

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. Order/MC/DS/2020-2021/ 9096 ]**

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

In respect of –

1. **Manju Agarwal (PAN:ADAPA6561H)** having address at - C/o Rama Kant Modi, 34 Tarak Sidhanta Lane, Ground Floor, Howrah – 711201

In the matter of PMC Fincorp Limited.

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter be referred to as, “**SEBI**”) initiated adjudication proceedings under Section 15A(b) of SEBI Act, 1992 (hereinafter be referred to as, the “**SEBI Act**”) against Manju Agarwal (hereinafter be referred to as, “**the Noticee/ Manju / You**”) for the alleged violations of Regulation 13(4A) of the SEBI (Prevention of Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT Regulations**”).

**APPOINTMENT OF ADJUDICATING OFFICER**

2. SEBI appointed the undersigned as Adjudicating Officer (hereinafter referred to as “**AO**”) vide order dated June 26, 2020 to inquire into and adjudge under section 15A(b) of the SEBI Act, the aforesaid alleged violations against the Noticee. The appointment of the AO was communicated vide order dated June 30, 2020.

## SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD5/MC/DPS/11529/2020 dated July 9, 2020 (hereinafter be referred to as, the “**SCN**”) was served upon the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against her under Section 15A(b) of SEBI Act, 1992, for the alleged violations of Regulations 13(4A) of PIT Regulations.
4. The allegations levelled against the Noticee in the SCN are summarized as below:
5. An investigation was carried out by SEBI in the scrip of PMC Fincorp Limited (hereinafter referred to as '**PMC / Scrip / Company**') for the period March 29, 2012 to March 31, 2015 (**investigation period**).
6. PMC Fincorp Limited is registered as a Public Limited Company in the State of Uttar Pradesh, Kanpur. The company was incorporated on February 4, 1985, to undertake business of Financial Services. The company is registered with Reserve Bank of India as a Non-Banking Financial Company (NBFC) and offered its shares to the public through an IPO in the year 1988. The shares of company were listed on UP Stock Exchange Ltd (UPSE) and subsequently got listed on Bombay Stock Exchange Ltd (BSE) on March 12, 2012. As per the MCA website, Company's registered office is at B-10, VIP Colony, Civil Lines, Rampur, UP - 244901 IN.

### 7. Shareholding Pattern:

Particular	Quarter ended Mar 2012			Quarter ended Jun 2012			Quarter ended Sep 2012		
	No. of shareholders	No. Of shares	%	No. of shareholders	No. Of shares	%	No. of shareholders	No. Of shares	%
Promoter Holding	11	2153200	16.10	7	2104600	15.73	7	2104600	15.73
Non Promoter Holding	632	11223500	83.90	496	11272100	84.27	538	11272100	84.27
Total share capital	643	13376700	100.00	503	13376700	100.00	545	13376700	100.00

8. It was observed that promoter shareholding changed from quarter ended March 2012 to June 2012 pursuant to transfer of shares in off-market by four promoter entities namely Noticee / Manju Agarwal (48150 shares), Sarita Modi (150 shares), Usha Modi (150 shares) and Rama Kant Modi (150 shares).
9. It was observed that Manju transferred 48150 shares off-market on April 06, 2012 and thereby triggered disclosure requirement under Regulation 13(4A) of PIT Regulations, to PMC and BSE as the number of transferred shares exceeded 25000. Vide email dated December 19, 2019, PMC expressed inability to provide information regarding disclosures made, if any. Vide email dated January 14, 2020, BSE provided a list of disclosures made in the scrip of PMC. However, no disclosure from Manju was received by BSE as per the aforesaid list.
10. In view of above, it was alleged that the Noticee has violated Regulation 13(4A) of PIT Regulations, on transfer 48150 shares off-market on April 06, 2012. The aforesaid regulations are reproduced as under;

PIT Regulations

**Continual disclosure.**

*13(4A) Any person who is a promoter or part of promoter group 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 from the last disclosure made under Listing Agreement or under sub-regulation (2A) 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.*

11. It was stated in the SCN that the aforesaid alleged violations, if established, would make the Noticee liable for monetary penalty under Section 15A(b) of the SEBI Act.

