

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO: Order/AA/AR/2020-21/9195]**

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

In respect of:

**Rosita Rabindra
PAN: ACEPR5041A**

In the matter of

NIIT Technologies Ltd

FACTS OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation into the suspected insider trading in the shares of NIIT Technologies Ltd (hereinafter referred to as '**NIIT Technologies**' / '**the Company**') by a few suspected entities during the period December 22, 2014 to March 23, 2015. During the course of investigation, it was observed that Ms. Rosita Rabindra (hereinafter referred to as '**the noticee**' / '**Rosita**'), who was the Chief People Officer of NIIT Technologies, had allegedly failed to disclose the sale transactions carried out by her in the scrip of NIIT Technologies during the period from February 23, 2015 to March 13, 2015 (hereinafter referred to as the '**relevant period**') to the Company and to the Stock Exchanges, as required under Regulation 13(4) read with Regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**') read with Regulation 12 of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations 2015**').
2. In view of the above observations and alleged violations, adjudication proceedings were initiated against the noticee under the provisions of section 15A(b) of the SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer (hereinafter referred to as 'AO'), vide communiqué dated May 04, 2020, under section 15-I of the SEBI Act read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of section 15 A(b) of the SEBI Act, the alleged violation of the relevant provisions of the PIT Regulations and PIT Regulations 2015 by the noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice ref. SEBI/EAD/AA/KL/12850/2020 dated August 06, 2020 (hereinafter referred to as '**SCN**') was issued to the noticee in terms of Rule 4 of the Adjudication Rules to show cause as to why inquiry should not be initiated and penalties, if any, be not imposed on her under section 15A(b) of the SEBI Act, for the alleged contravention of the provisions of the PIT Regulations done by her. Briefly, the allegations made in the SCN against the noticee is given below
- a) *The examination of trading by Noticee 3 / Rosita Rabindra in the scrip of NIIT reveals that she sold 1700 shares of NIIT during the period from February 23, 2015 to March 13, 2015 and the value of the shares sold was more than Rs. 5 lakh. It is observed that Rosita sold 1700 shares of NIIT and the value of such shares amounted to Rs 7.18 lakhs approximately. However, it is alleged that the transaction of dealing in shares as mentioned above, was not disclosed by Rosita Rabindra to the company within two days which resulted in violation of the provisions of Regulation 13(4) of the PIT Regulation r/w regulation 13(5) of the PIT Regulations and Regulation 12 of the PIT Regulations, 2015. The details of the trading done by Rosita Rabindra in the scrip of NIIT during the Investigation period is given in the table below:*

Sr. No	Trade Date	Gross Buy	Gross Sell	Net Qty (Total)
1	February 23, 2015	-	500	(500)
2	February 25, 2015	-	500	(500)
3	March 11, 2015	-	400	(400)
4	March 13, 2015	-	300	(300)

5. The SCN for the noticee was served on her vide a digitally signed email dated August 06, 2020, in terms of the Rule 7(b) of the Adjudication Rules. The noticee, vide her email dated August 19, 2020 made the following submissions in reply to the SCN;

- a) *I am no longer an employee of NIIT Technologies Limited and left the company in August 2016 after working for 34 years.*
- b) *I had no knowledge of the TSPL transaction and the default notice as it did not concern me in my role as head of HR. I was not a part of any of the Board meetings or any other meeting where the matter was discussed. I had no knowledge of any of the details mentioned in your Show Cause Notice. I understand that NIIT Technologies Ltd had clarified to SEBI earlier that my name did not feature in the list of people privy to any information on the TSPL Transaction.*
- c) *I have always informed the Secretarial team of all my selling transactions by seeking the necessary pre-clearance and also confirming the same post the completion of any sale of shares. I have been very diligent - especially as head of HR and CPO - I carried an additional responsibility of ensuring that I did not make a single default. The forms were always submitted on time and were in paper format as per the process at that time. I am surprised to note that the requisite information on the sale of 1700 shares sold between Feb 23rd 2015 and March 13 2015 over 4 lots was not communicated to SEBI. As this transaction is over 5.5 years old, I do not have any of the relevant documents with me to confirm this at this time.*
- d) *Please note that I have not sold any shares post March 13th.*
- e) *I am one of the first batch of employees who was awarded options every year as a part of my overall package. I have been regularly selling shares to realize my profits across the year and as and when I needed the funds. Please note that I did not sell my entire stake which would have been an option if I had access to the said information.*

