BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. ORDER/BM/DS/2021-22/15328]

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. Shatrughan Nath Bhatt

(PAN:AGVPB1966B)

In the matter of
Varun Beverages Limited

BACKGROUND:

1. Securities and Exchange Board of India (hereinafter being referred to as "**SEBI**") conducted an examination in the scrip of Varun Beverages Limited (hereinafter referred to as "**the Company**"/ "**VBL**"), for the period commencing January 01, 2017 to April 30, 2018 (hereinafter referred to as "**investigation period**"). During investigation, it was observed that there were non-compliances of provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "**SEBI PIT Regulations, 2015**") by employees of VBL including Mr. Shatrughan Nath Bhatt (hereinafter referred to as "**Noticee**").

2. In view of the above, SEBI initiated adjudication proceedings under the provisions of Section 15A(b) of the SEBI Act, 1992 against the Noticee for the aforementioned alleged violations.

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide Order dated October 11, 2021, the undersigned was appointed as the Adjudicating Officer (**"AO"**) under Section 19 read with Section 15-I of the SEBI Act, read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to enquire into and adjudge under the provisions of Section 15A(b) of the SEBI Act, 1992, the aforesaid alleged violations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice no. EAD/BM/DS/36031/2021 dated December 07, 2021 (hereinafter referred to as "**SCN**") was issued by the undersigned to the Noticee via Speed Post Acknowledgement Due (SPAD) and digitally signed e-mail under the provisions of Rule 4(1) of the Adjudication Rules read with section 15-I of the SEBI Act, calling upon the Noticee to show cause as to why an inquiry should not be held against him for the aforesaid alleged violations of provisions of Regulation 7(2)(a) of the SEBI PIT Regulations, 2015 and why penalty, if any, should not be imposed on him under Section 15A(b) of the SEBI Act.

5. The allegations levelled against the Noticee are as under:
    a. It was observed that Noticee had traded in the shares of VBL during the investigation period. Details of his trading are as under:

S. No.	Date of trade	Buy / Sell	Traded Quantity (No. of shares)	Traded Value (Rs.)	Cumulative Traded Value (Rs.)	Date of triggering of Reg 7(2)(a) of SEBI PIT Regulations	Disclosures made to the Company
1	13/04/2017	Sell	3000	1434000	1434000	13/04/2017	16/06/2017 (delay of 59 days)
2	19/04/2017	Sell	3000	1460000	1460000	19/04/2017	16/06/2017 (delay of 56 days)
3	09/05/2017	Sell	2000	1005331	1005331	09/05/2017	16/06/2017 (delay of 35 days)
4	02/06/2017	Sell	3000	1527012	1527012	02/06/2017	16/06/2017 (delay of 10 days)
5	07/07/2017	Sell	1000	555000	555000	21/08/2017	No
	21/08/2017	Sell	1000	561250	1116250		
6	21/12/2017	Sell	500	298500	298500	29/12/2017	No
	28/12/2017	Sell	500	302500	601000		
	29/12/2017	Sell	1000	655800	1256800		

b. In terms of provisions of regulation 7(2)(a) of SEBI PIT Regulations, 2015, requisite disclosures are to be made based on every event of either acquisition or disposal of securities in excess of ten lakh rupees.

c. It was observed from the table above that on six (6) occasions, the Noticee's traded value exceeded Rupees ten lakhs. Hence, the Noticee was required to make disclosures under Regulation 7(2)(a) of SEBI PIT Regulations, as the transactions were in excess of the limit specified under the aforesaid regulations.

d. On a query from the Company regarding the disclosures made by Noticee, as per Regulation 7(2)(a) of the SEBI PIT Regulations, the Company, vide mail dated March 09, 2020 confirmed that it received disclosures under Regulation 7(2)(a) of SEBI PIT Regulations on June 16, 2017 in respect of trades executed by Noticee on April 13 and 19 of 2017, May 09, 2017 and June 02, 2017, while no disclosures were received for two cumulative trades executed on July 07, 2017 and August 21, 2017 and also for three cumulative trades executed on December 21, 28 and 29 of 2017, from the Noticee, being employee of the Company during this period.

e. In view of above observations, it was alleged that Noticee has violated Regulation 7(2)(a) of SEBI PIT Regulations by making delayed disclosures on four occasions and by not making disclosures on two occasions, as required in the aforesaid regulations and making delayed disclosures on four occasions.

