

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SM/HG/2022-23/20802]

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. Subbarayan Selvaraj
[PAN: AMFPS6827E]

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 Bombay Stock Exchange Limited (**BSE**) and the National Stock Exchange of India Ltd (**NSE**) (both collectively called 'exchanges').
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 / designated persons of TCL including Mr. Subbarayan Selvaraj (hereinafter referred to as '**Noticee/by name**'). Pursuant to investigation, 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.

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 aforesaid alleged violation by Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A show-cause notice dated August 09, 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) of SEBI Act for the aforesaid violation 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:

Name of Noticee	Total Traded Value (BSE+NSE) (in Rs.)		No. of occasions on which traded value exceeded Rs. 10 lakh
	Apr – June 2018	Oct – Dec 2018	
Mr. Subbarayan Selvaraj	16,34,625	97,09,050	7

- b) It was observed from the table above that in the calendar quarters ending on June 2018 and December 2018, the total traded value of the securities traded by Noticee in the scrip of Titan was Rs 16,34,625/- and Rs. 97,09,050/- respectively. It was also observed that on 7 occasions in the aforesaid calendar quarters, Noticee's traded value of securities exceeded rupees ten lakhs.

Therefore, for the aforesaid transactions, which were in excess of the limit specified in Regulation 7(2)(a) of PIT Regulations, Noticee was required to make disclosure in terms of the aforesaid regulation. In this regard, in reply to a query by SEBI, TCL vide email dated October 28, 2020, confirmed that it had not received any disclosures from Noticee.

c) In view of the above observations, it was alleged that Noticee has violated Regulation 7(2)(a) of PIT Regulations on 7 occasions by not making disclosures as required in terms of aforesaid regulation.

6. The SCN was sent to Noticee through Speed Post Acknowledgement due (herein after referred to as '**SPAD**') on August 09, 2021, and digitally signed email dated August 12, 2021 and was duly served on Noticee. Noticee was given fourteen (14) days' time to make his submissions in respect of the allegations made in the SCN. Vide letter dated August 31, 2021, Noticee submitted his reply to the SCN.

7. Thereafter, in the interest of natural justice, vide hearing notice dated September 07, 2022, Noticee was granted an opportunity of personal hearing before the undersigned on September 19, 2022. The aforesaid hearing notice was sent to Noticee through SPAD and also through digitally signed email and was duly served upon him. Authorized representative of Noticee (herein after referred to as '**AR**') appeared for hearing on the scheduled date and requested for an adjournment of hearing. The request was acceded and the date of personal hearing was rescheduled to October 07, 2022. Vide letter dated October 06, 2022, Noticee submitted his detailed reply to the SCN. AR appeared for hearing on the scheduled date and reiterated the submissions by Noticee vide his earlier letter dated October 06, 2022. Further, during the hearing, Noticee requested for time till October 10, 2022 for submitting additional reply. Due to difficulties in view of the Covid-19 pandemic, hearing was conducted through video conferencing.

8. The submissions by Noticee are summarized hereunder:-

- a. He was working as a senior master technician in workman category in the New Product Development Department in Titan.
- b. He was not having company email id and all the information about the company will be disseminated to workman like him by way of displaying it

in the notice board. Similarly, TCL code of conduct (herein after referred to as 'TCoC') has been circulated only to employees having company email id and it was not displayed in notice board as well as not provided to him.

- c. The company has made a distinction between 'employees' – as those who carry on desk work, are provided with company email ids and are located in the offices of the company who are likely to have access to 'Unpublished Price Sensitive Information' (herein after referred to as 'UPSI') as against 'workman' who are employed in the factory of the company and by no stretch of imagination can have any access to UPSI.
- d. He was only a workman and has not been provided with the TCoC has no means of knowing the requirements under TCoC and cannot be expected to make disclosures under the provision of Regulation 7(2)(a) of PIT Regulations.
- e. He has submitted the judgement of the Hon'ble Supreme Court of India in *Securities and Exchange board of india Vs Abhijit Rajan* (Civil Appeal No. 563 of 2020 dated September 19, 2022) which *inter alia* analyses the expressions under in PIT Regulations.

Non-applicability of Regulation 7(2)(a) of PIT Regulations

- f. He has traded in the segment of 'Options' and 'Futures' during the period May 2018 to October 2018 and he had incurred losses on these trades.
- g. As per the provisions of Regulation 7(2)(a) of PIT Regulations, *"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."*
- h. He was a workman and not an employee of the company to whom company did not deem fit to communicate the TCoC. Therefore, the said provision for disclosure is not applicable to him.

Beneficial interpretation of the amendment to Regulation 7(2)(a) of PIT Regulations

- i. SEBI by notification dated December 31, 2018 had with effect from April 1, 2019 deleted the word “employee” in Regulation 7(2)(a) of PIT Regulations and substituted it with words “designated person”, thereby requiring only those persons who are “designated person” under the PIT Regulations to make disclosures if their “traded” “value” in “securities” exceeds Rs. 10 lakhs. Given that SEBI has itself amended the regulation 7(2)(a), and since the SCN was issued only in the year 2021, which is much after the date of amendment and since Noticee is not a “designated person” in the company, he should be provided a beneficial interpretation of the amendment

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

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:

- I. Whether Noticee has violated Regulation 7(2)(a) of PIT Regulations?
- II. Does the violation, if any, attract monetary penalty under Section 15A(b) of SEBI Act?
- III. 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;

Issue No. I- Whether Noticee has violated Regulation 7(2)(a) of PIT Regulations?

