BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[**ADJUDICATION ORDER NO. Order/SM/AR/2020-21/10748]**

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

In respect of:

Mr. Simon Thomas Inchody
(PAN No: AAAPII462J)
Inchody House, Sampada Hospital Road
Masoba Maidan, Kalyan (W)
Mumbai-421304

A – 2101, Runwal Pride, Behind 'R' Mall
L.B.S Marg, Mulund (West)
Mumbai – 400 080

In the matter of
Kokuyo Camlin Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') examined the trading of Mr. Simon Thomas Inchody (hereinafter referred to as **'Noticee'**) in the scrip of Kokuyo Camlin Limited (hereinafter referred to as '**KCL' / 'Company**') during the period January 01, 2013 to December 31, 2013 (hereinafter referred to as the '**examination period'**). The scrip price of KCL witnessed downward movement from Rs.60 to Rs.45 during the examination period. During the above referred examination period, the Noticee was

employed with KCL as its Chief Operating Officer, R & D (hereinafter referred to as '**COO**'). It was mentioned by the company that Noticee was also a 'Designated Employee' within the meaning of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereafter referred to as '**PIT Regulations'**). Further, the company mentioned that the Noticee had retired from its services w.e.f March 25, 2014.

2. On receipt of a reference dated January 6, 2014 from the company wherein it was mentioned that the Noticee sold 4,824 shares of the company during the Trading Window closure period, Integrated Surveillance Department, SEBI ('**ISD**') carried out an examination into the trades in the scrip of KCL and more particularly, w.r.t the transactions executed by the Noticee in the scrip of KCL during the examination period. Pursuant to the same, an examination report was also submitted by ISD in the matter. Specifically, the following observations were made by ISD during the examination:-

   (a) The Noticee sold the shares of the company on two occasions during the examination period when in possession of Unpublished Price Sensitive Information (hereinafter referred to as '**UPSI**') pertaining to the financial results announced by the company for the financial quarters ended December 2012 and September 2013. Therefore, it was alleged that Noticee sold the shares of the company on the two occasions when in possession of the UPSI.

   (b) The Noticee traded in the shares of the Company during the period October 29 – October 30, 2013 when the trading window of the company was closed for its employees. It was further mentioned that Noticee traded in the scrip of the company during the above referred period without taking any pre-clearance from the company.

   (c) The examination report also mentioned that Noticee failed to comply with the disclosure requirements prescribed under the PIT Regulations in respect of the trades executed by him in the scrip of the company during the examination period.

3. In view of the above observations, it is alleged that Noticee has violated the provisions of Regulation 3 (i), clauses 3.2-2 & 3.2- 5 of Schedule I of Regulation

12 (1) and Regulation 13(4) r/w Regulation 13(5) of the PIT Regulations. Therefore, adjudication proceedings have been initiated against the Noticee under the provisions of sections 15 A (b), 15 G and 15 HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**).

APPOINTMENT OF ADJUDICATING OFFICER

4. Shri D Ravikumar was appointed as the Adjudicating Officer ('**AO'**) vide an Order dated April 21, 2014 under Section 15 I of the SEBI Act read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) to inquire into and adjudge the alleged violation of the provisions of Regulation 3(i), Clauses 3.2-2 & 3.2-5 of Schedule I under Regulation 12(1) and Regulation 13(4) read with Regulation 13(5) of the PIT Regulations by the Noticee. Pursuant to the transfer of Shri D Ravikumar, the undersigned has been appointed as the AO in the matter, vide communiques dated June 22, 2015 and March 29, 2016.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice ref. A&E/EAD-3/DRK-DS/22660/2014 dated July 31, 2014 (hereinafter referred to as **'SCN'**) was initially issued to the Noticee in terms of Rule 4 of the Adjudication Rules requiring the Noticee to show cause as to why an inquiry should not be held against him and why penalty, if any, should not be imposed on the Noticee under the provisions of sections 15 A (b) & 15 G of the SEBI Act. Subsequently, in view of certain modification made in the order appointing the AO, a supplementary SCN ref. A&E/EAD-3/SBM-VB/10170/2016 dated April 04, 2016 was issued to the Noticee requiring him to show cause as to why an inquiry should not be held against him and why penalty, if any, should not be imposed on the Noticee under the provisions of sections 15A(b), 15G and also section 15HB of the SEBI Act. It is observed that the SCNs were served on the Noticee as per the postal records. The SCNs, inter-alia, alleged the following :-

a) It is alleged that the Noticee who was employed with the company as its Chief Operating Officer (COO) during the relevant examination period sold the shares of the company on two occasions viz. he sold 4,500 shares on January 22, 2013 i.e prior to the announcement of the quarterly financial results of the company for the quarter ended December 2012 and later on, the Noticee sold 4,824 shares of the company during the period October 29-30, 2013, when the trading window was closed by the company for its employees in lieu of the financial results announced by the company for the quarter ended September 2013.

