BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/PM/SM/2022-23/17449

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

In respect of:

Sagar Vilas Daundkar

PAN: BLOPD8208F

In the matter of Mindtree Ltd.

A. BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received a letter dated October 26, 2018 from Mindtree Ltd. (hereinafter referred to as the "**Company**") informing SEBI regarding instances of violation of the code of conduct framed by the Company under the provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as the "**PIT Regulations**") by two of its employees and action taken by the Company pursuant to the same. Accordingly, SEBI initiated an examination in the matter against the said two employees.

2. SEBI also initiated a separate investigation for ascertaining any violation of regulation 7(2)(a) of the PIT Regulations with regard to the transactions of promoters, directors and employees of the Company, in the Company's scrip, during the period from January 01, 2019 to March 31, 2019 (hereinafter referred to as the **"Investigation Period"**).

3. The investigation revealed that Sagar Vilas Daundkar (hereinafter referred to as the "**Noticee**") was an employee of the Company and had transacted in the Company's scrip during the Investigation Period. It was further observed that the Noticee had done transactions aggregating to a traded value in excess of Rs 10,00,000 over a calendar quarter.

4. Thereafter, the Company was asked to confirm whether the Company or its compliance officer had received any disclosures for trading done by the Noticee in terms of regulation 7(2)(a) of the PIT Regulations. *Vide* emails dated December 07, 2020 and December 14, 2020 (hereinafter referred to as the "**December 2020 Replies**"), the Company confirmed that it had not received any disclosures from the said Noticee. In view of this communication, it was *prima facie* observed that the Noticee had failed to make the required disclosure under regulation 7(2)(a) of the PIT Regulations. Thereafter, SEBI initiated adjudication proceedings against the Noticee for the alleged violation of regulation 7(2)(a) of PIT Regulations in respect of the transactions in the Company's scrip under section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act**").

B. APPOINTMENT OF ADJUDICATING OFFICER

5. Pursuant to the investigation, SEBI initiated adjudication proceedings against the Noticee and appointed the undersigned as the adjudicating officer *vide* order dated March 04, 2021 under section 19 of the SEBI Act read with sub-section (1) of section 15-I of the SEBI Act and rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "**SEBI Adjudication Rules**") to inquire into and adjudge under section 15A(b) of the SEBI Act for the alleged violation of regulation 7(2)(a) of the PIT Regulations by the Noticee.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

6. A show cause notice (hereinafter referred to as "**SCN**") bearing reference no. EAD-8/PM/NJMR/20484/1/2021 dated August 23, 2021 was served on the Noticee under rule 4 of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held against him in terms of rule 4 of the SEBI Adjudication Rules and penalty should not be imposed under section 15A(b) of the SEBI Act for the violation alleged to have been committed by him. In the SCN, the Noticee was asked to indicate whether he would prefer a personal hearing before the adjudicating officer in the matter.

7. The allegations levelled against the Noticee in the SCN are summarized below as follows:

(i) SEBI *vide* email sent on August 03, 2020, called upon the Company, to provide the names and PAN of its employees, promoters, directors and persons falling under the purview of regulation 6(2) of the PIT Regulations for the period January 01, 2019 to March 31, 2019, duly certified as true and correct by their compliance officer.

(ii) The Company *vide* emails sent on August 07, 2020, August 10, 2020, August 12, 2020, August 25, 2020 and August 26, 2020 submitted the list of their promoters, directors, designated persons, their relatives and employees in India for the period January 01, 2019 to March 31, 2019.

(iii) On receipt of the aforesaid data from the Company, SEBI conducted an analysis of the trading data received from BSE Limited (hereinafter referred to as "**BSE**") and National Stock Exchange of India Limited (hereinafter referred to as "**NSE**") with respect to the employees of the Company, in the Company's scrip, and it was observed that the Noticee had executed transactions aggregating to a traded value in excess of Rs 10,00,000 in a calendar quarter *i.e.* from January 01, 2019 till March 31, 2019.

