

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER No.: ORDER/AP/SK/2020-21/9141]

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. Girija Kelath
20th KM Hosur Road,
Electronics City,
Bangalore – 560100.

In the matter of Biocon Limited

1. Biocon Limited (hereinafter referred as “Biocon” or “the company”), is a company having its shares listed on BSE Ltd. (‘BSE’) and National Stock Exchange of India Ltd. (‘NSE’). Securities and Exchange Board of India (“SEBI”) conducted investigation to ascertain whether there was any disclosure and code of conduct violation of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as “PIT Regulations”) by Ms. Girija Kelath (“Noticee”), a designated person of Biocon, with respect to her transactions during the period August 31, 2018 to October 01, 2018. Pursuant to the investigation, SEBI made the following observations:
 - a) The Company had closed the trading window from October 01, 2018 till October 27, 2018 (both days inclusive). The Compliance Officer of the Company vide email dated September 28, 2018 intimated the designated employees about the start date, end date of trading window closure as well as the date of opening of the trading window. The intimation, *inter alia*, stated the following:
 - *Being a "Designated Person" under the subject code, you (including your immediate relatives) are hereby advised not to trade in Biocon equity shares during the trading window closure period ...'*
 - *A Key summary of the Code's provision that need to be complied with the designated employees has been stated in the email, which, inter alia, stated that '...deal in equity shares of Biocon Limited only when the trading window is open...'*
 - b) Noticee, being a designated employee, sold 15000 shares (Sale value: Rs. 1,00,50,000) on the market on October 01, 2018 i.e. during the trading window closure period. The details of the trade are as under:

Date (From BSE/ NSE Trade data)	Txn Type	Buy Qty	Sell Qty	Buy value (in Rs)	Sell Value (in Rs)	Disclosure requirement	Date of Disclosure to company (from BSE / NSE disclosure data)	Date of Disclosure to Exchange s by the Company
01-Oct-2018	ON mkt	0	15000	0	1,00,50,000	Reg 7(2)(a) of SEBI PIT Regulation 2015	10-Oct-2018	12-Oct-2018

- c) The threshold value for seeking pre clearance of trade by the designated persons from the Compliance Officer is Rs 10 lakhs. When the trading of the designated persons, cumulatively, whether in one transaction or a series of transactions, in any financial year exceeds Rs 10 lakh (market value), pre clearance is needed. The value of the trade carried out by the Noticee was Rs. 1,00,50,000 (Rupees One Crore and Fifty Thousand).
- d) The question of seeking pre-clearance would arise only if the Noticee had traded when the trading window was open but whereas the Noticee had traded during the trading window closure period which is specifically prohibited from trading itself. In view of the same, it has been alleged that Noticee had violated the provisions of Clause 4 of Code of Conduct under Schedule B of Regulation 9(1) and (2) of the PIT Regulations.
2. In regard to the above observation, BSE vide email dated June 24, 2019 and NSE vide email dated June 25, 2019 have informed SEBI that the Company had made relevant disclosure pertaining to the aforesaid sale transaction of the Noticee under the PIT Regulations on October 12, 2018. In support of the allegation, reliance was also placed on the email received from the Noticee dated July 10, 2019 and email received from the Company dated August 27, 2019.
3. The text of the aforementioned provisions alleged to be violated by the Noticee at the relevant time read as under:

PIT Regulations

Code of Conduct.

9. (1) The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.

NOTE: It is intended that every company whose securities are listed on stock exchanges and every market intermediary registered with SEBI is mandatorily required to formulate a code of conduct governing trading by its employees. The standards set out in the schedules are required to be addressed by such code of conduct.

(2) Every other person who is required to handle unpublished price sensitive information in the course of business operations shall formulate a code of conduct to regulate, monitor and report trading by employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.

NOTE: This provision is intended to mandate persons other than listed companies and market intermediaries that are required to handle unpublished price sensitive information to formulate a code of conduct governing trading in securities by their employees. These entities include professional firms such as auditors, accountancy firms, law firms, analysts, consultants etc., assisting or advising listed companies, market intermediaries and other capital market participants. Even entities that normally operate outside the capital market may handle unpublished price sensitive information. This provision would mandate all of them to formulate a code of conduct.