b) It is mentioned in the SCN that the trading window of the company was closed for its employees for the period January 25, 2013 to February 2, 2013 & also from October 25, 2013 to November 2, 2013.

c) It is alleged that the Noticee who was a 'designated employee' within the meaning of PIT Regulations sold the shares of the company on the two occasions mentioned above when in possession of the unpublished price sensitive information pertaining to the financial results of the company for the quarters ended December 2012 & September 2013. Therefore, it is alleged that the Noticee has violated Regulation 3(i) of the PIT Regulations. It is further alleged that as a result of the sale of the aforesaid shares, the Noticee made a net profit of Rs.9,039/-.

d) It is alleged that Noticee had traded in the scrip of the company during October 29-30, 2013 without taking any pre-clearance for the trades, which is in violation of clauses 3.2-2 & 3.2-5 of Schedule I under Regulation 12(1) of PIT Regulations.

e) It is alleged that Noticee sold 12,715 shares of the company for a total value of Rs.5,08,790 during the examination period. It is alleged that the Noticee did not make any disclosure with respect to the said sale of shares which resulted in violation of Regulation 13(4) r/w Regulation 13(5) of the PIT Regulations as the transactions of the Noticee during the examination period exceeded Rs 5 lakh in value.

6. In the interest of natural justice, Noticee was provided with opportunities of personal hearing in the matter on March 3, 2015, June 30, 2015, August 07, 2015, May 05, 2016 and September 29, 2016. The above notices confirming the hearing dates were sent to the address of the Noticee available as per records through RPAD/HDAD and as per postal confirmation on record, the letters/notices were served on the Noticee. Since there was no response from the Noticee to the SCNs and the hearing notices, the latest address of the Noticee was ascertained from the company. The company mentioned that the Noticee had retired from its services w.e.f March 2014 and the address of the Noticee available as per its records was the same where the SCNs/hearing notices were issued and served on the Noticee.

7. After prolonged correspondence with the Noticee, the reply from the Noticee was received on October 14, 2016 vide an email which was sent from his email ID simon.inchody@gmail.com. The Noticee submitted the following in his reply to the SCN:--

    a) Noticee mentioned that he was under the impression that the matter is closed until he received a call from Mr Damle (the company secretary of the company) some days back. Noticee mentioned that presently he is staying with his daughter after his retirement from the company and the letters/notices issued to him by SEBI were brought to his attention by the person who is currently living in the address (where the SCNs/hearing notices were sent by SEBI).
    b) Noticee mentioned that he sold 4800 shares of the company on 29th and 30th October 2013 at Rs 29.50. The total value of these shares were Rs 1. 416 lacs. Noticee mentioned that these shares were received by him from the company as a result of ESOP at a price of around Rs 26 per share.
    c) Noticee mentioned that the shares were sold by him at an impulse due to some urgent requirement of funds as he had booked a flat in October 2010 on the LBS Marg for Rs 124 lacs and he had to pay Rs 3.1 lacs every month and hence tapped this source as the builder would levy a penalty for delay in payment.

d) Noticee mentioned that after executing the sale transactions, the matter was brought to his notice by the company wherein the company issued a show cause notice for the violation of code of conduct and sought an explanation from him for executing the said sale transaction which was executed during the trading window closure period. Noticee mentioned that after obtaining his apology, the company closed the matter.

e) Noticee mentioned that he had not misused any information of the company to trade in the shares of the company. Noticee mentioned that the high and low of KCL's shares from 1st January 2013 to 25th January 2014 was Rs 49.7 and Rs 26.50. These shares were sold by him on 29th and 30th October 2013 at Rs 29.50 and the share price of the company as on 2nd November was Rs 31.25/Rs 30.20. Noticee reiterated that the share sale was wrongly done by him and he apologized for the same.

f) Noticee also enclosed the email communications that were exchanged between him and the compliance team of KCL during the relevant period wherein he had tendered his apology for the said act of sale of shares of the company executed by him.

8. From the reply of the Noticee, it is observed that he had not specifically indicated if he required a personal hearing in the matter. Therefore, keeping in mind the interest of natural justice, another opportunity of personal hearing was granted to the Noticee, vide email dated January 06, 2021, which was sent to Noticee's email ID at simon.inchody@gmail.com, i.e the same email ID from where he had initially submitted his reply to the SCN. Vide the said email, Noticee was clearly informed that a final opportunity of personal hearing is being granted to him in the matter on January 25, 2021. Noticee was also informed that in view of the difficulties faced by all concerned due to the Covid-19 Pandemic, the hearing proceedings would be conducted online through videoconferencing on the webex platform. It is observed that the Noticee neither appeared for the hearing on the stipulated date nor submitted his reply to the aforementioned email. In the instant proceeding, it is relevant to note that Noticee was provided with ample opportunities of hearing, which the Noticee failed to avail on various dates. Therefore, in view of the same and in line with the Adjudication Rules, I am compelled to proceed further in the matter on the

basis of facts and material on record and the submissions made by the Noticee vide his email dated October 14, 2016. In this context, it is also relevant to mention the contents of rule 4(7) of the Adjudication Rules, which is reproduced below:-

"If any person fails, neglects or refuses to appear as required by sub-rule(3) before the adjudicating officer, the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reason for doing so."

