BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-9/VKV/NK/2020-21/9991]

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 ("SEBI ACT") READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995)

In respect of:
Mr. Kundan K Lal
(PAN No.:ABDPL9472D)

In the matter of Sonata Software Limited

FACTS OF THE CASE IN BRIEF:

1. Sonata Software Limited (hereinafter to be referred as ‘Sonata’ or ‘Company’) vide its letter dated November 23, 2018 (“letter”) intimated Securities and Exchange Board of India ("SEBI") that, one of its employee, Mr. Mohammed Naveen Ajmal has sold the company shares without availing pre- trading approval and did not intimate the Compliance Officer about the transaction within two working days from the date of sale, as required under Company code of Conduct and made delayed disclosures for the trades executed. The same is in contravention of the provisions of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as SEBI (PIT) Regulations, 2015/ PIT Regulations) and Company’s Code of Conduct for Prevention of Insider Trading.

2. Pursuant to abovementioned letter, a preliminary examination was conducted by SEBI in the scrip of Sonata for ascertaining the violation the provisions of SEBI Act, 1992 / SEBI (PIT) Regulations, 2015 by the employee of the Company while trading in the scrip of Sonata with September 01, 2018 to October 31, 2018 as the examination period.

3. Pursuant to examination, it was inter-alia noted that, the responsibility of the disclosure falls on Mr. Kundan K Lal, Company Secretary and Compliance Officer at the given time. Thus, it was alleged that, Mr. Kundan K Lal (hereinafter referred to as "Noticee" or by his “name”) has violated Regulation 9 (1) read with 9 (3) of SEBI (Prohibition of Insider Trading) Regulations, 2015. Therefore, SEBI initiated adjudication proceedings against the Noticee under the provisions of Section 15A (b) of the SEBI Act, 1992 (hereinafter referred to as ‘SEBI Act’).

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI, vide order dated September 18, 2020 appointed the undersigned as Adjudicating Officer under Section 15 I of the SEBI Act, read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') to inquire into and adjudge under Section 15A (b) of SEBI Act, the alleged violation of the provisions of law by the Noticee.

SHOW CAUSE NOTICE and REPLY

5. A show-cause notice (hereinafter referred to as '**SCN**') dated November 06, 2020, was issued to the Noticee under rule 4 of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against the Noticee and penalty not be imposed upon him under section 15A (b) of SEBI Act for the violations alleged to have been committed by the Noticee. The Noticee was given 14 days' time to make his submission in respect of the allegations made in the SCN.

6. The following violations were alleged in the SCN, to have been committed by the Noticee:

    a) A Preliminary examination was conducted for the examination period September 01, 2018 to October 31, 2018 for ascertaining the violation the provisions of SEBI Act, 1992 / SEBI (PIT) Regulations, 2015 by the employee of the Company while trading in the scrip of Sonata.

    b) Following is observed from the preliminary examination Report ("PER"):

        i. One of the employee i.e. Mr. Mohammed Naveen Ajmal of the company i.e. Mr. Mohammed Naveen Ajmal (hereinafter referred to as "Mr. Ajmal") has sold shares of the Company and had delayed in filing the disclosures for the trades executed for sale of 10,000 shares of Sonata of value Rs. 35,90,014.35 on September 04, 2018. It is observed from the trades executed by Mr. Ajmal during the examination period, that such trades had triggered disclosure requirement in terms of Regulation 7(2)(a) of PIT Regulations.

        ii. The company in its submission dated September 30, 2019 has inter-alia stated that, it came to know about the transaction on 10th September, 2018, from the weekly BENPOS submitted by M/s Karvy Fintech Pvt Ltd, (RTA) of the Company. It also stated that, it received Form C (prescribed form for submitting trading details as per Code) on 23rd October, 2018 from Mr. Ajmal, providing the details (rate, exchange name on which shares were traded, contract value) which are mandatory for stock exchange information and the same was filed with National Stock Exchange &

Bombay Stock Exchange (collectively referred herein as “Stock Exchanges”) on 24th October, 2018.

