15th May, 2019

BSE Limited
1st Floor, New Trading Wing,
Rotunda Bldg, P.J. Towers,
Dalal Street, Fort, Mumbai- 400 001

National Stock Exchange of India Ltd.
Exchange Plaza, 5th Floor,
Plot No. C/1, G. Block,
Bandra-Kurla Complex, Mumbai – 400 051

Dear Sir / Madam,

Ref: BSE Scrip code: 500302
NSE Symbol: PEL

Sub: Intimation under Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

We write to inform you that the Securities Appellate Tribunal, Mumbai, ('SAT') vide its Order dated 15th May, 2019 ('SAT Order'), has allowed the Company's appeals against the order passed by the Adjudicating Officer of Securities and Exchange Board of India on 3rd October, 2016 ('SEBI Order'). SAT vide its order of even date has also set aside the penalty which was levied under the said SEBI Order. A copy of the SAT Order is enclosed herewith.

You are requested to kindly take the above on record.

Sincerely,
For **Piramal Enterprises Limited**

Bipin Singh
Vice President - Company Secretarial

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 12.03.2019
Date of Decision : 15.05.2019

Appeal No. 466 of 2016

Piramal Enterprises Limited
Piramal Tower,
Ganpatrao Kadam Marg,
Lower Parel,
Mumbai-400 013 …Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai- 400 051 …Respondent

WITH
Appeal No. 467 of 2016

1. Mr. Ajay G. Piramal
   Piramal Tower,
   Ganpatrao Kadam Marg,
   Lower Parel,
   Mumbai-400 013

2. Dr. (Mrs.) Swati A. Piramal
   Piramal Tower,
   Ganpatrao Kadam Marg,
   Lower Parel,
   Mumbai-400 013

3. Ms. Nandini Piramal
   Piramal Tower,
   Ganpatrao Kadam Marg,
   Lower Parel,
   Mumbai-400 013 …Appellants

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai- 400 051 …Respondent

Mr. Pesi Modi, Senior Advocate with Mr. Sumit Agrawal, Ms. Kalpana Desai and Ms. Prachi Jain, Advocates i/b Regstreet Law Advisors for Appellants in Appeal Nos. 466 and 467 of 2016.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Mihir Mody and Mr. Sushant Yadav, Advocates i/b K. Ashar & Co. for the Respondent in Appeal Nos. 466 and 467 of 2016.

CORAM: Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member

Per: Justice Tarun Agarwala

1. These two appeals are filed to challenge the order passed by the Adjudicating Officer of Securities and Exchange Board of India ("SEBI" for short) on October 03, 2016. By that order a penalty of ₹ 5 lakh has been imposed on the appellants under Section 15HB of the SEBI Act, 1992 for violating Clauses 3.2.1 and 3.2.3(f) of Model Code of Conduct for Prevention of Insider Trading for listed companies ("Model Code" for short) read with Regulation 12(3) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 ('PIT Regulations for short) read with Regulation 12 of PIT

Regulations, 2015 for failure to close the trading window during Unpublished Price Sensitive Information (UPSI) and for 24 hours beyond the UPSI is made public. Further, a penalty of ₹ 1 lakh has been imposed on the appellants under Section 15HB of the SEBI Act, 1992 for violating Clauses 1.2 and 2.2 of the said Model Code read with Regulation 12(3) of the PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 for failure to handle the price sensation information relating to sale of the domestic healthcare business of the appellant company to M/s Abbott Laboratories Limited ("Abbott" for short) on a 'need to know' basis. Appellants have been directed to pay these amounts of penalty jointly and severally.

2. Since dispute in these two appeals arise from the same impugned order and facts are common, by consent of parties both these appeals are heard together and disposed of by this common decision.

