BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/DD/2022-23/16261]

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. Mahesh S.

[PAN: AWVPM8744Q]

In the matter of Titan Company Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received a letter from Titan Company Limited (hereinafter referred to as '**Company/Titan/TCL**') wherein the company intimated SEBI about contravention of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations**') and Company's Code of Conduct for Prevention of Insider Trading by some of its designated persons/employees. The securities of Titan are listed on BSE Ltd (**BSE**) and the National Stock Exchange of India Ltd (**NSE**).

2. Thereafter, SEBI conducted an investigation in the scrip of Titan and observed several non-compliances of PIT Regulations during the period April 01, 2018 to March 31, 2019 (hereinafter referred to as '**Investigation Period/IP'**) by employees and designated persons of TCL including Mr. Mahesh S. (hereinafter referred to as '**Noticee/by name'**). Therefore, SEBI initiated adjudication proceedings against Noticee under the provisions of Section 15A(b) of Securities and Exchange Board of

India Act, 1992 (hereinafter referred to as '**SEBI Act'**) for alleged violation of Regulation 7(2)(a) of PIT Regulations by Noticee and under Section 15HB of SEBI Act for alleged violations of Clauses 6 and 10 of Schedule B read with Regulation 9(1) of PIT Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide order dated March 02, 2021, SEBI appointed the undersigned as Adjudicating Officer under Section 15I of the SEBI Act read with Section 19 of the SEBI Act and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) to inquire into and adjudge under the provisions of Section 15A(b) of SEBI Act, the alleged violation of Regulation 7(2)(a) of PIT Regulations and under Section 15HB, the alleged violation of Clauses 6 and 10 of Schedule B read with Regulation 9(1) of PIT Regulations by Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A show-cause notice dated August 12, 2021 (hereinafter referred to as '**SCN**') was issued to Noticee under Rule 4 of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against Noticee and penalty, if any, not be imposed upon him under the provisions of Section 15A(b) and Section 15HB of SEBI Act for the aforesaid violations alleged to have been committed by him.

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

   a) During the course of investigation, it was observed that Noticee had traded in the securities of the Titan during the Investigation Period. Details of his trading are as under:

Calendar Quarter	Traded value at NSE Cash segment (Rs.)	Traded value at NSE Derivatives segment (Rs.)	Traded value at BSE cash segment (Rs.)	Total traded value (BSE +NSE) (Rs.)
October - December 2018	0	1,419,975	0	1,419,975

b) It is observed from the table above that on the one (1) Calendar Quarter ending on December 31, 2018, total traded value of the securities traded by Noticee, in the scrip of Titan, has exceeded Rs. 10 Lakh. It is alleged that the Noticee was required to make disclosure in terms of Regulation 7(2)(a) of PIT Regulations on one (1) occasion to the company. In this regard, TCL vide email dated October 28, 2020, has confirmed that it had not received any disclosures from the Noticee. Accordingly, it is alleged that Noticee has violated Regulation 7(2)(a) of PIT Regulations

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

Name of the entity	Quarter	Date	Segment	Exchange	Buy Qty	Buy Value	Sell qty	Sell value
Mahesh S	Q3	06/12/2018	Options	NSE	750	709575		
		07/12/2018	Options	NSE			750	710400
		Total Buy + Sell value =1419975						
		Cumulative Trading value-1419975						

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

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

Name of the entity	Date	Segment	Exchange	Buy qty	Sell qty	Buy Price	Sell Price	Buy Value	Sell value	Profit in Rs
Mahesh S	06/12/2018	Options	NSE	750				709575		
	07/12/2018	Options	NSE		750				710400	825

f) It is observed from the above table that Noticee has executed buy and sell trades on consecutive days. Clause 10 of Schedule B read with Regulation 9(1) of PIT Regulations, states that – "*The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.*"

g) In view of the above, it is alleged that Noticee has violated Clause 6 and 10 of Schedule B read with Regulation 9(1) of PIT Regulations.

6. The SCN was sent to Noticee through Speed Post Acknowledgement due (herein after referred to as '**SPAD**') as well as through digitally signed email dated August 17, 2021 and was duly served upon Noticee. Noticee was given fifteen (15) days' time to make his submissions in respect of the allegations made in the SCN. Vide email dated September 01, 2021, Noticee submitted his reply to the SCN.