iii. The Company did not notify the particulars of the trade executed by its employee, Mr. Ajmal to stock exchanges till October 24, 2018. The number of days for which disclosures were delayed have been arrived as follows:

Date of intimation by BENPOS	**No. of Shares**	**Value of shares (in Rs.)**	**Due Date for disclosure**	**Date of Disclosure**	**Delay in filing of disclosures**
10/09/2018	10000	35,90,014.35	12/09/2018	24/10/2018	42 Days

iv. Further, in accordance with Regulation 9 (1) read with 9 (3) of SEBI (Prohibition of Insider Trading) Regulations, 2015, company was required to formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons and shall identify and designate a compliance officer to administer the code of conduct and other requirements under the SEBI (Prohibition of Insider Trading) Regulations, 2015.
Accordingly, Sonata has formulated a Code of Conduct for Prevention of Insider Trading, adopted and approved by the Board of Directors of Sonata at its meeting dated May 19, 2015 and is effective from May 15, 2015 as submitted in its letter dated September 30, 2019.

v. The company in its letter dated September 30, 2019 also submitted that, the responsibility for administering the Code of Conduct of the company in line with SEBI (PIT) Regulations, 2015 during the period from March 1, 2018 to March 31, 2019 including September 04, 2018 falls on Mr. Kundan K Lal, Company Secretary and Compliance Officer at the given time.

vi. Thus, in view of the above, it is observed that, Company become aware of the incident of trades dated September 04, 2018 carried out by its employee, Mr. Mohammed on September 10, 2018 from the weekly BENPOS submitted by M/s Karvy Fintech Pvt Ltd. However, company failed to notify the particulars of the trade to stock exchanges within two trading days of becoming aware of the said transactions. The company informed stock exchanges only on October 24, 2018 and it is also observed that, Noticee was the Compliance Officer at the given point of time who was responsible for monitoring of the trades and administering the Code of Conduct of the company in line with SEBI (PIT) Regulations, 2015 during the period from March 1, 2018 to March 31, 2019 including September 04, 2018.

vii. Thus, Noticee has failed to monitor and report details of transactions executed by Mr. Mohammad Naveen Ajmal on September 04, 2018 within time,

c) In view of the above, it is alleged that the Noticee has Violated Regulation 9 (1) read with 9 (3) of SEBI (Prohibition of Insider Trading) Regulations, 2015.

7. The SCN was sent to the Noticee through Speed Post Acknowledgement due (herein after referred to as '**SPAD**') and Email. The SCN was duly served upon the Noticee. The Noticee , vide email and letter dated November 20, 2020, submitted his reply to the SCN and *inter-alia* made the following submissions :

   1. *"At the outset and without prejudice to anything stated hereinafter, I deny all the allegations and findings made against me in the said notice except to the extent specifically admitted by me in this letter. Nothing contained in the said notice may be deemed to be admitted by me by reason of non-traverse or otherwise, save and except what is expressly admitted herein.*

   2. *My conduct as the Compliance Officer of Sonata Software Limited has, at all times been in compliance with all obligations cast on me under the SEBI (Prohibition of lnsider Trading) Regulations, 2015, Code of Conduct and, in terms of the extant regulatory framework.*

   3. *It has been alleged that, I have violated the provisions of Regulation 9(1) read with 9 (3) of PIT Regulations on one occasion. As per the notice, it was observed from the preliminary examination report (PER) :*

      a. *Mr. Mohammed Naveen Ajmal, an employee of the Company, sold shares of the Company and had delayed in filing the disclosures for the trades executed for sale of 10,000 shares of Sonata of value Rs. 35,90,014.35 on September 4, 2018.*

      b. *The company in its submission dated September 30, 2019 has inter-alia stated that, it came to know about the transaction on September 10, 2018, from the weekly BENPOS submitted by M/s Karvy Fintech Pvt Ltd, (RTA) of the Company. It also stated that, it received Form C (prescribed form for submitting trading details as per Code) on October 23, 2018 from Mr. Ajmal, providing the details (rate, exchange name on which shares were traded, contract value) which are mandatory for stock exchange information and same was filed with National Stock Exchange & Bombay Stock Exchange (collectively referred herein as "Stock Exchanges") on October 24, 2018.*