CONSIDERATION OF ISSUES AND FINDINGS

9. I have taken into consideration the facts and circumstances of the case and the material on record. I have also carefully perused the examination report, the violations alleged against the Noticee in the SCNs and also the submission of the Noticee.

10. The relevant provisions of the PIT Regulations allegedly violated by the Noticee are mentioned as under:-

"Prohibition on dealing, communicating or counselling on matters relating to insider trading.

3. *No insider shall—*

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or

Code of internal procedures and conduct for listed companies and other entities.

12. *(1) All listed companies and organizations associated with securities markets including:*

…

shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same.

***SCHEDULE I* - INSIDER TRADING FOR LISTED COMPANIES**

3.2 Trading window

…….

3.2.2 When the trading window is closed, the employees/directors shall not trade in the company's securities in such period.

3.2.3 The trading window shall be, inter alia, closed at the time:—

(a) Declaration of financial results (quarterly, half-yearly and annually).

(b) Declaration of dividends (interim and final).

(c) Issue of securities by way of public/rights/bonus etc.

(d) Any major expansion plans or execution of new projects.

(e) Amalgamation, mergers, takeovers and buy-back.

(f) Disposal of whole or substantially whole of the undertaking.

(g) Any changes in policies, plans or operations of the company.

…

3.2.5 All directors/officers/designated employees of the company shall conduct all their dealings in the securities of the Company only in a valid trading window and shall not deal in any transaction involving the purchase or sale of the company's securities during the periods when trading window is closed, as referred to in para 3.2.3 or during any other period as may be specified by the Company from time to time.

13. Disclosure of interest or holding in listed companies by certain persons – Continual Disclosure

(4) Any person who is a director or officer of a company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub-regulation and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(*5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of:*

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be."

11. The issues that arise for consideration and determination in the present matter are as under:-

a) Whether Noticee sold 4,500 shares & 4,824 shares of the company on January 22, 2013 and October 29 & 30, 2013 respectively when in possession of the UPSI pertaining to the declaration of the financial results of the company for the quarters ended December 2012 and September 2013 and whether in the process, Noticee has violated the provisions of Regulation 3 (i) of the PIT Regulations?

b) Whether Noticee sold the above shares during the period when the trading window of the company was closed for its employees and in the process, whether Noticee has violated the provisions of the code of conduct for prevention of insider trading prescribed under clauses 3.2-2 & 3.2-5 of Schedule I of Regulation 12(1) of the PIT Regulations?

c) Whether Noticee failed to obtain pre-clearance for his trades executed during October 29 & 30, 2013 and in the process, whether the Noticee has violated the provisions of the code of conduct prescribed under Regulation 12(1) of the PIT Regulations?

d) Whether Noticee sold 12,715 shares of the company worth Rs 5,08,790/- during the examination period and failed to make the necessary disclosures under Reg. 13(4) r/w Reg. 13(5) of the PIT Regulations as his traded value in the scrip during the examination period exceeded Rs 5 lacs in value?

e) Whether Noticee is liable for monetary penalty under the provisions of sections 15A(b), 15G and 15 HB of the SEBI Act for the aforementioned alleged violations?

f) If yes, what should be the quantum of penalty to be imposed on the Noticee?

<u>ISSUE 1</u>: Whether Noticee sold 4500 shares and 4824 shares of the company on January 22, 2013 & October 29 & 30, 2013 respectively when in possession of UPSI and whether Noticee has violated the provisions of Regulation 3(i) of the PIT Regulations?

12. It is alleged that Noticee who was employed with the company as its Chief Operating Officer (COO) during the relevant period sold 4500 shares of the company on January 22, 2013 and further sold 4824 shares on October 29 & 30, 2013. It is alleged that Noticee sold the shares of the company during the aforementioned period prior to the announcement of the financial results of the company for the quarters ended December 2012 & September 2013. Therefore, as on the date of the above transactions in question, it is alleged that Noticee sold the shares of KCL when in possession of UPSI pertaining to the financial results of the company for the quarters ended December 2012 & September 2013.

13. In terms of regulation 2 (e) of the PIT Regulations, a person to be considered as an 'insider' should be and who is or was actually connected with the company or deemed to have been connected with the company and by virtue of such connection the person is reasonably expected to have access to UPSI or has received or has had access to such UPSI. It is admitted fact that during the relevant examination period, the Noticee was a full time employee of the company and was its Chief Operating Officer (R & D). Therefore, Noticee by virtue of his position in the company was part of the senior management team of the company. Further, the company also confirmed that Noticee was a 'designated employee' within the meaning of the PIT Regulations. In terms of regulation 2 (c) (ii) of the PIT Regulations, it is sufficient for a person to be treated as a *connected person* with the company if he occupies the position as an officer <u>or an employee of the company</u> or holds a position involving a professional or business relationship between himself and the company, whether temporary or permanent, and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company. In view of the above, I am convinced that Noticee was a *connected*

person as defined in regulation 2 (c) (ii) and in turn an *insider* as defined in regulation 2 (e) of the PIT Regulations.