SCHEDULE B

[See sub-regulation (1) and sub-regulation (2) of regulation 9]

Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders

1.

.....

4. Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.

4. Vide a *communication-order* dated February 13, 2020, it has been informed that the competent authority in SEBI is satisfied that there are sufficient grounds to inquire into the affairs and adjudicate upon the alleged violation as aforesaid. It has also been informed that competent authority has appointed the undersigned as Adjudicating Officer under Section 15-I (1) of the SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'the Adjudication Rules') to inquire into and adjudicate the alleged violation the provisions of Clause 4 of Code of Conduct under Schedule B of Regulation 9(1) and (2) of the PIT Regulations by the Noticee under Section 15HB of the SEBI Act. The said provision of the SEBI Act reads as under:

SEBI Act

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 shall not be less than one lakh rupees but which may extend to one crore rupees.

5. Accordingly, after receipt of records of these proceedings, a notice to show cause no. EAD-2/AP-SKS/OW/12834/1/2020 dated July 14, 2020 ('the SCN') was issued to the Noticee in terms of Rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act calling upon her to show cause as to why an inquiry should not be held against her in terms of rule 4 of the Adjudication Rules and penalty be not imposed under Section 15HB of the SEBI Act for the aforesaid alleged violations. The SCN was sent at the last known address of the Noticee through Speed Post with Acknowledgment Due as well as the e-mail id of the Noticee viz: girija.kelath@biocon.com. The same was duly served.

6. In response to the SCN, vide letter dated August 21, 2020, the Noticee filed her reply and availed the opportunity of personal hearing granted to her through WebEx platform on September 16, 2020, when Mr. Ravichandra Hegde, Advocate, Authorized Representative ('AR') of the Noticee appeared on her behalf and made oral submissions on the lines of written reply filed by the Noticee vide letter dated August 21, 2020 and explained the contents thereof. Subsequently, the Noticee filed her post-hearing written submissions vide letter dated September 18, 2020, on the limited point of leniency. The replies/submissions of the Noticee are *inter-alia* as follows:
 - a) The transactions in question are not commercial in nature, and they were in no manner motivated by any inside events or unpublished price sensitive information ("UPSI") of Biocon. She has not gained any benefit, monetary or otherwise from the same and no harm has been caused to the investors as a result. The lapse, at most was technical and inconsequential in nature, which does not contravene the provisions of the PIT Regulations when viewed in the spirit of the Regulations.

 - b) She had joined Biocon as a Deputy Manger- regulatory sciences in March 2002. On account of her appreciable performance in the company, she had over the course of time promoted to the designation of Associate Vice President - Regulatory Science of Biocon. She was employed with the Company for the last 18 years and she has no experience and exposure in share trading, and this is the first instance where she has acquired shares through the Company's employee stock option plans ("ESOP") policy. The reason for such acquisition was future financial requirement on her personal front.

 - c) Being in the Company for more than around 18 years, this is the first time she had faced such a situation and has a clean record in her employment history. It is an admitted position that she is not involved in the day to day affairs or management of Biocon. Additionally, the sale of shares is in no manner motivated by any inside events or UPSI but solely on account of personal financial needs which existed much before the closure of the trading window.

