

BEFORE THE ADJUDICATING OFFICER SECURITIES AND EXCHANGE BOARD OF
INDIA [ADJUDICATION ORDER: EAD-9/VKV/GSS/2020-21/9501]

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. Theekevedu B Alexander
PAN: ABBPT7410K

In the matter of Titan Company Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), received a complaint dated November 13, 2018 from Titan Company Limited, (hereinafter referred as '**Titan**' or '**Company**') a company listed on BSE limited ("**BSE**") and National Stock Exchange of India Ltd. ("**NSE**"), intimating that the designated employee of the company viz. Mr. Theekevedu B Alexander (herein after referred as '**Noticee**') had contravened the provisions of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as **PIT Regulations, 2015**). Pursuant to above, preliminary examination was conducted in the scrip of the company.
2. During the period of examination, following was observed;
 - 2.1. Mr. Theekevedu B Alexander (**Noticee**), designated employee of the company, and his spouse had traded in the scrip of Titan when the trading window was closed. Thus, violated Clause 4 of Schedule B r/w Regulation 9(1) of SEBI (PIT) Regulations, 2015.

APPOINTMENT OF ADJUDICATING OFFICER

3. Subsequently, vide communication order dated June 08, 2020, the undersigned has been appointed as Adjudicating Officer in the matter under Section 15 I (1) of Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") and Rule 4 of SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995 (hereinafter referred to as "**AO Rules**") to inquire and adjudge under section 15HB of SEBI Act and if satisfied that the Noticee is liable for imposition of penalty, may impose such penalty in terms of rule 5 of AO rules.
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SHOW CAUSE NOTICE, REPLY AND HEARING

4. Based on the findings of SEBI, a Show Cause Notice (SCN) dated June 26, 2020, was digitally issued to the Noticee on June 26, 2020, at the e-mail ID; bijua@titan.co.in to the Noticee, advising the Noticee to file its reply within fourteen days of receipt of SCN.
5. Subsequently, the Noticee vide e-mail dated July 09, 2020, acknowledged receipt of the SCN and informed that the Noticee had filed an Application for Settlement under Regulation 3 of the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018. In view of the same, the current proceedings were kept in abeyance.
6. Thereafter, the Noticee vide e-mail dated September 30, 2020 informed that his settlement application has been rejected and the same was intimated to the Noticee by the concerned division of SEBI vide e-mail dated September 29, 2020. In view of the same, the current adjudication proceedings are being proceeded further from the stage, where they were pending.
7. Vide e-mail dated September 30, 2020, the Noticee was advised to submit response to the SCN anytime on or before October 09, 2020 and subsequently, attend the virtual hearing on October 15, 2020, in the interest of principles of natural justice. Subsequently, the Noticee vide e-mail dated October 07, 2020 sent its confirmation to attend the Virtual Hearing on October 15, 2020 through its Authorized Representatives (AR). The Noticee vide e-mail dated October 13, 2020, submitted its preliminary response to the SCN. The AR of the Noticee attended the virtual hearing on October 15, 2020 and reiterated the earlier submissions. During the hearing the AR were advised to submit additional documents, which were duly submitted by AR of the Noticee vide e-mail dated October 21, 2020.
8. Submissions of the Noticee are summarized below;
 - *At the outset, it is submitted that the Alleged Violation was inadvertently caused on account of a bona fide oversight by the Noticee. It is submitted that the Noticee had sought approval from the compliance officer of the Company to buy up to 500 shares of the Company in accordance with the Code of Conduct specified under Schedule B of the PIT Regulations, which was approved on September 18, 2018. Pursuant to this approval, the Noticee and Noticee's Wife executed the Impugned Trades.*
 - *The Noticee mistakenly assumed that the trading window closes when the 'silent period' starts, which is defined as the period beginning from the end of the quarter (post September 30, 2018 in the current factual situation) till the results are announced when the designated employees are prohibited from speaking to the media. Therefore, in order to not fall afoul of the Code of Conduct of the Company, the Noticee and Noticee's Wife executed the trades before the start of the 'silent period'. At the time of execution of the Impugned*

Trades, the Noticee was not aware of the closure of trading window on September 23, 2018 itself. The Noticee was travelling around that time, and failed to see the email sent regarding the closure of the trading window. Further, the Noticee had already taken permission from the compliance officer of the Company to execute the Impugned Trades, and he was under the sincere belief that such permission has not been vitiated by any subsequent event.