7. Thereafter, in the interest of natural justice, vide hearing notice dated October 22, 2021, Noticee was granted an opportunity of personal hearing before the undersigned on November 18, 2021. The aforesaid hearing notice was sent to Noticee through SPAD and also through digitally signed email on October 22, 2021, and was duly served upon him. Noticee appeared for hearing on the scheduled date and reiterated his earlier submissions. Due to difficulties in view of the Covid-19 pandemic, hearing was conducted through video conferencing.

8. The relevant submissions by Noticee are summarized hereunder:-
    a. He acknowledged the impugned transactions in the scrip of Titan.
    b. He was not aware of the impugned transactions since these were undertaken by the broker who traded in the F&O segment and therefore he could not take pre-clearance of his trades.
    c. However, he instructed his broker not to undertake any further trades in the securities of Titan.
    d. Since it was an Option transaction, the transaction had to be reversed within the expiry date and it was not possible to stop the opposite transaction.
    e. He was not in possession of any confidential or unpublished price sensitive information of the company at the time of his transactions even though he was categorized as a designated person.
    f. He had not provided the requisite disclosures since the net total of his transactions was only Rs. 39,975/- and he believed that said provision would not be applicable.

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

9. I have carefully perused the charges levelled against Noticee, replies/submissions filed by Noticee and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

    1) Whether Noticee has violated Regulation 7(2)(a) and of PIT Regulations and Clauses 6 and 10 of Code of Conduct under Schedule B read with Regulation 9(1) of PIT Regulations?

2) Do the violations, if any, attract monetary penalty under Section 15A(b) and Section HB of SEBI Act?

3) If the answer to issue no. 2 is in affirmative, then what should be the quantum of monetary penalty?

10. Before moving forward, it is pertinent to refer to the relevant provision of the PIT Regulations which was in force at the time of impugned transactions, which are reproduced as under:

Relevant provisions of PIT Regulations:

Disclosures by certain persons.

7(2) continual disclosure.

(a)Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;

Code of Conduct.

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

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

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

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

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

11. I note from the available records that Noticee was one of the employees/designated persons of Titan which fact has also been accepted by Noticee in his submissions. While in employment of Titan, Noticee had transacted in securities of Titan as seen from the details extracted from the trade log obtained from NSE, which are given below:-

Name of Noticee	**Total Traded Value (BSE+NSE) (in Rs.)**	**No. of occasions on which traded value exceeded Rs. 10 lakh**
	Oct-Dec 2018	
Mr. Mahesh C	14,19,975	1

12. On perusal of the trading details of Noticee for the quarter October-December 2018, I note that during the period from December 06, 2018 to December 07, 2018, the total

value of securities of Titan traded by Noticee, on cumulative basis, amounted to Rs. 14,19,975/- on December 07, 2018. Therefore, from the aforesaid transactions, I observe that the total value of transactions on the aforesaid occasion exceeded rupees ten lakhs. From the submissions made by Noticee, I note that he has not disputed the impugned transactions by him in the scrip of Titan as specified above.

13. In terms of Regulation 7(2)(a) of PIT Regulations, Noticee, being an employee/ designated person of the company, was required to make requisite disclosures to Titan in respect of the aforesaid transactions within two (2) working days. However, there is no evidence available on record to show that Noticee had made any disclosures in terms of the aforesaid regulation for the aforesaid transactions. I note from Noticee's submissions that he was not aware of the impugned transactions since they had been done by his broker. However, I also note that he has contradicted the statement by admitting to the said default on his part and has stated that he did not make the requisite disclosure since he believed that the transactions did not breach the limit specified in the aforesaid regulation. In view of the aforesaid admission on his part, I conclude that the allegation that Noticee has violated Regulation 7(2)(a) of PIT Regulations stands established.

