

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-9/ AO/SM/ 211 - 214 / 2018-19]**

**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 BY ADJUDICATING OFFICER)
RULES, 1995**

In respect of:

1. M/s. Syncom Healthcare Ltd (PAN: AAKCS3247G)
2. Mr. Ajay Bankda (PAN: ADHPB2851J)
3. Ms. Jyoti Bankda (PAN: ADHPB2855N)
4. Mr. J C Paliwal (PAN: AFYPP3780M)

In the matter of M/s. Syncom Healthcare Ltd

Facts of the case:

1. Securities and Exchange Board of India ("SEBI") had conducted an investigation in the scrip of Syncom Healthcare Ltd ("SHL") based on the complaint received from All Gujarat Investor Protection Trust ("AGIPT") for possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 ('Act') and various Rules and Regulations made thereunder during the investigation period from February 15, 2010 to March 31, 2010 (hereinafter referred to as the 'IP').
2. SHL is listed at Bombay Stock Exchange Limited ('BSE') and National Stock Exchange of India Ltd ("NSE").

Corporate Announcements

3. SHL during IP made the following Corporate announcements and its impact on the price and volume of the scrip of SHL on BSE was as under:

S.No	Date and Time	Announcement/News	Price Impact/Shares Traded				Remarks
1	March 08, 2010 (Mon) at 11:35:00	Syncom is entering in an MOU with M/s Advanced Techno Lab, based in Congo who will undertake product marketing activities.	05/03/10 (Fri)				The scrip on March 08, 2010 closed above 4.09% of the previous day (05/03/2010) closing price.
			O	H	L	C	
			112	113.9	109.3	111.2	
			No. of shares traded: 28,26,274				
			08/03/2010				
			O	H	L	C	
113	116.7	111.8	115.75				

			No. of shares traded: 26,01,683				
2	March 29, 2010 (Mon) at 12:37:00	In addition to the existing tie ups with Ranbaxy Labs Ltd., Wockhardt Ltd., Piramal Healthcare Ltd., Lupin Pharma etc., Company is entering into agreement with Mumbai based Kilitch Drugs Ltd.	29/03/10				The scrip on March 30, 2010 closed above 3.24% of the previous day (29/03/2010) closing price.
			O	H	L	C	
			135	135	119.65	129.5	
			No. of shares traded: 81,20,681				
			30/03/10				
			O	H	L	C	
			129.5	136.4	128.45	133.7	
			No. of shares traded: 31,99,190				

Similar price movement in the scrip was observed on NSE.

4. SHL made corporate announcement on March 08, 2010 at 11:33:00 and 11:35:00 on NSE and BSE respectively about entering into an MOU with M/s Advanced Techno Lab who will undertake product marketing activities in Congo, Africa and expected growth of top line from 25% to 30% to approx Rs. 90 cores in next financial year.

4.1 Chronology of events relating to MOU with Advanced Techno Lab:

Date	Persons involved	Event
March 08, 2010	Shriraj Ramchandani (Advanced Technolab) and Pratik Bankda (Syncom)	Company received letter from Advanced Technolab, Congo showing interest to buy products and requesting for quotations
		Corporate Announcement was disclosed on BSE (at 11:35:00) and NSE (at 11:33:00).
March 18, 2010	Shriraj Ramchandani,	Quotations sent to Advanced Technolab
March 26 - 27, 2010	Nikhil Roy (Advanced Technolab) and Pratik Bankda (Syncom)	Revised quotations sent by Syncom to Advanced Technolab based on the discussions with Advanced Technolab
April 07, 2010	Shriraj Ramchandani (Advanced Technolab) and Pratik Bankda (Syncom), JC Paliwal (Company Secretary & VP Finance of Syncom)	Discussions with Advanced Technolab representative. Syncom requesting security in form of Letter of Credit for 60% of order value and Cheque for 40% of order value.
April 12, 2010		Advanced Technolab informed that providing Letter of Credit was not suitable to them and called off the deal.

4.2 With regard to the aforesaid corporate announcement following was observed:

- SHL made an announcement to exchanges considering the information as material and price sensitive
- SHL in its announcement stated that it expects top line increase of 25% to 30% due to this MOU

(iii) SHL extending its business to foreign country i.e., Republic of Congo.