3. Appellant in Appeal No. 466 of 2016 is the company M/s. Piramal Enterprises Limited (hereinafter referred to as "PEL") and Appellants in Appeal No. 467 of 2016 are its Directors. Appellant No. 1 Shri Ajay G. Piramal was the

Chairman, Appellant No. 2 Dr. Swati A. Piramal and Appellant No. 3 Ms. Nandini Piramal were Directors of the PEL at the relevant time. It is held in the impugned order that Abbott approached the PEL with an offer to acquire its Domestic Healthcare Business on January 18, 2010. During February-May 2010 due diligence was carried out by the PEL on the offer. On May 10, 2010 Shri Ajay Piramal, Chairman of the Board individually informed other Board Members regarding the proposed transactions. On May 20, 2010 the Chairman of the PEL informed other Board Members that the meeting of the Audit Committee and the Board of Directors of the PEL will be held on May 21, 2010 and accordingly these meetings were held on May 21, 2010 wherein some of the Board Members joined telephonically. In this meeting the Board of Directors approved the acceptance of the offer from Abbott for a consideration of 3.72 billion USD and a corporate announcement was made by the PEL at 11:59 AM to both BSE Limited and National Stock Exchange of India Limited. These facts are undisputed.

4. An investigation was done by SEBI into possible violation of PIT Regulations, 1992 and possible violations of Clause 49 of the Listing Agreement etc. by the PEL. During the investigation, vide letter dated January 21, 2011 the PEL

informed SEBI that, in addition to the appellants in Appeal No. 467 of 2016, Shri Anand Piramal, Shri Rajesh Laddha and Prof. Nitin Nohria were privy to the decision at every stage in the matter of sale of its domestic healthcare business to Abbott. Shri Anand Piramal is the son of the Chairman and Managing Director, Appellant No. 1 and 2 in Appeal No. 467 of 2016. Further, Shri Anand Piramal is neither a Board Member nor holds any position in the PEL. Shri Rajesh Laddha was an Executive Director and Chief Operating Officer of the PEL. He held a position of Senior Management but not a Member/ Director in the Board of Directors. Prof. Nohria was a consultant. A show cause notice dated February 24, 2016 was issued by SEBI and subsequently a personal hearing and inspection of documents etc. were granted.

5. We are told by the parties that Shri N. Santhanam, Compliance Officer who has also been held guilty for not closing the trading window, filed an appeal before this Tribunal during the pendency of which the matter was settled with SEBI under the Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014.

6. There are basically two charges against the appellants:-

i) Disclosing the information relating to the proposed transaction or Business Transfer Agreement ("BTA" for short) to entities who were not required to know about the transaction and thereby violating the relevant Clauses of the Model Code for listed Companies under PIT Regulations, 1992.

ii) Failure to close the trading window and thereby violating the relevant Clauses of the Model Code for listed Companies under PIT Regulations, 1992.

7. The learned counsel Shri Modi appearing for the appellants extensively argued that there is no violation from the side of the appellants citing the relevant provisions of the PIT Regulations, 1992. He submitted that Shri Anand Piramal was a promoter of the PEL and like other promoters, he had to sign a non-compete agreement for 8 years as part of the BTA. Being a son of directors of the PEL he is a deemed to be connected person as well. Given these facts there is absolutely nothing wrong in sharing the information with him from the beginning of the discussions relating to the sale of the division. He further confirmed that Shri Anand Piramal or any of the appellants, did not trade in the shares of the PEL at any point of time during the

entire process and as such has not violated any of the provisions relating to the PIT Regulations 1992.

8. Further, the learned counsel cited the following Model Code of Conduct adopted by the PEL for prevention of insider trading for listed Companies.

> *"**1.1** The listed company has appointed a Compliance Officer senior level employee who shall report to the Managing Director/Chief Executive Officer.*
>
> ***1.2** The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing; of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.*
>
> *Explanation : For the purpose of this Schedule, the term 'designated employee' shall include :-*
>
> *(i) officers comprising the top three tiers of the company management [***];*
>
> *(ii) the employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct."*

Citing the aforesaid, the learned counsel for the appellants further submitted that the Compliance Officer was responsible for closing the trading window since as per the Model Code of Conduct adopted by the PEL it is the responsibility of the Compliance Officer and that is the reason why a senior level officer had been appointed as Compliance Officer. The impugned order passed directions against him as well which has been settled by him with SEBI accepting the responsibility for not closing the trading window. The Board of Directors has only an overall responsibility once the Model Code of Conduct is adopted by PEL and a Compliance Officer is appointed. The Compliance Officer has to submit only periodical reports to the Board or put up matters to the Board when he needs some directions.

