BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER: Order/MC/VS/2022-23/17579]

UNDER SECTION 15I 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 -

Shailesh Hingarh (PAN AAAPH3472K) having address at 1102, 'C' Wing 11th Floor New Sarvottam CHS Off S.V. Road, Andheri (West), Mumbai – 400058

In the matter of Hubtown Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") initiated adjudication proceedings against **Shailesh Hingarh** (hereinafter referred to **"the Noticee")** under Section 15A (b) of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") for alleged violation of provisions of the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("**PIT Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer vide order dated June 18, 2021 to inquire into and adjudge under Section 15A (b) of SEBI Act the aforesaid alleged violations against the Noticee. The appointment of the undersigned as AO was communicated vide order dated June 21, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD5/MC/VS/36557/2021 dated December 10, 2021 (hereinafter referred to as "**SCN**") was issued to the Noticee in terms of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ("**Adjudication Rules**") read with Section 15-I of the SEBI Act to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee under Section 15A (b) of SEBI Act for the aforesaid alleged violations.

4. The allegations levelled against the Noticee in the SCN are summarized as follows:-

5. Hubtown Limited was in the business of real estate development across Mumbai, Thane, Pune, Bangalore, and 4 cities in Gujarat. The registered office of the company was at Plaza Panchsheel, A Wing, 5th floor, 501 Hughes Road, Grant Road (West), Mumbai - 400007. The company was listed on BSE and NSE.

6. The details of management of the company during the investigation period were as under:

7. Table 1 (Source: MCA)

S.No.	Name	Designation	Initial Date of Appointment	Date of Cessation
1	Hemant Mahipatray Shah	Executive Director, Chairperson	01-Jan-12	N.A
2	Abhijit Datta	Independent Director	07-Nov-12	N.A
3	Sunil Chandrakant Shah	Independent Director	14-Aug-14	N.A.
4	Priti Kamlesh Shah	Independent Director	14-Aug-14	N.A
5	Shailesh Ghisulal Hingarh	Independent Director	22-Mar-18	01-Mar-19
6	Vyomesh Mahipatray Shah	Executive (Managing) Director	30-Nov-06	N.A

8. Shailesh Hingarh was an independent director in the company from March 22, 2018 till March 01, 2019.

9. From the trading details of Shailesh Hingarh/the Noticee in the scrip of Hubtown Ltd., it was observed that the Noticee had traded in the scrip of Hubtown Ltd., during his tenure as Independent Director in the company. Following are the details of such trades:-

(Source: NSE and BSE trade logs)

	Date of transaction	Name of TM	Buy Qty.	Sell Qty.	Avg. Buy Price (Rs.)	Avg. Sell Price (Rs.)	Buy Value (Rs.)	Sell Value (Rs.)
Pre-UPSI (10/05/2018 - 09/08/2018)	11/06/2018	Ashika Stock Broking Ltd.	-	86000	-	60.00	-	51,60,243
	22/06/2018	Motilal Oswal Financial Services Ltd.	-	6960	-	71.81	-	4,99,813
UPSI Period (10/08/2018 - 14/11/2018)	11/10/2018	Motilal Oswal Financial Services Ltd.	-	1040	-	40.1	-	42,596
Post-UPSI (15/11/2018 - 15/02/2019)	-	-	-	-	-	-	-	-

<u>Incorrect Initial Disclosure under Reg. 7(1)(b) of SEBI PIT Regulations</u>

10. From the demat account statement of the Noticee, the following off-market transactions were observed between Noticee and Ashika Credit Capital Ltd.("ACCL"):

(Source: CDSL Transaction Statement of 1203450000744353)

Date of transfer	BO Name	Counter-party Name-ACCL (1203450000771780)	Type of transaction	Number of shares of Hubtown
29/12/2017	Shailesh Hingarh (1203450000744353)	ACCL (1203450000771780)	Debit	70000
15/03/2018			Credit	2500
16/03/2018			Debit	2500
21/03/2018			Debit	11000
	Net Debit shares			81000

11. ACCL vide email dated February 19, 2021 submitted that the Noticee was loan client of Ashika Credit Capital Ltd during the FY 2017-18 & 2018-19 and the shares were given by Noticee to ACCL as security against loan provided to him.

12. ACCL vide email dated March 05, 2021 confirmed that as on March 21, 2018, 81000 shares of Hubtown Ltd. were held as collateral against loan given to Noticee by ACCL. The said shares of Hubtown were transferred back by ACCL to Noticee on June 12, 2018, for delivery of the same against the trades executed by Noticee on June 11, 2018.