- Thus, it is submitted that the Impugned Trades were executed under the bona fide belief that the trading window was open, and the Noticee had no intent to violate the Code of Conduct of the Company or the provisions of the PIT Regulations.
- It is pertinent to note that the Noticee/Noticee's Wife did not have access to UPSI at the time of execution of the Impugned Trades. While requesting for an approval from the compliance officer, the Noticee had given an undertaking that he was not in possession of UPSI. Further, the SCN also does not refer to the existence of any UPSI. Therefore, even though the Noticee had traded while the trading window was closed, the object of closing the trading window has not been violated.
- It is submitted that it was never the intention of the Noticee to violate the Code of Conduct of the Company or the provisions of the PIT Regulations. The Noticee and Noticee's Wife have the highest regard for securities laws and have always endeavoured to comply with the Code of Conduct. This is evidenced by the fact that the Noticee has never been warned/penalised by the Company or SEBI prior to this incident. It is submitted that the execution of the Impugned Trades was on account of a bona fide oversight on part of the Noticee.
- Further, the entire value of the Impugned Trades is minuscule. The Noticee and Noticee's Wife had purchased a total of 120 shares after the closure of the trading window, amounting to only Rs. 94,470. It is submitted that the volume weighted average price of Company's share for the 2 trading days when the Noticee and Noticee's wife could have traded after obtaining approval and before the closure of the trading window, i.e. on September 19, 2018 and September 21, 2018 (since September 20, 2018 was a trading holiday) was around Rs. 813.50 (as per the data available on NSE's website). Accordingly, the estimated notional gain the Noticee made by purchasing the shares after the closure of the trading window is a mere Rs. 3,150 $\{(Rs. 813.50 - Rs. 787.25) \times 120 \text{ shares}\}$. These facts conclusively prove that executing the Impugned Trades after the closure of the trading window is not intentional, and that the Noticee has not made any substantial gains from doing so.
- Therefore, in light of the above reasons, it is submitted that the Alleged Violation is merely a technical violation caused on account of an oversight, without any mala fide intention.

- *It is submitted that the facts of the current matter are squarely similar to the facts in the matter of Marksans Pharma Limited. The Noticee did not indulge in market manipulation or insider trading, and make any wrongful gain or cause any loss to the investors. Further, the audit committee of the Company had taken note of the non-compliance of the Code of Conduct by the Noticee and directed the compliance officer to issue a warning letter to the Noticee to remain diligent and be in complete compliance of the Code of Conduct henceforth. Further, the audit committee advised the Noticee to pay Rs. 1,00,000 to Titan ECHO (Educate to Carry Her Onwards), a programme to support the education of underprivileged girl children, which was done by the Noticee.*
- *Subsequently, the compliance officer of the Company sent an email to the Noticee on November 13, 2018, informing the Noticee of the decision of the audit committee of the Company, and warning the Noticee to be henceforth diligent and in compliance with the Code of Conduct of the Company.*
- *The Noticee has referred to following case laws;*
 - *G Jayaraman v. SEBI*
 - *SEBI v. Cabot International Capital Corporation*
 - *Piramal Enterprises Limited v. SEBI*
 - *Marksans Pharma Limited*

ISSUES UNDER CONSIDERATION

9. I have carefully perused the charges levelled against the Noticee in the SCN and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:

- I. Whether the Noticee has violated Clause 4 of Schedule B r/w Regulation 9(1) of SEBI (PIT) Regulations, 2015.?
- II. Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15HB of SEBI Act?
- III. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

FINDINGS

10. Before Proceeding further, the provisions as applicable, are reproduced as under:

SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

Code of Conduct

9. (1) *The board of directors of every listed company and 26[the board of directors or head(s) of the organisation of every intermediary shall ensure that the chief executive officer or managing director] shall formulate a code of conduct 27[with their approval] to regulate, monitor and report trading by its 28[designated persons and immediate relatives of designated persons] towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B 29[(in case of a listed company) and Schedule C (in case of an intermediary)] to these regulations, without diluting the provisions of these regulations in any manner.*

Explanation – For the avoidance of doubt it is clarified that intermediaries, which are listed, would be required to formulate a code of conduct to regulate, monitor and report trading by their designated persons, by adopting the minimum standards set out in Schedule B with respect to trading in their own securities and in Schedule C with respect to trading in other securities.]