14. It has also been alleged in the SCN that Noticee has violated Clauses 6 and 10 of Schedule B read with Regulation 9(1) of PIT Regulations. The trading details of the Noticee are as follows –

Name of the entity	Quarter	Date	Segment	Exchange	Buy Qty	Buy Value	Sell qty	Sell value
Mahesh S	Q3	06/12/2018	Options	NSE	750	709575		
		07/12/2018	Options	NSE			750	710400
		Total Buy + Sell value =1419975						
		Cumulative Trading value-1419975						

15. From the material on record, I note that the cumulative trades of Noticee during the Financial Year 2018-19 had exceeded the threshold level of Rs. 10 lakhs as specified in the company's Code of Conduct. I note that in terms of Clause 6 of Schedule B read with Regulation 9(1) of PIT Regulations, Noticee was required to obtain pre-clearance

of the aforesaid trade from Titan. However, I note from the company's email dated November 05, 2020 to SEBI that Noticee had not taken the requisite pre-clearance for the aforesaid trades from the company. Noticee in his submissions has also admitted that he did not take any preclearance from the Company for his aforesaid trades. Thus, I note that Noticee has violated Clause 6 of Schedule B read with Regulation 9(1) of PIT Regulations.

16. I further note from records that Noticee had executed contra trades during the financial year as depicted in the above table. From the same I note that the said contra trades have been executed by the Noticee within a period of six months. Thus, it is alleged that the said contra trades by the Noticee was not in compliance of Clause 10 of Schedule B read with Regulation 9(1) of PIT Regulations. In this regard, Noticee has argued since it was an option transaction, the transaction had to be reversed within the expiry date. I note that no such compulsion exists as argued by the Noticee as the contracts would get exercised or shall expire on the date of expiry, depending on whether the contract is in the money or out of the money. Noticee has also contended that he did not have access to any unpublished price sensitive information as a designated person. In this regard, I note that Noticee has admitted to the default on this account. Thus, the Noticee, who was a designated person, by executing contra trades in Titan has violated the provisions of Clause 10 of Schedule B read with Regulation 9(1) of PIT Regulations.

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

17. 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."*

18. I note that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established..….".*

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

SEBI Act

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made there under,—*
(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

Penalty for contravention where no separate penalty has been provided.

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

<u>Issue No.3 - What should be the quantum of monetary penalty</u>?

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

<u>SEBI Act</u>

Factors to be taken into account by the adjudicating officer.

Section 15J *- While adjudging quantum of penalty under section 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely:-*

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

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

(c) the repetitive nature of the default.

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

21. In view of the charges established and the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15-J of the SEBI Act, stated as above. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the default of Noticee in making disclosures or the consequent loss caused to investors as a result of the default.

22. However, with respect to the disclosure violations by Noticee, I note that the purpose of these disclosures is to bring about transparency in the transactions of Directors/

Promoters/Acquirers/ employees and assist the Regulator to effectively monitor the transactions in the market. Hon'ble SAT in the case of **M/s. Coimbatore Flavors & Fragrances Ltd. & Ors vs SEBI (Appeal No. 209 of 2014 order dated August 11, 2014)**, has held that *"Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."* Hon'ble SAT, in the aforesaid order, has articulated the importance of true and timely disclosures. In the present case, I find that Noticee has violated the provisions of Regulation 7(2)(a) of PIT Regulations. Further, I find that the Noticee by not taking pre-clearance and by executing contra trades has violated and Clauses 6 and 10 of Code of Conduct under Schedule B read with Regulation 9(1) of PIT Regulations. Such violations of the Code of Conduct by a Designated Person, as found in this case, would defeat the purpose of principles enshrined under the PIT Regulations keeping in mind the mandate of protecting the interest of investors.

ORDER

23. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs. 1,00,000/- (Rupees One Lakh only) under the provisions of Section 15A(b) of SEBI Act and Rs. 1,00,000/- (Rupees One Lakh only) under the provisions of Section 15HB of the SEBI Act, i.e. **total Rs. 2,00,000/- (Rupees Two Lakh only)** on Noticee i.e. Mr. Mahesh S for the violations discussed in this order. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee.

24. 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.

25. 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 II, 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)	

26. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticee.

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

Place: Mumbai	**SOMA MAJUMDER**
Date: April 29, 2022	**ADJUDICATING OFFICER**