BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/GN/2023-24/28341]

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.

Mukund Kumar Jha
(PAN: AGAPJ8218P)

In the matter of Himadri Speciality Chemical Limited.

BACKGROUND OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI"**) conducted examination in the scrip of Himadri Speciality Chemical Limited (hereinafter referred to as "**HSCL**") and observed non-compliances of SEBI (Prohibition Of Insider Trading) Regulations, 2015 (hereinafter referred to as "SEBI (PIT) Regulations), by Mukund Kumar Jha (hereinafter referred to as "**Noticee** ").

2. In view of the above, adjudication proceedings were initiated under Section 15HB and Section 15(A)(b) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act"**) SEBI Act against the Noticee for the alleged violations which are as follows:

Sr. No.	Noticee	Alleged Violation	Charging Provisions
1.	Noticee	Regulation 7(2)(a) of SEBI (PIT) Regulations.	Section 15A (b) of the SEBI Act.
		Clause 6 of Schedule B of Code of Conduct as prescribed under SEBI (PIT) Regulations.	Section 15HB of the SEBI Act.
		Clause 10 of Schedule B of Code of Conduct as prescribed under SEBI (PIT) Regulations.	Section 15HB of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer **(**hereinafter referred to as "**AO")** vide Order dated December 19, 2022 under Section 15-I(1) of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules"**) read with Section 19 of the SEBI Act to inquire into and adjudge under the provisions of Section 15HB and Section 15(A)(b) of the SEBI Act in the manner specified under Rule 4 of Adjudication Rules read with Section 15-I(1) and (2) of SEBI Act, 1992, and if satisfied that penalty is liable, impose such penalty deemed fit in terms of Rule 5 of Adjudication Rules and Section 15HB and Section 15(A)(b) of the SEBI Act.

SHOW CAUSE NOTICE, REPLY OF THE NOTICEE AND HEARING

4. Show Cause Notice No. SEBI/EAD-3/BM/UR/64424/1/2022 dated December 28, 2022 (hereinafter referred to as **"SCN"**) was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against him and why penalty should not be imposed under Section 15HB and Section 15(A)(b) of the SEBI Act, for the aforesaid alleged violations.

5. The allegations levelled against the Noticee are as under:

a. During the course of examination, it was observed that Noticee was Designated Person of HSCL. Noticee was categorised as a Designated Person from September 18, 2020, since he was falling under two level below CEO. It was alleged that Noticee had undertaken some of the trades without obtaining necessary pre-clearance in compliance of Clause 6 of Schedule B of the Code of Conduct and had executed trades in contravention of provisions of Clause 10 of Schedule B of the Code of Conduct, for which company has issued warning letter on May 21, 2021.

Alleged Violation of Clause 6 of Schedule B of the Code of Conduct as prescribed under SEBI (PIT) Regulations by Noticee :

b. According to Clause 6 of Schedule B of the Code of Conduct as prescribed under SEBI (PIT) Regulations, "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."

c. Vide letter dated, July 12, 2022, submitted by HSCL, it was observed that all promoters / designated persons who traded during the period – 01-Jan-2020 till Jul-2022 had pre-cleared their trades, except for Noticee.

d. As per the Code of Conduct framed by HSCL under the SEBI (PIT) Regulations, all Designated Persons, who intend to deal in the securities of the Company while the trading window is open, should pre-clear the transaction from the Compliance Officer where the no. of shares exceeds 10,000 (Ten thousand) or the aggregate value of trade exceeds Rs, 10 lakhs, in a calendar quarter.

e. As per the details received from the exchanges, the trades of Noticee was observed to be in excess of the aforementioned thresholds and therefore the trades should have been undertaken after taking pre-clearance of the Compliance Officer.

f. It was observed that Noticee traded shares during the month of December 2020, February 2021 and March 2021.

g. In view of the above, it was alleged that Noticee by not complying with the requirement of pre-clearance by the compliance officer for executing trades has allegedly violated Clause 6 of the Schedule B of code of Conduct as prescribed under SEBI (PIT) Regulations.