12. The SCN was served to the Noticee. Vide letter dated July 21, 2020, Authorised Representative (AR) of the Noticee – Raj Kumar Modi informed that Noticee is a 57 years old lady and is not actively associated with the securities market. The matter referred is also almost 7 years old and she needs to collate and trace necessary documents. Therefore request for 21 days extension of time was made for filing its reply. Noticee vide letter dated August 21, 2020 filed its reply.
13. An opportunity of hearing was provided to the Noticee on August 25, 2020 through video conferencing vide notice dated July 23, 2020. Hearing on August 25, 2020 was attended by his Authorised Representative (AR) – Deepika Vijay Sawhney. AR of the Noticee reiterated the submissions made in the reply dated August 21, 2020 and submitted that they will be filing demat statement of Dilip Kumar Agarwal with regard to 48150 shares by August 31, 2020. Accordingly Noticee filed additional submissions vide letter dated August 28, 2020.
14. The key submissions of the Noticee vide letter dated August 21, 2020 and August 28, 2020 are summarized as below:
- a) Noticee submitted that the sale transaction under consideration was already made to her husband – Mr. Dilip Kumar Agarwal through off-market way back on November 20, 2011 and not on April 6, 2012 as stated in the SCN.
  - b) These shares were held in physical form and hence transferred through delivery and execution of shares transfer form.
  - c) Share transfer forms were presented to the company for transfer later i.e. in April 2012. Thus April 6, 2012 is only the date when the sale was recorded in the records of the Company.
  - d) On the transaction date i.e. November 20, 2011, the company was listed on UP Stock Exchange and not on BSE Limited. The Company got listed on BSE Limited only on March 12, 2012. Noticee submitted the screen shot of the BSE website showing the date of listing.

- e) Noticee submitted a sale bill dated November 20, 2011 addressing Mr. Dilip Kumar Agarwal.
- f) Noticee submitted copy of ITR of her husband, Mr. Dilip Kumar Agarwal for the financial year 2012-13, wherein he has claimed Long Term Capital Gain during the Financial Year 2012-13 upon sale of shares acquired by him from the Noticee during November 2011.
- g) In November 2011, the name of the Company was Priti Merchantile Company Limited. The name of the Company was later changed to PMC Fincorp Limited.
- h) Noticee submitted that the matter pertains to the year 2011-12 and there had been an enormous inordinate delay in the initiation of the proceedings which is causing undue mental pressure and grave injustice to the Noticee.
- i) Noticee reiterated that the matter is more than 9 years old and Noticee being a housewife, does not have any records available.
- j) Thus the Noticee approached the Company to seek the disclosure made by the Noticee to the Company and other relevant documents, if any.
- k) Noticee was able to trace the following documents/ disclosures to substantiate her contention that due disclosures were adequately made by her in a timely manner:
  - a. From the records of the Company, Noticee was able to locate the disclosure made by the Noticee to the Company under Regulation 13(4A) r/w 13(5) of PIT Regulations.
  - b. The Covering letter of the said disclosure is addressed to the Company and also to UPSE.
  - c. The Copy of the covering letter along with the disclosure made to the Company and UPSE was submitted.
- l) Thus from the above facts, it was evident that the Noticee has filed disclosures under Regulation 13(4A) r/w 13(5) of PIT Regulations on November 20, 2011 itself to the Company as well as to the Stock Exchange.

- m) From the records of the Company, it was further observed that the Company had also made the consequent disclosure under Regulation 13(6) of PIT Regulations to UPSE, on the same day as per the applicable provision. The Copy of the disclosure made by the company to UPSE along with the courier receipt was submitted.
- n) Further, w.r.t. documents sought from the Company, it is observed from the Annexure 2 of the SCN, that the Company stated that Mr. R.K. Modi (Managing Director and Promoter of PMC) who possess the relevant information/documents of the Company was in judicial custody due to which the Company will not be able to provide the relevant situation at the moment. The information sought from Company was w.r.t. various disclosures and transactions and not only in respect of the transaction hereunder. The Company never expressed or stated that whether the disclosure was made by the Noticee or not and had merely stated that the concerned person is not available since all the information sought by SEBI through various summons could only be made available by the dealing officer.
- o) Hence it is erroneous to infer that as per the averment made by Company in Annexure 2 of the SCN that the disclosure was not made by the Noticee.
- p) In view of the above, Noticee has duly complied with the requirement under Regulation 13(4A) r/w 13(5) of PIT Regulations.
- q) Noticee submitted the copy of the demat statement of Mr. Dilip Kumar Agarwal and submitted that the dematerialization of 48,300 shares (out of which 48,150 shares were acquired from the Noticee in physical mode) was done during December 2012 in the account of Dilip Kumar. This substantiates that the shares were held and transferred in physical form.
- r) Further, Mr. Dilip had sold 2,000 shares on 15.02.2013 and 7,000 shares on 18.02.2013 and had claimed the Long Term Capital Gain in the ITR for the FY 2012-13. Thus, this substantiates the contention that the

shares were acquired from the Noticee, prior to April 2012 i.e. during November 2011.