c. *The Company did not notify the particulars of the trade executed by its employee, Mr. Mohammed Naveen Ajmal to stock exchanges till October 24, 2018. The number of days for which disclosures were delayed have been arrived as follows:…delay in disclosure of 42 days.*

d. *Further, in accordance with Regulation 9 (1) read with 9 (3) of SEBI (Prohibition of Insider Trading) Regulations, 2015, company was required to formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons and shall identify and designate a compliance officer to administer the code of conduct and other requirements under the SEBI (Prohibition of Insider Trading) Regulations, 2015. Accordingly, Sonata has formulated a Code of Conduct for Prevention of Insider Trading, adopted and approved by the Board of Directors of Sonata at its meeting dated May 19, 2015 and is effective from May 15, 2015 as submitted in its letter dated September 30, 2019.*

e. *The company in its letter dated September 30, 2019 also submitted that, the responsibility for administering the Code of Conduct of the company in line with SEBI (PIT) Regulations, 2015 during the period from March 1, 2018 to March 31, 2019 including September 4, 2018 falls on Mr. Kundan K Lal, Company Secretary and Compliance Officer at the given time.*

In this connection, I would like to bring in your notice the complete facts and submit the following:

i. *It is correct to say that Mr. Naveen Ajmal, an employee of Sonata had traded in shares in excess of Rs. 10 Lakh rupees and thus triggered the disclosure requirement under Regulation 7(2) (a) of PIT Regulations. However, it is incorrect that the Noticee became aware of the transaction made by the said employee on September 10, 2018 from the WEEKLY BENPOS submitted by M/s Karvy Fintech Pvt. Ltd. I would like to mention here that I came to know about trading of transaction by the said employee on October 22, 2018 on verification of the Shareholding pattern for the quarter ended September 30, 2018 in detail. We had made the trading closure notice on October 16, 2018 which was effective from October 25, 2018. Further, I would like to mention that I used to monitor shareholding changes in Promoters Holding, FI/FPIs holdings, top 10 shareholders, change in the shareholders who were holding more than 1% shares in the Company from the WEEKLY BENPOS in order to monitor any significant changes in Promoters and non-promoters-financial institutions holdings. The Secretarial team of Sonata was periodically checking the changes in the shareholding of designated person etc. i.e. quarterly and on Annual basis and also seeking disclosure on the Annual basis as per the Code of Conduct. The said review and monitoring process was established in compliance of PIT Regulations.*

ii. I would like to further submit that, on my enquiry Mr. Ajmal confirmed about trading of shares on October 22, 2018, and I asked him to immediately submit the Form C along with value of shares sold and name of the Stock exchanges where traded in order to submit the same with the Stock Exchanges. Subsequently, I instructed my team member Shashank to get the Form C duly signed by him. Copy of the email dated October 22, 2018 is attached as an Annexure-1. He provided the details on October 24, 2018 and I submitted the same with the Stock Exchanges on the same day. I would like to reiterate that I came to know about the transaction on October 22, 2018 only and not on September 10, 2018. It may be noted that Mr. Ajmal was required to take preclearance for trading of shares as per clause 4 of the Code of conduct which he had never taken from the notice/Company. It may be further noted that the Stock Exchange does not accept the form unless it is having the details of value of shares, name of the Stock Exchange etc. where the transaction undertaken. The said information is not available in the WEEKLY BENPOS supplied by RTA. In view of the above, I became aware about the trading made by Ajmal on October 22, 2018 and there is no delay in disclosure from the Noticee as alleged in the Notice.

iii. I further submit that I was the Company Secretary and Compliance officer during the alleged period and had resigned from the said position effective March 15, 2019. The letter dated September 30, 2019 submitted by Sonata was submitted without prior information to me and the date of becoming aware from BENPOS is not correct as I was the compliance officer during the alleged period and I became aware about the trading made by Mr. Ajmal on October 22, 2018.