Alleged Non-Compliance of Regulation 7(2)(a) SEBI (PIT) Regulations by Noticee 1:

h. As observed from the above paragraphs, Noticee, executed trades in the shares of HSCL during the month of December 2020, February 2021 and March 2021. HSCL on receipt of BENPOS provided by Depositories, became aware of trades by the Noticee and thereafter issued warning letter to Noticee on May 21, 2021.

i. Regulation 7(2)(a) of SEBI (PIT) Regulations, provides, *“Every promoter, member of the promoter group, designated person 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.”*

j. The trades executed by Noticee exceeded value of ten lakh rupees for which he was required to make the disclosure to HSCL.

k. Since, Noticee did not make disclosure being the designated person of HSCL within two trading days in compliance of Regulation 7(2)(a) of SEBI (PIT) Regulations, it is alleged that Noticee has violated Regulation 7(2)(a) of SEBI (PIT) Regulations.

Alleged Violation of Clause 10 of Schedule B of the Code of Conduct as prescribed under SEBI (PIT) Regulations by Noticee :

l. It was observed that, Noticee being Designated Persons had undertaken contra-trades. Clause 10 of the Schedule B of the 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."*

m. The following trades appeared to be in the nature of contra-trades:–

<table>
<tr><th>Name</th><th>Details of trades</th><th>Profit</th></tr>
<tr><td>Mukund Kumar Jha</td><td>Multiple instances of Contra Trade
<table>
<tr><th>Date</th><th>Buy</th><th>Sell</th><th>Buy Value</th><th>Sell Value</th></tr>
<tr><td>11-Dec-2020</td><td>5000</td><td>0</td><td>212000.00</td><td>0.00</td></tr>
<tr><td>15-Dec-2020</td><td>0</td><td>5000</td><td>0.00</td><td>219184.90</td></tr>
<tr><td>16-Dec-2020</td><td>0</td><td>9000</td><td>0.00</td><td>407837.70</td></tr>
<tr><td>21-Dec-2020</td><td>15900</td><td>0</td><td>689831.05</td><td>0.00</td></tr>
<tr><td>24-Feb-2021</td><td>1900</td><td>0</td><td>76885.00</td><td>0.00</td></tr>
</table></td><td>95,300 shares sold by the entity.

On proportionate basis, the entity incurred a loss of Rs 15,987.80</td></tr>
</table>

Name	Details of trades					Profit
	25-Feb-2021	0	1900	0.00	84025.00	
	01-Mar-2021	2700	1000	134839.05	52525.00	
	02-Mar-2021	0	700	0.00	33355.00	
	03-Mar-2021	700	700	33460.00	34090.00	
	04-Mar-2021	1000	0	46500.00	0.00	
	17-Mar-2021	13000	17500	562738.80	751820.65	
	18-Mar-2021	35500	33500	1547134.10	1435380.60	
	25-Mar-2021	22000	26000	909620.75	1075309.60	
	26-Mar-2021	4000	0	168000.00	0.00	

n. Clause 10 of the Schedule B of the PIT Regulations specifically prohibits execution of contra trades for a period to be determined by the company which in any event shall not be less than 6 months. It was observed that Noticee executed contra trades and thus were alleged to be in violation of Clause 10 of the Schedule B of the PIT Regulations.

6. SCN was served on the Noticee, vide digitally signed email dated December 28, 2022, which constitutes valid service as per Rule 7(1)(b) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995. The proof of delivery is on record. Noticee

vide email dated February 11, 2023, submitted that he did not receive the SCN dated December 28, 2022 and requested to send the SCN once again and keep the proceedings in abeyance. In view of which, vide email dated February 13, 2023, SCN along with annexures were once again sent to Noticee and he was provided with 7 days of time to reply to the SCN i.e. by February 20, 2023. The reply submitted by Noticee is summarized below:

- *Noticee submitted that, he had joined in Himadri Specialty Chemical Limited on 31.08.2018 but he came to know for the first time from SCN that he had been categorized as a Designated Person from September 18, 2020. Further, he submitted that he had not received any mail or by issuing letter from Secretarial & Compliances department that he had been categorized as a Designated person from September 18, 2020. In this regard Noticee further submitted that if the Company has not provided proper information to their employee, how would they know what to do and what not to do. Otherwise, every employee who is working in listed company in India must have all knowledge of All Section, Rules & Regulation of SEBI etc. before joining listed company in India and responsibility.*