9. Citing ***Valecha Engineering Ltd. V/s Securities and Exchange Board of India 2014 SCC OnLine SAT 51 (Appeal No. 174 of 2013 decided on March 11, 2014)*** the learned counsel for the appellants submitted that only the Compliance Officer is responsible for closing the trading window. Relying on ***Siddharth Chaturvedi V/s Securities and Exchange Board of India (2016) 12 SCC 119 (Civil Appeals No. 14730 of 2015 with Nos. 14728-29 of 2015 decided on March 14, 2016)***;

Adjudicating Officer, Securities and Exchange Board of India V/s Bhavesh Pabari 2019 SCC OnLine SC 294 (Civil Appeal No(s). 11311 of 2013 decided on February 28, 2019) *he further submitted that not closing the trading window* was only a technical violation for which only the Compliance Officer was responsible and, therefore, all the mitigating factors under Section 15J of the SEBI Act needs to be taken into account and given the fact that it is only a technical violation no penalty is imposable as held in the cited judgments. In the instant matter, it is an undisputed fact that none of the appellants has taken any advantage of the situation of not closing the trading window and no investor has been adversely affected nor the offence is repetitive in nature. Accordingly, it was urged that it was a fit case for not imposing any penalty.

10. Shri Sancheti, learned senior counsel for respondent SEBI submitted that there are certain undisputed facts: sale of the healthcare division was under consideration since January 2010; such information is price sensitive information, this information was available with the Directors as well as with Shri Anand Piramal, apart from Chartered Accountant and Lawyers etc; trading window was never closed is an admitted fact. Accordingly, when many people were aware of the price

sensitive information not closing the trading window was a serious breach. One should also note that the amount in question was 3.72 billion USD. The main responsibility for closing the trading window is on the PEL and, therefore, on the Board of Directors acting on behalf of the PEL. He cited Regulations 2(c), 2(e), 2(h) (viii), 2(ha), (vi) & (vii), 2(k), 3, 4 and 12(2) of the PIT Regulations, 1992 to further explain the violations as held in the impugned order. For convenience relevant PIT Regulations, 1992 are extracted as below:

> ***"Definitions.***
>
> ***2.*** *In these regulations, unless the context otherwise requires :—*
> *(a) .....*
> *(b).....*
> *(c)* ***"connected person"*** *means any person who—*
>
> *(i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act or*
>
> *(ii) occupies the position as an officer or an employee of the company 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:

[Explanation :—For the purpose of clause (c), the words "connected person" shall [mean] any person who is a connected person six months prior to an act of insider trading;]

(d)…….

(e) ***"insider"*** *means any person who,*

(i) is or was connected with the company or is deemed to have been connected with the company and who is reasonably expected to have access to have access to unpublished price sensitive information in respect of securities of a company, or

(ii) has received or has had access to such unpublished price sensitive information ;]

(f)……

(g)……

(h) ***"person is deemed to be a connected person"****, if such person—*

(viii) relatives of the connected person;

"2(ha) "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 securities of company.*

Explanation.—The following shall be deemed to be price sensitive information:—

(i) ……
(ii) ……
(iii) ……
(iv) ……
(v) ……

(vi) disposal of the whole or substantial part of the undertaking;

(*vii*) *and significant changes in policies, plans or operations of the company*;

k) *"unpublished" means information which is not published by the company or its agents and is not specific in nature.*

Explanation.—Speculative reports in print or electronic media shall not be considered as published information.]

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

(ii) communicate [or] counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities:

Provided *that nothing contained above shall be applicable to any communication required in the ordinary course of business [or profession or employment] or under any law.]*

Violation of provisions relating to insider trading.