4.3 In view of the above, Corporate announcement with regard to Entering into MOU with Advanced Techno lab was a price sensitive information ("PSI") under Clause (vii) – Significant changes in policies, plans or operations of the company under Explanation of Regulation 2(ha) of SEBI (Prohibition of Insider Trading) Regulations, 1992 ("PIT Regulations, 1992").

4.4 However, the said MOU had not been executed and SHL vide its e-mail dated October 09, 2014 confirmed that no disclosure with regard to failure of entering into MOU was made to the exchange. Hence, it was alleged that SHL, Board of Directors (excluding independent directors) and Company secretary/Compliance officer during the relevant period i.e. as on April 12, 2010 had violated Clause 2.0 of Schedule II – Code of Corporate Disclosures for Prevention of Insider Trading prescribed under Regulation 12(2) of PIT Regulations, 1992.

5. SHL agreement with Kilitch Drugs: With regard to the Corporate Announcement made by SHL on March 29, 2010, it was observed from the agreement provided by SHL (vide e-mail dated January 7, 2015) that although SHL had entered into the agreement with Kilitch Drugs Limited on March 17, 2010, it made corporate announcement as "it is entering into an agreement" on March 29, 2010 i.e.. Thus it was alleged that Corporate Announcement made by SHL was not true. Therefore, SHL misled the public by the aforesaid corporate announcement. The agreement was signed by J P Bageria, Non-Executive Director. Hence, it was alleged that SHL, Board of Directors (excluding independent directors) and Compliance officers during the relevant period had violated Section 12A(c) of the Act read with Regulations 3(d), 4(1), 4(2)(f) and 4(2)(r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ("FUTP Regulations").

6. **Code of Conduct:**

6.1 SHL vide Letter dated March 10, 2014 submitted the Code of Conduct for Prevention of Insider Trading. From the analysis of code of conduct, following was observed and hence thereby alleged:

- (i) From clause II of TITLE, COMMENCEMENT AND EXTENT, it was observed that adopted code of conduct came into force on April 1, 2010.
- (ii) Clause 1.3, sub-clause (d) of clause 3.2-3, Clauses 3.2-5, 3.2-6, 3.3-1, 3.3-2, 3.3-3, 4.1 and 4.2 of Part A – Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified in Schedule I under Regulation 12(1) of SEBI(Prohibition of Insider Trading) Regulations, 1992 were not

incorporated in the Code of Conduct framed by the SHL which was violation of Regulations 12(1) and 12(3) of SEBI (PIT) Regulations, 1992.

6.2 Hence, it was alleged that there was no code of conduct for Prevention of Insider Trading in force during February 15, 2010 (Listing Day) to March 31, 2010. Further, code of conduct adopted by SHL which came into force from April 01, 2010 was not as near thereto Code of Conduct prescribed by SEBI under its SEBI (PIT) Regulations, 1992. Further, vide Letter dated September 16, 2014, SHL confirmed that code of conduct which was adopted on February 6, 2010 had come into force from April 01, 2010 and provisions which were not adopted as mentioned above were adopted from September 16, 2014.

6.3 The details of the non-independent directors and compliance officers of SHL during February 15, 2010 to September 16, 2014, as follows:

S. No.	Name	Designation	Period
1	Ajay Bankda	Chairman & Managing Director	FY 2009 – FY 2014
2	Jyoti Bankda	Whole Time Director	FY 2009 – FY 2010
3	J P Bagaria	Non – Executive Director	FY 2009 – FY 2014
4	J C Paliwal	Compliance Officer	FY 2009 – May 24, 2012
5	Atul Thapliyal	Compliance Officer	July 12, 2012 – Sep 01, 2012
6	Naveen Sood	Compliance Officer	Sep 01, 2012 – March 22, 2013
7	Subash Chandra Gupta	Compliance Officer	March 22, 2013 – Aug 30, 2014
8	J.C. Paliwal	Compliance Officer	w.e.f. Aug 30, 2014

6.4 In view of the above, it was alleged that Board of Directors (excluding independent directors) and Compliance Officers of SHL during February 15, 2010 to September 16, 2014 had violated Regulations 12(1) and 12(3) read with Clause 1.2 of Part A of Schedule I of the PIT Regulations, 1992.

