 2020 to SEBI has confirmed that Noticee had not taken any pre-clearance approval from the Compliance Officer of TCL.

Accordingly, it is alleged that Noticee has violated Clause 6 of Schedule B read with Regulation 9(1) of PIT Regulations.

h) Further, SEBI observed that Noticee has executed contra trades during the investigation period, the details of the same are provided as below: -

Name of the entity	Date	Segment	Exchange	Buy qty	Sell qty	Buy Price	Sell Price	Buy Value	Sell value	Profit in Rs
Samik Ghosh	20/11/2018	Cash	NSE	50	-	912.35	-	45617.5		
	21/11/2018	Cash	NSE	-	50	926	-	-	46300	682.5
	04/02/2019	Future	NSE	750	-	-	-	774187.5		
	05/02/2019	Future	NSE	-	750	-	-	-	777000	2812.5
	11/03/2019	Future	NSE	750	750			814600	804937.5	337.5

i) It is observed from the above table that Noticee has executed buy and sell trades, in the scrip of TCL, either on the same day or on consecutive days. Clause 10 of Schedule B read with Regulation 9(1) of PIT Regulations, states that – "*The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.*" It was observed that TCL vide letter dated November 09, 2020, has submitted that the profits derived, if any, by Noticee from the contra trades was not remitted to SEBI for credit to IPEF by the Company as the same was not disclosed by Noticee to the Company/Compliance Officer. The Company became aware of these transactions only after receipt of SEBI's emails in this regard. Accordingly, it is alleged that Noticee has violated Clause 10 of Schedule B read with Regulation 9(1) of PIT Regulations.

6. The SCN was sent to Noticee through Speed Post Acknowledgement due (herein after referred to as '**SPAD**') as well as through digitally signed email dated August

24, 2021. The SCN sent through SPAD was returned undelivered, however, SCN sent through digitally signed email was duly served upon Noticee. Noticee was given fifteen (15) 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 October 22, 2021, Noticee was granted an opportunity of personal hearing before the undersigned on November 18, 2021. The aforesaid hearing notice was sent to Noticee through SPAD and also through digitally signed email on October 22, 2021, and was duly served upon him. Vide email dated November 17, 2021, Noticee submitted his reply to the SCN. Noticee appeared for hearing on the scheduled date and reiterated his earlier submissions.

8. Since more than 6 months had elapsed since the date of personal hearing, vide email dated August 10, 2022, Noticee was granted another opportunity for filing additional written submission in this matter, if any, by August 25, 2022. Vide email dated August 25, 2022, Noticee filed his replies reiterating his earlier submissions.

9. The relevant submissions by Noticee are summarized hereunder:-
    a. He never had access to fetch any confidential or unpublished price sensitive information of the company throughout his career in the role of Internal Controls Documentation from August 2014 to May 2020.
    b. He stated that during the investigation period, he was working in the subsidiary of Titan Company in Chennai in the role of Internal Controls by travelling from Bangalore to Chennai on weekly basis.
    c. He was having a working email id pertaining to subsidiary company during his tenure over there.
    d. He stated that Titan Finance Head and his Reporting Manager has informed him that he will not remain as part of Titan DP list and will be removed from such list during his tenure in subsidiary of Titan Company as he is not involved or not having access to any confidential or unpublished price sensitive information of the company. However, same has not been officially communicated to him.

e. He stated that during the investigation period, he had executed intraday trading or Buy Today Sell Tomorrow trading with the intention of closing them either on the same day or within couple of days. In addition to Titan shares, other companies' shares were also executed in the similar nature during the investigation period and such trades were random trades and not on the basis of any confidential or unpublished price sensitive information.

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) and of PIT Regulations and Clauses 4, 6 and 10 of Code of Conduct under Schedule B read with Regulation 9(1) of PIT Regulations?

2) Do the violations, if any, attract monetary penalty under Section 15A(b) and Section 15HB 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:

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;

Code of Conduct.

9. (1) The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.

Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders given under Schedule B

Clause 4. *Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed*

Clause 6*. When the trading window is open, trading by designated persons shall be subject to pre-clearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate. No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed.*

Clause 10*. The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to* *trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.*

Issue No.1- Whether Noticee has violated Regulation 7(2)(a) and Clauses 4, 6 and 10 of Code of Conduct under Schedule B read with Regulation 9(1) of PIT Regulations?

