

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. EAD-2/DSR/PU/145/2014]**

---

**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 BY ADJUDICATING OFFICER) RULES, 1995**

In respect of

**Ms. Chandana Gosh  
[PAN: AABPG1077A]**

In the matter of

**ITC Limited**

---

**Background**

1. The Securities and Exchange Board of India (hereinafter referred to as 'SEBI') carried out an investigation into the alleged irregularity in the scrip of ITC Limited (herein after referred to as 'ITCL'). Upon examination it was, inter alia, observed that Ms. Chandana Gosh (herein after referred to as 'the Noticee') as an officer of ITCL had failed to disclose the change in shareholding to the company and the stock exchange, as required under Regulation 13 (4) read with Regulation 13 (5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (herein after referred to as the 'PIT Regulations').

**Appointment of Adjudicating Officer**

2. I have been appointed as the Adjudicating Officer (AO), vide order dated October 17, 2013 under Section 15 I of the Securities and Exchange Board of India

Act, 1992 (hereinafter referred to as 'SEBI Act') read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Adjudication Rules") to inquire into and adjudge under 15A(b) of the SEBI Act, the alleged violation of the provisions of law by the Noticee.

### **Show Cause Notice, Reply and Personal Hearing**

3. A show cause notice dated November 29, 2013 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4 (1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on the Noticee under Section 15 A(b) of the SEBI Act, for the alleged violation of the provisions of law. The Noticee submitted a reply to the SCN vide letter dated December 12, 2013.
  
4. An opportunity of personal hearing was granted to the Noticee on March 21, 2014 vide letter dated March 05, 2014. The Noticee sought an adjournment vide letter dated March 18, 2014 and accordingly, another opportunity of personal hearing was granted to the Noticee on May 05, 2014 vide letter dated April 21, 2014. Senior Counsel Mr. Pesi Modi along with the authorized representative Ms. Ananya Gosh, Advocate, Amarchand & Mangaldas & Suresh A. Shroff & Co., appeared on behalf of the Noticee on the said date. He reiterated the written submissions and further submitted copies of the Judgments passed by the Hon'ble Securities Appellate Tribunal (SAT), in the cases of Sundaram Finance Limited Vs. SEBI, dated September 16, 2010 and Mahendra Pandey Maitri Vs. SEBI, dated December 22, 2011 and June 26, 2013 in support of the same along with the Governance Structure of ITC Ltd. and charts depicting the hierarchy of the company, which includes the position held by the Noticee. In addition to the said submissions, one week's time to file additional submissions in the matter

was requested and the same was granted. Accordingly, vide letter dated May 12, 2014, the Noticee submitted additional reply in the matter.

### **Consideration of Issues, Evidence and Findings**

5. I have carefully perused the charges made against the Noticee as mentioned in the SCN, written/oral submissions and all the documents available on record. In the instant matter, the following issues arise for consideration and determination:

a) **Whether the Noticee is required to comply with Regulation 13 (4) read with Regulation 13 (5) of the PIT Regulations?**

b) **Whether the Noticee is liable for monetary penalty under Section 15 A(b) of the SEBI Act?**

c) **If so, what should be the quantum of monetary penalty?**

6. Now, I would like to refer to the relevant provisions of the PIT Regulations, which read as under:

#### **PIT Regulations**

#### **13. Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure**

.....

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

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

*(a) the receipts of intimation of allotment of shares, or  
(b) the acquisition or sale of shares or voting rights, as the case may be."*

7. It is observed that ITCL is listed on both the Bombay Stock Exchange (BSE) as well as the National Stock Exchange (NSE). It has been alleged in the SCN that the Noticee had sold 10,000 shares worth ₹ 35,37,078/- on July 11, 2013. The Noticee being an 'officer' of the company was under an obligation to disclose the change in shareholding that exceeded the value of ₹ 5,00,000/-to the company and the stock exchange, as required under Regulation 13 (4) read with 13 (5) of the PIT Regulations. Since, the Noticee failed to make the required disclosures, it was alleged that she is in violation of the said provisions of law as prescribed under the PIT Regulations.
8. The Noticee vide her reply dated December 12, 2013, submitted that she was holding the position of a 'manager' in the Human resources function of the Trade Marketing and Distribution vertical of the Tobacco Division of ITCL. She also enclosed a copy of Form D (also dated December 12, 2013), addressed to both NSE and BSE, along with her reply to the SCN. Further, the Noticee stated that she was never in possession of any unpublished price sensitive information about ITCL and also that she is neither a director nor an officer of the company within the meaning of Regulation 13 (4) of the PIT Regulations.
9. In addition to her earlier submissions, vide letter dated May 12, 2014, the Noticee contended that, she is an employee in the Human Resources function of the Trade Marketing and Distribution vertical of the India Tobacco division of ITCL. The Noticee has quoted, the definition of an 'Officer' as per Regulation 2 (g) of the PIT Regulations read with Section 2 (30) of the Companies Act, 1956, along with the definition of 'Manager' under Section 2(24) of the Companies Act, 1956, the definition of 'Secretary' as per Section 2 (45) of the Companies Act, 1956 and has contended that there is no possibility of her falling under any of the above