7. Pursuant to the initiation of adjudication proceedings, the Adjudicating Officer of SEBI had passed the Order on November 30, 2017 levying a penalty of Rs.15,00,000/- on the Entities. As against the said order the Entities had made appeal to Hon'ble Securities Appellate Tribunal ("SAT") and SAT in Appeal no.145 of 2018 vide its order dated May 18, 2018 while setting aside the impugned order qua the appellants and restore the matter for fresh decision on merits and in accordance with law since
- *There is no clarity in the impugned order as to whether the penalty is imposed on the entities named therein individually or collectively and*
 - *In view of the fact that the submissions made by the appellants have not been properly considered in the impugned order.*

8. *In this order wherever SEBI (Prohibition of Insider Trading) Regulations, 1992 ("PIT Regulations, 1992") is mentioned it should be referred to as PIT Regulations, 1992 read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015.*

Appointment of Adjudicating Officer

9. Accordingly, the matter was referred back to me for necessary action as directed by Hon'ble SAT.

Show Cause Notice, Reply and Personal Hearing

10. I have relied upon the common show cause notice dated December 29, 2015 wherein Entities were show caused as to why inquiry should not be held and penalty should not be imposed under sections 15HA and 15HB of the Act. I have also relied upon the response of SHL vide letter dated June 03, 2016, inter-alia made the following submissions which was also adopted by other Entities as their reply to SCN as informed vide their letters.
- 10.1 *SHL requested to drop the proceedings since the investigation/SCN was carried out on the complaint made by AGIPT which is not a recognised investor association of SEBI as claimed in the SCN as per the list of recognised investor associations of SEBI as on April 25, 2016.*
- 10.2 *The announcement was made on March 29, 2010 upon signing the agreement even though the agreement is dated March 17, 2010 which was not corrected due to oversight.*
- 10.3 *With regard to impact of price of the scrip on the corporate announcement made with regard to Kilitch Drugs Ltd, had a negative impact and the price of SHL was in tandem with the BSE healthcare Index.*
- 10.4 *Further, as far as the words "it is entering into an agreement" are concerned, SHL submitted that they were entering into agreement and the agreement was entered into in and around March 29, 2010 without any malafide intention to make such announcement.*
- 10.5 *With regard to corporate announcement on March 08, 2010 i.e., "Syncom is entering in a MOU with M/s.Advanced Techno Lab, based in Congo" it is submitted that marginal increase in the price due to the said corporate announcement is testimony of the fact that the alleged price sensitive information was not significant and did not have any impact on the price. Further, there was an increase of around 1% in the BSE Healthcare Index on March 08,2010 compared to closing BSE Healthcare index on March 05, 2010 and which clearly show that there was virtually no increase in price of the scrip prior to and after the corporate announcement although BSE Healthcare Index had shown positive signs.*