(iv) In terms of the provisions of regulation 7(2)(a) of the PIT Regulations, as it existed at the time the Noticee committed the alleged violation, promoters, employees and directors of every company were required to disclose to the company the number of 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, aggregated to a traded value in excess of Rs 10,00,000.

(v) However, it was observed that the Noticee did not disclose his transactions in Company's scrip which exceeded Rs 10,00,000 in value in the calendar quarter from January 01, 2019 to March 31, 2019 to the Company, within two trading days of the transactions, as confirmed by the Company, *vide* the December 2020 Replies.

(vi) Given the above, it was alleged that the Noticee had violated regulation 7(2)(a) of the PIT Regulations. The alleged violation, if established, makes the Noticee liable for monetary penalty under section 15A(b) of the SEBI Act.

8. The Noticee *vide* email dated September 14, 2021 submitted his reply to the SCN. The relevant extract from the aforesaid reply is provided below verbatim:

1) I am Noticee No. 32 in the captioned matter. By way of my background, I wish to inform you that I am Computer Engineering Graduate by education, and I have completed the said degree from Marathwada Mitra Mandals Engineering College in the year 2014.

2) My work experience so far has been as follows:

Name of the Organisation	***Period***	***Designation / Area of Work Handled***
QuickHeal Technologies Pvt Ltd, Pune	*Jun 2014- Feb 2017*	*Associate Engineer (Malware/Virus analysis)*
SonicWALL Technologies Pvt Ltd, Bangalore	*Apr 2017- Feb 2018*	*Security Researcher (Malware/Virus analysis)*
Mindtree Limited	*Feb 2018- Dec 2020*	*Security Researcher (Malware/Virus analysis)*

3) As you would see from the above, I have always worked in the area of engineering and technology and have never had any knowledge of any areas of finance concerning the company or any commercial laws concerning the company. I am generally aware on the basis of newspapers and films that insider trading is a prohibited activity but the same could have never concerned me as I was never privy to any UPSI ever in my tenure at Mindtree. I was involved in the day-to-day operations of the company and no sensitive matters were ever brought to my attention which would ever lead to any suspicion that I am in possession of any UPSI.

4) Along with my job, I started trading in the securities market for some time and was generally trying to do some intra day trading so as to generate a second source of income. As is well known to you, all intra day trades work on the premise of low margin high volume theory and even in order to make a meagre profit, a trader is required to take substantial positions.

5) As is evident from the table at paragraph 4, I have only traded on 2 occasions when in the scrip of Mindtree Limited. I never acquired any of these shares and these were intra day trades squared off on the same date. I have never "acquired" or "disposed of" Mindtree shares worth more than Rs. 10 lakhs in any calendar year.

6) We were never told by Mindtree about the requirement to disclose our trading in Mindtree or else I had no reason to hide these transactions. These were transactions in *usual course and not with any mala fide or illegal intent.*

7) *In order to ascertain the purpose behind addition of Regulation 7 (2) (a) of the SEBI Regulations, I would like to draw your attention to relevant paragraphs from the Sodhi Committee Report which deliberated the draft regulation before the same was enacted by SEBI:*

"69. The Committee believes that it is necessary to make provision for disclosure of trades by employees of listed companies and their immediate relatives on two grounds. Such disclosures would not only enable the administration and policing of the Proposed Regulations but it would also enable the market at large to take an informed investment decision on the basis of dealings by the company's insiders. The Committee has carefully differentiated between internal disclosures and external disclosures and has sought to minimize external disclosures unless such disclosures serve any specific regulatory purpose.

70. The Committee debated whether even in the internal disclosures there would be a need to restrict disclosures with any materiality threshold being involved. Some members of the Committee felt that it may be onerous to keep records of all employees' holdings and trades in securities. However, it was felt that given the advancement in information technology, keeping a repository of information of trades internally should not be very onerous for listed companies. It was also felt that providing for a routine maintenance of records would be a laudable legislative measure and should not be diluted. However, if the value of trades were to cross a materiality threshold it would then become necessary to require public disclosure of such trades.