iv. There was a procedural lapse on part of Mr. Ajmal as he neither receive pretrading clearance before trading in shares from the Noticee/Company nor disclose the information to be submitted to the Stock Exchange in terms of Regulation 7 (2) and formats specified under PIT Regulations. It may be noted, that I had placed the matter before the Audit Committee and Board of Sonata in the meeting held for the quarter ended September 30, 2018 inter alia for taking action against Mr. Ajmal as per the code.

v. I submit that the Board of Directors of Sonata imposes penalty on him as per the code. Subsequently, I had intimated about the action taken by the Company to BSE, NSE and SEBI on November 23, 2018 even after disclosure under Regulation 7(2) of PIT Regulations on October 24, 2018. It shows that I have conducted my role and responsibilities as mandated under the Code of Conduct of the Company and PIT Regulations as the Compliance officer of the Company.

vi. I submit that there was no mensrea for delay in compliance of provision under regulation 7(2) (b) of PIT Regulations, if my intention was such that not to disclose as that transaction took placed then I should also would not have disclosed to the Stock Exchanges on October 24, 2018 and on November 23, 2018 about the action taken by the Company to the Stock Exchanges and SEBI. I reiterate that I became aware of the transaction by Mr. Ajmal on October 22, 2018 only.

vii. I submit that I have complied with Clause 8 of the Code of Conduct i.e. 'Practice for regulation, monitoring and report on Trading of Securities by Insiders' fully and also disclosed to the Stock Exchanges and SEBI about the action taken by the Company. I submit and reiterate that I did not have any intention to hide nor did I hide any information from general investors. I submit and say that I always follow all the procedures, as stipulated by any regulatory authority, follow all rules/ regulations/ instructions etc. issued by any government agency, and my intention has never been to conceal any information.

viii. Mr. Ajmal was aware of his obligations under the PIT Regulations and the same is also reflected in the Code. In fact, the summary of the code was being sent to the employees every quarter and same is also available on the Company's website and employee's portal of the Company. Copy of the email for trading closure containing summary of Conduct is attached as an Annexure-2. I further submit, that the Noticee as a Compliance Officer had conducted a training session on compliance of PIT Regulations and Code of Conduct by the employees and relevant presentation was sent to all designated employees.

ix. The Compliance Officer is not required to undertake suo moto investigation into the trading activity of the employees of a company either under the PIT Regulations or Code of Conduct adopted by Sonata, since such an exercise would be unviable and result in a significant drain on the resources of the company. The legal obligation about the pre-clearance of trades and disclosure had been cast on employees under the PIT Regulations and the Code of Conduct to report their trades for value exceeding Rs. 10 Lakhs in a quarter.

x. That the disclosure obligation of a listed company under Regulation 7(2) (b) of the PIT Regulations is triggered upon such company 'becoming aware of such information'.

xi. That it would be unreasonable and wholly impracticable for the Noticee to be expected to review the BENPOS Report in order to identify the change in the shareholding of all its employees on an ongoing basis. It is also to be noted that the Company is having more than 4200 employees and its completely impractical to *review transaction made by each employee on weekly basis. As mentioned above, the BENPOS Report is generated for an entirely different purpose and is not intended to be used as a tool to track trading by employees.*

xii. *That in the instant case a reasonable construction of the phrase 'becoming aware of such information' in Regulation 7(2)(b) of the PIT Regulations is called or. The said phrase has to be interpreted to mean becoming aware due to a disclosure made by the employee. Any other interpretation, which confers an Obligation on the Noticee to suo moto investigate the trading history of employees would result in "hardship, serious inconvenience, injustice, absurdity or anomaly".*

xiii. *That failure by the employee (Mr. Ajmal) to perform his legal obligations cannot automatically lead to the creation of an onerous responsibility on the Noticee to conduct a suomoto investigation into the trading history of the employee, especially when no such obligation exists under the PIT Regulations or Code of Conduct adopted by the Company. The role and responsibility can be imposed if the same is feasible. The Noticee cannot be liable for the offence committed by Mr. Ajmal as he has admitted the same and paid penalty as decided by the Company in accordance with the Code of Conduct and PIT Regulations.*