NOTE: It is intended that every company whose securities are listed on stock exchanges and every 31[intermediary] registered with SEBI is mandatorily required to formulate a code of conduct governing trading by 32[designated persons and their immediate relatives]. The standards set out in the 33[schedules] are required to be addressed by such code of conduct.

SCHEDULE B

[See sub-regulation (1) of regulation 9]

Minimum Standards for Code of Conduct 43[for Listed Companies] to Regulate, Monitor and Report Trading by 44[Designated Persons]

4. (1) *Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.*

(2) Trading restriction period 52[shall] be made applicable from the end of every quarter till 48 hours after the declaration of financial results. The gap between clearance of accounts by audit committee and board meeting should be as narrow as possible and preferably on the same day to avoid leakage of material information.]

(3) The trading window restrictions mentioned in sub-clause (1) shall not apply in respect of –

(a) transactions specified in clauses (i) to (iv) and (vi) of the proviso to sub-regulation (1) of regulation 4 and in respect of a pledge of shares for a bonafide purpose such as raising of funds, subject to pre-clearance by the compliance officer and compliance with the respective regulations made by the Board;

(b) transactions which are undertaken in accordance with respective regulations made by the Board such as acquisition by conversion of warrants or debentures, subscribing to rights issue, further public issue, preferential allotment or tendering of shares in a buy-back offer, open offer, delisting offer.]

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

Issue no. I: Whether the Noticee has violated Clause 4 of Schedule B r/w Regulation 9(1) of SEBI (PIT) Regulations, 2015.?

11. It is noted that vide letter dated May 24, 2019, the company informed that Mr. Theekevedu B (Noticee) Alexander was a designated employee of the company. The following are the trade details of Mr. Theekevedu B Alexander during the period April 01, 2018 to September 30, 2018:

Date	Buy Qty	Sell Qty	Buy Price	Sell Price	Buy Value	Sell value	Profit
19/09/2018	20	-	813.00	-	16260	-	-
24/09/2018	18	-	786.00	-	14148	-	-
24/09/2018	12	-	786.00	-	9432	-	-
Total	50	-	795.00	-	39840	-	-

12. It is further observed that vide letter dated November 13, 2018, the company has stated that the trading window was closed with effect from September 23, 2018 till November 12, 2018 for the purpose of declaration of financial results for the quarter and half year ended September 30, 2018.

13. Thus. It is seen from the above table that Mr. Theekevedu B Alexander i.e. Noticee had traded on two trading days during the period from September 23, 2018 to November 12, 2018 (period during which the trading window was closed).

14. It is noted from the above table that the Noticee had traded on September 24, 2018 when the trading window was closed. It is also observed that Mrs. Sarina Biju Alexander, who is a wife of, had also traded during the period when the trading window was closed. The following are the trade details of Mrs. Sarina Biju Alexander during the period April 01, 2018 to September 30, 2018:

Date	Buy Qty	Sell Qty	Buy Price	Sell Price	Buy Value	Sell value	Profit
05/09/2019	50	-	852.00	-	42600	-	-

11/09/2019	20	-	822.00	-	16440	-	-
17/09/2018	10	-	822.00	-	8220	-	-
24/09/2018	50	-	780.60	-	39030	-	-
25/09/2018	20	-	792.00	-	15840	-	-
28/09/2018	20	-	801.00	-	16020	-	-
Total	170	-	811.60	-	138150	-	-