6. Further, an opportunity of hearing was granted to the noticee through video conferencing on Webex platform on September 10, 2020, which was

communicated to her vide email dated August 19, 2020. The noticee availed the opportunity of personal hearing on September 10, 2020 and reiterated the submissions made in her earlier reply dated August 19, 2020. Further, vide email dated September 10, 2020, the noticee made additional submission as the following.

“I would like to also present that I had 28023 Shares of NTL as on March 23rd 2015. This clearly shows that there was no intent to gain from any Knowledge of the default notice.”

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

7. I have carefully perused the charges leveled against the noticee and the documents / material available on record. The issues that arise for consideration in the present case are:

- I. Whether the noticee violated the provisions of the Regulation 13(4) read with Regulation 13(5) of the PIT Regulations?
- II. Does the violation, if any, attract monetary penalty under section 15A(b) of the SEBI Act?
- III. If yes, what should be the quantum of penalty?

8. Before proceeding further, I would like to refer to the relevant provisions of the SEBI Act, alleged to have been violated by the noticee, as below:

➤ ***PIT Regulations***

Disclosure of interest or holding by directors and officers and substantial shareholders in listed companies - Initial Disclosure

13(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) and (4) 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.

➤ **2015 PIT Regulations**

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.*

I. Whether the noticee violated the provisions of the Regulation 13(4) read with Regulation 13(5) of the PIT Regulations and Regulation 12 of PIT Regulations 2015?

9. NIIT Technologies is a global IT solutions organization which is listed on BSE and NSE. The noticee was the Chief People Officer of the Company during the relevant period of time viz. February and March, 2015. It is observed that while being an officer of the Company, the noticee sold 1700 shares of the Company during the period February 23, 2015 to March 13, 2015 which amounted to Rs. 7.18 lakhs approximately. Therefore, the total value of the shares sold by the noticee was more than the value of Rs. Five lakh. The details of the trading done by the noticee in the scrip of NIIT Technologies during the relevant period is given in the table below:

Sr. No	Trade Date	Gross Buy	Gross Sell	Net Qty (Total)	Value of shares sold in Rs. Lakhs (Approx)
1	February 23, 2015	-	500	(500)	7.18
2	February 25, 2015	-	500	(500)	
3	March 11, 2015	-	400	(400)	
4	March 13, 2015	-	300	(300)	
	Total		1,700	(1,700)	

10. The disclosure requirement under the Regulation 13(4) of the PIT Regulations is triggered when the shareholding of an entity / person in a listed company, who is also an officer of that company, *inter alia*, changes by more than Rs. Five lakh in value. The noticee is Chief People Officer of the NIIT Technologies, which is also accepted by the noticee in her reply to the SCN. Further, vide her email dated August 19, 2020, the noticee has also submitted that she was the head of Human Resource Department of NIIT Technologies during the relevant period. Therefore, the noticee was an officer of the company during the relevant period of time as per the terms of the definition of the '*officer of a company*' under Regulation 2(g) of the PIT Regulations read with section 2(30) of the Companies Act, 1956.
11. It is clear from the table above that in the instant matter, the decrease in the shareholding of the noticee in NIIT Technologies was of 1700 shares and the value of such share amounted to Rs. 7.18 lakhs which was more than Rs. 5 lakhs, during the relevant period. I find that the noticee has also not contested the veracity of the abovementioned trades alleged to have been done by her.