In view of the above submissions,

- *The duty of disclosure for the trading made by Mr. Ajmal was casted on him under the Regulation 7 (2) of PIT Regulations and he was required get the pre-clearance of trade from the Noticee as per the Code of Conduct of the Company. Further, he was required to submit the duly filled Form-C with the Noticee in order to submit the same with the Stock Exchanges within 2 working days as per the PIT Regulations.*

- *The Noticee became aware about the trading made by Ajmal on October 22, 2020 and the disclosure was made on October 24, 2020 which was as per Regulation 7 (2) (b) of the PIT Regulations.*
- *Mr. Ajmal had admitted the delay in disclosure made by him and he was penalised by the Board of the Company for violation of Code of Conduct.*
- *As the transaction relating to trading of shares by Mr. Ajmal and disclosure under PIT Regulations and Code of Conduct by Mr. Ajmal to the Noticee and subsequently by Noticee to the Stock Exchanges constituted single transaction for which Mr. Ajmal have admitted the violation and paid the penalty.*
- *The Noticee has complied with the Regulation 9(1) read with Regulation 9 (3) of PIT Regulations.*

I request you to take the above clarifications and submissions on record and discharge me from the alleged delay in submission of disclosures under Regulation 7(2) of PIT Regulations.

You are kindly requested to take note of the above in the matter and probable proceedings under Section 15A (b) of SEBI Act, 1992 may not be initiated. It is further requested that the present proceedings may be dropped and I may be discharged from the same. "

PERSONAL HEARING

8. Pursuant to the consideration of the reply, a personal hearing and hearing through Webex, in light of the ongoing pandemic was granted to the Noticee on December 11, 2020 in order to comply with the principles of natural justice. Hearing notice was delivered to the Noticee via digitally signed email. The Noticee appeared for hearing on December 11, 2020 and reiterated the submissions made in the letter dated October 06, 2020 by the Noticee and also requested to make additional submissions by December 14, 2020.

9. Noticee vide email dated December 11, 2020 *inter alia* made following additional submissions:

"I would like to thank you for providing me opportunity to make my submissions in the above referred matter during the hearing on December 11, 2020. I have made the following additional submissions during the hearing verbally and the same is provided herein below for your kind consideration:

1. *It is incorrect that I became aware of the transaction made by Mr. Navin Ajmal on September 10, 2018 from the WEEKLY BENPOS submitted by M/s Karvy Fintech Pvt. Ltd. I would like to reiterate that I came to know about trading of transaction by the said employee on October 22, 2018 during detailed verification of the Shareholding pattern for the quarter ended September 30, 2018 which is evident from the email sent by my team to him asking to submit Form-C.*

2. *I would like to mention that I used to monitor shareholding changes in Promoters Holding, FI/FPIs holdings, top 10 shareholders, change in the shareholders who were holding more than 1% shares in the Company from the WEEKLY BENPOS in order to monitor any significant changes in Promoters and non-promoters-financial institutions holdings. It is to be noted that the Company is having more than 36000 shareholders and it is difficult to check movement in small shareholders through WEEKLY BENPOS. The Secretarial team of Sonata was periodically checking the changes in the shareholding of designated persons including Employees on quarterly basis and also seeking disclosure on the Annual basis as per the Code of Conduct.*

Mr. Ajmal was holding only 0.01% of total shares as reported in the Form –C. The said review and monitoring process was established in compliance of PIT Regulations.

3. *There was a procedural lapse on part of Mr. Ajmal as he neither receive pre-trading clearance before trading in shares from the Noticee/Company nor disclose the information to be submitted to the Stock Exchange in terms of Regulation 7 (2) and formats specified under PIT Regulations. It may be noted, that I had placed the matter before the Audit Committee and Board of Sonata in the meeting held for the quarter ended September 30, 2018 inter alia for taking action against Mr. Ajmal as per the code.*

4. *I had not violated any provision under the PIT Regulations when looked at its quintessence. As per clause 4 of the Code of Conduct, Mr. Ajmal was required to get pre-clearance of Trade which was not taken by him.*

5. *As per Clause 8.5 of the Code of Conduct, the Compliance Officer shall report to the Board of Directors/the Audit Committee at such frequency as stipulated by the Board. I was reporting in the quarterly meeting and this incident was also reported in the meeting held in November, 2018.*