13. The Noticee was appointed as Independent Director of Hubtown on March 22, 2018. Hence, it could be inferred that Shailesh Hingarh was the beneficial owner of the 81000 shares of Hubtown when he was appointed as an Independent Director in Hubtown Ltd on March 22, 2018.

14. As per Hubtown's reply dated February 16, 2021, Noticee had disclosed 'Nil' holding in the shares of Hubtown Ltd in the initial disclosure, dated Mach 21, 2018, made to the company in terms of Regulation 7(1)(b) of SEBI PIT Regulations, 2015.

15. Regulation 7(1) (b) of SEBI PIT Regulations, 2015 provides that:

7. (1) Initial Disclosures.

(b). Every person on appointment as a key managerial personnel or a director of the company or upon becoming a promoter shall disclose his holding of securities of the company as on the date of appointment or becoming a promoter, to the company within seven days of such appointment or becoming a promoter.

16. Hence, by disclosing incorrect holding of the shares of Hubtown Ltd. at the time of his appointment as Independent Director, the Noticee was alleged to have violated Regulation 7(1)(b) of SEBI Regulations, 2015.

17. With regard to the sale of shares of Hubtown Ltd. on June 11, 2018 and June 22, 2018, Noticee in his reply dated February 10, 2021 submitted that such sales were on account of margin call by Brokers.

18. As per the trading details of the Noticee, sale of 86000 shares of the company was made from his trading account with Ashika Stock Broking Ltd. ("ASBL") on June 11, 2018. As submitted by ASBL in email dated Feb 15, 2021, ACCL was a registered NBFC, Noticee was a client of ACCL and had availed loan facility from it. Further, in lieu thereof, the shares as bought in Shailesh Hingarh account were transferred to ACCL by him as collateral towards facilitation of erstwhile credit facility. As per email dated February 18, 2021 of ASBL (Annexure – 4 to SCN), trades in the account of Shailesh Hingarh on June 11, 2018 and in the scrip of Hubtown Ltd. were executed on the instruction of the Noticee from his mobile (i.e. 9820147213). However, no supporting recordings/ transcripts is available regarding placing of such order with ASBL.

19. As per the demat transaction statement of the Noticee (BO ID 12010900-09717123), 86000 shares were transferred via off-market from the demat account of ACCL to the said demat account of the Noticee on June 12, 2018 and were then transferred to the demat account of ASBL for Early pay-in towards delivery of trades executed by the Noticee on June 11, 2018.

20. ACCL submitted in email dated Feb 19, 2021 that Shailesh Hingarh was loan client of Ashika Credit Capital Ltd during the FY 2017-18 & 2018-19 and the shares were given by Noticee to ACCL as security against loan provided to him. Taking into consideration the submissions of ACCL and ASBL, it is inferred that the Noticee was the beneficiary owner of such shares and took the decision regarding the selling of such shares.

21. As per trading details of the Noticee, sale of 6,960 shares of the company was made from his trading account with Motilal Oswal Financial Services Ltd. ("MOFSL") on June 22, 2018. MOFSL vide email dated February 16, 2021

informed SEBI that 6,960 shares of Hubtown Ltd., worth approximately Rs. 5 lakh, from the account of Noticee were sold on June 22, 2018 to clear the ageing debit balance of Noticee and that intimation regarding the same was sent to the Noticee one day prior to sell.

22. Overall, Noticee had sold shares worth Rs. 56.6 lakh of Hubtown Ltd. during March-June 2018 quarter and such trades were required to be disclosed by Noticee to Hubtown Ltd. in terms of Regulation 7 (2) (a) of SEBI PIT Regulations, 2015.

23. The company vide letter dated February 06, 2021 submitted that Noticee during his tenure as Independent Director in the company, had not made any disclosures to the company regarding his transactions in the scrip of the company. Thus, though total sale value of Noticee in the quarter June 2018-Sept 2018, exceeded Rs. 10 lakh, Noticee failed to make any disclosure to the company regarding the same.

Regulation 7 (2) (a) of PIT Regulations provides that:

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;

24. Hence, by not making disclosures regarding the aforesaid sales to the company while being a director, Shailesh Hingarh has violated Regulation 7(2) (a) of PIT Regulations.