4. *Any insider who deals in securities [***] in contravention of the provisions of regulation 3 [or 3A] shall be guilty of insider trading.*

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

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

(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;

(b) the self-regulatory organisations recognised or authorised by the Board;

(c) the recognised stock exchanges and clearing house or corporations;

(d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and

(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies,

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].

12*(2) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate*

Disclosure Practices as specified in Schedule II of these Regulations."

(3) All entities mentioned in sub-regulation (1), shall adopt appropriate mechanisms and procedures to enforce the codes specified under sub-regulations (1) and (2)."

11. The learned senior counsel for SEBI also submitted that the Board of the PEL was supposed to take action against the Compliance Officer which was not done. Further, as per the Model Code of Conduct Compliance Officers role and that of the PEL / Board's role cannot be decided in isolation. As per Clause 3.2.1 of the Mode Code the decision to close the trading window should have been taken by the PEL through its Board of Directors and communicated by the Compliance Officer. In the instant case, what is recorded is that the Chairman was directly piloting the entire issue of sale of a division and communicating to the Board of Directors. Similarly, full time Board of Directors and few other persons were kept privy to the information since the beginning of the discussion relating to this sale. Independent Directors were informed at a later stage. So the primary responsibility, given the context and the facts lies with the executive directors who are in the Board. Accordingly, the finding in the impugned order that the PEL, Executive Directors who are Board Members and the Compliance Officer

are liable for not closing the trading window, cannot be faulted. He also walked us through the various provisions of the Model Code.

12. Relying on the following judgments ***Shri E. Sudhir Reddy V/s Securities and Exchange Board of India (Appeal No. 138 of 2011 decided on 16.12.2011)***; ***Mr. Manmohan Shetty V/s Securities and Exchange Board of India (Appeal No. 132 of 2010 decided on 27.02.2011), Mrs. Chandra Mukherji V/s Securities and Exchange Board of India (Appeal No. 126 of 2014 decided on 30.11.2016)*** and ***Mr. N. Narayanan V/s Adjudicating Officer Securities and Exchange Board of India 2012 SCC OnLine SAT 194 (Appeal No. 29 of 2012 decided on October 5, 2012),*** learned senior counsel for the respondent submitted that it is the responsibility of the PEL and its Board of Directors to decide on the trigger of price sensitive information and, therefore, on a decision relating to closing the trading window and in case of violation both the PEL and the Board of Directors are responsible.

13. Before proceeding further, the Model Code of Conduct for listed Companies, as provided under PIT Regulations, 1992 is reproduced for convenience.

SCHEDULE I
[Under Regulation 12(1)]
PART A

MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES

"1.0 Compliance Officer

1.1 *The listed company has appointed a Compliance Officer senior level employee who shall report to the Managing Director/Chief Executive Officer.*

1.2 *The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing; of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct*
under the overall supervision of the Board of the listed company.

Explanation : For the purpose of this Schedule, the term 'designated employee' shall include :—

(i) officers comprising the top three tiers of the company management 60[***];

(ii) the employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct.

1.3 *The compliance officer shall maintain a record of the designated employees and any changes made in the list of designated employees.*

1.4 *The compliance officer shall assist all the employees in addressing any clarifications regarding the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 and the company's code of conduct.*

2.0 Preservation of "Price Sensitive Information"

2.1 *Employees/directors shall maintain the confidentiality of all Price Sensitive Information. Employees/Directors shall [not] pass on such information to any person directly or indirectly by way of making a recommendation for the purchase or sale of securities.*

2.2 Need to know

2.2-1 *Price Sensitive Information is to be handled on a "need to know" basis, i.e., Price Sensitive Information should be disclosed only to those within the company who need the information to discharge their duty.*

2.3 Limited access to confidential information

2.3.1 *Files containing confidential information shall be kept secure. Computer files must have adequate security of login and password etc.*

3.0 Prevention of misuse of "Price Sensitive Information"

3.1 *All directors/officers and designated employees of the company shall be subject to trading restrictions as enumerated below.*

"3.2 Trading window

3.2.1 *The company shall specify a trading period, to be called "trading window", for trading in the company's securities. The trading window shall be closed during the time the information referred to in para 3.2.3 is unpublished.*

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.