- 10.6 *With regard to alleged violation that code of conduct was not adopted immediately after listing, it is submitted and denied that there was no code of conduct for prevention of insider trading in force during February 15, 2010 to March 31, 2010 and further code of conduct was adopted immediately after listing i.e., on April 01, 2010. In the title of the code of conduct, it has been mentioned that code of conduct came into force on April 1, 2010, however, this code of conduct is part of our DNA we have been following this code of conduct even prior to the date of listing and none of our directors, promoters, or KMPs have traded in the scrip of SHL while in possession of unpublished price sensitive information. It is submitted that from SEBI's own case that no violation of code of conduct has taken place, none of our employees including directors, promoters and KMPs were following the code even prior to date of listing.*
- 10.7 *With regard to the allegation that non-adoption of code of conduct as near thereto model code of conduct specified in Schedule I of PIT Regulations, 1992 it is submitted that SHL has not diluted any clause of code of conduct and reiterate that our conduct contains all important clauses which have been specified under Regulation 12(1) of these by PIT Regulations, 1992 and deny that SHL or any of its directors or promoter or KMPs have violated Regulation 12(1) and 12(3) of PIT Regulations since we have followed all the clauses of code of conduct as stipulated under Schedule I of PIT Regulations. Further, the code of conduct was prepared by our company secretary/compliance officer and the same was adopted by the Board of Directors and went by the advice of the company secretary/ compliance officer at that point of time.*
- 10.8 *With regard to alleged violation of Section 12A(c) of SEBI Act read with Regulation 3(d), 4(1), 4(2)(f) & 4 (2) (r) of FUTP Regulations; Regulation 12(1) and 12(3) read with clause 1.2 of Part of Schedule I of PIT Regulations and Regulation 12(2) read with clause 2.0 of Schedule II of PIT Regulations, it is humbly submitted that SHL or any of its directors or promoters of KMPs has not dealt in the shares of SHL, not carried out any act which would act as fraud or deceit on any person, published or causing to publish any report which was not true, has not planted any news which induced any person to deal and has followed all the clauses contained in code of conduct of PIT Regulations in letter and in spirit from the time the company was not even listed.*
- 10.9 *With regard to alleged violation of Regulation 4(2)(f) of FUTP Regulations, we strongly contend that this regulation is attracted when a person "prior to or in the course of dealing in securities" and it is own case that SHL and its directors/ promoters/ KMPs have not dealt in the securities of SHL either prior to or after giving out any corporate announcement.*
- 10.10 *Further, attention is drawn to case laws in support of the claim that charge of fraud is a serious charge and in absence of any convincing evidence such charge cannot be made.*
- 10.11 *With regard to imposition of penalty under section 15HA and 15HB, referred to case laws in support that penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Art. 14 of the constitution. Since the charges against SHL and its*

directors, promoters have not been established, it is kindly requested not to levy any penalty and to drop the current proceedings.

11. Pursuant to remanding back of the case by Hon'ble SAT, an opportunity of personal hearing was granted to the Entities on August 29, 2018 vide notice dated August 8, 2018. On the said date, AR of Entities appeared before me and sought further time to file their reply and filed their reply vide letter dated September 6, 2018 wherein another opportunity of hearing was sought. Accordingly, another opportunity was granted on September 19, 2018 and on that day, AR appeared before me and reiterated the submissions made vide letter dated September 6, 2018 and also sought time till September 26, 2018 to submit case laws in support of their claim about considering the effective date of an agreement in respect of Kilitch Drugs.
12. The submission made by the Entities vide their letter dated September 6, 2018 inter-alia states:
 - 12.1 *A detailed reply dated June 3, 2016 to the above show cause notice was sent by Syncom ... with all the allegations and contentions as raised in the said show cause notice. The contents of the said reply are hereby repeated and reiterated and it is submitted that the contents of the said reply be construed to be a part and parcel also of the present submission.*
 - 12.2 *The copy of the complaint by AGIPT leading to the issuance of the show cause notice is not provided till date even though submissions in respect of the same was made earlier and the same was sought by the Noticees herein. As such Natural Justice by which quasi-judicial authority are totally bound by are violated. It is submitted that a full and complete opportunity to the Noticees for defending themselves are not provided in the absence of the above complaint and circumvented further rights of the Noticees as provided to them in the matter. The Noticees also would require to cross examine the alleged complainant and the official who has conducted investigation in the matter in view of the facts and circumstances of the case. It is therefore requested a copy of the complaint be given and the Noticee be allowed to cross examine as stated above*
 - 12.3 *.As far as allegation of announcement by the company on March 29, 2010 in respect of agreement entered into with Kilitch Drugs Ltd on March 17, 2010 is concerned, it is repeated that SEBI has misconstrued the date of stamp paper with the date of the agreement. From the copy of the email provided to SEBI, it is evident that Syncom was still circulating draft agreement as late as March 23, 2010. The email dated 23 March 2010 of SHL to KDL mentions "agreement OK with us. We request you to formalise it, sign it and send it to our Indore address where we will sign and forward it to Deharadun for licensing purpose". In view of the same it is preposterous even to suggest that the agreement was entered on March 17, 2010. It is submitted that the final agreement was signed concluded and came into existence only on or about 29 March 2010. Upon the bare perusal of the said agreement it can be observed that the agreement was notarised on 29 March 2010 which fact is a conclusive proof that the agreement was not in existence before the said date and was concluded, came into existence and operation on 29 March 2010 only.*
 - 12.4 *With regard to impact of price of the scrip on the corporate announcement made with regard to Kilitch Drugs Ltd, had a negative impact and the price of SHL was in tandem with the Healthcare index. The above clearly negates the allegation of the SCN and confirms the fact that there was no intention*

of misleading the public that the public was misled and no such even remote allegations or evidence in respect thereof has been set out in the SCN in question.