Therefore, the noticee was required to make the disclosures to the Company and to the Stock Exchanges in the prescribed format within two working days of its sale of shares, in terms of Regulation 13(4) read with Regulation 13(5) of the PIT Regulations and Regulation 12 of PIT Regulations 2015.

12. It is noted from the submissions of the noticee that she has claimed to have informed the Company about her aforementioned transactions. The Noticee also mentioned that she was holding 28,023 shares of the Company, as on March 23, 2015. However, the noticee has not submitted any documentary evidence to support her claims about informing the aforementioned transactions to the Company. Further, even if the submission of the noticee that she had informed the Company about her aforementioned sale transactions is accepted, it is seen that she had not informed the stock exchanges about the transactions as required under the Regulation 13(4) of the PIT Regulations. Further, there is no documents/evidence produced by the noticee to show that she had disclosed to the Company about her sale transactions during the relevant period in the format prescribed under Regulation 13(4) of the PIT Regulations and within a period of two days of her transactions as stipulated under Regulation 13(5) of the PIT Regulations. Further, the Company vide its email dated December 12, 2018 (copy provided to the noticee as annexure to SCN) has confirmed to SEBI that the noticee had requested for pre-clearance for the sale of 1700 shares of the Company but she did not disclose to the Company about the transaction pursuant to selling the shares.

13. In this context, I observe that the Hon'ble SAT in its Order dated September 30, 2014, in the matter of Akriti Global Traders Ltd. Vs SEBI had observed that

“Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the

limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations.”

14. I further observe in this context that the Hon'ble Supreme Court of India, in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006]} 5 SCC 361} held that;

“In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary”

15. Therefore, in view of the documents available on record and the submissions of the noticee in this regard, I conclude that the noticee had failed to disclose to the Company and the stock exchange about the sale transaction in the scrip of the Company during the relevant period which amounted to Rs. 7.18 lakhs, which was more than Rs. 5 lakhs in value, thereby violating the provisions of Regulation 13(4) read with Regulation 13(5) of the PIT Regulations and Regulation 12 of PIT Regulations 2015.

16. In view of the violation of the provisions of PIT Regulations by the noticee, as established above, the noticee is liable for monetary penalty under the provisions of Section 15A(b) of the SEBI Act, which reads as under :

Penalty for failure to furnish information, return, etc

15A. *If any person, who is required under this Act or any rules or regulations made there under*

-

(b)*To file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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.*

17. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, 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.

18. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that the concerned department of SEBI has not quantified the profit/loss for the violations committed by the noticee. No quantifiable figures or data are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default of the Noticee. Further, there is nothing on record to show that the default by the Noticee was repetitive in nature. I am of the view that the disclosure requirements that have been prescribed under PIT Regulations are of utmost significance for the protection of interest of the investors, as such information received by them in a time bound manner would facilitate them to take an informed investment decision as regards their holdings in the Company. However, I have also considered the fact that the investigation report has not mentioned about any undue advantage gained by the noticee by not disclosing about her sale transaction to stock exchanges. Further, although the noticee did not disclose to the company after undertaking the impugned transactions, she did inform the Company about her transactions while requesting for pre-clearance of trades and therefore had not entirely concealed such transactions from the Company.

ORDER

19. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in section 15J of the SEBI Act and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a total penalty of Rs.

2,00,000/- (Rs. Two Lakh only) on the noticee viz. Rosita Rabindra, under section 15A(b) of the SEBI Act.

20. I am of the view that the said penalty is commensurate with the lapses/omissions on the part of the noticee. The noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO> PAYNOW; or by using the web link for payment of penalty at SEBI website viz. <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>. In case of any difficulties in payment of the penalty, the noticee may contact the support at portalhelp@sebi.gov.in.
21. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.
22. In terms of the provisions of Rule 6 of the Adjudication Rules, copy of this order is sent to Rosita Rabindra and also to the Securities and Exchange Board of India.

Date: September 25, 2020
Place: Mumbai

Dr. ANITHA ANOOP
ADJUDICATING OFFICER