[3.2.3A The time for commencement of closing of trading window shall be decided by the company.]

3.2-4 The trading window shall be opened 24 hours after the information referred to in para 3.2.3 is made public.

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.

3.2-6 *In case of ESOPs, exercise of option may be allowed in the period when the trading window is closed. However, sale of shares allotted on exercise of ESOPs shall [not] be allowed when trading window is closed.*

3.3 Pre-clearance of trades

3.3.1 *All directors/officers/designated employees of the company [and their dependents as defined by the company] who intend to deal in the securities of the company (above a minimum threshold limit to be decided by the company) should pre-clear the transaction as per the pre-dealing procedure as described hereunder.*

3.3.2 *An application may be made in such form as the company may notify in this regard, to the Compliance Officer indicating the estimated number of securities that the designated employee/officer/director intends to deal in, the details as to the depository with which he has a security account, the details as to the securities in such depository mode and such other details as may be required by any rule made by the company in this behalf.*

3.3.3 *An undertaking shall be executed in favour of the company by such designated employee/director/officer incorporating, inter alia, the following clauses, as may be applicable:*

(a) That the employee/director/officer does not have any access or has not received "Price Sensitive Information" upto the time of signing the undertaking.

(b) That in case the employee/director/officer has access to or receives "Price Sensitive Information" after the signing of the undertaking but before the execution of the transaction he/she shall inform the Compliance Officer of the change in his position and that he/she would completely refrain from dealing in the securities of the company till the time such information becomes public.

(c) That he/she has not contravened the code of conduct for prevention of insider trading as notified by the company from time to time.

(d) That he/she has made a full and true disclosure in the matter.

4.0 Other restrictions

4.1 *All directors/officers/designated employees [and their dependents (as defined by the company)] shall execute their order in respect of securities of the company within one week after the approval of pre-clearance is given. If the order is not executed within one week after the approval is given, the employee/director must pre-clear the transaction again.*

4.2 *All directors/ officers/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction. All directors/ officers/ designated employees shall also not take positions in derivative transactions in the shares of the company at any time. In the case of subscription in the primary market (initial public offers), the above mentioned entities*

shall hold their investments for a minimum period of 30 days. The holding period would commence when the securities are actually allotted.]

4.3 *In case the sale of securities is necessitated by personal emergency, the holding period may be waived by the compliance officer after recording in writing his/her reasons in this regard.*

5.0 Reporting Requirements for transactions in securities

5.1 *All directors/officers/designated employees of the listed company shall be required to forward following details of their securities transactions including the statement of dependent family members (as defined by the company) to the Compliance Officer:*

(a) all holdings in securities of that company by directors/ officers/ designated employees at the time of joining the company;

(b) periodic statement of any transactions in securities (the periodicity of reporting may be defined by the company. The company may also be free to decide whether reporting is required for trades where pre-clearance is also required); and

(c) annual statement of all holdings in securities.

5.2 *The Compliance Officer shall maintain records of all the declarations in the appropriate form given by the directors/officers/designated employees for a minimum period of three years.*

5.3 *The Compliance Officer shall place before the Managing Director/Chief Executive Officer or a committee specified by the company, on a monthly basis all the details of the dealing in the securities by employees/director/officer of the company and the accompanying documents that such persons had executed under the pre-dealing procedure as envisaged in this code.*

6.0 Penalty for contravention of code of conduct

6.1 Any employee/officer/director who trades in securities or communicates any information for trading in securities in contravention of the code of conduct may be penalised and appropriate action may be taken by the company.