12.5 With regard to corporate announcement on March 8, 2010 "i.e., Syncom is entering in a MOU with M/s. Advanced Techno Lab, based in Congo", it is submitted that marginal increase in the price due to the said corporate announcement is testimony of the fact that the alleged price sensitive information was not significant and did not have any impact on the price. Further there was an increase of around 1% in the BSE healthcare index on March 8, 2010 compared to closing BSE Healthcare index on March 5, 2010 and which clearly show that there was no increase in price of the scrip prior to and after the corporate announcement although BSE healthcare index shown positive signs.

12.6 It was clearly mentioned that "company received letter from Advance techno Lab, Congo showing interest to buy products and requesting for quotations. The said corporate announcement had only indicated that the Noticee No.1 company was in negotiation with M/s. Advanced techno Lab who had shown interest in buying its products. On 12-04-2010, M/s. Advanced Techno Lab informed the Noticee No.1 company that providing letter of credit was not suitable to them and called off the deal. Since no definitive agreement was entered into, the corporate announcement made by the NOTICEE No.1 company 08-03-2010 did not made any impact on the price of the scrip as alleged in the SCN.

12.7 With regard to alleged violation that Code of conduct was not adopted immediately after listing, it is submitted and denied that there was no code of conduct for prevention of insider trading in force during February 15, 2010 to march 31, 2010 and further code of conduct was adopted immediately after listing i.e, on April 01, 2010. In the title of the code of conduct, it has been mentioned that code of conduct came into force on April 1, 2010, however, this code of conduct has been followed even prior to the date of listing and none of the directors, promoters, or KMPs have traded in the scrip of SHL while in possession of unpublished price sensitive information.

12.8 With regard to non-adoption of code of conduct as near thereto Model code of conduct specified in Schedule I of PIT Regulations, 1992, it is submitted that SHL has not diluted any clause of code of conduct and reiterate that our conduct contains all the important clauses which have been specified under Regulation 12(1) of these by PIT regulations, 1992 and deny that SHL or any of its directors or promoter or KMPs have violated regulation 12(1) and 12(3) of PIT Regulations since we have followed all the clauses of Code of Conduct as stipulated under Schedule I of PIT Regulations. Further, the code of conduct was prepared by the company secretary/ compliance officer and the same was adopted by the Board of Directors and went by the advice of the company secretary/ compliance officer at that point of time.

12.9 With regard to alleged violation of section 12A(c) of SEBI Act read with regulation 3(d), 4(1), 4(2)(f) & 4(2)(r) of FUTP Regulations, Regulation 12(1) and 12(3) read with clause 1.2 of Part of Schedule I of PIT regulations and Regulation 12(2) read with clause 2.0 of Schedule II of PIT Regulations, it is humbly submitted that SHL or any of its directors or promoters or KMPs has not dealt in the shares of SHL not carried out any act which would act as fraud or deceit on any person, published or causing to publish any report which was not true, has not planted any news which induced any person to deal and has followed all the clauses contained in code of conduct of PIT Regulations in letter and in spirit from the time of Noticee No.1 company was not even listed.

13. Further, AR has also referred to case laws in the matter of S.L Kapoor vs Jagmohan & Ors (AIR 136, 1981 SCR(1)746, Canara bank and Ors vs Shri Debasis Das and Ors (7539 of 1999) etc. in the connection with principle of natural justice for providing cross examination of the investigating authority and complete investigation report. Also referred to judgements relied upon by the Noticees in the matter of Hanssraj Gupta vs

Dehra Dun Mussorie electric Tramway Ltd (AIR 1940 privy council 98), SEBI Vs Indsec Securities and Finance (17 May 2005), D K Yadav Vs YMA Industrial Ltd (Supreme court (1993) 3 SCC 259) to support their submissions on dating of agreement.