6. *Further, it is informed that Mr. Ajmal and the Company have already settled the matter with SEBI vide order dated 20th March, 2020 and 15th July, 2020 respectively.*

7. *The Hon'ble Securities Appellate Tribunal, Mumbai in the matter of Piramal Enterprises Limited (Appeal 466/ 2016), the imposition of penalty was converted into one of warning with a further direction that if any such incident occur in future, it would be open to SEBI to proceed as per law. In this case, the Learned AO has imposed penalty on the Company for a Technical violation of Model Code and the Compliance Officer has already settled the matter with SEBI. Kindly refer para 26 and 27 of the Order.*

Without prejudice to the above, it is urged that a similar view based on the spirit of the law be taken in this case as well, since the infractions in this case were not with any intention or to violate the principles underlying the PIT Regulations."

Consideration of Issues

10. I have carefully perused the charges levelled against Noticee in the SCN, oral and written Replies of the Noticee and all the documents available on record. In the instant matter, the following issues arise for consideration and determination :

<u>Issue – I</u>:-. Whether Noticee has violated Regulation 9 (1) read with 9 (3) of SEBI (Prohibition of Insider Trading) Regulations, 2015.

<u>Issue – II</u>:- Does the violation, if any, on the part of Noticee attract monetary penalty under Section 15 A (b) of the Act?

<u>Issue – III</u>:- If so, what would be the quantum of monetary penalty that can be imposed on noticee taking into consideration the factors mentioned in Section 15J of the Act?

11. In this context, it is pertinent to refer to the relevant provisions of the PIT Regulations which read as under:

Code of Conduct

"9. (1) *The board of directors of every listed company and [the board of directors or head(s) of the organisation of every intermediary shall ensure that the chief executive officer or managing director] shall formulate a code of conduct [with their approval] to regulate, monitor and report trading by its [31][designated persons and immediate relatives of designated persons] towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B [(in case of a listed company) and Schedule C (in case of an intermediary)] to these regulations, without diluting the provisions of these regulations in any manner. [Explanation – For the avoidance of doubt it is clarified that intermediaries, which are listed, would be required to formulate a code of conduct to regulate, monitor and report trading by their designated persons, by adopting the minimum standards set out in Schedule B with respect to trading in their own securities and in Schedule C with respect to trading in other securities.]*

NOTE: It is intended that every company whose securities are listed on stock exchanges and every [intermediary] registered with SEBI is mandatorily required to formulate a code of conduct governing trading by [35][designated persons and their immediate relatives]. The standards set out in the [schedules] are required to be addressed by such code of conduct.

(2*)…………*

(3) *Every listed company, [intermediary] and other persons formulating a code of conduct shall identify and designate a compliance officer to administer the code of conduct and other requirements under these regulations.*

NOTE: This provision is intended to designate a senior officer as the compliance officer with the responsibility to administer the code of conduct and monitor compliance with these regulations."

[31] Substituted for the words “employees and other connected persons” by Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2018 (w.e.f. April 01, 2019).

[35] Substituted for the words “its employees” by Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2018 (w.e.f. April 01, 2019)

Issue – I:- Whether Noticee has violated Regulation 9 (1) read with 9 (3) of SEBI (Prohibition of Insider Trading) Regulations, 2015?

12. The first issue for consideration is whether the Noticee has violated the provisions of Regulation 9 (1) read with 9 (3) of PIT Regulations. I note that there were amendments in the PIT Regulations and as of now only promoters, directors and designated persons are required to make disclosures. In this regard I note that, the aforesaid amendments are applicable with effect from April 01, 2019 and these amendments do not have retrospective operations as the instant case pertains to the period prior to April 01, 2019.

13. From the available records, it is observed that, Noticee himself being compliance officer of the company intimated SEBI that, one of the employee of Sonata, viz. Mr. Mohammed Naveen Ajmal has sold the company shares worth more than Rs. 10,00,000/- without availing pre-trading approval and made delayed disclosures for the trades executed. The Company in its aforesaid letter has, inter alia stated that Mr. Ajmal has sold the company shares without availing pre-trading approval and did not intimate the Compliance Officer about the transaction within two working days from the date of sale, as required under Company code of Conduct.