- d) Vide ESOP Grant 2014, Biocon released its employee stock option scheme wherein she was offered the Company's ESOP as an appreciation and recognition of her performance in the Company and that she was interested in acquiring the ESOPs being vary of the future financial requirements as explained above.
- e) In or around September 2018, she was in need of liquid funds for the payments to be made with respect to her house renovation and extension. Accordingly, she had decided to sell the shares of Biocon through HDFC securities. It is pertinent to mention that the communication from the compliance officer with respect to closure of the trading window was communicated on Friday evening i.e. September 28, 2018 and being a weekend, she did not have a chance to look at the communication. On Monday morning when she saw the email, she immediately intimated and instructed HDFC Securities to not place the trade till the time she give further instruction about opening of the trading window. However, by the time she had communicated this, the trades had already been placed by HDFC securities.
- f) As soon as she realized the mishap, she immediately approached the compliance officer of Biocon, Mr. Satish Kumar SS and informed him of what had transpired. She even addressed an apology letter to him on October 4, 2018. Thereafter, she made post transaction disclosures to the Company in designated Form C. Following which, in due compliance of Regulation 7(2)(b) of the PIT Regulations, appropriate disclosures with regards her trades were immediately made to the stock exchanges by the Company.
- g) The Company conducted disciplinary proceedings before its Audit and Risk Committee of the Board of Directors on October 25, 2018. Finally, noting that-(a.) this was the first time she had missed to seek pre-clearance from the compliance officer before executing trades; (b.) she was not in possession of any UPSI; and (c.) that the trades in question were executed during a non-window closure period, the compliance officer excused her by giving her a warning and directing her to attend training programs on the subject code.
- h) The transactions entered by her were not transactions while in possession of UPSI and no prejudice is caused to other participants dealing in the scrip of Biocon. In view thereof, the purpose of enactment of the PIT Regulation is not defeated by the impugned sale.
- i) The presumption under the allegations under PIT Regulations is that when an insider trades or deals in securities of a listed company, he/she does so on the basis of UPSI and the burden of proof lies on the insider to establish the divergent view. The same was held by the SAT in the in the case of *Chandrakala Vs. SEBI [Appeal 209 of 2011]*, wherein the SAT further goes on to give an elaborate explanation on the basic tenets and principles of these

Regulations. The SAT endorses the legal principle for the applicability of PIT Regulations that the trading by an insider should be *induced by* the UPSI, and accordingly, in the said case the SAT concluded that the appellant was not guilty of insider trading despite having traded while in possession of UPSI, merely because such trade was not *induced by* the UPSI. Accordingly, the penalty imposed on the Appellant by the adjudicating officer was suspended.

- j) It is urged that a similar view based on the spirit and not letter of law be taken in this case as well, since the infractions in this case were not with any intention or to violate the principles underlying the PIT Regulations. Even the SCN does not state the contrary. The impugned transactions lacked commercial intent and were merely done for the purpose of house renovation and extension. There is also no impact of the Impugned Transactions on the market value of the Biocon scrip, and the same is not even alleged anywhere in the SCN.
 - k) In view the aforementioned submissions, the Noticee submitted that she had not violated any provision under the PIT Regulations when looked at its quintessence. At most, she can be held accountable for mere negligence as she was acting in haste and under pressure. In this regard, she drew attention to the views taken by the SEBI Adjudicating Officer in the case of *Utsav Pathak* (decided on August 30, 2019), wherein despite holding the Noticee guilty of insider trading, no penalty was imposed.
 - l) She is just a salaried employee of Biocon with no other shares or investments. This impugned sale is an inadvertent error that happened because of certain unfortunate events that occurred in haste and her lack of expertise. She pleaded not to take any adverse actions and expose her to such financial burden that will put her in an irreparable condition and that she will undertake to be more careful in future.
7. I have considered the allegations and charges levelled against the Noticee, submissions of the Noticee and the relevant material available on record. As per Regulation 9 (1) of the PIT Regulations, the onus lies on the board of directors of every listed company to formulate a code of conduct to govern, regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with PIT Regulations, adopting the minimum standards as set out in Schedule B to the PIT Regulations without diluting the provisions of PIT Regulations in any manner. The standards set out in the Schedule B are required to be addressed by such code of conduct. But, whereas Regulation 9 (2) of the PIT Regulations mandate persons other than listed companies and market intermediaries that are required to handle UPSI to formulate a code of conduct governing trading in securities by their employees. These entities include professional firms such as auditors, accountancy firms, law firms, analysts, consultants etc., assisting or advising listed companies, market intermediaries and other capital market participants. Hence, Regulation 9 (2) of

the PIT Regulations does not apply in the facts and circumstances of this case as it relates to persons other than listed companies. As per Clause 3 of Code of Conduct under Schedule B to the PIT Regulations, “designated persons” are employees and connected persons designated on the basis of their functional role in the organisation and they are governed by an internal code of conduct governing dealing in securities. The board of directors shall in consultation with the compliance officer specify the designated persons to be covered by such code on the basis of their role and function in the organisation and due regard shall be had to the access that such role and function would provide to UPSI in addition to seniority and professional designation. Clause 4 of Code of Conduct under Schedule B to the PIT Regulations mandates that a notional trading window shall be used as an instrument of monitoring trading by the designated persons. Further it envisages that the trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of UPSI. Such closure shall be imposed in relation to such securities to which such UPSI relates and that the designated persons and their immediate relatives shall not trade in securities when the trading window is closed. The charges in this case clearly falls under the said Clause 4 as the Noticee is designated as a designated person of Biocon during the reference period who is bound to execute trades subject to compliance with the PIT Regulations.