Consideration of Issues, Evidence and Findings

14. I have carefully perused the charges levelled against the entities in the SCN and written and oral submissions made in response to SCN and all the documents available on record. In the instant matter, the following issues arise for consideration and determination:
- I. Whether the Entities have violated Regulation 12(2) read with clause 2.0 of Schedule II and Regulations 12(1) and 12(3) read with Clause 1.2 of Part A of Schedule I of PIT Regulation, 1992, and Section 12A(c) of the Act read with Regulations 3(d), 4(1), 4(2)(f) and 4(2)(r) of FUTP Regulations?
 - II. Does the violation, if any, on the part of Entities attract monetary penalty under Section 15 HA and 15 HB of the Act?
 - III. If so, what would be the quantum of monetary penalty that can be imposed on the Entities taking into consideration the factors mentioned in Section 15J of the Act?
15. Before proceeding further, I would like to refer to the relevant provisions of the SEBI Act, PIT Regulations, 1992, PIT Regulations, 2015 and FUTP Regulations. The provisions referred above are reproduced as under:

SEBI Act, 1992

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

(a)

(b)

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

SEBI (PIT) Regulation, 1992:-

CHAPTER IV

POLICY ON DISCLOSURES AND INTERNAL PROCEDURE FOR PREVENTION 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.

(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).

(4) Action taken by the entities mentioned in sub-regulation (1) against any person for violation of the code under sub-regulation (3) shall not preclude the Board from initiating proceedings for violation of these Regulations.

Schedule I of SEBI (PIT) Regulation, 1992:-

SCHEDULE I

[Under regulation 12(1)]

PART A

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

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;

(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.

SCHEDULE II

[Under regulation 12(2)]

CODE OF CORPORATE DISCLOSURES PRACTICES FOR PREVENTION OF INSIDER TRADING

1.0 Corporate Disclosure Policy

1.1 To ensure timely and adequate disclosure of price sensitive information, the following norms shall be followed by listed companies:—

2.0 Prompt disclosure of price sensitive information

2.1 Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.

2.2 Listed companies may also consider ways of supplementing information released to stock exchanges by improving Investor access to their public announcements.

Regulation 12 of SEBI (PIT) Regulation, 2015:-

Repeal and Savings.

12. (1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.

(2) Notwithstanding such repeal,—

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and

(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(3) After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

FUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

(a)...

(b)...

(c)....

(d)..

(e)...

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(g)...

..

...

(r) planting false or misleading news which may induce sale or purchase of securities

Findings

16. On perusal of the records, replies of the entities and other materials available before me, I find the following:
17. SHL has contended that it was provided only with the extracts of the investigation report and have not been provided with full copy of the investigation report and the complaint filed by one All Gujarat Investor Protection trust (AGIPT) as is compulsory under the principles of natural justice and established principles of legal jurisprudence. I note that relevant portion of the investigation report which was relied by me in this proceedings has been already shared with the entities, and I have not relied on any contents of the complaint so filed against SHL, therefore by not sharing the complete investigation report and the complaint filed, no prejudice is caused to the entities.
18. In this context, it becomes necessary to quote the judgment of the Hon'ble Securities Appellate Tribunal, in the case of Mayrose Capfin Private Limited V/s. Securities and Exchange Board of India (Appeal No. 20 of 2012) dated March 30, 2012,
"The principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation, but, has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count".
19. I further rely on the findings of Hon'ble Supreme Court in the matter of Chandrama Tiwari vs. Union of India (AIR 1988 SC 117),
"It is not necessary that each and every document must be supplied to the delinquent government servant facing charges; instead only material and relevant documents are necessary to be supplied to him. If a document even though mentioned in the Memo of charges is not relevant to the charges or if it is not referred to or relied upon by the enquiry officer or the punishing authority in holding the charges proved against the government servant, no exception can be taken to the validity of the proceedings or the order passed on the

ground of non-supply of the copy of the order. If a document is not used against the party charged, the ground of violation of principles of natural justice cannot be successfully raised. Violation of the principles of natural justice arises only when a document, a copy of which may not have been supplied to the party charged, is used in recording findings of guilt against him." In view of the above quoted case laws, I am of the opinion Principle of justice has been followed in the matter as I find all the information and documents relied by me had been provided to SHL, I will now move to the facts of the case.