- *Noticee submitted that he had never received any warning letter, so statement given by HSCL to issue a warning letter on 21.05.2021 is 100% incorrect with intention to save HSCL and transfer the non-Compliances from HSCL to Small Employee. Further, he submitted that, second very big false statement given by HSCL was that upon issue of Warning Letter dated 21.05.2021, he had left the organization. In this regard he submitted that if he had left the organization upon issue of Warning Letter dated 21.05.2021 then why HSCL had paid Salary for the month of May-21, June-21 & July-21. He also submitted that he had received offer letter from Century Extrusion Limited on 25/06/2021 thereafter for better opportunity he had put his resignation Letter on 30/06/2021.*

- *Noticee submitted that he was released on 20/07/2021 & HSCL issued release Letter & Certificate of Experience, wherein it was mentioned that, "During the span we found him punctual and diligent to work. He has contributed positively as valuable team member with the assignment given by combining logic and initiative: He worked Well in a team and has the ability to get along with different people across the organization".*

- *Noticee submitted that HSCL had received mail from BSE dated 29.06.2022 and to comply PIT regulation (Clause 10 of the PIT Regulation), HSCL had replied to BSE dated 12/07/2022 with false & manipulated information that upon Issuing Warning Letter dated*

21.05.2021, the said employee left the organisation to save HSCL from non-compliances.

- *Noticee upon highlighting reply by HSCL on query received from BSE (mail dated 29.06.2022), submitted that after receiving mail from BSE, Compliance officer of HSCL had gone on leave on next day and as per the Noticee it indicates as follows:*

  i. *HSCL has no adopted pre-clearance system (No system as per code of conduct to communicate the person who is categorized as a designated person, inform them to obtain necessary pre-clearance in compliance of contravention of provisions of Clause 10 of Schedule B of the Code of Conduct).*

  ii. *HSCL maintain complete details of trade only for Promoter & KMP and HSCL has no knowledge of trades under taken by Designated Person.*

  iii. *And finally, from the above two, they had no information about who is violating the COC under SEBI PIT Regulation, 2015.*

- *Noticee submitted that he had not received any communication from HSCL for obtaining pre-clearance as per Clause 6 of Schedule B of Code of Conduct.*

- *Noticee submitted that HSCL had no policy of Code of conduct under clause 10 of Schedule B, so alleged Violation of Clause 6 of Schedule B of the Code of Conduct as prescribed under SEBI (PIT) Regulation cannot be forced to him.*

- *Noticee submitted that on the basis of mail received from the Compliance officer of HSCL he used to know that he cannot trade during the period when trading window is closed. So he had never traded in HSCL during the period when trading window is closed.*

- *Noticee submitted that recently vide email dated 08.12.2022, he had received mail from the Compliance officer of HSCL to transfer all unlawful profit from trade with HSCL to SEBI IPEF Fund within 2 days. On the basis of mail received he immediately transferred all the gains made to SEBI IPEF Account.*

7. Pursuant to issuance of the SCN, in the interest of principles of Natural Justice, Noticee was granted opportunity of hearing on February 13, 2023 vide hearing notice dated January 27, 2023. Noticee vide email dated February 11, 2023 submitted that he did not receive the SCN in the captioned matter and on the same day only he had received Hearing Notice dated January 27, 2023. In view of the above, vide email dated February 13, 2023, SCN

along with supporting annexures were sent to Noticee and further he was informed that he is being provided with 7 days time i.e. time till February 20, 2023 to reply to the SCN and he is being provided with final opportunity of hearing on February 21, 2023. Noticee appeared on the scheduled day and time and thus the hearing in respect of the Noticee was completed. The minutes in this regard are on record.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the charges levelled against the Noticee, their replies and the documents/material available on record. The issues that arise for consideration in the present case are:

Issue No. I Whether Noticee violated the provisions of Clause 6 of Schedule B of Code of Conduct, Regulation 7(2)(a) and Clause 10 of Schedule B of Code of Conduct of SEBI (PIT) Regulations?

Issue No. II Does the violation, if any, attract monetary penalty under Section 15A(b) and 15HB of the SEBI Act, 1992?