14. It is further observed from the SCN that, Company has stated that, it came to know about the transaction on 10th September, 2018, from the weekly BENPOS submitted by M/s Karvy Fintech Pvt Ltd, (RTA) of the Company. Thus, Due Date for disclosure was September 12, 2018. However Company has made delayed disclosures of the shares sold by Mr. Ajmal by 42 days and the Noticee being the Company Secretary and Compliance Officer was responsible for delayed disclosures.

15. I Note that Noticee has resigned from the company effective March 15, 2019 and with regard to company’s reply dated September 30, 2019 inter alia stating that, it came to know about the transaction on 10th September, 2018, from the weekly BENPOS submitted by M/s Karvy Fintech Pvt Ltd, (RTA) of the Company , Noticee has contended that, he came to know about trading of transaction by the said employee on October 22, 2018 on verification of the Shareholding pattern for the quarter ended September 30, 2018 in detail and not on September 10, 2018 from the WEEKLY BENPOS submitted by M/s Karvy Fintech Pvt. Ltd.

Noticee has further, stated that ,from the Weekly BENPOS he used to monitor shareholding changes in Promoters Holding, FI/FPIs holdings, top 10 shareholders, change in the shareholders who were holding more than 1% shares in the Company in order to monitor any significant changes in Promoters and non-promoters-financial institutions holdings. He also stated that, The BENPOS Report is generated for an entirely different purpose and is not intended to be used as a tool to track trading by employees. He further mentioned that the information about the details of value of shares, name of the Stock Exchange etc. where the transaction undertaken is not available in the WEEKLY BENPOS supplied by RTA.

16. I have perused the aforesaid BENPOS report provided by RTA to Sonata. From the aforesaid BENPOS report, I note that, it inter-alia include information on "Top 10 Sellers & Demat/Remat as on 07/09/2018",which clearly mentions the Name of "MOHAMMED NAVEEN AJMAL" at serial number 9 in third column along with his DPID and ClientID and category clearly mentioned as "EMP" . Further, in the next column his Previous holding as on 31/08/208 is mentioned as 11875. In the next column of aforesaid BENPOS Report, a negative difference of Ten thousand (10000) shares is mentioned. From the above, it is observed that the aforesaid BENPOS report clearly indicated that there has been reduction of 10000 shares in the shareholding of Mr. Ajmal. Therefore, I find that the Noticee was in possession of the information regarding change (reduction) in shareholding of Mr. Ajmal on September 10, 2018.

17. The Noticee has further, contended that, *That failure by the employee (Mr. Ajmal) to perform his legal obligations cannot automatically lead to the creation of an onerous responsibility on the Noticee to conduct a suo moto investigation into the trading history of the employee, especially when no such obligation exists under the PIT Regulations or Code of Conduct adopted by the Company. The role and responsibility can be imposed if the same is feasible. The Noticee cannot be liable for the offence committed by Mr. Ajmal as he has admitted the same and paid penalty as decided by the Company in accordance with the Code of Conduct and PIT Regulations.* In this regard, I note from the aforesaid *BENPOS* report that, it did contain the information about the transaction of Mr Ajmal mentioned under top ten sellers which was clearly visible and by seeing this, the Noticee could have asked Mr. Ajmal to file the disclosure in proper format along with all the required information. This by no means can be equated to an investigation. Thus, I do not find any merit in this contention made by Noticee.

18. The Noticee contended that *company has more than 4200 employees and its completely impractical to review transaction made by each employee on weekly basis*. I note that the statutory disclosure requirements are applicable to all listed companies, irrespective of the number of its employees. Therefore, I am unable to accept the aforesaid contention of the Noticee.

19. In view of the above, I note that Noticee was in possession periodical “BENPOS” report dated September 10, 2018 submitted by RTA to the company which does contain the information about the transaction of Mr. Ajmal. Noticee in his capacity of Compliance officer of Sonata is responsible for administering the Code of Conduct of the company in line with SEBI (PIT) Regulations, 2015 during the period from March 1, 2018 to March 31, 2019 including September 04, 2018.Thus, it is clear that the Noticee was not only responsible for the compliance and administering the PIT Regulations but also had the BENPOS report in his possession at the relevant time however he did not file the necessary disclosure with the exchanges. Therefore, I conclude that the Noticee has violated the provisions of Regulation 9(1) read with 9(3) of PIT Regulations.