20. The main allegations levelled against SHL and others were
- i) the code of conduct adopted by SHL on February 06, 2010 was effective from April 01, 2010 and hence no code of conduct was in force from February 15, 2010 (listing day) to March 31, 2010.
 - ii) Code of conduct adopted by SHL does not contain clause 1.3, sub-clause (d) of clause 3.2-3, clauses 3.2-5, 3.2-6, 3.3-1, 3.3-2, 3.3-3, 4.1 and 4.2 of Part A – Model code of conduct for prevention of insider trading for listed companies specified in Schedule 1 under Regulation 12(1) of PIT Regulations, 1992.

My observation

21. The above allegations were casted on Entities upon analysis of the code of conduct submitted by SHL vide its letter dated March 10, 2014. Entities in their reply to SCN had said that the code of conduct was adopted even before listing but their reply that the code of conduct was brought into effect from April 1, 2010 nullifies their claim about the existence of code of conduct even before listing.
22. I note that in clause II of the submitted code of conduct adopted by SHL, the effective date mentioned was April 01, 2010 and Noticees have not produced any cogent evidence to substantiate their claim to prove it contrary. . Therefore the claim that this code was in effect even prior to listing does not hold good.
23. I also note that clauses of Model code of conduct prescribed under PIT Regulations as mentioned in the SCN were not incorporated in the code of conduct adopted by SHL. Since SHL itself has accepted that the code of conduct was came into effect from April 01, 2010 and the clauses mentioned in the SCN were not incorporated, therefore allegation stands established and I conclude that Entities have violated Regulations 12(1) and 12(3) read with Clause 1.2 of Part A of Schedule 1 of PIT Regulations, 1992 and hence liable for penalty for not having code of conduct between February 15, 2010 (listing day) to March 31, 2010 and not adopting as near thereto model code of conduct.

24. Allegation relating to delayed disclosure relating to agreement with Kilitch Drugs and no announcement relating with calling off deal with Advanced technolab

My observation - Kilitch Drugs

25. SHL in its reply stated that even though the agreement was dated as March 17, 2010 taking into the practical difficulties of signing the agreement, the same was signed and notarized on March 29, 2010. Accordingly, the corporate announcement was made on that day. Further, their submission that franking for stamp duty was completed on March 17, 2010 and the agreement was never back dated. Further, their submission that the draft agreement which was circulated was dated March 17, 2010 only and while finalizing inadvertently, the date was not changed. The above submission of SHL is not eliciting any merit since for all practical purposes the date mentioned on the agreement shall be construed as date of agreement.
26. It was argued that since the agreement entered with Kilitch Drugs Limited was notarized on March 29, 2010 therefore it should be construed that the agreement was not in existence before the said date, I do not agree with the statement so made as parties may enter into an agreement and they may get the agreement notarized at a later date also. It may be noted that an agreement can be in existence without being notarized. I also note that none of the parties to the agreement had put the date of signature.
27. Noticees have also argued that it was misconstrued the date of the stamp paper with the date on which agreement has been entered. Here I note that date mentioned on the agreement was March 17, 2010 and it was not the date of stamp paper. Also, with regard to email dated March 23, 2010 wherein SHL had confirmed to Kilitch that they are OK with the agreement.
28. Here I would like to consider the fact that the corporate office of SHL was located in Indore and its plant was in Dehradun whereas the corporate office of Kilitch was in Mumbai and plant in Ponta Sahib and signatories' to this agreement were based out of Ponta Sahib and Dehradun. By looking at the above fact, I am inclined to accept the version of SHL that final signature on the agreement was done on March 29, 2010 and same day it was informed to the Stock Exchange. Hence I am inclined to give benefit of doubt to SHL in the matter.

Advanced Technolab (ATL)

29. SHL made disclosure about entering into MOU with Advanced Technolab on March 08, 2010 for which they made public announcement but SHL had not made any public announcement when the said MOU was called off on April 12, 2010.