14. As per regulation 2(ha) of the PIT Regulations, 'price sensitive information' means *any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of the securities of a company.*

Explanation- The following shall be deemed to be price sensitive information:-

(i) Periodical financial results of the company;

(ii) Intended declaration of dividend (both interim and final);

(iii) Issue of securities or buy-back of securities;

(iv) Any major expansion plans or execution of new projects;

(v) Amalgamation mergers and takeovers;

(vi) Disposal of the whole or substantial part of the undertaking; and

(vii) Significant changes in policies, plans or operations of the company".

From the above, it is noted that Regulation 2(ha) (i) of PIT Regulations states that the periodical financial results of the company shall be deemed to be price sensitive information. Hence, the quarterly financial results of the company for the quarters ended December 2012 & September 2013 would certainly be considered as a *price sensitive information* in terms of the PIT Regulations. In this context, upon examination of the financial results of the company for the quarter ended December 2012, it is noted that the company posted a loss of Rs 345.36 lacs for the quarter ended December 2012 as against loss of Rs 604.22 lacs reported for the previous quarter ended September 2012. For the quarter ended September 2013, the company posted a loss of Rs 416.66 lacs as against profit of Rs 85.52 lacs which was reported for the quarter ended June 2013. As per the information furnished by the company, the disclosure of the financial results for the quarter ended September 2013 was made by the company to the stock exchanges on

November 1, 2013 and for the quarter ended December 2012, the disclosure of the results was made to the stock exchanges on February 1, 2013. The company mentioned that its trading window was closed from October 25, 2013 to November 2, 2013 in lieu of the quarterly results announced by the company for the quarter ended September 2013 and in respect of the financial results for the quarter ended December 2012, the trading window was closed from January 25, 2013 to February 2, 2013. It is alleged that Noticee sold 4500 and 4824 shares of KCL on January 22, 2013 & October 29 & 30, 2013 respectively on the basis of the price sensitive information pertaining to the impending financial results of the company for the quarters ended December 2012 & September 2013.

15. From the findings of the examination report, there is no denying the fact that Noticee who was the COO (R & D) of the company during the relevant examination period was an *insider* and he had also executed the sale transactions in the scrip of the company during the examination period. I find that the entire foundation of the case, as set out in the SCN and in the examination report, is that the Noticee by virtue of his position in the company would have been reasonably aware of the details of the impending financial results of the company for the financial quarters mentioned above. In view of the same, it is alleged that his transactions in the scrip of KCL on the above mentioned dates were motivated on the basis of the price sensitive information pertaining to the impending financial results of the company. However, on perusal of the examination report and other material made available, it is pertinent to mention that there is not an iota of evidence, either in the form of substantive material on record and/or any other documentary evidence, to confirm that Noticee had participated in any of the meetings of the company, which discussed the financial results for the above mentioned quarters and therefore, he could have been reasonably aware of the price sensitive information. In fact, the examination report has not discussed the role of the Noticee in the preparation of the financials for the financial quarters mentioned above.

16. I am of the view that before the finalization of the results/ accounts and its dissemination to the stock exchanges, any company would usually follow a procedure of constituting a core team to work on the financials and the team would typically commence the work pertaining to the financials by collecting the relevant data/information/details from various units, consolidate the trial balances figures, collate the financial data obtained from various units, obtain feedback from each unit which could have a bearing on the financials, and hold discussions with the auditors, core employees etc. Certainly, KCL would also have followed the above procedures before finalization of its accounts for the above mentioned financial quarters. The above process/procedure, if followed by the company, will also establish the existence of the UPSI i.e the exact date when the UPSI came into existence. It is however observed from the examination report that no such data/information were sought from the company and the examination report is totally silent on these aspects. In fact, in the context of the present proceeding, the examination report has not even discussed the period when the UPSI actually came into existence i.e the actual date of the commencement of UPSI. As a result of the same, the trading window closure period w.r.t the finalization of the results for the financial quarters ended December 2012 & September 2013 have been presumed as the UPSI period in the context of the present proceeding. From the perusal of the examination report, I find that there is nothing on record either in the form of observations / discussions and / or any other documentary evidence to show the role and responsibility of the Noticee in the preparation of the financials of the company for the above mentioned financial quarters. The examination report has also not brought out any evidence / observation to show if the Noticee had any specific role in the preparation/finalization of the financial results of the company. Further, the examination report has also not dealt with any specific finding /observation on whether the Noticee had any discussions /interaction with the core team members, the auditors, and/or other functionaries in the preparation of the financials of the company. In view of the same, the likelihood of the Noticee obtaining the price sensitive information w.r.t the impending financial results is doubtful.