71. The idea behind the provisions relating to disclosures to enable a smooth administration of the Proposed Regulations. The provisions entailing disclosure by all employees impose an internal requirement. Introducing a provision to stipulate such requirement only for designated employees would lead to a difficulty in administration inasmuch as even the reach and jurisdiction of these provisions would become dependent on questions of fact. There would be higher prospect of regulatory litigation through that approach, leading to questions of whether a certain employee ought to have been designated or whether he was outside the scope of coverage. Instead, since this requirement is nothing but an internal exercise, it would *be eminently feasible for companies to have an electronic means of providing such information and retaining the same in the records.*

72. *The Committee has also consciously stipulated value thresholds for external disclosures. While there can always be a debate about what the value of such thresholds should be, it was felt necessary to leave flexibility to SEBI to specify any value other than what is being stipulated in the Proposed Regulations.*

73. *The Committee believes that reference to voting rights as a threshold for disclosures as is the case with the PIT Regulations, 1992 is not really relevant. The regulatory objective of the Proposed Regulations, unlike the Takeover Regulations, is not aligned with making the voting power relevant. What is of greater relevance is the scale and size of the trading by insiders particularly those who are expected to have access to UPSI. Even the size of the company is not relevant in this regard. The disclosure obligations in Chapter III of the Proposed Regulations have been drafted accordingly.*

74. *Mr. Suresh Senapaty and Mr. Subodh Kumar Agarwal have expressed their dissent to the requirement for coverage of disclosures of securities held and traded by all employees, and to public disclosure of material trades by all employees. Their dissenting view is also supported by Ms. Arundhati Bhattacharya, Mr. Nirmal Jain and Mr. K. Venkataramanan.*

75. *According to them, the correct approach would be to restrict the coverage of the disclosures only to those covered by the Code of Conduct i.e. to —designated persons‖ (see the section on Code of Conduct), since only such persons are —insiders‖ and not each and every employee. Their grounds of dissent on this issue are summarized below:-*

a. *a company would need to educate all employees and their relatives about these disclosure requirements;*
b. *obtain accurate declaration from them;*
c. *put in place mechanism to capture and track data on a real time basis;*
d. *do a due diligence on the data integrity and compile such d ata accurately;*
e. *retain audit trail of the same for reference in future; and*
f. *timely report the same to the Stock Exchange.*

76. *They also believe that many companies have in their employee base as much as about 40% based outside India and about another 40% having nationalities outside*

India. Many companies have dual listing in India and overseas. Having to ensure that the employees have a mechanism to track such data accurately for themselves and their immediate relatives and report in time would invite penalty on the company too. They acknowledge that the number of transactions in excess of Rs. 10 lakhs may be infrequent, but having to accurately report this would necessitate tracking and monitoring of all transactions which makes the activity very onerous considering it would need to cover all employees and their immediate relatives. They are also opposed to public disclosure of all such trades that are above the thresholds on the premise that this would result in competition getting to know information about Indian listed companies. Consequently, in their view, the recommendation ought to be that only directors and those in the senior management of listed companies should be covered by the disclosure obligations. The companies should be required to keep records only for such persons. Such records should be available to SEBI but should not be disclosed in the public domain. They also believe that mandating disclosures of trades and holdings in securities of all employees and not just —designated persons‖ would go beyond the mandate of this Committee since it should only make recommendations for insiders and not for those who are not insiders.