6.2 *Employees/officers/directors of the company who violate the code of conduct shall also be subject to disciplinary action by the company, which may include wage freeze, suspension, [ineligible] for future participation in employee stock option [plans], etc.*

6.3 *The action by the company shall not preclude SEBI from taking any action in case of violation of SEBI (Prohibition of Insider Trading) Regulations, 1992.*

7.0 Information to SEBI in case of violation of SEBI (Prohibition of Insider Trading) Regulations, 1992

7.1 *In case it is observed by the company/Compliance Officer that there has been a violation of SEBI (Prohibition of Insider Trading) Regulations, 1992. SEBI shall be informed by the company."*

14. We find merit in the submission made by the learned senior counsel for the appellants that the information relating to sale of the healthcare division of the PEL was given to Shri Anand Piramal and others only on a 'need to know' basis as is provided under Regulation 12(3) of the PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015. It is an undisputed fact that Shri Anand Piramal is a promoter of the appellant PEL and the same has been disclosed to the stock exchanges on various occasions. Moreover, he is a "deemed to be connected person" under 2(h)(viii) of PIT Regulations, 1992 Being a promoter holding about 2% of equity capital of the PEL he had to give an undertaking relating to multiple Clauses in the BTA like non-compete provision for 8 years. Hence, he had to know in advance the decision relating to selling part of the PEL. There is no charge that Shri Anand Piramal indulged in insider trading when he was in a possession of this information. The charge is only that the information was shared with him by the appellants. Since as a promoter and as a "person is deemed to be a connected person" the information was shared with him only on a "need to know" basis which is as provided under PIT Regulations 1992. In the light of this the penalty imposed for the alleged violation of Clauses 3.2.1 and 3.2.3(f) of the Model

Code of Conduct and 1.1, 1.2 and 12(3) and of PIT Regulations, 1992 is not sustainable.

15. As far as the second charge is concerned that the trading window was not closed at the relevant time we find that admittedly the trading window was not closed at any point of time. The contention that the trigger came in only when the Board approved the BTA on May 21, 2010 cannot be accepted. It is on record that the said information was disclosed by the Chairman of the PEL to other Board Directors on May 10, 2010. According to the regulations the trading window had to remain closed for 24 hours further to the disclosure to the stock exchange but at no point of time the trading window was closed.

16. The argument that only the Compliance Officer is responsible for the closure of the trading window since the Board of Directors has an overall responsibility only cannot be accepted. Sale of a division of a company is not a routine matter like adoption of annual accounts or quarterly accounts or other standard disclosures. Sale of a division of PEL is a decision the PEL has to take as per Clause 3.2.3A of the Model Code and the PEL has to decide the trigger point in such matters. Once, the PEL decides the trigger date then the onus

can be passed on to the Compliance Officer. Here there is nothing on record to show that the PEL / Board had taken a decision relating to the trigger and informed the Compliance Officer prior to the Board's decision on May 21, 2010. Thus, there was a failure to abide by the Clause 3.2.1 and 3.2.3(f) of the Model Code of Conduct. The AO found that once the violation was established the penalty becomes leviable irrespective of the intention.

17. This leads us to a question as to whether the imposition of penalty is the ultimate aim under Section 11 of the SEBI Act. In our view, the object of the SEBI Act is to protect the interest of the investors in the securities market and to promote the development of the securities market. SEBI has to monitor the activities in the securities market and take appropriate measures if it finds that the provisions of the Act has been violated.

18. In this regard, in ***SEBI V/s Kishore R. Ajmera, (2016) 6 SCC 368*** the Supreme Court held:

> *"The SEBI Act and Regulations framed thereunder are intended to protect the interests of investors in the securities market which has seen substantial growth in tune with the parallel developments in the economy.*

Investors' confidence in the capital/securities market is a reflection of the effectiveness of the regulatory mechanism in force. All such measures are intended to preempt manipulative trading and check all kinds of impermissible conduct in order to boost the investors' confidence in the capital market. The primary purpose of the statutory enactments is to provide an environment conducive to increased participation and investment in the securities market which is vital to the growth and development of the economy. The provisions of the SEBI Act and the Regulations will, therefore, have to be understood and interpreted in the above light."

19. In ***SEBI V/s Rakhi Trading (P) Ltd., 2018 (13) SCC 753,*** the Supreme Court held that:

"Fairness, integrity and transparency are the hallmark of the stock market in India. The Securities and Exchange Board of India (hereinafter referred to as "SEBI") is the vigilant watchdog, whether the factual matrix justified the watchdogs bite is the issue arising for consideration in this case."