17. In this regard, I find from the examination report that in response to certain queries sought by the concerned Department of SEBI i.e ISD - SEBI regarding the transactions executed by the Noticee in the scrip of KCL, the company has vide its email dated January 24, 2014 disclosed the names of certain employees, which also included the Noticee and made a bald statement that *they may be aware* of the preparation of the financial results for the quarter ended September 2013. As can be seen above, there is no certainty in the above statement made by the company about the role of the Noticee in the preparation of the financials of the company. No doubt, being a connected person, the Noticee was an insider. But as already mentioned in the preceding paragraphs of the order, neither the examination report nor the SCN has brought on record any evidence, direct or circumstantial, to show Noticee's involvement in the preparation / finalization of the results of the company for the above mentioned financial quarters. Therefore, it is difficult to sustain the observation that Noticee sold the shares on the basis of the UPSI pertaining to the financial results. A charge of insider trading must be sustained by a higher degree of proof, which is lacking in this case.

18. Further, the trading pattern of the Noticee in the scrip during the examination period also belies the allegation that Noticee traded in the scrip of KCL on the basis of the UPSI or when he was in possession of the UPSI. In this regard, I have examined the trading pattern of the Noticee in the scrip during the relevant period and observe that the Noticee was holding 12,715 shares of the company before the impugned trades executed by him in the scrip of KCL on January 22, 2013 & October 29 &30, 2013. I find that Noticee sold 12,715 shares of the company in tranches over the entire period of one year i.e calendar year 2013. The details of the shares of KCL sold by the Noticee during the year 2013 is mentioned below:-

Date	**No of shares sold**	**Value (Rs.)**
4/1/2013	1534	73,555.30
7/1/2013	1857	89,878.80
22/1/2013	4500	2,00,925
29/10/2013	2200	66,110
30/10/2013	2624	78,020.40
Total	**12,715**	**5,08,490**

19. In the SCN, it is alleged that Noticee sold 4500 shares of the company on January 22, 2013 on the basis of UPSI pertaining to the financial results of the company for the quarter ended December 2012. I note that the said results were disseminated by the company to the stock exchange on February 1, 2013. Looking at the trading pattern of the Noticee from the above mentioned Table, it seems highly improbable that his sale of 4500 shares of KCL was done on the basis of UPSI, as when the Noticee sold 4500 shares on January 22, 2013, he was still holding 4824 shares of the company in his beneficiary account. A person who is in possession of UPSI which, on becoming public, is likely to cause a negative impact on the price of the scrip, would sell his entire holding in the scrip immediately, and not sell the shares in tranches. As already discussed, in the instant matter, the UPSI pertaining to the negative financial results of the company for the quarter ended December 2012 would have induced the Noticee to sell his entire holdings in KCL on January 22, 2013 itself in anticipation of a negative result, whereas, it is on record that Noticee sold the remaining 4824 shares which he was holding in his Beneficiary account on a much later date. Moreover, it can also be seen from the Table that the Noticee started selling the shares of the company even before January 22, 2013. Therefore, looking at the entire trading pattern of the Noticee in the scrip of KCL, it is highly improbable that the trading in the scrip of KCL by the Noticee on January 22, 2013 was on the basis of UPSI.

20. The price movement analysis in the scrip of KCL during the trading window closure period and post the declaration of the quarterly results for the financial quarters ended December 2012 and September 2013 have been examined and are mentioned below

Table showing the Price Volume Analysis of KCL for various periods

Particulars	Period	Open (Rs.)	Close (Rs.)	% change
Trading window closure period for announcement of results	January 25,2013 to February 02 2013	40.7	42.05	3.31%
One week post announcement of financial results	February 01 to February 08,2013	42	39.65	-5.59%

Trading window closure period for announcement of results	October 25,2013 to November 2 2013	30.6	30.55	-0.16%
One week post announcement of financial results	November 1, 2013 to November 08,2013	31.25	29.95	-4.16%

21. From the above table, it can be seen that there was only a marginal change in the scrip price of KCL during the trading window closure period pursuant to the announcement of the results of the company for the quarters ended December 2012 and September 2013. Even one week post the announcement of the financial results, the change in the scrip price was found to be minimal. There was no major announcement made by the company during the period of examination other than the results. From the announcements made by the company after December 2012 and upto September 2013, it appears that no specific pattern has been observed in the announcements pertaining to the financial results of the company and/or the trading in the shares of the company. Further, I am also of the view that a downward price movement in the scrip of KCL from Rs 60 to Rs 45 which has been observed during the entire period of one year i.e the examination period in question cannot be construed as a major price fall due to the negative financial results posted by the company for the above quarters. Therefore, in my view, the sale of shares of KCL by the Noticee may not be attributed to the negative financials and/or the fall in the scrip price of KCL. As already mentioned, in the instant proceeding, sufficient facts/material has not been brought on record to show that Noticee has traded in the scrip of KCL while in possession of the UPSI.