20. The Noticee has also submitted that *Board of Directors of Sonata imposes penalty on him as per the code. Subsequently, I had intimated about the action taken by the Company to BSE, NSE and SEBI on November 23, 2018 even after disclosure under Regulation 7(2) of PIT Regulations on October 24, 2018. It shows that I have conducted my role and responsibilities as mandated under the Code of Conduct of the Company and PIT Regulations as the Compliance officer of the Company.* In this regard, I note that the aforesaid action taken by the company on Mr. Ajmal (the employee) is within framework of ‘Code of Internal Procedures and Conduct for Regulating, Monitoring and Reporting of Trading by Insiders’ and such action cannot absolve the Noticee from his obligations under PIT Regulations.

21. 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)**, observed *"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."*

22. In view of the above, I find that the allegation of violation of Regulation 9(1) read with 9(3) of the PIT Regulations against the Noticee for making delayed disclosure stands established. In this regard I would be guided by the ruling of 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.….”.*

<u>Issue – II</u>:- Does the violation, if any, on the part of Noticee attract monetary penalty under Section 15 A (b) of the Act?

23. The Noticee in its reply has placed reliance on the Order of Hon'ble Securities Appellate Tribunal, Mumbai in the matter of Piramal Enterprises Limited (Appeal 466/ 2016) (which is mentioned in the summary of reply), in his defense. I have perused the same. I note that the instant case is distinguishable in view of above findings and does not help Noticee in any manner.

24. From the foregoing, I conclude that, as the Compliance officer of company, the Noticee carried the responsibility for administering the Code of Conduct of the company in line with SEBI (PIT) Regulations, 2015 during the period from March 1, 2018 to March 31, 2019 including September 04, 2018. However, the Noticee has not fulfilled his duties and responsibilities as the Compliance officer, thereby violating Regulation 9(1) read with 9(3) of SEBI (Prohibition of Insider Trading) Regulations, 2015 warranting imposition of monetary penalty under Section 15A (b) of the SEBI Act which reads as under:

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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

25. While determining the quantum of penalty under Section 15A(b) of the SEBI Act,1992, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 which reads as under:-

15J-Factors to be taken into account by the Adjudicating Officer 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 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.*

<u>Issue – III</u>: - If so, what would be the quantum of monetary penalty that can be imposed on noticees taking into consideration the factors mentioned in Section 15J of the Act?

26. In view of the charges as established, 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 failure of the Noticee in making timely disclosures or the consequent loss caused to investors. Further, from the material available on records, it is evident that the Noticee had made delayed disclosure of 42 days on only (1) one occasion, thus the violation by Noticee is non-repetitive in nature.

<u>ORDER</u>

27. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee and also the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose the following penalty on the Noticee under the provisions of Section 15 A (b) of the SEBI Act.

Name of the Noticee	Provisions of Law Violated	Penalty Provision	Penalty Amount (in Rs.)
Mr. Kundan K Lal	Regulation 9 (1) read with 9 (3) of SEBI (Prohibition of Insider Trading) Regulations, 2015	Section 15A(b) of the SEBI Act	3,00,000/- (Three lakhs Only)

I am of the view that the said penalty is commensurate with the lapse/ omission on the part of the Noticee.

28. The Noticee shall remit/pay the said amount of penalty within 45 days of receipt of this order either by way of demand draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or The amount of penalty can also be made by online payment through following path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any

difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

29. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be forwarded to "The Division Chief (Enforcement Department – 1-DRA- 1), Securities and Exchange Board of India, SEBI Bhavan II, Plot no C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051 and also send an email to tad@sebi.gov.in with the following details:

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)	

30. 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.

31. In terms of Rule 6 of the Rules, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date : December 24, 2020 **Vijayant Kumar Verma**
Place : Mumbai **Adjudicating Officer**