77. The majority view set out in Regulation 7 of the Proposed Regulations, and in particular, those governing disclosures by employees, essentially entail imposing obligations on employees of listed companies. The failure on their part to report to their employers would be a violation of law by them and not by their employers. Indeed, increasing awareness and educating employees to enable them to comply would only be a welcome measure and would further the regulatory objective of improving hygiene in the securities market in connection with insider trading and quite consistent with the mandate of this Committee. The threshold beyond which public disclosure is mandated has been materially enhanced. Currently, any trade of above a value of above Rs. 5,00,000 would in any case fall within public disclosure. Public disclosure is also mandatory regardless of value if the securities traded are more than 2,500 in number, or if the share represent more than 1% of the total share capital. The Committee has consciously reviewed such thresholds from the standpoint of materiality and relevance and is recommending reform to rationalize the trades disclosure threshold at a value of Rs. 10,00,000 or more in a calendar quarter.

78. On the other hand, it is critical to ensure that employees, regardless of their designation should report to their employer the trades they execute in securities of the employer. Considering there is no scope for penalty on a company on the ground of a violation by the employees, the Committee believes that this fundamental reform measure should indeed be recommended, taking note with respect, the dissenting voice of those representing industry."

8) The exact apprehension as shown by leaders of industry has happened in the present matter. Mindtree never took any steps to educate its employees of these disclosure requirements and in our regular course of functioning, we had no reason or occasion to know of the same. These provisions were not widely publicized for a layman like me to know that such a provision exists.

9) Since Mindtree never educated any of the employees about the same, none of us have any idea about the said disclosure. At the cost of repetition, I wish to state that had it been known to me that such a disclosure requirement is there, I would have willingly disclosed the same. It is only on account of the absence of such knowledge that I have not been in a position to disclose the same.

10) I state that I have been a law-abiding citizen all my life. The profit from these alleged transactions was Rs. 1878. I never intended to default on any regulation and the alleged breach on my part is purely technical / venial in nature.

11) I submit that it is not mandatory for SEBI to impose penalty in every single matter even if it comes to a conclusion that there is a violation of law. In a recent decision of SEBI, even though SEBI did come to a conclusion that a person had communicated UPSI and therefore violated Regulation 3 (which is a substantive violation requiring intent and is not merely a technical or venial violation), SEBI has taken a view that a tipper who communicated the UPSI was not liable to pay any penalty in the case of Utsav Pathak (In the matter of Crisil Limited, Order dated 30.8.2019).

12) It is submitted that as held by the Supreme Court in the case of ***Hindustan Steel Ltd. vs. State of Orissa 1969 2 SCC 627*** *and* ***Adjudicating Officer, SEBI vs Bhavesh Pabari (2019) 5 SCC 90,*** *penalty need not be levied in every single case, even if there appears to be a violation of law. The principles laid down in Section 15J have to be considered before imposing the penalty.*

13) In the present case:

a. The actions of the Noticee did not result in any undue gain to the Noticee or any wrongful loss to the investors;

b. The violation is a technical violation and that too done for the first and only time;

c. The Noticee ought to have been trained / educated / informed by Mindtree about the said regulations as they were in a better position to be aware of the same given the fact that it is a large scale listed organisation with a dedicated legal, secretarial and compliance department.

14) In any event, since all my trades were intraday trades, it cannot be suggested that I acquired or disposed of shares. These were merely creation of position and then squaring it off and therefore on a plain understanding of the language, it cannot be suggested that intraday trades fall within this category.

15) In the end, I wish to submit that even in other cases, Ld. WTM of SEBI have while upholding the violation held that no directions are warranted against Noticees and let them off with a warning. In the matter of AstraZeneca Pharma India Limited (Order dated 5 June 2020), the Ld. WTM let off the Noticees with a caution warning and did not pass any directions even though it was categorically held that the violation has occurred. Similarly, even the SAT in several matters while upholding violations set aside orders of penalty passed by the Ld. AOs.