6. Vide his letter dated December 24, 2021, the Noticee made following submissions:

a. Noticee confirmed that the transactions as mentioned in table above were executed by him during the period. Noticee submitted that for his transactions on April 13 and 19 of 2017, May 09, 2017 and June 02, 2017, disclosures were made to the Company on June 16, 2017, which was delayed but without any mala-fide intention.

b. He also submitted that his transactions in September, 2017 and December, 2017 quarters were undertaken by him when the trading window of VBL was open and there was no restriction in trading in equity shares of VBL. Noticee admitted that he inadvertently missed to inform to the Company and there was no mala-fide intent to hide the transaction.

c. Noticee submitted that he does and has always adhered to best governance practices and has followed all rules and regulations from time to time.

d. Noticee requested to close the matter and not to take any further action in this regard.

7. In the interest of natural justice and in order to conduct an enquiry in terms of Rule 4(3) of the Adjudication Rules, the Noticee was granted an opportunity of personal hearing on January 19, 2022, vide Hearing Notice dated January 10, 2022. The Noticee nominated an authorized representative (hereinafter referred to as "AR") to appear on his behalf vide mail dated January 13, 2022.

8. On the date of hearing, the AR appeared on behalf of the Noticee. The AR reiterated the submissions made by the Noticee vide letter dated December 24, 2021 and also made additional submissions, which she confirmed to submit in writing, for which she sought time till February 04, 2022. The same was granted by the undersigned. The AR was informed that it was the final hearing and no further hearing shall be granted.

9. The AR, on behalf of the Noticee, vide letter dated February 04, 2022 made following submissions:

   a. *At the outset, it was reiterated that the Noticee was a senior employee who had been associated with VBL for over two decades. In his long-standing career, the Noticee has always strived to act fairly and transparently. As a person associated with a listed entity, the Noticee is committed to discharging all his obligations in due compliance with law.*

   b. *It was submitted that the Relevant Trades were only sell side trades which were undertaken whilst the trading window was open and in respect of shares arising from the exercise of employee stock options ("ESOPs").*

c. The Noticee was not in possession of any unpublished price sensitive information at the time of undertaking the Relevant Trades and the sole purpose of the Relevant Trades was to repay the financing availed for exercising the ESOPs.

d. In so far as the trades undertaken April 13, 2017, April 19, 2017, May 09, 2017 and June 02, 2017 are concerned, the Noticee did make the relevant disclosures, albeit after a delay of 10- 59 days which was entirely unintentional. Having said that, it is pertinent to note that such disclosures were made by the Noticee prior to receipt of the Notice / any direction from SEBI. The Hon'ble AO was requested to view such belated disclosures as a mitigant and factor this in whilst arriving at her decision.

e. In this regard, it was also clarified to the Hon'ble AO that the Relevant Trades were executed within a short period of VBL having been listed, and hence, it was an evolving phase wherein the Noticee was still familiarising himself with the new obligations applicable to him as an individual associated with a listed company. Nonetheless, it was acknowledged that while disclosures were made in respect of the trades undertaken from April 13, 2017 till June 02, 2017 (although delayed), the Noticee did not make the required disclosures in respect of the trades executed in the September, 2017 and December, 2017 quarters at later point in time.

f. In light of the above facts and circumstances, it was submitted that the non-disclosure and delayed disclosure of the Relevant Trades was unintentional, and an inadvertent oversight on the part of the Noticee without any mala fide intent to withhold or suppress information. Accordingly, it was humbly prayed that the Hon'ble AO adopt a lenient view in the matter and discharge the Noticee without imposing any penalty.

g. There is sufficient case law jurisprudence which establishes that the Hon'ble AO is vested with the discretion to not impose any penalty under Section

15(A)(b) of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") for a technical non-compliance such as non-disclosure or delayed disclosure of trades under Regulation 7(2)(a) of the PIT Regulations. In this regard, the Noticee relied upon judgement of Hon'ble Supreme Court in Hindustan Steel Limited v State of Orissa (AIR 1970 SC 253).