Issue No. III If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?

9. The relevant provisions of law are reproduced below:

Clause 6 of Schedule B of the Code of Conduct of the PIT Regulations

"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."

Regulation 7(2)(a) of SEBI (PIT) Regulations

"Every promoter, member of the promoter group, designated person 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>Clause 10 of the Schedule B of the PIT Regulations</u>

"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. I Whether Noticee violated the provisions of Clause 6 of Schedule B of Code of Conduct, Regulation 7(2)(a) and Clause 10 of Schedule B of Code of Conduct of SEBI (PIT) Regulations?

Violation of Clause 6 of Schedule B of the Code of Conduct of SEBI (PIT) Regulations

10. It has been alleged in the SCN, that Noticee violated Clause 6 of Schedule B of the Code of Conduct as prescribed under SEBI (PIT) Regulations, as Noticee failed to take pre clearance of the trades from the compliance officer before undertaking the trades in the shares of HSCL.

11. HSCL submitted a letter dated, July 12, 2022 to the BSE. From the letter, it was observed that all promoters / designated persons who traded during the period – 01-Jan-2020 till Jul-2022 had pre-cleared their trades, except for Noticee. In this context, I find it pertinent to refer to Clause 6 of Schedule B of the Code of Conduct as prescribed under SEBI (PIT) Regulations which provides that "*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."*

12. From the information provided by the company vide letter dated July 12, 2022, to BSE Limited, I note that as per the Code of Conduct (to regulate, Monitor and Report of Trading by trading by Designated Persons) of HSCL, all Designated Persons, who intend to deal in the securities of the Company while the trading window is open, should pre-clear the transaction from the Compliance Officer for shares exceeding 10,000 (Ten thousand) provided that the aggregate value of trade shall not exceed Rs, 10 lakhs, in a calendar quarter.

13. From the documents available on record, I observe that Noticee was the Manager – Finance & Accounts from May 31, 2018 to July 20, 2021. Further, I note from the letter dated July 12, 2022 from HSCL that Noticee was categorized as Designated person from 18/09/2020, since he was falling under two level below CEO. Therefore, as per the code of conduct of the HSCL Noticee, being a designated person, had to obtain a pre-trading approval if his cumulative trading in a financial year exceeded Rs. 10 lakhs.

14. As per the details received from the exchanges during investigation, the trades of Noticee were observed to be in excess of the aforementioned thresholds and therefore the trades executed should have been undertaken after taking pre-clearance from the Compliance Officer.

15. I note that Noticee traded in the scrip of HSCL during the month of December 2020, February 2021 and March 2021. The details of trades by Noticee, during the period he was appointed as Designated Person and wherein he had not undertaken pre-clearance of the Compliance Officer are as follows:

Quarter	**Date of Transaction**	**Buy / Sell**	**Number of Shares Traded**	**Gross Traded Value (Rs.)**	**Whether trades were in excess of CoC* thresholds**
Quarter ending December 31, 2020	04-Dec-2020	Buy	5,000	2,18,361.35	Yes. Traded Value exceeded on 16-Dec-2020. Total Traded value during the quarter was Rs.19.20 Lakhs
	08-Dec-2020	Buy	4,000	1,73,000.00	
	11-Dec-2020	Buy	5,000	2,12,000.00	
	15-Dec-2020	Sale	5,000	2,19,184.90	
	16-Dec-2020	Sale	9,000	4,07,837.70	
	21-Dec-2020	Buy	10,900	4,73,986.35	
Quarter ending March 31, 2021	24-Feb-2021	Buy	1,900	76,885.00	
	25-Feb-2021	Sale	1,900	84,025.00	
	01-Mar-2021	Buy Sell	2,700 1,000	1,87,364.05	Yes. Traded Value exceeded Rs. 10 lakhs on 17-Mar-2021. Total Traded value during the quarter was Rs.69.45 Lakhs
	02-Mar-2021	Sale	700	33,355.00	
	03-Mar-2021	Buy Sell	700 700	67,550.00	
	04-Mar-2021	Buy	1000	46,500.00	
	17-Mar-2021	Buy Sell	13,000 17,500	13,14,559.45	
	18-Mar-2021	Buy Sell	35,500 33,500	29,82,514.70	
	25-Mar-2021	Buy Sell	22,000 26,000	19,84,930.35	
	26-Mar-2021	Buy	4,000	1,68,000.00	