12. It has been alleged in the SCN that Noticee has violated Regulation 7(2)(a) of PIT Regulations as Noticee being an employee as well as designated person, failed to make requisite disclosures within two trading days when the value of total transactions by Noticee exceeded rupees ten lakhs in 2 (two) calendar quarters. I note that TCL had informed SEBI vide email dated October 28, 2020 and November 05, 2020 and letter dated November 09, 2020 that Noticee was a designated person as well as employee of TCL at the relevant time. 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."

13. I note that the term "employee" in the aforementioned provision was substituted with the term "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 Mindtree Limited (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>*

14. I note from the aforesaid order of Hon'ble SAT that the amendment made in Regulation 7(2)(a) with effect from April 1, 2019 would apply retrospectively and therefore, Noticee being a designated employee was squarely covered under the Regulation 7(2)(a) of the PIT Regulations.

15. I note that Noticee had transacted in securities of Titan during the IP as seen from the details extracted from the trade log obtained from exchanges. The details 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 + Notiona Day Sell Value) (Rs.)	Cumulative Value (Rs.)
06-08-18	OPTSTK	1,500	14,37,713	-	-	14,37,713	14,37,713
07-08-18	OPTSTK	-	-	1,500	14,40,000	14,40,000	28,77,713
Total		**1,500**	**14,37,713**	**1,500**	**14,40,000**	**28,77,713**	
04-02-19	FUTSTK	750	7,74,188	-	-	7,74,188	7,74,188
05-02-19	FUTSTK	-	-	750	7,77,000	7,77,000	15,51,188
12-03-19	FUTSTK	750	8,04,600	750	8,04,938	16,09,538	31,60,725
12-03-19	Cash	200	2,14,339	200	2,13,640	4,27,979	35,88,704
27-03-19	Cash	20	22,354	-	-	22,354	36,11,058
Total		**1,720**	**18,15,480**	**1,700**	**17,95,578**	**36,11,058**	

16. 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 August 06, 2018 and August 07, 2018 amounted to Rs. 14,37,713/- and Rs. 14,40,000/- respectively. Further, I note that during the quarter ended March 2019, the value of trades by Noticee in the securities of Titan from February 04, 2019 to February 05, 2019, on a cumulative basis, amounted to Rs. 15,51,188/- on February 05, 2019. I also note that on March 12, 2019, the value of trades by Noticee in the securities of Titan amounted to Rs. 16,09,538/-.

17. Therefore, I observe that the value of total transactions by Noticee on each of the aforesaid four 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, I note that Noticee has not disputed the transaction carried out by him in the scrip of Titan as specified above.

18. In his submissions, Noticee has contended that Titan Finance Head and his Reporting Manager has informed him that he will not remain as part of Titan DP list and will be removed from such list during his tenure in subsidiary of Titan Company as he is not involved or not having access to any confidential or unpublished price sensitive information of the company. Noticee has also stated that the same has not been officially communicated to him. However, as noted earlier, TCL vide email dated October 28, 2020 and November 05, 2020 and letter dated November 09, 2020 had informed SEBI that Noticee was a designated person as well as employee at the relevant time. Therefore, I find that even though Noticee was handling matters pertaining to the subsidiary of the Company within the corporate finance team he continued to be categorized as designated person at the relevant time. Therefore, I do not find merit in the said contention. In the instant matter, disclosure requirements in terms of Regulation 7(2)(a) of PIT Regulations were triggered because the total traded value of transactions by Noticee (as designated person) in the securities of Titan exceeded ten lakh rupees on the aforesaid four occasions.

19. Therefore, in terms of Regulation 7(2)(a) of PIT Regulations and placing reliance in the aforesaid Hon'ble SAT order, I find that Noticee, being a designated person of the company, was required to make requisite disclosures to Titan in respect 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 aforesaid transactions. Further, from the available records, I note that Titan, vide email dated October 28, 2020, confirmed that it had not received any disclosures from Noticee in this regard. Therefore, I conclude that the allegation that Noticee violated Regulation 7(2)(a) of PIT Regulations on four (4) occasions, stands established.