mentioned definitions. Further, she submitted that ITCL is a multi-business conglomerate, with 11 divisions, spreading across Fast-Moving Consumer Goods (FMCG), paperboards and packaging, lifestyle retailing, hotels etc., including the 'Indian Tobacco Division'. The Board of Directors at the apex, as trustee of the shareholders, carry the responsibility for the strategic supervision of the Company. The strategic management of the company rests with the Corporate Management Committee (CMC) comprising the whole time directors and members drawn from the senior management. The executive management of each division is vested with the Divisional Management Committee (DMC), headed by the Chief Executive Officer for the said division. The structure of the company has been set out in a flowchart and the relevant pages of the Annual Report of ITCL for 2012 -2013, containing the Report on Corporate Governance depicts the governance structure of the company along with the roles of various entities and the nature of functions being carried out by each level thereof, was submitted as a part of the reply to the SCN, by the Noticee. The same does not make any reference to the Noticee or even any other person at her level in the structure of the Company.

**10.** Furthermore, the Indian tobacco division itself is one of the 11 business divisions of the Company, which is further divided into 'Cigarette Brands and Supply Chain' and Trade Marketing & Distribution', along with all the other divisions and departments, has its own human resource department. Notably, each of the business divisions of ITCL has a separate human resources department, headed by a 'Head' of Human Resources, in addition to which there is a Corporate Human Resources department, the head of which is a member of the CMC. The Noticee is the head of the 'Competency Development and Human Resource' function of the 'Trade Marketing and Distribution' vertical of the Indian Tobacco Division' of the Company.

11. The Noticee further submitted that she had inadvertently referred to her position in the company as a Manager in her letter dated December 12, 2013. Even the Company's letter dated September 02, 2013 evinces the fact that the Noticee's designation is not that of a manager. In fact, persons internally given the nomenclature or label of manager are subordinate to the Noticee in hierarchy. The Noticee's responsibilities are that of implementing decisions taken above her level, by helping in the recruitment of new employees, developing training modules, conducting training programs for the field personnel and new joiners as per business requirements communicated to her by the Chief operating officer of the Trade Marketing and Distribution division. She submits that there are about 65 personnel in the company who are at the same level as the Noticee, and there are 42 personnel in the company who are above the Noticee in the hierarchy. The Noticee has relied upon the judgment of the Hon'ble Securities Appellate Tribunal in the matter of Shri Mahendra Pandey Maitri (dated December 17, 2013), which has clarified the scope of the definition of the term 'officer' in the context of Regulation 13 (4) of the PIT Regulations. She also submits that she was under the bonafide belief that she was not an 'officer' of the company and was not required to make any such disclosures and additionally she did not get any disproportionate gain or unfair advantage on account of the purported contraventions of Regulation 13 (4) and 13 (5) of the PIT Regulations.

12. Now, I would like to refer to the relevant definitions which read as under;

i. **Regulation 2 (g) of PIT Regulations** - "*Officer of a company' means any person as defined in Clause (30) of Section 2 of the Companies Act, 1956 (1 of 1956) including an auditor of the company"*.

ii. **Section 2 (30), Companies Act, 1956- Definition of 'Officer'** - "*Officer includes any director, manager or secretary or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act"*.

13. I note from the documents available on record, that ITCL is an multi-business Indian Conglomerate with Five Businesses i.e. FMCG, Hotels, Paperboards, Speciality Papers & Packaging and Agri - Business and Nine Corporate Functions i.e. Planning & Treasury, Accounting, Legal, Secretarial, Employees Health Scheme (EHS), Human Resources, Communications, Internal Audit and Information technology. The structural Governance of ITCL consists of the Board of Directors (Executive & Non-Executive Directors), who control the following committees, i.e. audit committee, compensation committee, nominations committee, investor services committee and sustainability committee, which consists of Executive Chairman and Members (Directors & Company Secretaries). They are followed by the Executive Chairman, the Executive Director, DMC and the Divisional Chief Executive Officer, in the hierarchy. Further, the practice of Corporate Governance in ITCL takes place at three interlinked levels:

- i. **Strategic Supervision** by the Board of Directors
- ii. **Strategic Management** by the Corporate Management Committee, and
- iii. **Executive Management** by the Divisional/Strategic business Unit (SBU) Chief Executives assisted by the representative Divisional/ SBU Management Committees.