20. This is precisely the question which is required to be answered in the present facts of the case. In the instant case, in January 2010, Abbott approached the Chairman of PEL with an offer to acquire the domestic healthcare business of PEL. We find that due diligence was carried out by PEL upto May 2010 in strictest confidence. Except for certain individuals, who were identified as being privy to the transaction and informed to SEBI in January 2011 itself, no one in PEL was aware of the information to sell the domestic healthcare business at any time prior to the Board meeting and subsequent positive announcement on 21.05.2010. We also find that the Chairman of the PEL informed the members of the Board of PEL on 10.05.2010 of the possibility of the pending deal that may take place, and none of the persons identified as being privy to the deal had sought any pre-clearance for trading in the scrip of PEL.

21. SEBI had made an investigation and found that only one designated employee had traded in the scrips. The AO found that the said employee was not associated in any manner with the process of domestic healthcare business and was not in possession of the Unpublished Price Sensitive Information (UPSI) relating to the deal. The AO accordingly exonerated

him of the charge of insider trading. Apart from the aforesaid instance, the AO has not found any other instance where the UPSI was misused by any employee of PEL, outsider, directors of the PEL, or the individuals who were identified to sell the domestic healthcare business.

22. The purpose of closing the trading window is for a salutary purpose. It is to ensure that trading is restricted during the period in question and pre-clearance requests can only be sanctioned as per the existing Model Code of PEL. In the given circumstances, even though the trading window was not closed, there was no trading of the scrips by any of the designated employees of the PEL nor any pre-clearance requests were received by PEL. Thus, even though, no announcement was made for closure of the trading window, we find that PEL ensured compliance in pith and substance of the Model Code of PEL and the PIT Regulations including the Model Code. We further find that UPSI at all times was preserved and there was no misuse of UPSI.

23. In the light of the aforesaid, we find that the violation of the Model Code in the given circumstances is technical in nature. We were informed that the PEL is a blue chip company

and has its presence in many countries which has not been denied by the respondent. We were also told that till date there has not been any violation of SEBI Laws. The imposition of penalty, even though meager will leave an indelible mark and leave a blot on their spotless image. Such blot may not be in the interest of the securities market especially in the international market.

24. Considering the aforesaid, we are of the opinion that the object of the Act is not only to protect the investors but also the securities market. The appellant is part of the securities market and its existence is required for the healthy growth of the securities market. SEBI is the watchdog and not a bulldog. If there is an infraction of a rule, remedial measures should be taken in the first instance and not punitive measures. In the absence of any direct or clinching evidence of insider trading or misuse of UPSI, a reasonable benefit of doubt should be extended to the PEL instead of mechanically imposing a penalty. Other factors should be considered including those stated in Section 23J of the Act which apparently was not considered.

25. When fairness and transparency was shown by PEL in the execution of the deal and there is no evidence of lack of integrity on the part of PEL, it would be harsh to penalize PEL, howsoever small the penal amount it may be.

26. The AO has imposed a penalty upon PEL for a technical violation of the Model Code. The compliance officer has already settled the matter with SEBI. We feel that in the given situation the imposition of penalty upon PEL and its directors was unwarranted and, in any case, disproportionate. This Tribunal, in appeal, apart from exercising the powers of the Board can also exercise powers to make such orders and give such directions as may be necessary or expedient to secure the ends of justice as specified under Rule 21 of the Securities Appellate Tribunal (Procedure) Rules, 2000. These powers have been conferred upon the Tribunal with a view to do complete justice between the parties which is equitable in nature to be exercised to ensure justice between the parties or to prevent injustice.

27. Consequently, the imposition of penalty is converted into one of warning with a further direction that if any such incident

occurs in future, it would be open to SEBI to proceed in accordance with law.

28. The impugned order is accordingly modified to the extent stated aforesaid. The appeals are allowed. In the circumstances, there shall be no order as to costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

Sd/-
Dr. C.K.G. Nair
Member

15.05.2019
Prepared & Compared By: PK