25. The SCN was served upon the Noticee by e-mail on 10.12.2021 and by SPAD on 13.12.2021.

26. Vide reply dated 24.01.2022 the Noticee stated the following:-

a) Noticee had orally informed the company secretary of the company Hubtown Limited regarding his holding of the shares in Hubtown Limited at the time of his appointment as the director of the company. However, the same was inadvertently missed to be disclosed by the company within the required period as per Regulation 7(1){b) of the SEBI PIT Regulations, 2015.

b) Noticee has been a director in many other companies including listed companies since 1992, however, no such violation has occurred in any of those companies till now. The Noticee has always been vigilant enough about disclosing his holding upfront to the company as and when required.

c) Noticee is himself surprised and shocked on receipt of this SCN with respect to the violation of Regulation 7(1) regarding initial disclosures since he had informed the company regarding his holding.

d) Vide e-mail to SEBI dated 27.03.2021 Noticee clarified his position that he had informed the company about his holding and had pledged the shares since being the director of the company, the Noticee did not want to trade in those shares.

e) With regard to the sale of 86,000 shares on 11th June 2018, the Noticee states that those shares were sold by the broker Ashika Stock broking Ltd. ("ASBL") due to margin shortfall in the account of the Noticee. ASBL had informed the Noticee regarding squaring off shares of six different scrips including Hubtown Limited vide email dated 11.06.2018. The Noticee states that the statement given by ASBL (Annexure 4 to the SCN) is thus false and incorrect.

f) With regard to the sale of 6960 shares of the company in trading account of the Noticee held with Motilal Oswal Financial Services Ltd. ("MOSFL") on 22nd June 2018, the Noticee states that the shares were sold by the broker to clear the ageing debit balance in the account of the Noticee. This fact was substantiated vide MOSFL's email dated 16th February 2021 (Annexure 5 to SCN) to SEBI wherein it mentioned that the shares were sold by MOSFL to clear the ageing debit balance. Annexure 5 to the SCN clearly shows the debit balance as on 22.06.2018.

g) There was no intention of the Noticee to trade in the shares of Hubtown Limited and that his shares were sold by the brokers, on both the occasions, to clear the ageing debit in his account.

h) Noticee in fact made a loss while dealing in the scrip of Hubtown Limited. The Noticee accounted for the loss made in Hubtown Limited scrip in the income tax returns filed by him for that year. Hereto annexed and marked as Annexure "D" to reply were copies of the income tax returns filed by the Noticee for the assessment year 2019-2020. No benefit has been attributed to the Noticee on account of such inadvertent non-disclosure

i) The alleged violations are technical in nature.

j) Noticee relies upon the Hon'ble Adjudication Officer's (AO) order dated 22.12.2021 in Mr. Patil Basavaraj Mallikarjun in the matter of *Titan Company Limited* wherein the Hon 'ble AO has considered the factors under Section 15J has levied a penalty of Rs. 1 lac only. The Noticee also relies upon Hon'ble Securities Appellate Tribunal's order wherein Hon'ble SAT has reduced the penalty amount citing reasons that the violations were in technical in nature and that no disproportionate gain or unfair advantage has been attributed to the Noticee.

27. Vide Hearing Notice dated 10.03.2022 the Noticee was granted an opportunity of hearing by videoconferencing through WebEx on 07.04.2022. During the hearing, Ms. Hiral Shah, Advocate and Authorised Representative of the Noticee ("AR"), reiterated the submissions made by the Noticees in its reply dated 24.01.2022.

28. In the light of the allegations contained in the SCN and relevant material available on record, I hereby proceed to decide the case on merits.

CONSIDERATION OF ISSUES AND FINDINGS

1. The issues arising for consideration in the instant proceedings before me are:-
   - **I.** Whether the provisions of Regulation 7 (1) (b) and 7 (1) (a) of the PIT Regulations were violated by the Noticee?
   - **II.** If yes, whether the Noticee is liable for imposition of monetary penalty under Section 15A (b) of the SEBI Act?
   - **III.** If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

I. Whether the provisions of Regulation 7 (1) (b) and 7 (1) (a) of the PIT Regulations were violated by the Noticee

2. It is alleged that on the date of his appointment as independent director of the Company on 22.03.2018, the Noticee held 81000 shares of the Company. However, he did not disclose to the Company the shares of Hubtown held by him as on the date of his appointment as independent director i.e. key managerial personnel on 22.03.2018 as mandated in regulation 7 (1) (b) of the PIT Regulations. The applicable legal provision in Regulation 7 (1) (b) of the PIT Regulations states - "*Every person on appointment as a key managerial personnel or a director of the company or upon becoming a promoter shall disclose his holding of securities of the company as on the date of appointment or becoming a promoter, to the company within seven days of such appointment or becoming a promoter.*"

3. The Noticee has submitted that he had orally informed the Company Secretary of Hubtown but he had inadvertently omitted to disclose the same to the

Company as stipulated in Regulation 7 (1) (b) of the PIT Regulations. In view of the admission of the Noticee, I find that the allegation of violation of Regulation 7 (1) (b) of the PIT Regulations stands established.