14. Each business division has a separate Human Resources department and Corporate Human Resources department. The Noticee holds the position of the head of the 'Competency Development and Human Resource' function of the 'Trade Marketing and Distribution' vertical of the Indian Tobacco Division' of ITCL. The duties of the Noticee in ITCL are recruitment of personnel for Trade Marketing & Distribution, recruitment profile, qualifications and terms of employment of new employees, dealing with appraisals, promotions and processing of exits and maintenance of reports/records and information systems of the employees of the Trade Marketing & Distribution vertical. Some decisions

emanate from the Executive Director - FMCG Business along with the Executive Vice President - Corporate Human Resources and are approved by the chairman and communicated to the Noticee through the Divisional Chief Operating officer of the Trade, Marketing and Distribution vertical. Similarly some decisions emanate from the Divisional Chief executive Officer, India tobacco Division and are communicated to the Noticee through the Chief operating Officer of the Trade, Marketing and Distribution vertical. Further, Annexure C to her reply dated May12,2014, which is a flowchart of the Human resources function in the Trade Marketing & Distribution vertical of ITCL, is reproduced hereunder:





15. Upon perusal of the above chart, I find that the Noticee is the Head-Human Resource & Competency Development. The Divisional Manager - HR Operations, Divisional Manager - Competency Development, District human resources managers (N/S/E/W), the Assistant HR Managers - Operations, Manager - HR Systems and Processes, Manager Skilling & Employability, Asst Manager Training, Asst Manager Training, Asst. HR Managers (N/S/E/W), HR Officer - Frontline Performance are the personnel subordinate to the noticee which means that she is clearly holding a higher position capable of giving directions to her subordinates.
16. It is relevant to refer to the Judgment of the Hon'ble Securities Appellate Tribunal (SAT) in Sundaram Finance Ltd. V. SEBI [2010] SAT 286, (decided by 3 member bench) wherein it was observed that "*....A reading of the aforesaid definition makes it clear that it is an inclusive definition. Apart from what the word 'Officer' means, it includes all that is stated therein. In other words, the definition does not exhaust all persons who otherwise come within its ambit or scope. While the definition says that it includes the persons specified therein, it doesn't say who are all the persons who will come within the term. We are of the view that an 'Officer' means a person holding an appointment to an office which carries with it an authority to give directions to other employees. Thus, an 'Officer' as distinct from a mere employee is a person who has the power of directing any other person or persons to do anything whereas an employee is one who only obeys. Any person who occupies a position of responsibility in a company will be an 'Officer' and this has been clarified by the Department of Company Affairs, government of India as per its letter dated October 7, 1963.*"
17. It is trite law that a judgment has to be read in the context of the facts in which it is delivered and cannot be applied in isolation. Here, I note that the facts and circumstances in the case of Shri Mahendra Pandey Maitri Vs. SEBI (Appeal No.

37/2013 - Order dated June 26, 2013,decided by two member bench) stand on a different footing and therefore, cannot be applied in the present case mechanically. A decision is a precedent on its own facts (Government of Karnatake & Ors V. Smt. Gowramma & Ors (2007) 1 SCC 482 . Further, I find that the Noticee herself has admitted in her reply dated May 12, 2014 that persons internally given the nomenclature or label of manager are subordinate to her in hierarchy.

18. In view of the above findings, I conclude that the Noticee is an 'Officer' of the company within the meaning of the definition of Section 2(30) of Companies Act read with Regulation 2 (g) of the PIT Regulations. I note that the Noticee has sold 10,000 shares amounting to ₹ 35,27,078/- on July 11, 2013. It is noted that the Noticee vide her reply dated December 12, 2013, submitted that she had made the said disclosures with the Stock Exchanges vide her letter dated December 12, 2013 i.e. after initiation of the Adjudication proceedings.

19. In Appeal No. 66 of 2003 - *Milan Mahendra Securities Pvt. Ltd. Vs SEBI*, the Hon'ble SAT has observed that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."*

20. Therefore, I conclude that the Noticee has violated the provisions of Regulation 13 (4) read with 13 (5) of the PIT Regulations and thus, liable for monetary penalty under Section 15 A (b) of the SEBI Act, which reads as under:

*15A. Penalty for failure to furnish information, return, etc. - If any person, who is required under this Act or any rules or regulations made thereunder,-*

.....

*(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;*

21. While imposing monetary penalty, it is important to consider the factors stipulated in Section 15J of 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.”*

22. I observe that, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the defaults cannot be computed. It is observed that the violation is not repetitive in nature.

## ORDER

23. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15-I (2) of the SEBI Act read with the Adjudication Rules, I hereby impose a penalty of ₹ 5,00,000 /- (Rupees Five Lakh Only ) on the Noticee viz., Ms Chandana Gosh, under Section 15 A (b) of the SEBI Act. In my view, the penalty is commensurate with the default committed by the Noticee.

24. The above penalty amount shall be paid by the Noticee through a duly crossed demand draft drawn in favour of “SEBI – Penalties Remittable to Government of

India” and payable at Mumbai within 45 days of receipt of this order. The said demand draft shall be forwarded to The Division Chief, Integrated Surveillance Department - ISD, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051.

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

**Date: July 07, 2014**

**Place: Mumbai**

**D. SURA REDDY  
ADJUDICATING OFFICER**