10. After considering the facts and circumstances of the case, the undersigned granted an opportunity of personal hearing to the Noticee on January 28, 2022 *vide* notice of hearing sent *vide* email on January 19, 2022. In view of the prevailing circumstances owing to COVID-19, the hearing was scheduled through video conferencing on cisco webex platform. On the scheduled hearing date, the Noticee did not avail the said hearing opportunity. In the interest of justice, Noticee was granted another Opportunity of personal hearing on June 02, 2022 vide email sent on May 27, 2022. The Noticee appeared before me on the scheduled hearing date and reiterated the submissions made by him *vide* email sent on October 12, 2021 which has been reproduced in paragraph 8 above. The Noticee stated that he does not wish to submit any additional submissions in the present matter. Therefore, I find that principles of natural justice have been complied with respect to the Noticee in the current adjudication proceedings.

D. CONSIDERATION OF ISSUES AND FINDINGS

9. I have taken into consideration the material available on record. The issues that arise for consideration in the present case are as follows:

   I. Whether the Noticee has violated regulation 7(2)(a) of the PIT Regulations and does the violation, if any, attract monetary penalty under section 15A(b) of the SEBI Act?

   II. If the Violation attract any monetary penalty under section 15A(b) of the SEBI Act, then what should be the quantum of monetary penalty?

I. Issue No. 1: Whether the Noticee has violated regulation 7(2)(a) of the PIT Regulations and does the violation, if any, attract monetary penalty under section 15A(b) of the SEBI Act?

10. Before moving forward, it is pertinent to refer to the relevant provision of the PIT Regulations which is alleged to have been violated by the Noticee. The said provision is reproduced hereunder:

Disclosures by certain persons.

7. (2) Continual Disclosures.

(a). Every promoter [1][member of the promoter group], [2][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;

[1]Inserted by Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2019 (w.e.f. January 21, 2019).

[2]Substituted for the word "employee" by Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2018 (w.e.f. April 01, 2019) (hereinafter referred to as the "PIT 2018 Amendment Regulations")

11. I note from the material available on record that the Noticee was an employee of the Company during the Investigation Period. On perusal of the transaction details of the

Noticee, I note that the Noticee had traded in excess of Rs 10,00,000 in the Company's scrip during the Investigation Period (*i.e.,* calendar quarter beginning from January 01, 2019 to March 31, 2019). The details of the said trades of the Noticee are tabulated below:

Traded value at NSE cash segment (in Rs.)	**Traded value at NSE derivatives segment (in Rs.)**	**Traded value at BSE cash segment (in Rs.)**	**Total traded value** (BSE +NSE) **(in Rs.)**	**No. of occasions transactions executed**
43,85,626	-	-	43,85,626	2

12. I note from the table given in the paragraph above that the Noticee had executed twenty-two transactions through which the total traded value of the Noticee in the said calendar quarter amounted to Rs. 43,85,626 which is in excess of Rs 10,00,000.

13. Regulation 7(2)(a) of the PIT Regulations, as it existed at the time the Noticee committed the alleged violation (*i.e.,* before the PIT 2018 Amendment Regulations came into force), provided that certain specified entities (such as employees) are required to submit disclosures to the company within two trading days of transactions, if the value of the securities traded, in one transaction or a series of transactions, aggregates to a traded value in excess of Rs 10,00,000 over any calendar quarter.

14. I note from the reply of the Noticee that he has not disputed the following allegations levelled in the SCN that: (i) he was an employee of the Company during the Investigation Period; and (ii) he had not filed the requisite disclosures within the time stipulated under regulation 7(2)(a) pursuant to the trades executed by him. I note from the material available on record that the Company *vide* the December 2020 Replies has confirmed that the Noticee did not submit the disclosure within the time specified under the aforesaid regulation for the trades undertaken by him during the Investigation Period. However, the Noticee in his reply has contended that he had only traded on 2 occasions and he never acquired any of these shares and these were intraday trades squared off on the same date. Further, he had never "acquired" or "disposed of" Mindtree shares worth more than Rs.10 lakhs in any calendar year. In this regard, I find that the trading details of the Noticee obtained from BSE and NSE were sent to the Noticee as annexure to the SCN. The relevant extract from the aforesaid trading details is tabulated below:

Date of transaction	Gross quantity in cash market (Buy quantity + sell quantity)	Gross transaction value in cash market (in Rs.) (Buy quantity value + sell quantity value)	No of units in derivatives market	Gross transaction value in derivatives market (in Rs.)	Gross transaction value in cash and derivatives market (in Rs.)
05-Mar-2019	200	1,83,100	-	-	1,83,100
06-Mar-2019	600	5,51,850	-	-	5,51,850
07-Mar-2019	280	2,59,764	-	-	2,59,764
08-Mar-2019	2,580	23,76,073	-	-	23,76,073
11-Mar-2019	700	6,44,468	-	-	6,44,468
12-Mar-2019	400	3,70,373	-	-	3,70,373
Total		**43,85,626**			**43,85,626**

15. The table provided above clearly shows that the Noticee breached the threshold two times on March 08, 2019 and March 12, 2019. He breached the threshold for the first time when he traded in cash segment amounting to Rs 33,70,786 together with the trades executed on March 05, 2019, March 06, 2019 and March 07, 2019. Thereafter, the Noticee breached the threshold for the second time on March 12, 2019 when he again traded in cash segment which amounted to Rs 10,14,840 together with the trade executed on March 11, 2019.

16. In light of the above, I have no difficulty in arriving at the conclusion that the total traded value of the Noticee during the Investigation Period was Rs 43,85,626 and the disclosure requirement under regulation 7(2)(a) with respect to the Noticee was triggered two times. Therefore, as per the calculation made in the above mentioned table, the submission of the Noticee that he had never “acquired” or “disposed of” Mindtree shares worth more than Rs.10 lakhs in any calendar year does not hold any merit.

17. As for the other submission, where the Noticee has submitted that he had always worked in the area of engineering and technology and he never had any knowledge of any areas

of finance concerning the company. The Noticee also submitted that he was involved in the day-to-day operations of the company and no sensitive matters were ever brought to his attention which would ever lead to any suspicion that he was in possession of any UPSI. I find that the aforesaid submissions of the Noticee is irrelevant to the facts of the present matter as the words of regulation 7(2)(a) at the time the Noticee committed the alleged violation were crystal clear that the regulation demands continual disclosures from all employees irrespective of the position/designation of the employee, the level of access the employee possesses with respect to unpublished price sensitive information of the company and his/her connection with the management of the company. In this regard, it is pertinent to note that the alleged violation committed by the Noticee fell between the period extending from January 01, 2019 to March 31, 2019, and the PIT 2018 Amendment Regulations which substituted the word "employee" with "designated person" under regulation 7(2)(a) came into effect from April 01, 2019. Therefore, the provisions of the PIT 2018 Amendment Regulations do not apply to the Noticee. Thus, I do not find any merit in the aforesaid submission of the Noticee.

18. The Noticee submitted that he was unaware about the commercial laws of the company and he was only aware about the prohibition of insider trading through movies and newspaper. The Noticee also submitted that he was never informed by the company that he was required to disclose the trading in Mindtree and the transactions were not done with malafide or illegal intention. I note that the Noticee cannot take shelter of his lack of knowledge and proper awareness of the regulation with respect to the requirement to disclose transactions and the manner of computation of threshold under regulation 7(2)(a) of the PIT Regulations as it is the law of the land. It is an established legal principle that "*ignorantia juris non excusat*" which translates into ignorance of law is no excuse. The legal principle is justified on the grounds of necessity because if there is relaxation in the application of this principle, every accused will take the plea that he did not know the law and it will be incumbent on the adjudicating authority to establish the knowledge of law and it would, in turn, render the administration of justice impracticable. This has also been explained by John Salmond, in one of his revered works, *"Jurisprudence or the Theory of the Law"*, wherein he has stated that one of the main reasons for the strict application of the aforesaid principle is due to the evidential difficulties that would be faced by the adjudicating authority for establishing knowledge of law. The relevant text from his aforesaid work is reproduced below verbatim:

"In the second place, even if invincible ignorance of the law is in fact possible, the evidential difficulties in the way of the judicial recognition of such ignorance are insuperable, and for the sake of any benefit derivable therefrom it is not advisable to weaken the administration of justice by making liability dependent on well nigh inscrutable conditions touching knowledge or means of knowledge of the law. Who can say of any man whether he knew the law, or whether during the course of his past life he had an opportunity of acquiring a knowledge of it by the exercise of due diligence?....." (emphasis supplied).

In this regard, I find it relevant to refer to the order of Hon'ble Securities Appellate Tribunal (SAT) passed in the matter of ***Madanchand Prasan Chand Chordia vs. SEBI*** (Appeal No. 134 of 2014), dated June 16, 2014, wherein it held that:

"The main contention of the appellant, who has appeared in person before us, is that he was not aware about the requirement of law in making disclosure as a part of SAST Regulations, 2011 and PIT Regulations, 1992. We note that ignorance of law is not an excuse."

19. I note that Noticee has also submitted that the Noticee did not have intention to indulge in any unfair trade practice. In this regard, I find it relevant to refer to the judgment of Apex Court in ***SEBI vs Shri Ram Mutual Fund*** (Appeal Civil 9523-9524 of 2003) dated May 23, 2006, wherein it held that "*in our opinion, mens rea is not an essential ingredient for contravention of the provisions of a civil act*". In light of the above, I find that the aforesaid submission of the Noticee does not hold any ground for ascertaining violation of regulation 7(2)(a) establishing presence of malafide intention on the part of the Noticee is not germane.

Thus, I find that the aforesaid submission of the Noticee deserves dismissal.

20. Further, I note that the loss suffered by Noticee, absence of any disproportionate gain made by him, absence of any loss caused to the investors and the breach was a technical one can't be considered relevant for determining whether the Noticee has voilated regulation 7(2)(a). All these factors are mitigating factors. I find that my view is supported by the following orders passed by the Hon'ble SAT:

(i) In ***Akriti Global Traders Ltd. vs. SEBI*** (Appeal no.78 of 2014), decided on September 30, 2014, Hon'ble SAT held 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..". (emphasis supplied)*

(ii) Further, in ***Shri Virendrakumar Jayantilal Patel vs. SEBI*** *(*Misc. application no.140 of 2014 and appeal no.299 of 2014) dated October 14, 2014, Hon'ble SAT held that: *"Similarly argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures." (emphasis supplied).*

21. I note that the Noticee has referred to Sodhi Committee Report in his submissions on the disclosures. The report focuses that the restriction of disclosure should be limited to the Designated Person since they are the insiders. I find that the aforesaid submissions based on Sodhi Committee report of the Noticee is irrelevant to the facts of the present matter as the words of regulation 7(2)(a) at the time the Noticee committed the alleged violation were crystal clear that the regulation demands continual disclosures from all employees irrespective of the position/designation of the employee, the level of access the employee possesses with respect to unpublished price sensitive information of the company and his/her connection with the management of the company. In this regard, it is pertinent to note that the alleged violation committed by the Noticee fell between the period extending from January 01, 2019 to March 31, 2019, and the PIT 2018 Amendment Regulations which substituted the word "employee" with "designated person" under regulation 7(2)(a) came into effect from April 01, 2019. Therefore, the provisions of the PIT 2018 Amendment Regulations do not apply to the Noticee. Thus, I do not find any merit in the aforesaid submission of the Noticee.

22. I also note that Noticee has cited two Judgments of Hon'ble Supreme Court ***(Hindustan Steel Ltd. vs. State of Orissa 1969 2 SCC 627*** *and* ***Adjudicating Officer, SEBI vs Bhavesh Pabari (2019) 5 SCC 90)*** wherein, it was held that *"penalty need not to be levied in every case even if there appears to be a violation of law*.