15. Thus, it is clear from the above table that Mrs. Sarina Biju Alexander i.e. wife of the Noticee has traded on three trading days i.e. on September 24, 2018, September 25, 2018 and September 28, 2018, during the period from September 23, 2018 to November 12, 2018 (period during which the trading window was closed).
16. In this regard, it has been submitted by the Noticee that *“The Noticee mistakenly assumed that the trading window closes when the ‘silent period’ starts, which is defined as the period beginning from the end of the quarter (post September 30, 2018 in the current factual situation) till the results are announced when the designated employees are prohibited from speaking to the media. Therefore, in order to not fall afoul of the Code of Conduct of the Company, the Noticee and Noticee’s Wife executed the trades before the start of the ‘silent period’ At the time of execution of the Impugned Trades, the Noticee was not aware of the closure of trading window on September 23, 2018 itself.”*
17. In this regard, on perusal of letter of the company addressed to SEBI dated November 13, 2020, submitted by the Noticee under current proceedings, it is observed that it is clearly mentioned by the Company in section C of the letter that “the silent period for Titan starts at end of the quarter and not one week before the quarter ends.” However, the trades executed by the Noticee and his wife were during the September 19, 2020 to September 24, 2020 and September 05, 2020 to September 28, 2020, respectively, which was much before ending of the quarter. Thus, it is clear that that the trades executed by the Noticee and his wife do not fall under the silent period.
18. It has further been submitted by the Noticee that *“the Impugned Trades were executed by the Noticee and Noticee’s Wife after obtaining requisite approval from the compliance officer of the Company. At the time of receipt of the approval, the trading window was not closed. The Noticee was not aware of the closure of the trading window at the time of execution of the Impugned Trades.”*
19. In this regard, on perusal of available documents / material / evidence available on record, it is observed that at the time of taking approval from the compliance officer by the Noticee for the alleged trades, the trading window was not closed and that the requisite approval was not given to the Noticee and his wife for executing trades during the period when trading window was closed. However, the same was executed by the Noticee during

window closure period, which was in violation of provisions of Clause 4 of Schedule B r/w Regulation 9(1) of SEBI (PIT) Regulations, 2015.

20. Regarding Noticee's contention of not being aware of the closure of trading window, it is noted that the heart and soul of compliance under Regulation 9 of PIT Regulations, 2015, falls on the shoulder of the Company, which has to educate the employees at all cadre falling under the category of designated employees about complying with the Regulation and also about the outcome of such non-compliance. Thus, the excuse of the Noticee of not being aware of the closure of Trading window smells of an afterthought and thus, is not acceptable under current proceedings.

21. Also, by virtue of legal principle *Ignorantia juris non excusat*, which means "ignorance of the law is no excuse", one cannot defend his /her actions by arguing that he / she did not know that their actions were illegal, even if one honestly did not realize that he / she were breaking the law. Therefore, contention of the Noticee that he was not aware about the closure of trading window can not be accepted under these proceedings.

22. Thus, in light of the foregoing, by virtue of Clause 4 of Schedule B r/w Regulation 9(1) of PIT Regulations, 2015, which says that designated persons and their immediate relatives shall not trade in securities when the trading window is closed. It is noted that in the instant case, the trading window was closed during the period September 23, 2018 to November 12, 2018. Thus, Mr. Theekevedu B Alexander by trading during such period has violated Clause 4 of Schedule B r/w Regulation 9(1) of SEBI (PIT) Regulations, 2015.

23. Mrs. Sarina Biju Alexander (wife of the Noticee) also executed trades during closure of trading window and thus, violated Clause 4 of Schedule B r/w Regulation 9(1) of SEBI (PIT) Regulations, 2015. It is however observed that the responsibility to ensure compliance with code of conduct as prescribed under PIT Regulations, 2015, lies with designated person. Hence, Mr. Theekevedu B Alexander i.e. Noticee, being spouse of Mrs. Sarina Biju Alexander is responsible for violation of Clause 4 of Schedule B r/w Regulation 9(1) of SEBI (PIT) Regulations, 2015.

Issue No. II: Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of SEBI Act?

24. Referring to the judgment in the matter of SEBI vs. Shriram Ram Mutual Fund 2006 SCL 216(SC), wherein Hon'ble Supreme Court held that; *"In our opinion, mens rea is not an essential ingredient for contravention of the provisions of a civil act. In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. In other words, the breach of a civil obligation which attracts penalty under the provisions*

of an Act would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not. We also further held that unless the language of the statute indicates the need to establish the presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not”

25. In view of the foregoing, it is concluded that Mr. Theekevedu B Alexander i.e. the Noticee has violated Clause 4 of Schedule B r/w Regulation 9(1) of SEBI (PIT) Regulations, 2015 for executing trades by himself and on behalf of trades executed by his wife, during the closure of trading window. Therefore, it is a fit case to impose monetary penalty under the provisions of Section 15HB of the SEBI Act, which reads as under :

Penalty for contravention where no separate penalty has been provided.