16. I note from the above table that total traded value of the Noticee for the quarter ending December 31, 2020 was Rs.19.20 Lakhs and for the quarter ending March 31, 2021 was Rs. 69.45 Lakhs and thereby Noticee was required to pre-clear before executing trades which he failed to do. I further note from the letter dated July 12, 2022 from HSCL to BSE Limited that Noticee had not taken requisite pre – clearance for the trades undertaken during the Quarter ending December 31, 2020 and March 31, 2021 as the aggregate value of trade exceeded Rs, 10 lakhs, in a calendar quarter of December 2020 and March 2021.

17. Noticee submitted that, he had not received any communication from HSCL for obtaining pre-clearance as per Clause 6 of Schedule B of Code of Conduct. I further note that Noticee submitted that he had not received any email or letter from Secretarial & Compliances department of HSCL that he has been categorized as a designated person from September 18, 2020. I note that Noticee has not disputed the transaction carried out by him in the scrip of HSCL.

18. However, I observe from the material available before me that, company secretary & compliance officer of HSCL vide email dated November 18, 2020 had sent an email among others to the Noticee informing that he is the designated person of HSCL. It was mentioned in the said email that designated person 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. It was further mentioned in the said email that all Designated Persons, who intend to deal in the securities of the Company when the trading window is opened, should pre clear the transaction from Compliance Officer for shares exceeding 10,000 (Ten thousand) provided that the aggregate value of trade shall not exceed Rs, 10 lakhs, in a calendar quarter. HSCL code of conduct and SEBI (PIT) regulations were also attached with the email dated November 18, 2020 of company secretary & compliance officer of HSCL. Further, I would like to refer to the maxim of *"Ignorantia juris non excusat"* which means that the ignorance of law excuses no one and everyone is presumed to know the law of the land. A person cannot defend his illegal actions by stating that he was not aware his actions were illegal, even if he honestly believed that they were not breaking the law.

19. In view of the above, the contention of the Noticee that he was not aware that he is a designated person of the company and he was required to obtain pre-clearance as per Clause 6 of Schedule B of Code of Conduct is not tenable .

20. In view of the same, I observe that Noticee being a designated person has not complied with the requirement of pre-clearance by the compliance officer for executing trades and thereby violated Clause 6 of the Schedule B of code of Conduct as prescribed under SEBI (PIT) Regulations.

Non-Compliance of Regulation 7(2)(a) SEBI (PIT) Regulations

21. It has been alleged in the SCN that Noticee executed trades in the shares of HSCL during the month of December 2020, February 2021 and March 2021. The value of trades exceeded ten lakh rupees for which he was required to make the disclosure to HSCL.

22. As per Regulation 7(2)(a) of SEBI (PIT) Regulations, "*Every promoter, member of the promoter group, designated person 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*."

23. As already observed at paragraph 16 above, the trades executed by Noticee exceeded value of ten lakh rupees for the quarter the quarter ending December 31, 2020 and March 31, 2021 and the value of the trades executed by Noticee was Rs.19.20 Lakhs and Rs. 69.45 Lakhs for the respective quarters. In terms of the Regulation7(2)(a) of SEBI (PIT) Regulations Noticee being a designated person was required to make the disclosure to HSCL.

24. I note that HSCL on receipt of BENPOS provided by Depositories, became aware of trades by the Noticee and thereafter issued warning letter to Noticee on May 21, 2021. HSCL vide email dated February 02, 2023, submitted that no reply was submitted by the Noticee. Noticee submitted that he did not receive any such warning letter from the company and the statement given by the company is incorrect. However, I note from the letter dated July 12, 2022 of the HSCL to BSE limited that Noticee did not make disclosure being the designated person of HSCL within two trading days in compliance of Regulation 7(2)(a) of SEBI (PIT) Regulations. I further note that Noticee has not disputed the transaction carried out by him in the scrip of HSCL In view of the same, I conclude that Noticee has violated Regulation 7(2)(a) of SEBI (PIT) Regulations.