24. I note that the Apex Court in the case of ***Shri Ram Mutual Fund (supra)*** 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."*

25. Further, in ***Mr. Ankur Chaturvedi vs. SEBI*** (Appeal no. 434 of 2014) decided on August 04, 2015, Hon'ble SAT has held that *"As rightly pointed out by the adjudicating officer the entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Therefore, omission on the part of the appellant in failing to make disclosures was detrimental to the interest of the investors in the securities market and hence no fault can be found with the decision of SEBI in imposing penalty".*

26. In view of the judgments/orders referred above and the fact that the Noticee has violated regulation 7(2)(a) of the PIT Regulations, I am of the view that a monetary penalty needs to be imposed upon the Noticee 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 thereunder:*

(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, [3][or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents], he shall be liable to a penalty [4][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].*

[3]Inserted by the Finance Act, 2018 w.e.f. 08-03-2019.

[4]Substituted for the words "of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.

23. In view of the aforesaid paragraphs, I conclude that the allegation that the Noticee has violated regulation 7(2)(a) of the PIT Regulations stands established due to his failure to make the requisite disclosures with respect to the concerned trades within the time stipulated under the aforesaid regulation. It is pertinent to note that the requirement to submit disclosures under the PIT Regulations in the manner prescribed and within the time stipulated are sacrosanct as they enable the public to make an informed investment decision in a timely manner. By not submitting the requisite disclosures within the specified time, the concerned persons deprive the investing public of their statutory rights. Further, the disclosure also enables the regulator to properly monitor the transactions in the capital market to effectively regulate the same. Thus, I find that the aforesaid violation by the Noticee affects multiple stakeholders and has an impact on the entire securities market.

II. Issue No 2: If the Violation attracts monetary penalty under section 15A(b) of the SEBI Act, then what should be the quantum of monetary penalty?

27. While determining the quantum of monetary penalty under section 15A(b) of the SEBI Act, I have considered the factors stipulated in section 15-J of the SEBI Act, which reads as under:

Factors to be taken into account while adjudging quantum of penalty

While adjudging quantum of penalty under [5][15-I or section 11 or section 11B, the Board or the adjudicating officer] shall have due regard to the following factors, namely :—

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

[6][Explanation: For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]

[5]Substituted for the words "section 15-I, the adjudicating officer" by the Finance Act, 2018 w.e.f. 08-03-2019

[6] *Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Part II Section 1 dated March 31, 2017. This shall come into force from April 26, 2017.*

28. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the default of the Noticee in submitting timely disclosures or the consequent loss caused to investors as a result of the aforesaid default. With respect to repetitive nature of the default, it is important to note that the Noticee has violated the provisions of regulation 7(2)(a) of the PIT Regulations on two occasions during the Investigation Period. Hence, the violation committed by the Noticee is repetitive in nature.

29. In the present matter, the facts of the case clearly establish the violation committed by the Noticee. Accordingly, I consider it necessary to impose monetary penalty which would act as a deterrent to the Noticee in future.

E. ORDER

30. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with rule 5 of the SEBI Adjudication Rules, I hereby impose a penalty of Rs 1,00,000 (Rupees One Lakh Only) on the Noticee *i.e.,* Sagar Vilas Daundkar under section 15A(b) of the SEBI Act. I am of the view that the penalty is imposed on the Noticee is commensurate with the violation committed by the Noticee.

31. 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 through online payment facility available on the SEBI website **www.sebi.gov.in** on the following path by clicking on the payment link.

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

32. The Noticee shall forward the said demand draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-I, SEBI, in the format given in table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for	Penalty

33. In terms of rule 6 of the SEBI Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: June 29, 2022
Place: Mumbai

PRASANTA MAHAPATRA
ADJUDICATING OFFICER