h. *In terms of the decision of the Hon'ble Supreme Court in Adjudicating Officer, Securities and Exchange Board of India v. Bhavesh Pabari [AIR 2019 SC 1265], the adjudicating officer has the discretion as to the imposition of minimum penalty under Section 15A(b) of the SEBI Act keeping in view the period of default as well as aggravating and mitigating circumstances including those specified in Section 15-J of the SEBI Act.*

i. *Noticee further relied upon the judgement of Hon'ble High Court of Bombay in SEBI v. Cabot International Capital Corporation [2004 (4) Bom CR700]. The Noticee also relied on subsequent Order of Hon'ble SAT in the case of Reliance Industries Limited v. SEBI [(2004) 55 SC L81 (SAT)] in which Hon'ble SAT had referred to the aforesaid judgement.*

j. *Therefore, in light of the various mitigating factors mentioned above and the aforementioned decisions, the Hon'ble AO is humbly requested to exercise her discretion to not impose any penalty on the Noticee under Section 15A(b) of the SEBI Act.*

k. *Based on all the submissions made above as well as the submissions made in the Reply and the arguments presented at the Hearing, it was humbly prayed that the Hon'ble AO should not issue any adverse order or finding on the Noticee and that the Noticee be discharged with a mere warning.*

<u>ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS</u>

10. After perusal of the material available on record, I have the following issues for consideration.

ISSUE I: Whether Noticee has violated Regulation 7(2)(a) of the SEBI PIT Regulations, 2015 ?

ISSUE II: Does the violation, if any, on part of the Noticee attract penalty under Section 15A(b) of the SEBI Act?

ISSUE III: If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act?

11. Before moving forward it is pertinent to refer to the relevant provisions of SEBI PIT Regulations, 2015 which read as under:

SEBI (Prohibition of Insider Trading) Regulations, 2015

Disclosures by certain persons.

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;

FINDINGS

12. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticee, I record my findings hereunder:

ISSUE I. Whether Noticee has violated Regulation 7(2)(a) of the SEBI PIT Regulations, 2015?

13. I note from the available records that Noticee was one of the employees of VBL. While in employment of VBL, Noticee has transacted in securities of VBL as seen from the details given below:

S. No.	Date of trade	Buy / Sell	Traded Quantity (No. of shares)	Traded Value (Rs.)	Cumulative Traded Value (Rs.)	Date of triggering of Reg 7(2)(a) of SEBI PIT Regulations	Disclosures made to the Company
1	13/04/2017	Sell	3000	1434000	1434000	13/04/2017	16/06/2017 (delay of 59 days)
2	19/04/2017	Sell	3000	1460000	1460000	19/04/2017	16/06/2017 (delay of 56 days)
3	09/05/2017	Sell	2000	1005331	1005331	09/05/2017	16/06/2017 (delay of 35 days)
4	02/06/2017	Sell	3000	1527012	1527012	02/06/2017	16/06/2017 (delay of 10 days)
5	07/07/2017	Sell	1000	555000	555000	21/08/2017	No
	21/08/2017	Sell	1000	561250	1116250		
6	21/12/2017	Sell	500	298500	298500	29/12/2017	No
	28/12/2017	Sell	500	302500	601000		
	29/12/2017	Sell	1000	655800	1256800		

14. On perusal of the transaction details of Noticee, I note that on six occasions, i.e. on April 13 and 19 of 2017, May 09, 2017, June 02, 2017, from July 07, 2017 to August 21, 2017 and from December 21, 2017 to December 29, 2017, total value of shares of VBL traded by the Noticee was in excess of Rupees Ten Lakhs. From the submissions made by Noticee, I note that he has confirmed that he executed the impugned transactions in the scrip of VBL.