4. It is further alleged that between March-June 2018 the Noticee sold Hubtown shares worth a total of Rs. 56.60 lakh without disclosing to Hubtown the number of shares thus disposed even though they aggregated to a traded value of more than ten lakh rupees, as required by Regulation 7 (2) (a) of the PIT Regulations. The said Regulation states – "*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;*".

5. The Noticee sold 86000 shares of Hubtown through his trading account with the broker Ashika Stock Broking Ltd. ("ASBL") on 11.06.2018, for which 86000 shares were transferred from the demat account of Ashika Credit Capital Ltd, an NBFC from which the Noticee had taken a loan and deposited shares of Hubtown as collateral, to the Noticee's demat account and then that of ASBL on 12.06.2018 for utilisation as early pay-in towards delivery for trades carried out by the Noticee. It is further alleged that on 22.06.2018 as well 6860 shares of Hubtown belonging to the Noticee were sold from the Noticee's trading account with broker Motilal Oswal Financial Services Ltd. ("MOFSL")

6. The Noticee has submitted that he had pledged his shareholding in Hubtown with ACCL as he did not want to trade in the same, but that the shares still got sold due to margin shortfall and the brokers did not wait for his approval. From Annexure C to the Noticee's reply dated 24.01.2022 I note that vide e-mail dated 11.06.2018 the Noticee had been informed by his broker regarding sale of 86000 shares of Hubtown due to margin shortfall in his LAS account. As on 11.06.2018 the traded value of sale of 86000 shares of Hubtown from the

Noticee's trading account was Rs. 5160243.85. Thus, the sale trade carried out in the trading account of the Noticee on 11.06.2018 and intimated to him on the same date by his broker triggered the disclosure requirement in Regulation 7 (2) (a) in respect of the Noticee as the traded value exceeded ten lakh rupees. In the present factual context, the Noticee cannot claim to be unaware of the transaction which took place in his trading account and involving sale of shares of which he was the beneficial owner. As director of the Company, the Noticee was obliged to disclose to the Company the number of shares of the Company acquired or disposed of by the Noticee if they exceeded Rs. 10,00,000 in traded value aggregated over a quarter. Disposal of 86000 shares of the Noticee from his trading account aggregating to traded value of approximately Rs. 51,60,243 certainly warranted disclosure in terms of Regulation 7 (2) (a) of the PIT Regulations.

7. In view of the above, I find that the allegation levelled against the Noticee regarding violation of Regulation Regulation 7 (2) (a) of the PIT Regulations stands established.

II. If yes, whether the Noticee is liable for imposition of monetary penalty under Section 15A (b) of the SEBI Act?

III. If yes, what would be the monetary penalty that can be imposed upon the respective Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

8. As it has been established that the Noticee has violated Regulation 7 (1) (b) and 7 (2) (a) of the PIT Regulations, he is liable for imposition of monetary penalty under Section 15A (b) of the SEBI Act.

9. Section 15A (b) of the SEBI Act read as follows:-

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 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 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;

10. While determining the quantum of penalty under Section 15A (b) of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:

    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.

11. I note that no disproportionate gain or unfair advantage is alleged to have accrued to the Noticee on account of failure to disclose his shareholding on the date of his appointment, or on account of failure to disclose disposal of shares to the Company as director. Loss to investors on account of such failure to disclose shareholding or number of shares of the Company sold as director of the Company has also not been quantified. I take into account that the disclosure requirement under Regulation 7 (2) (a) of the PIT Regulations was triggered on account of need to meet margin requirement by the Noticee's broker, though the Noticee was aware of the transaction.

12. Taking into account the above, I am of the view that a penalty of Rs. 2,00,000/- (Two lakhs only) payable by the Noticee under Section 15A (b) of the SEBI Act will be commensurate with the violations committed by the Noticee.

ORDER

13. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15 I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 2,00,000/- (Rupees two lakhs only) under Section 15A (b) of the SEBI Act payable by Noticee for violation of Regulations 7 (1) (b) and 7 (2) (a) of the PIT Regulations.

14. 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 favour 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

15. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – 4 of SEBI.

16. The Noticee shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity (Noticee)
b) Name of the case / matter
c) Purpose of Payment – Payment of penalty under AO proceedings
d) Bank Name and Account Number

e) Transaction Number

17. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: JUNE 30, 2022

PLACE: MUMBAI

MANINDER CHEEMA

Digitally signed by MANINDER CHEEMA
Date: 2022.06.30 16:49:54 +05'30'

MANINDER CHEEMA

ADJUDICATING OFFICER