22. In this context, following observations of Hon'ble SAT in the matter of Mr Manoj Gaur Vs SEBI (Appeal No 64 of 2012) decided on October 03, 2012 are relevant to rely upon :-

"12. *Referring to the order of this Tribunal in the case of Dilip S.Pendse vs Securities and Exchange Board of India (Appeal no. 80 of 2009 decided on November 19, 2009) it has been rightly pointed out by learned senior counsel for the appellant that the charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing higher must be the preponderance of probabilities in*

establishing the same". Further, Hon'ble SAT in the matter of Mrs. Chandrakala v. SEBI has observed that "*the prohibition contained in Regulation 3 of the Insider Trading Regulations apply only when an insider trades or deals in securities on the basis of any UPSI and not otherwise. It means that the trades executed should be motivated by the information in the possession of the insider".*

23. Therefore, going by the facts and circumstances of the present case, I am of the view that although the Noticee is an *insider* in the context of the present proceeding, there is nothing that has been brought on record, either in the examination report and /or in the material made available, to demonstrate the fact that Noticee had traded in the scrip of KCL when in possession of the UPSI and/or on the basis of the UPSI. In view of the above observations and also taking into consideration that no evidence has been brought on record, direct or circumstantial, to show that Noticee has traded in the scrip of KCL on the basis of UPSI or when in possession of the UPSI, the allegation leveled against the Noticee that he has violated the provisions of Regulation 3 (i) of the PIT Regulations is not sustainable.

ISSUE 2 & ISSUE 3:

Whether Noticee sold the shares of the company during the period when the trading window of the company was closed for its employees and whether Noticee sold the shares of the company on October 29 &30, 2013 without obtaining the pre-clearances for his trades and in the process, whether Noticee has violated the provisions of the code of conduct for prevention of insider trading under clauses 3.2-2 & 3.2-5 of Schedule I of Regulation 12(1) of the PIT Regulations?

24. As per the SCN, it is alleged that Noticee had traded in the scrip of KCL during the period when the company had closed the trading window for its employees. It is also alleged that Noticee did not obtain the pre-clearances for his trades that were executed by him during the examination period. In this regard, in terms of Regulation 12 (1) of the PIT Regulations, all listed companies are required to frame a Code of Conduct as near to the Model Code of Conduct

(MCC) mentioned under the PIT Regulations. I find that KCL has also framed a Code of Conduct prescribing various provisions, including the requirement that the 'insiders' and 'designated employees' of the company shall not deal in the securities of the company when the trading window is closed. Also, the Code of Conduct framed by the company prescribes that 'insiders' and 'designated employees' shall conduct their dealings in the securities of the company only during the free period and after obtaining the necessary pre-clearances for their trades which are in excess of 5000 shares. In this context, I have perused the Code of Conduct adopted by the company during the relevant examination period, which was submitted to SEBI by the company, vide letter dated September 1, 2015. In terms of an email dated February 3, 2014, which was addressed to SEBI by the company, it is observed that the trading window of the company was closed from January 25, 2013 to February 2, 2013 in lieu of the declaration of the financial results of the company for the quarter ended December 2012. Further, the company vide its letter dated January 6, 2014 mentioned that the trading window was closed from October 25, 2013 till November 2, 2013 for approving the un-audited financial results for the quarter ended September 2013.

25. Vide an email dated February 3, 2014 received from the company, it is observed that during the examination period, Noticee had taken the pre-clearance for his trades only once i.e during January 2013. Based on the same, it is on record that Noticee had also executed the trades in the scrip of KCL in the month of January 2013 i.e. Noticee sold 1534 shares of KCL on January 4, 2013, sold 1857 shares on January 7, 2013 and sold 4500 shares on January 22, 2013. In view of the same, I am convinced that Noticee's trades in KCL during the month of January 2013 were executed by him during the open period and after obtaining the necessary pre-clearances which were required in terms of the Code of Conduct prescribed under the PIT Regulations.

26. However, as already mentioned in the preceding paragraphs of the order, the present proceeding against the Noticee has been initiated by SEBI on the basis of a letter dated January 6, 2014 which was received from the company wherein it was mentioned that Noticee sold 4,824 shares of KCL valuing about Rs 1.5 lacs during the period when the company's trading window was closed for

approving the financial results for the quarter ended September 2013. From the examination report and other material made available, it is observed that the trading window of the company was closed from October 25, 2013 till November 2, 2013 and during the said period i.e specifically on October 29 & 30, 2013, Noticee sold 4,824 shares of the company. Since the Noticee's trades were executed during the trading window closure period, the same has resulted in the violation of the MCC and also the Code of Conduct adopted by the company, which is prescribed under Schedule I r/w Regulation 12(1) of the PIT Regulations. In this regard, I find from the records that the company had also issued a show cause notice dated December 16, 2013 to the Noticee seeking an explanation from him for violating the code of conduct and subsequently, after obtaining the explanation from the Noticee, the company vide its letter dated March 11, 2014 had also issued a warning to the Noticee for violating the provisions of the Code of Conduct.