Violation of Clause 10 of Schedule B of the Code of Conduct as prescribed under SEBI (PIT) Regulations

25. It has been alleged in the SCN that Noticee being Designated Persons had undertaken contra-trades. I note that Clause 10 of the Schedule B of the 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*."

26. I note that the following trades of the Noticee are in the nature of contra trades:

<table>
<tr><th>Name</th><th colspan="5">Details of trades</th><th>Profit</th></tr>
<tr><td rowspan="14">Mukund Kumar Jha</td><td colspan="5">Multiple instances of Contra Trade</td><td rowspan="14">95,300 shares sold by the entity.
On proportionate basis, the entity incurred a loss of Rs 15,987.80</td></tr>
<tr><td>Date</td><td>Buy</td><td>Sell</td><td>Buy Value</td><td>Sell Value</td></tr>
<tr><td>11-Dec-2020</td><td>5000</td><td>0</td><td>212000.00</td><td>0.00</td></tr>
<tr><td>15-Dec-2020</td><td>0</td><td>5000</td><td>0.00</td><td>219184.90</td></tr>
<tr><td>16-Dec-2020</td><td>0</td><td>9000</td><td>0.00</td><td>407837.70</td></tr>
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<tr><td>02-Mar-2021</td><td>0</td><td>700</td><td>0.00</td><td>33355.00</td></tr>
<tr><td>03-Mar-2021</td><td>700</td><td>700</td><td>33460.00</td><td>34090.00</td></tr>
<tr><td>04-Mar-2021</td><td>1000</td><td>0</td><td>46500.00</td><td>0.00</td></tr>
<tr><td>17-Mar-2021</td><td>13000</td><td>17500</td><td>562738.80</td><td>751820.65</td></tr>
<tr><td>18-Mar-2021</td><td>35500</td><td>33500</td><td>1547134.10</td><td>1435380.60</td></tr>
</table>

Name	Details of trades					Profit
	25-Mar-2021	22000	26000	909620.75	1075309.60	
	26-Mar-2021	4000	0	168000.00	0.00	

27. I note from the above table that Noticee had executed contra trades on NSE and BSE Limited in the scrip of HSCL from December 11, 2020 to March 26, 2021 and bought a total of 66, 200 shares and sold a 95,300 shares within a period of three months and fifteen day i.e. between December 11, 2020 to March 26, 2021. From the same, I observe that said contra trades have been executed by the Noticee within a period of less than six months.

28. From the submissions made by the Noticee I observe that Compliance Officer of HSCL vide email dated December 08, 2022 advised the Noticee to transfer all unlawful profit from trades in HSCL to SEBI IPEF Fund withtin 2 days and Noticee remitted the amount of Rs. 10,179 to the "SEBI's Designated Bank account" on December 08, 2022. Thus admittedly Noticee entered into contra trades which was not in compliance of Clause 10 of the Schedule B of the PIT Regulations.

29. I find it relevant to refer to the judgment of the Apex Court in *SEBI vs Shri Ram Mutual Fund*, (Appeal Civil 9523-9524 of 2003) dated May 23, 2006,wherein it was held that *"in our opinion, mens rea is not an essential ingredient for contravention of the provisions of a civil act".* In view of the aforesaid judgment, I find it difficult to exercise leniency on grounds such as ignorance or lack of intention. If leniency is observed in such cases then every offender would seek impunity citing aforesaid reasons and the legislative intent of the provisions of PIT Regulations would be defeated.

30. In view of the foregoing it is established that the Noticee violated the provision of Clause 10 of the Schedule B of Code of Conduct as prescribed under SEBI (PIT) Regulations, 2015.

Issue No. II: Does the violation, if any, attract monetary penalty under 15(A)(b) and 15HB of the SEBI Act, 1992?

31. As observed above, Noticee violated the provisions of Clause 6 of Schedule B of Code of Conduct, Regulation 7(2)(a) and Clause 10 of Schedule B of Code of Conduct of SEBI (PIT) Regulations.