8. In this case, it is an admitted position that the company had closed the trading window from October 01, 2018 till October 27, 2018 (both days inclusive). The Compliance Officer of the company vide email dated September 28, 2018 intimated the designated employees including the Noticee about the start date, end date of trading window closure as well as the date of opening of the trading window. It is noted that the Noticee, being a designated person, had traded during the trading window closure period which is specifically prohibited. The Noticee is found to have sold 15000 shares worth Rs. 1,00,50,000/- on the market on October 01, 2018. The Noticee has not disputed the transaction in question and thus, the charge that the Noticee had violated the provisions of Clause 4 of Code of Conduct under Schedule B of Regulation 9(1) of the PIT Regulations stands established. Therefore, in my view, the failure of the Noticee as found in this case deserves imposition of monetary penalty under section 15HB of the SEBI Act.
9. The intent of the legislature behind enacting and implementation of the PIT Regulations is to assure that no one would gain by trading on 'insider' or 'unpublished information' i.e. information that is not available to all market participants. The PIT Regulations intend to prevent abuse by trading when in possession of UPSI. Further, the concept of trading window norms has been provided in the PIT Regulations with respect to designated persons and their immediate relative solely on the basis that they are reasonably expected to possess UPSI. The objective is to create a level playing field by making information accessible to all market participants i.e. the shareholders and proposed

investors. Resultantly, when the information is equally available to all, there is no distinct advantage that insiders can capitalize on. Any market abuse by a designated person as found in this case would defeat the purpose of principles enshrined under the PIT Regulations keeping in mind the mandate of protecting the interest of investors. The reliance placed by the Noticee on the views taken by the SEBI Adjudicating Officer in the case of *Utsav Pathak* is out of place as that case involve charge on communication of UPSI which is not the charge in this matter.

10. The Noticee has submitted that after the event has transpired, she had immediately approached the compliance officer of Biocon and addressed an apology letter to him and also made post transaction disclosures to the Company in designated Form C following which in due compliance of Regulation 7(2)(b) of the PIT Regulations, appropriate disclosures with regards her trades were made immediately to the stock exchanges by the Company. The Noticee also submitted that the Company conducted disciplinary proceedings before its Audit and Risk Committee of the Board of Directors and noting that this was the first time she had missed to seek pre-clearance from the compliance officer before executing trades, the compliance officer excused her by giving a warning and directing her to attend training programs on the subject code. All these post corrective measures taken by the Noticee may only be a mitigating factor for adjudging the quantum of penalty.
11. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI Act which are as under:
 - 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.
12. Having regard to the factors listed in section 15J and the guidelines issued by Hon'ble Supreme Court of India in *SEBI Vs Bhavesh Pabari Civil Appeal No(S).11311 of 2013* vide judgement dated February 28, 2019, it is noted 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 default in this case cannot be computed. Further, the material brought on record shows that the act of the Noticee is a one-off action and hence, not repetitive in nature. Having said the same, and considering the mitigating factors, I am still of view that this case deserves imposition of monetary penalty.
13. Taking into consideration all the facts and circumstances of the case including the aforesaid 15J factors and exercising the powers conferred upon me under section 15I of the SEBI Act read with

Rule 5 of the Adjudication Rules, I hereby impose, a monetary penalty of ₹ 5,00,000/- (Rupees Five Lakh Only) on the Noticee section 15HB) of the SEBI Act. In my view, the said penalty is commensurate with the violations committed by the Noticee in this case.

14. The Noticee shall remit / pay the said total amount of penalty within 45 days of receipt of this order in either of the 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 > PAY NOW; OR by using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in
15. The Demand Draft or details and confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD-DRA-III, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in.

1	Case Name	
2	Name of the 'Payer/Noticee'	
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 along with order details)	

16. 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.
17. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: September 24, 2020

Place: Mumbai

Amit Pradhan

Adjudicating Officer