My observation:

30. Reply of SHL in this regard is vague and not addressing the allegation that it had failed to make public announcement with regard to call off of the MOU. Here I note that on receipt of letter from ATL showing interest to buy products and requesting for quotations, SHL found this information material and went ahead to make corporate announcement as this was the positive news for the company. On the contrary when on April 12,2010 when ATL informed SHL that it is calling off the deal ,SHL did not made any corporate announcement . Here I note that SHL cannot resort to different set of rules of its convenience, I further note that generally receiving an order or an interest by a listed company is considered positive news so it had made corporate announcement on it and since calling off of any deal is not considered positive news, hence no specific corporate announcement made.Failure on the part of SHL certainly had contravened the provisions of Regulation 12(2) read with Clause 2.0 of Schedule II of the PIT Regulations, 1992. Hence, I conclude that Entities have violated Regulation 12(2) read with clause 2.0 of Schedule II of PIT Regulations, 1992 and liable for penalty.

ISSUE II : Does the violation, if any, on the part of the Entities attract monetary penalty under Section 15 HB of the Act?

31. It is stated in the schedule I under Regulation 12(1) of PIT 1992 that 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. Therefore SHL ,its compliance officers and its Board of Directors is responsible for the violations
32. Having concluded that the Entities, being the company, the directors and company Secretary of Syncom at the relevant period have violated Regulation 12(2) read with clause 2.0 of Schedule II , Regulations 12(1) and 12(3) read with clause 1.2 of PART A of Schedule I of PIT Regulation, 1992, are liable for penalty under 15 HB of the Act.
33. Relevant portions of Sections 15 HB of the Act are reproduced as under:

Penalty for fraudulent and unfair trade practices.

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 may extend to one crore rupees.

Issue III : If so, what would be the quantum of monetary penalty that can be imposed on Entities taking into consideration the factors mentioned in Section 15J of the Act?

34. While determining the quantum of penalty under Section 15HB, it is important to consider the factors stipulated in Section 15J of the Act, which read 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.

35. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..."*. Hence, Entities have contravened the provisions of law are liable for penalty.
36. I would like to place the emphasis on the objective of code of conduct i.e., the objective of framing a Code of Conduct under the PIT Regulations, 1992 is to prevent insider trading and prevent misuse of the price sensitive information which undermines the confidence of the investors. It is, thus, a preventive measure rather than a post facto remedial action. Hence, I find that the quantum of penalty cannot primarily depend upon the disproportionate gain or unfair advantage made by the entities or the monetary loss to the investors. On the contrary, it will largely be guided by the conduct of the entities in complying with the relevant regulations.

ORDER

37. After considering all the facts, circumstances of the case and case laws mentioned above, I exercise the powers conferred upon me under Section 15-I of the Act and Rule 5 of Rules and hereby impose the following monetary penalties which in my view are commensurate with the default committed by the entities:

Entity	Provisions of law violated	Penalty levied under Section	Quantum of penalty payable jointly and severally in Rs.
M/s.Syncom Healthcare Ltd Mr. Ajay Bankda Ms. Jyoti Bankda Mr. J C Paliwal	Regulation 12(2) read with clause 2.0 of Schedule II of PIT Regulation, 1992	Section 15 HB of the Act	Rs.5,00,000
	Regulations 12(1) and 12(3) read with clause 1.2 of PART A of Schedule I of PIT Regulation, 1992		Rs.5,00,000

38. The 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 (EFD), Division of Regulatory Action - I [**EFD-DRA-I**] SEBI Bhavan, Plot No.C4-A, ' G ' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 OR 2) through e-payment facility into Bank Account, the details whereof are given as below :-

Account No. for remittance of penalty(ies) levied by Adjudication Officer :-

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

39. The Noticees shall forward the said Demand Drafts or the details / confirmation of penalty so paid through e-payment to the Division Chief of the aforesaid Enforcement Department (EFD) of SEBI.

40. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the Form as provided at Annexure `A` of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is reproduced as under:-

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

41. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Date : November 30, 2018
Place : Mumbai

SAHIL MALIK
ADJUDICATING OFFICER