11. I note from the available records that Noticee had transacted in securities of Titan as seen from the details extracted from the trade log obtained from exchanges, which are given below: -

Date	Segment	Buy Qty	Buy Value/Sum of Notional Day Buy Value (Rs.)	Sell Qty	Sell Value/Sum of Notional Day Sell Value (Rs.)	Gross Value/Gross Notional Value (Notional Day Buy Value + Notional Day Sell Value) (Rs.)	Cumulative Value (Rs.)
02-05-18	OPTSTK	750	8,16,525	-	-	8,16,525	8,16,525
09-05-18	OPTSTK	-	-	750	8,18,100	8,18,100	16,34,625
Total		750	8,16,525	750	8,18,100	16,34,625	
12-10-18	OPTSTK	750	6,22,500	-	-	6,22,500	6,22,500
15-10-18	OPTSTK	-	-	750	6,24,000	6,24,000	12,46,500
24-10-18	FUTSTK	750	5,95,125	750	5,86,125	11,81,250	11,81,250
25-10-18	FUTSTK	1,500	11,71,500	1,500	11,76,000	23,47,500	35,28,750
26-10-18	FUTSTK	1,500	12,26,625	1,500	12,28,425	24,55,050	59,83,800
29-10-18	FUTSTK	750	6,12,750	750	6,14,250	12,27,000	72,10,800
30-10-18	FUTSTK	750	6,31,500	750	6,20,250	12,51,750	84,62,550
Total		6,000	48,60,000	6,000	48,49,050	97,09,050	

12. From the above table, I note that during the quarter ended June 2018, the value of trades by Noticee in the securities of Titan from May 02, 2018 to May 09, 2018, on a cumulative basis, amounted to Rs. 16,34,625/- on May 09, 2018. Further, I note that during the quarter ended December 2018, the value of trades by Noticee in

the securities of Titan from October 12, 2018 to October 15, 2018, on a cumulative basis, amounted to Rs. 12,46,500/- on October 15, 2018. I also note that the value of trades by Noticee in the securities of Titan on October 24, 2018, October 25, 2018, October 26, 2018, October 29, 2018 and October 30, 2018 amounted to Rs. 11,81,250/-, Rs. 23,47,500/-, Rs. 24,55,050/-, Rs. 12,27,000/- and Rs. 12,51,750/- respectively.

13. Therefore, from the aforesaid transactions, I observe that the value of total transactions by Noticee on each of the aforesaid seven occasions exceeded rupees ten lakhs.

14. I note that it has been alleged in the SCN, that abovementioned trading of Noticee as the employee of Titan, in calendar quarters ending on June 2018 and December 2018 had resulted in violation of Regulation 7(2)(a) of the PIT Regulations by Noticee. In this context, I find it pertinent to refer to Regulation 7(2)(a) of the PIT Regulations, as it stood during the relevant time, which is reproduced hereunder:

“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.”

15. In this regard, I note that the term “employee” in the aforementioned provision was substituted with “designated employee” by Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2018. I also note that the amendment came into effect from April 01, 2019. By virtue of the amendment, the obligation to make disclosures under Regulation 7(2)(a) of the PIT Regulations no longer lies on every employee of the company but is restricted to designated employees only. In this context, I find it pertinent to quote a recent decision of Hon’ble Securities Appellate Tribunal (hereinafter referred to as ‘SAT’) in *Sudhir Bapusaheb Devkar & Anr v SEBI* in the matter of (Date of

Decision: 10.10.2022, Appeal No. 654 of 2022; Appeal No. 655 of 2022); wherein Hon'ble SAT has held as under:

"In view of the aforesaid, coupled with the fact that no disproportionate gain or unfair advantage resulted to any party for the default committed by the appellants, coupled with the fact that no loss was caused to the investors, as a result of the aforesaid default, we are of the opinion that without going into the controversy as to whether the appellants had in fact acquired or disposed of the shares through intra-day trading and whether the appellants have in fact violated the provisions of Regulation 7(2)(a) of the PIT Regulations, and in view of the decision of the Hon'ble Supreme Court in Commissioner of Income Tax (supra), the amendment made in Regulation 7(2)(a) with effect from April 1, 2019 would apply retrospectively. We are of the opinion that the amendment was a beneficial piece of legislation and the benefit was conferred for the entire community as a whole. As such, even though the amendment came into effect from April 1, 2019, the amended provision would apply with retrospective effect to the transactions made by the appellants."

16. From the above, I note that Hon'ble SAT in its aforementioned decision has laid down that amendment to Regulation 7(2)(a) of PIT Regulations which came into effect on April 1, 2019, would apply with retrospective effect i.e. benefit of amendment would go to "employees" for the trades done by them prior to amendment. Considering the principle laid down in the aforementioned judgment and the fact that Noticee was not designated employee of the company at the time of impugned trades, I find that for his trades done in calendar quarters ending on June 2018 and December 2018, Noticee would not be liable for violation of Regulation 7(2)(a) of the PIT Regulations. Therefore, I find allegation in SCN that Noticee has violated Regulation 7(2)(a) of the PIT Regulations does not stand established.

17. Since the alleged violation against Noticee is not established, I find that the Issues No. II and III requires no further consideration.

ORDER

18. Accordingly, taking into account the aforesaid findings and in exercise of powers conferred upon me under Section 15-I of SEBI Act read with Rule 5 of the Adjudication Rules, the Adjudication proceedings against Noticee i.e. Mr. Subbarayan Selvaraj, initiated vide SCN dated August 09, 2021, stands disposed of without imposition of any penalty.

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

Place: Mumbai

Date: October 28, 2022

**SOMA MAJUMDER
ADJUDICATING OFFICER**