20. It has also been alleged in the SCN that Noticee has violated Clause 4 of Schedule B read with Regulation 9(1) of PIT Regulations as Noticee, being a designated person, had traded during the trading window closure. On perusal of available records, I note that vide email dated October 21, 2020, TCL informed SEBI of the

various trading window closure period of TCL and the details of the same are as given below:

Trading Window Closure	
From	**To**
25th March 2018	12th May 2018
22nd June 2018	5th August 2018
23rd September 2018	11th November 2018
23rd December 2018	3rd February 2019
24th March 2019	10th May 2019

21. I note from the available record that Noticee had traded in the securities of Titan on March 27, 2019. The details of which are provided as below:

Name of the entity	Quarter	Date	Segment	Exchange	Buy Qty	Buy Value	Sell qty	Sell value
Samik Ghosh	Q4	27-03-2019	Cash	BSE	20	22,354	-	-

22. From the above table, I observe that Noticee had traded during the trading window closure period from March 24, 2019 to May 10, 2019 and had bought 20 shares of TCL on March 27, 2019 i.e. during trading window closure period. I note that in terms of Clause 4 of Schedule B read with Regulation 9(1) of PIT Regulations, designated person shall not trade in securities when the trading window was closed. Therefore, it is clear that Noticee who was a designated person of TCL at the relevant time had traded during the trading window closure period. I note from the submission of Noticee that Noticee has neither disputed the aforesaid transaction carried out by him in the scrip of Titan nor disputed the charge. Thus, I find that the allegation that Noticee has violated Clause 4 of Schedule B read with Regulation 9(1) of PIT Regulations stands established.

23. Further, it has been alleged in the SCN that Noticee has violated Clause 6 of Schedule B read with Regulation 9(1) of PIT Regulations as the cumulative trades of Noticee, being a designated person, during the Financial Year 2018-19 had

exceeded the threshold level of Rs. 10 lakhs as specified in the company's Code of Conduct and Noticee has not taken any pre-clearance for the aforesaid trades from Titan.

24. I find that, Code of Conduct of TCL as available on record states that "*Every Designated Person shall obtain a pre-trading approval as per the procedure prescribed hereunder for any Trading in the Securities of the Company proposed to be undertaken by such Designated Person / his / her Immediate Relatives. Such pre-trading approval would be necessary, only if the cumulative trading (including trading in derivatives of Securities, if permitted by law) whether in one transaction or a series of transactions in any financial year exceeds Rs. 10 lakhs (market value).*" Therefore, I note from the above Code of Conduct of TCL that Noticee, being a designated person, had to obtain a pre-trading approval if his cumulative trading in a financial year exceeded Rs. 10 lakhs.

25. I note that Noticee had traded in the securities of Titan as per details given below:

Name of the entity	Quarter	Date	Segment	Exchange	Buy Qty	Buy Value	Sell qty	Sell value
Samik Ghosh	Q2	06-08-18	OPTSTK	NSE	1,500	14,37,713	-	-
		07-08-18	OPTSTK	NSE	-	-	1,500	14,40,000
		Total Buy + Sell value = 28,77,713						
	Q3	20/11/2018	Cash	BSE	50	45618		
		21/11/2018	Cash	NSE			50	46300
		Total Buy + Sell value = 91,918						
	Q4	04-02-19	FUTSTK	NSE	750	7,74,188	-	-
		05-02-19	FUTSTK	NSE	-	-	750	7,77,000
		12-03-19	FUTSTK	NSE	750	8,04,600	750	8,04,938
		12-03-19	Cash	NSE	200	2,14,339	200	2,13,640
		27-03-19	Cash	BSE	20	22,354	-	-
		Total Buy + Sell value =36,11,058						
	Cumulative Trading value = 65,80,689							

26. On perusal of above table, I note that the cumulative trades of Noticee during the Financial Year 2018-19 was Rs. 65,80,689/- and thereby Noticee, had exceeded the threshold level of Rs. 10 lakhs as specified in the company's Code of Conduct. I note that in terms of Clause 6 of Schedule B read with Regulation 9(1) of PIT Regulations, Noticee as a designated person, was required to obtain pre-clearance for the aforesaid trades from Titan. However, I note from the company's email dated November 05, 2020 and letter dated November 09, 2020 to SEBI that Noticee had not taken the requisite pre-clearance for the aforesaid trades from the company. I note from the submission of Noticee that Noticee has neither disputed the aforesaid transaction carried out by him in the scrip of Titan nor disputed the charge.

27. I observe that for the quarter ended December 2018, March 2019 and the cumulative trading value as mentioned in SCN differs 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, I note that Noticee has not disputed the transaction carried out by him in the scrip of Titan as specified above.

28. Therefore, I find that the allegation that Noticee has violated Clause 6 of Schedule B read with Regulation 9(1) of PIT Regulations stands established.