27. In this context, I observe that Noticee was a senior functionary of the company during the relevant period and he was also a 'designated employee' within the meaning of the MCC applicable under Reg. 12 of the PIT Regulations. The importance of the compliance with the Code of Conduct by the 'designated employees' and more specifically by the senior management officials of the company cannot be over-emphasised. It is noted that the company has sent an intimation to all its employees, including the Noticee beforehand informing them about the proposed trading window closure date. However, despite the intimation made by the company, it is on record that Noticee sold 4,824 shares of KCL on October 29 & 30, 2013 i.e during the period when the trading window of the company was closed for its employees. The Noticee has also admitted to the lapse on his part in his submission dated October 14, 2016. The contentions of the Noticee that he sold the shares at an impulse as he needed urgent funds to pay for the flat booked by him and that he was not privy to any sensitive information while selling the shares etc are not valid reasons to escape liability for violating the provisions of the MCC and also the code of conduct of the company. The Noticee who was a senior functionary of the company during the relevant examination period was expected to have conducted properly and he should have known the importance of the MCC

prescribed in the PIT Regulations and also the implications of trading in the shares of the company during the trading window closure period.

28. In the instant matter, even though the Noticee has been warned by the company for violating the code of conduct, I am of the view that, keeping in mind the importance and purpose of the MCC prescribed under the PIT Regulations, the trading in the shares of the company by the Noticee during the trading window closure period should warrant independent enforcement action against the Noticee under the SEBI Act and the PIT Regulations. The code of conduct prescribed by the company under the PIT Regulations for all practical purposes is to be treated as a part of the PIT Regulations. Moreover, in terms of clause 6.3 of the MCC, it is specified that the action taken by the company for the violation of the code of conduct shall not preclude SEBI from taking any action in case of violation of the PIT Regulations. In this regard, I would like to rely upon the observations made by Hon'ble SAT in the matter of Manmohan Shetty vs SEBI (Appeal No 132 of 2010) wherein Hon'ble SAT has observed the following:-

"*We are of the considered view that the only possible conclusion that can be arrived at is that the code of conduct prescribed by the company for prevention of insider trading as mandated by the Regulations for all practical purposes is to be treated as a part of the Regulations and any violation of the code of conduct can be dealt with by the Board as violation of the Regulations framed by it*"

Hon'ble SAT has further observed that: - "*We are, therefore, of the considered view that violation of the Code of Conduct, as framed by the Company in accordance with the mandates prescribed in the Regulations, is nothing but part of the Regulations and any violation thereof is punishable by the Board also as violation of the Regulations in addition to such action that may be taken by the Company. Any other view taken in the facts and circumstances of the case will defeat the very purpose of the Regulations in question*"

Therefore, in view of the facts and circumstances stated above, I am convinced that Noticee by trading in the shares of the company during the trading window

closure period has violated the provisions of clauses 3.2-2 & 3.2-5 of Schedule I under Regulation 12(1) of the PIT Regulations. I therefore hold that Noticee has violated the provisions of clauses 3.2-2 & 3.2-5 of Schedule 1 under Reg. 12(1) of the PIT Regulations.

As regards the allegation levelled in the SCN that the Noticee had failed to obtain the pre-clearances for his trades which were executed on October 29 & 30, 2013 i.e during the trading window closure period, it is clear from the MCC and also from the Code of Conduct of the company that the 'insiders' and 'designated employees' were totally prohibited from trading/dealing in the shares of the company during the trading window closure period. In view of the same, Noticee could not have executed any trades in the scrip of the company during the trading window closure period and the requirement of obtaining the pre-clearance for trading in the shares of the company does not arise. Therefore, the allegation levelled in the SCN that Noticee failed to obtain the pre-clearance for his trades done on October 29 & 30, 2013 is without any merit and not sustainable. On the contrary, the trading by the Noticee during the trading window closure period has resulted in the violation of the MCC prescribed in the PIT Regulations, details of which have already been discussed in the preceding paragraph.

ISSUE 4

Whether Noticee sold 12,715 shares of the company worth Rs 5,08,490/- during the examination period and failed to make the necessary disclosures under Reg. 13(4) r/w Reg. 13(5) of the PIT Regulations as his traded value during the examination period exceeded Rs 5 lacs in value?