32. 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 October14, 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.*"

33. I further note that the Hon'ble Supreme Court of India in the matter of *SEBI vs. Shri Ram Mutual Fund* interalia held *"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow."*

34. Hon'ble Tribunal in the matter of **Annand Sarnaaik Versus Securities & Exchange Board of India** dated 23.07.2019, had held "….*the appellants were duty bound to make the necessary disclosures within the stipulated period under the PIT and SAST regulations. Non-disclosures within the stipulated period violated the provisions of the aforesaid regulations and, consequently, the penalty became leviable*." Further. Hon'ble tribunal in the matter of Akriti GlobalTraders Ltd. v. Securities and Exchange Board of India (Appeal No. 78 of 2014 dated September 30, 2014) has held that, ".... *firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon the intention of parties...."*

35. In view of the same, I am convinced that it is a fit case for imposition of monetary penalty on the Noticees under the provisions of Section 15(A)(b) and 15HB of the SEBI Act, 1992 which are as under:

The provisions of Section 15A(b) and 15HB of the SEBI Act read 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 thereunder,—*

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, 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;

Section 15HB of the SEBI Act

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. III: If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?

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

    Factors to be taken into account by the adjudicating officer.

    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.

37. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act as stated above. The main objective of the PIT Regulations is to afford fair treatment for shareholders who are affected by the change in shareholdings. The requirement to submit disclosures under the PIT Regulations are sacrosanct as they enable the public to make an informed investment decision in a timely manner. By not submitting the requisite disclosures, the concerned persons deprive the investing public of the statutory rights available to them. The

Regulation seeks to achieve fair treatment by inter alia mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decisions.

38. Thus, the cornerstone of SEBI PIT Regulations, 2015 is investor protection. Further the disclosure as required under SEBI PIT Regulations, 2015 are of significant importance from the point of view of the Regulators also. Also, the purpose of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders as prescribed under Schedule B to SEBI PIT Regulations, 2015 is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. Also, I cannot lose sight of the compliance of internal code of conduct as enshrined under the SEBI PIT Regulations, 2015 are mandatory in nature which are meant to achieve an objective of fair play by the persons involved in responsible capacity (viz. directors/officers/designated employees) and any violation / deviation of such code of conduct, deserves to be viewed seriously. Further, I cannot ignore to point out that the Hon'ble SAT in case of *Mr. Manmohan Shetty vs. SEBI (Appeal no. 132/2010)* decided on 27/05/2011 had upheld the importance of code of conduct including pre –clearance of trading as an essential requirement.

39. 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."

40. 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 SEBI PIT Regulations, 2015 on four occasions.

41. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticee. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticee. In this case, from the

material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default cannot be computed.

ORDER

42. Having considered the facts and circumstances of the case, the material available on record, the mitigating factors, the factors mentioned in Section 15J of the SEBI Act, and also taking into account judgement of the Hon'ble Supreme Court in SEBI vs. Bhavesh Pabari (2019) 5 SCC 90 and in exercise of the powers conferred under Section 15 I of the SEBI Act, 1992, and Rule 5 of Adjudication Rules, I, impose following penalty on the Noticee:

<table>
<tr><th>Name of entity</th><th>Provisions violated</th><th>Penalty Provision</th><th>Penalty (Rs.)</th></tr>
<tr><td rowspan="3">Mr. Mukund Kumar Jha</td><td>Regulation 7(2)(a) of SEBI (PIT) Regulations</td><td>Section 15A(b) of SEBI Act, 1992</td><td>₹ 2,00,000/- (Rupees Two Lakh only)</td></tr>
<tr><td>Clause 6 of Schedule B of Code of Conduct as prescribed under SEBI (PIT) Regulations, 2015</td><td rowspan="2">Section 15HB of SEBI Act, 1992</td><td rowspan="2">₹ 1,00,000/- (Rupees One Lakh only)</td></tr>
<tr><td>Clause 10 of Schedule B of Code of Conduct as prescribed under SEBI (PIT) Regulations, 2015</td></tr>
<tr><td></td><td colspan="2" align="right">Total</td><td>₹ 3,00,000/- (Rupees three Lakh only)</td></tr>
</table>

43. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the violations committed by Noticee.

44. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order by way of 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

45. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery

proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

46. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Place: Mumbai	**BARNALI MUKHERJEE**
Date: July 27, 2023	**ADJUDICATING OFFICER**