15. As the inquiry in the matter has been completed, I now proceed to decide the case on the basis of SCN issued, replies made by the Noticee and material available on record.

### **CONSIDERATION OF ISSUES AND FINDINGS**

16. The issues that arise for consideration in the instant matter are:

**Issue No. I** Whether Noticee had failed to make mandated disclosures under the Regulations 13(4A) of PIT Regulations as alleged in the SCN?

**Issue No. II** If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A(b) of the SEBI Act?

**Issue No. III** If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

**Issue No. I** **Whether Noticee had failed to make mandated disclosures under the Regulation 13(4A) of PIT Regulations as alleged in the SCN?**

17. The allegation against the Noticee relates to non-disclosure of a transaction involving off-market transfer of 48150 shares held in physical form on April 06, 2012 as shown in the share transfer form obtained from the RTA. The date of April 06, 2012 reflects the date on which the share transfer is approved for recording in the company records. The transfer is from the Noticee to her husband Dilip Kumar Agarwal.

18. Noticee has contended that the shares were sold to her husband – Mr. Dilip Kumar Agarwal on November 20, 2011 and not on April 6, 2012 as stated in the SCN. Further, during that time the company name was Priti Merchantile

Company Limited and it was listed on UP Stock Exchange. In support of this contention, Noticee has submitted copy of ITR of her husband, Mr. Dilip Kumar Agarwal for the financial year 2012-13, wherein he has claimed Long Term Capital Gain during the Financial Year 2012-13 upon sale of shares acquired by him from the Noticee during November 2011. From the ITR, a long term capital gain of Rs.356882 is shown, and total sale consideration of Rs.360512 is shown, though it cannot be ascertained that the capital gain accrued from the sale of PMC shares. I also note that the demat statement of Dilip Kumar Agarwal, shows demat credit of 48300 shares on December 07, 2012 and debit of 9000 PMC shares in February 2013.

19. On perusal of the share transfer form, I note that the shares were lodged for transfer on February 18, 2012 and the transfer was approved on April 06, 2012. Hence, the share transfer form itself indicates that the transfer took place prior to February 18, 2012.

20. I note from the BSE website and submissions made by the Noticee that the Company got listed on BSE only on March 12, 2012 and on the date of transaction stated by the Noticee i.e. November 20, 2011, the company was listed on UP Stock Exchange.

21. Noticee has submitted the copies of the disclosures made to the Company and to the relevant exchange i.e. UPSE where the company was listed at the time, in November 2011. Noticee has further stated that the copies of disclosures have been obtained from the Company. On perusal of the copies submitted, I note that Noticee had made the said disclosures under Regulation 13(4A) of PIT Regulations for transaction of 48150 shares on November 20, 2011 to the company and to UPSE. I have also perused copy of a sale bill submitted by the Noticee showing transfer of 48150 shares to Mr. Dilip Kumar Agarwal on November 20, 2011 for a consideration of Rs. 2,40,750/-.



22. Considering the transfer date as per the sale bill is November 20, 2011 and that the share transfer form shows a lodgement date of February 18, 2012, I find that the company was not listed on BSE at the time the transaction took place. Hence, there was no obligation to disclose to BSE.

23. In view of the above, as the Noticee has shown records of required disclosures made to the Company as well as to the Stock Exchange as required under Regulation 13(4A) of PIT Regulations, the charge against the Noticee is not established.

24. Therefore, issues II and III do not merit consideration.

### **ORDER**

25. In view of the findings noted in the preceding paragraphs, the adjudication proceeding initiated against the Noticee i.e. Manju Agarwal vide SCN dated July 9, 2020 are disposed of.

26. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

**DATE: SEPTEMBER 22, 2020**

**PLACE: MUMBAI**

**MANINDER CHEEMA**

**ADJUDICATING OFFICER**