BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/HG/2022-23/19456]

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. Rakesh Rai

[PAN: APIPR3883D]

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. Rakesh Rai (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**
	July-September 2018	**January – March 2019**	
Mr. Rakesh Rai	18,88,697	27,99,187	3

b) It was observed from the table above that in the calendar quarter ending on September 2018, the total traded value of the securities traded by Noticee in the scrip of Titan was Rs 18,88,697/- and in the calendar quarter ending on March 2019, the total traded value of the securities traded by Noticee in the scrip of Titan was Rs 27,99,187/-. It was also observed that on 3 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 3 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.

7. Thereafter, in the interest of natural justice, vide hearing notice dated October 21, 2021, Noticee was granted an opportunity of personal hearing before the undersigned on November 16, 2021 through video conferencing due to the difficulties in view of the Covid-19 pandemic. The aforesaid hearing notice was sent to Noticee through SPAD and also through digitally signed email and was duly served upon him. Vide email dated November 16, 2021, Noticee informed that due to health issue, he was unable to attend the hearing. Therefore, vide hearing notice dated December 09, 2021, Noticee was granted another opportunity of personal hearing before the undersigned on January 04, 2022 through video conferencing. Vide email dated January 02, 2022, Noticee informed that he was unable to attend the hearing due to some medical emergency. Therefore, vide email dated February

03, 2022, another opportunity of personal hearing before the undersigned was granted to the Noticee on February 17, 2022. However, Noticee has failed to avail the opportunity of personal hearing. Thereafter, vide email dated July 19, 2022, a final opportunity of personal hearing before the undersigned was granted to the Noticee on August 03, 2022 through video conferencing. However, vide email dated August 03, 2022, Noticee has informed that he was unable to attend the hearing. Therefore, vide email dated August 25, 2022, Noticee was granted one more opportunity of personal hearing before the undersigned on September 08, 2022 through video conferencing. However, Noticee failed to appear for this hearing also. Vide emails dated August 03, 2022 and August 25, 2022, Noticee submitted his replies to SCN.

8. The submission by Noticee are summarized hereunder: -

   a. Noticee is no more employee of the Titan Company.
   b. Noticee incurred losses out of these trades
   c. Noticee has paid all taxes and other payments to government as per law and he has not violated any law.

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:

<u>Relevant provisions of PIT Regulations:</u>

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;

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

11. I note from the available records that Noticee was one of the employees of Titan at the relevant time. While in employment of Titan, 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 + Notiona Day Sell Value) (Rs.)	Cumulative Value (Rs.)
25-07-18	Cash	100	86,517	-	-	86,517	86,517
27-07-18	Cash	-	-	100	87,641	87,641	1,74,158
30-07-18	Cash	50	44,450	-	-	44,450	2,18,608
31-07-18	Cash	-	-	50	45,653	45,653	2,64,260
02-08-18	Cash	100	92,800	-	-	92,800	3,57,060

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 + Notiona Day Sell Value) (Rs.)	Cumulative Value (Rs.)
17-08-18	Cash	-	-	95	89,485	89,485	4,46,545
20-08-18	Cash	100	92,325	-	-	92,325	5,38,870
27-08-18	Cash	500	4,47,472	-	-	4,47,472	9,86,342
31-08-18	Cash	-	-	500	4,42,238	4,42,238	14,28,580
04-09-18	Cash	200	1,80,711	-	-	1,80,711	16,09,291
19-09-18	Cash	-	-	200	1,62,860	1,62,860	17,72,151
Total		**1,050**	**9,44,274**	**945**	**8,27,877**	**17,72,151**	
07-01-19	Cash	-	-	100	95,400	95,400	95,400
01-02-19	OPTSTK	750	7,98,150	-	-	7,98,150	8,93,550
04-02-19	OPTSTK	-	-	750	8,00,550	8,00,550	16,94,100
13-03-19	Cash	10	10,880	-	-	10,880	17,04,980
14-03-19	Cash	50	53,550	-	-	53,550	17,58,530
15-03-19	Cash	-	-	50	54,148	54,148	18,12,678
16-03-19	OPTSTK	750	7,51,350	-	-	7,51,350	25,64,028
23-03-19	Cash	-	-	10	11,221	11,221	25,75,248
30-03-19	Cash	100	1,11,439	100	1,12,500	2,23,939	27,99,187
Total		**1,660**	**17,25,369**	**1,010**	**10,73,818**	**27,99,187**	

12. From the above table, I note that during the quarter ended September 2018, the value of trades by Noticee in the securities of Titan from July 25, 2018 to August 31, 2018, on a cumulative basis, amounted to Rs. 14,28,580/- on August 31, 2018. Further, I note that during the quarter ended March 2019, the value of trades by Noticee in the securities of Titan from January 07, 2019 to February 04, 2019, on a cumulative basis, amounted to Rs. 16,94,100/- on February 04, 2019 and the value of trades by Noticee in the securities of Titan from March 13, 2019 to March 30, 2019, on a cumulative basis, amounted to Rs. 11,05,087/- on March 30, 2019.

Therefore, from the aforesaid transactions, I observe that the value of total transactions by Noticee on each of the aforesaid three occasions exceeded rupees ten lakhs. I observe that for the quarter ended September 2018, the cumulative traded value as mentioned in SCN differs slightly from the details of his trades as depicted in trading details extracted from the trade log obtained from exchanges, which has also been provided to Noticee as an annexure to the SCN. However, 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. In any case, I note that his transactions on each of the aforesaid three occassions exceeded rupees ten lakhs.

13. In terms of the Regulation 7(2)(a) of PIT Regulations, Noticee, being an employee of the company, was required to make disclosures to Titan, for each 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 above transactions. Further, from the available records, I note that Titan vide email dated October 28, 2020, has confirmed that it had not received any disclosures from Noticee.

14. In his reply, Noticee has contended that he is no more employee of the Titan Company and he has incurred losses out of these trades. Noticee also stated that he has paid all taxes and other payments to government as per law and he has not violated any law. I find that these submissions by Noticee are not relevant to the allegations of his failure to make requisite disclosures in terms of Regulation 7(2)(a) of PIT Regulations. Therefore, I am not inclined to consider this contention of Noticee.

15. In view of the above, I conclude that the allegation that Noticee has violated Regulation 7(2)(a) of PIT Regulations on three (3) occasions, stands established.

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

16. 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."*

17. 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..….".*

18. Therefore, in view of the above judgments and considering that Noticee violated Regulation 7(2)(a) of PIT Regulations, as established in the foregoing paragraphs, I find that Noticee would be liable for monetary penalty under Section 15A (b) of the SEBI Act. The text of Section 15A(b) of the SEBI Act is reproduced below:

<u>SEBI Act</u>

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;

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

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

SEBI Act

Factors to be taken into account by the adjudicating officer.

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

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of 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 of an adjudicating officer 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.*

20. 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.

21. 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. Further, I find that Noticee has violated the provisions of Regulation 7(2)(a) of PIT Regulations on three (3) occasions.

ORDER

22. 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) on Noticee i.e. Mr. Rakesh Rai, under the provisions of Section 15A(b) of SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee.

23. 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.

24. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - I, Securities and Exchange

Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

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

25. 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.

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

Place: Mumbai **SOMA MAJUMDER**

Date: September 20, 2022 **ADJUDICATING OFFICER**