29. In the SCN, it is alleged that Noticee sold 12,715 shares of the company during the examination period and the shares sold by him had exceeded Rs 5 lakh in value. It is alleged that the Noticee who was an 'officer' of the company during the examination period was required to make the necessary disclosures to the stock exchanges under Reg. 13(4) r/w Reg. 13(5) of the PIT Regulations within two working days as his traded value in the shares of the company had resulted in change in shareholding and the change had exceeded Rs 5 lakh in value. As

can be observed from the Table mentioned at para 18 above, Noticee sold 12,715 shares of the company during the period January 2013 to December 2013 and the total value of the shares sold by him during the entire period of one year was Rs 5,08,490/-. In view of the same, Noticee was required to make the necessary disclosures under Regulations 13(4) r/w 13(5) of the PIT Regulations to the stock exchanges within two working days from October 30, 2013 i.e the date of his last sale transaction wherein he sold 2624 shares. It is on record that the Noticee had not made the requisite disclosures to the stock exchanges. In this regard, as per Regulation 2(g) of PIT Regulations, an *officer of a company means any person as defined in clause (30) of section 2 of the Companies Act 1956 including an auditor of the company.* Further, as per Section 2 (30) of the Companies Act, *1956 "an officer" includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act."*

30. The Noticee by virtue of his position in the company during the relevant period was certainly an 'officer' within the meaning of the Companies Act and also in terms of Reg. 2 (g) of the PIT Regulations. As already brought out in this Order, the Noticee was selling the shares of the company in tranches during the entire period of 2013 and the total value of the shar*es* sold by him during the said period amounted to Rs. 5,08,490, which marginally crossed the threshold of Rs. 5 lakh in value as on October 30, 2013. In my view, when the shares were sold by the Noticee in tranches across a period of one year, it would be practically impossible to monitor with precision the exact time when the threshold of Rs. 5 lakh in value has been breached by him. Further, Noticee had exceeded the threshold limit of Rs. 5 lakh only marginally which can also be seen from the Table above (para 18) and therefore, the alleged non-reporting by the Noticee under the provisions of Regulations 13 (4) r/w Reg. 13(5) of PIT Regulations, in the facts and circumstances of the case, can be viewed as a technical lapse on his part. In view of the same, I do not find the violation by itself significant enough to warrant any enforcement action against the Noticee. Therefore, I am not inclined to hold that Noticee has violated the provisions of Regulations 13(4) r/w 13(5) of the PIT Regulations.

ISSUES- 5 & 6

Whether Noticee is liable for monetary penalty under the provisions of sections 15A(b), 15G and 15 HB of the SEBI Act for the aforementioned alleged violations?

If yes, what should be the quantum of penalty to be imposed on the Noticee?

31. It has already been established in the preceding paragraphs of this order that Noticee has by selling 4,824 shares of the company during the trading window closure period has violated clause 3.2-2 read with clause 3.2-5 of the Model Code of Conduct prescribed under schedule-I of Regulation 12(1) of PIT Regulations. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty on the Noticee under section 15HB of the SEBI Act, which reads as under:

Penalty for contravention where no separate penalty has been provided. ***Section15 HB.*** *Whoever fails to comply with any provisions 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*"

32. The Hon'ble Supreme Court of India in the matter of SEBI vs Shriram Mutual Fund {(2006)} 5 SCC 361} 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 and hence the intention of the parties committing such violation becomes wholly irrelevant*…."

33. While determining the quantum of monetary penalty under section 15 HB of the SEBI Act, I have considered the factors stipulated in section 15-J of the SEBI Act, which reads as under:

"15 J – *Factors to be taken into account by the adjudicating officer 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 "

34. From the material available on record, I observe that any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default by the Noticee cannot be computed. I however observe that the default on the part of the Noticee by trading in the shares of the company during the trading window closure period is serious in nature keeping in mind the significance of the position held by the Noticee during the relevant period. A senior functionary of the company is expected to comply with the relevant provisions of law while trading/dealing in the shares of the company and should set an example for others. In the instant matter, it is on record that despite the intimation from the company about the trading window closure period, Noticee deliberately traded in the shares of the company during the said period. Such blatant violation of the Code of Conduct by persons occupying very senior positions in a company cannot be ignored, as the same will defeat the very purpose of the Regulation in question. While imposing the monetary penalty on the Noticee, I have also taken note of the fact that the company has warned the Noticee for the lapse on his part.

ORDER

35. In view of the above, after considering all the facts and circumstances of the case, reply of the Noticee and also the factors mentioned in section 15-J of the SEBI Act, 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 penalty of Rs 1,00,000/- (Rupees One lakh only) to be paid by the Noticee viz. Mr Simon Thomas Inchody u/s 15HB of the SEBI Act for his violation of the provisions of Clauses 3.2-2 & 3.2-5 of Schedule 1 under Regulation 12(1) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 read with Regulation 12(1) of the SEBI (Prohibition of Insider Trading) Regulations, 2015

36. I am of the view that the said penalty is commensurate with the lapses/omissions on the part of the noticee. 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 by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO> PAYNOW; or by using the web link for payment of penalty at SEBI website viz. https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of the penalty, the noticee may contact the support at portalhelp@sebi.gov.in.

37. 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, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

38. In terms of Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee viz. Mr Simon Thomas Inchody and also to the Securities and Exchange Board of India.

Place: Mumbai
Date: 26.02.2021

SURESH B MENON
ADJUDICATING OFFICER