15. In terms of Regulation 7(2)(a) of PIT Regulations, Noticee, being an employee of the company, was required to make disclosures to VBL, for each of the aforesaid transactions within two (2) working days. However, the Company confirmed that it received disclosures under Regulation 7(2)(a) of SEBI PIT Regulations on June 16, 2017 in respect of trades executed by Noticee on April 13 and 19 of 2017, May 09, 2017 and June 02, 2017, while no disclosures were received for two cumulative trades executed on July 07, 2017 and August 21, 2017 and also for three cumulative trades executed on December 21, 28 and 29 of 2017 and the AR also mentioned the same at the time of hearing. It is pertinent to note that non-compliance of the regulations still continues as disclosures have still not been made for two cumulative transactions executed on July 07, 2017 and August 21, 2017 and also for three cumulative transactions executed on December 21, 28 and 29 of 2017, as also confirmed by the AR during the course of hearing and also in Noticee's submissions vide letter dated February 04, 2022.

16. In terms of the aforesaid provision of SEBI PIT Regulations, 2015, requisite disclosures are to be made based on every event of either acquisition or disposal of securities in excess of ten lakh rupees. In the instant matter, disclosure requirements in terms of Regulation 7(2)(a) of SEBI PIT Regulations, 2015 were triggered because the traded value of Noticee's transactions in the scrip of VBL exceeded ten lakh rupees.

17. Noticee has submitted that he undertook relevant trades when trading window was open and there was no restriction in trading of equity shares. I note that the SCN alleges violation of provisions of SEBI PIT Regulations, 2015 for non-disclosure and delayed disclosure of the transactions executed by him as per regulation 7(2)(a) of the aforesaid regulations and not for having transacted per se.

18. As regards the Noticee's submission that his intention was not malafide, I note the observation made by SAT in the matter of Akriti Global Traders Ltd. Vs. SEBI, decided on 30.09.2014, that *"… Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay.."*. In view of the same, I am not inclined to accept said contention of the Noticee.

19. Thus it is established that the Noticee has violated the provisions of regulation 7(2)(a) of SEBI PIT Regulations, 2015.

ISSUE II: Does the violation, if any, on part of the Noticee attract penalty under Section 15A (b) of the SEBI Act?

20. The provisions of Section 15A(b) of the SEBI Act read as under:

    Penalties and Adjudication

    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, 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.

21. I further note that, the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361} has 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 and hence the intention of the parties committing such violation becomes wholly irrelevant.............."

22. 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."

23. Hence, in view of the findings as given above, I am convinced that the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act for violating the provisions of regulation 7(2)(a) of SEBI PIT Regulations 2015.

ISSUE III: If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act?

24. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the factors relevant as stipulated in Section 15J of the SEBI Act, 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 investor/+s as a result of the default;

(c) the repetitive nature of the default.

25. Noticee has submitted various mitigating factors including that Noticee has acted transparently and fairly in his long career with VBL for over two decades; that he has always discharged his obligations in due compliance with law; that the trades were made to settle personal financial obligations; that the Noticee was still familiarizing himself with the new obligations as VBL was recently listed at the time of impugned transactions; that the non-disclosure was inadvertent and not mala-fide. I have taken into consideration all these factors and also the judgements of case laws relied upon by the Noticee.

26. 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 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. 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.

27. Hon'ble SAT in the case of M/s. Coimbatore Flavors & Fragrances Ltd. & Ors vs SEBI (Appeal No. 209 of 2014 order dated August 11, 2014), has held that *"Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."*

    Hon'ble SAT, in the aforesaid order, has articulated the importance of true and timely disclosures. Further, I find that Noticee has violated the provisions of Regulation 7(2)(a) of SEBI PIT Regulations, 2015 on six (6) occasions. Further, as mentioned earlier, non-compliance by the Noticee for two cumulative trades executed on July 07, 2017 and August 21, 2017 and also for three cumulative trades executed on December 21, 28 and 29 of 2017 still continues.

28. 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. It is observed from the records that the Noticee has not been penalized by SEBI in the past. Hence the default by the Noticee is not repetitive in nature.

ORDER

29. 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, 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 ₹ 2,00,000/- (Rupees Two Lakhs Only) on the Noticee for violation of provisions of regulation 7(2)(a) of SEBI PIT Regulations, 2015.

30. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

31. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

32. 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 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.

33. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee i.e. Mr. Shatrughan Nath Bhatt, and also to the Securities and Exchange Board of India.

Place: Mumbai
Date: March 10, 2022

BARNALI MUKHERJEE
ADJUDICATING OFFICER