29. Further, it has also been alleged in the SCN that Noticee has violated Clause 10 of Schedule B read with Regulation 9(1) of PIT Regulations as Noticee, being a designated person, had executed contra trades within a period of six months without obtaining relaxation form the compliance officer and the profit obtained from such trades was not remitted to Investor Protection and Education Fund (hereinafter referred to as '**IPEF**'). In this regard, I note that the trading details of the Noticee are as follows:

Name of the entity	Date	Segment	Exchange	Buy qty	Sell qty	Buy Price	Sell Price	Buy Value	Sell value	Profit in Rs
Samik Ghosh	20/11/2018	Cash	NSE	50	-	912.35	-	45617.5		
	21/11/2018	Cash	NSE	-	50	926	-	-	46300	682.5
	04/02/2019	Future	NSE	750	-	-	-	774187.5		
	05/02/2019	Future	NSE	-	750	-	-	-	777000	2812.5
	12/03/2019	Future	NSE	750	750			814600	804937.5	337.5

30. I note from the above table that Noticee had executed three sets of contra trades during the financial year 2018-19 i.e. (1) Noticee bought 50 quantities of shares of Titan on November 20, 2018 and sold the same on November 21, 2018 in cash segment, (2) Noticeee bought 750 quantities of shares of Titan on February 04, 2019 and sold the same on February 05, 2019 in F&O segment and (3) Noticeee bought and sold 750 quantities of shares of Titan on March 12, 2019 in F&O segment. From the same, I note that the said contra trades have been executed by the Noticee within a period of six months. I note the provision of Clause 10 of Schedule B states that "*The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act"*. I also note from the above table that Noticee has made a profit of Rs. 3,832.5/- out of the aforesaid three contra trades. I also note from the available record that TCL, vide emails dated November 25, 2020 and December 28, 2020 had asked Noticee for his comments in regard, however no reply has been received by TCL from Noticee. Further, I note from the letter dated November 09, 2020 by TCL to SEBI that the profit derived from the aforesaid contra trades was not remitted to SEBI for credit to IPEF by the Company as the same was not disclosed by Noticee to the Company/Compliance Officer of TCL. I further note from the submission of Noticee that Noticee has neither disputed the aforesaid transaction carried out by him in the scrip of Titan nor disputed the charge.

31. I observe that the date for the third contra trade as mentioned in SCN differs 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, I note that Noticee has not disputed the transaction carried out by him in the scrip of Titan.

32. Therefore, I find that the allegation that Noticee has violated the provisions of Clause 10 of Schedule B read with Regulation 9(1) of PIT Regulations stands established.

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

33. 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."*

34. 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..….".*

35. Therefore, in view of the above judgments and considering that Noticee violated Regulation 7(2)(a) of PIT Regulations, and Clauses 4, 6 and 10 of Code of Conduct under Schedule B read with Regulation 9(1) of PIT Regulations as established in the foregoing paragraphs, I find that Noticee would be liable for monetary penalty under Section 15A(b) and 15HB of the SEBI Act. The text of Section 15A(b) of the SEBI Act and 15HB 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;

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

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

36. While determining the quantum of penalty under Section 15A(b) and 15HB 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 or section 11 or section 11B, the Board or 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 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.*

37. 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.

38. 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. In the present case, I find that Noticee has violated the provisions of Regulation 7(2)(a) of PIT Regulations. Further, I find that the Noticee by trading during window closure period, not taking pre-clearance and by executing contra trades has violated and Clauses 4, 6 and 10 of Code of Conduct under Schedule B read with Regulation 9(1) of PIT Regulations. Such violations of the Code of Conduct by a Designated Person, as found in this case, would defeat the purpose of principles enshrined under the PIT Regulations keeping in mind the mandate of protecting the interest of investors.

ORDER

39. 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) under the provisions of Section 15A(b) of SEBI Act and Rs. 1,00,000/- (Rupees One Lakh only) under the provisions of Section 15HB of the SEBI Act, i.e. **total of Rs. 2,00,000/- (Rupees Two Lakh only)** on Noticee i.e. Mr. Samik Ghosh for the violations discussed in this order. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee.

40. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI – Penalties Remittable to Government of India", payable at Mumbai OR 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

41. Noticee shall forward the said Demand Draft or the details of confirmation of e-payment made in the format as given in table below to "The Division Chief, Enforcement Department – DRA - I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "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)	

42. 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.

43. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee viz. Mr. Samik Ghosh and also to SEBI.

Place: Mumbai **SOMA MAJUMDER**

Date: November 22, 2022 **ADJUDICATING OFFICER**