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

Issue No. III: If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

26. In this regard, while determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI Act, which reads as under:

“15J - 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.*

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.”

27. On perusal of recommendations of the Committee on Fair Market Conduct for bringing amendment to PIT regulations on “Code of Conduct for Listed Companies - Trading Window Restriction”, it is observed that the committee was of the view that UPSI gets generated and insiders are likely to have access to UPSI after close of quarter till publication of financial results. Hence, trading window should be closed during this period.

28. Thus, the main object behind the aforesaid amendment in SEBI PIT Regulation 2015, was to protect leakage of Unpublished Price Sensitive Information (UPSI) by designated individuals at the time of declaration of financial results of the company.
29. Coming to the case in hand, there is no reference in the SCN with respect to the existence of any UPSI, which the Noticee or Noticee's wife were in possession of. Therefore, it is clear that the Noticee and his wife were not in possession of any UPSI while they traded during the period when the trading window was closed. This acts a mitigating factor in the present case.
30. It has further been observed that the Noticee and Noticee's Wife had purchased a total of 120 shares after the closure of the trading window, amounting to Rs. 94,470. The volume weighted average price of Company's share for the 2 trading days if the Noticee and Noticee's wife would have traded before the closure of the trading window, i.e. on September 19, 2018 and September 21, 2018 (September 20, 2018 being a trading holiday) would have been Rs. 813.50 (as per the data available on NSE's website). Accordingly, the estimated notional gain the Noticee made by purchasing the shares after the closure of the trading window is Rs. 3,150 {(Rs. 813.50-Rs.787.25)*120 shares}, which is a notional amount and thus, this observation also acts a mitigating factor in the instant case.
31. It has also been submitted by the Noticee that the audit committee of the Company had taken note of the aforesaid non-compliance of the Code of Conduct by the Noticee and issued a warning letter to the Noticee to remain diligent and be in complete compliance of the Code of Conduct henceforth. Further, the audit committee advised the Noticee to pay Rs. 1,00,000 to Titan ECHO (Educate to Carry Her Onwards), a programme to support the education of underprivileged girl children as a constructive measure for the aforesaid non-compliance and the same was subsequently, done by the Noticee. In this regard, it is observed that the Noticee has submitted requisite documents / proofs establishing his aforesaid contention under current proceedings. This also acts a mitigating factor under the current proceedings.

ORDER

32. After taking into consideration the facts and circumstances of the case and factors enumerated in section 15J of the SEBI Act and mitigating factors of the case, an appropriate penalty for the alleged violation by the Noticee for violation of Clause 4 of Schedule B r/w Regulation 9(1) of SEBI (PIT) Regulations, 2015 (as enumerated in preceding paras above), in exercise of powers conferred under section 15I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, is imposed on the Noticee, under Section 15HB of the SEBI Act, 1992. The Noticee will be liable to pay the penalty amount as mentioned in the table below;

Name of the Noticee	Penalty Amount (in Rs.)
Mr. Theekevedu B Alexander PAN: ABBPT7410K	2,00,000/- (Two Lakh Only)

33. Noticees shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai and 1) the said DD should be forwarded to the Division Chief, Enforcement Department 1(EFD), Division of Regulatory Action – III [EFD 1-DRA- 3] SEBI Bhavan, Plot No.C4-A, ‘ G’ Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following details:

1.	Case Name	
2.	Name of the Payee	
3.	Date of payment	
4.	Amount Paid	
5.	Transaction No.	
6.	Bank Details in which payment is made	
7.	Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

34. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT
→ Orders → Orders of AO → Click on PAY NOW or at
<https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>

35. 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.

36. In terms of Rule 6 of the Rules, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

DATE: October 29, 2020
PLACE: MUMBAI

VIJAYANT KUMAR VERMA
ADJUDICATING OFFICER