

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref. No. Order/SBM/KL/2021-22/12740-12742]

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:
Mr Ripu Sudan Kundra
(PAN – AZUPK9777F)

Ms. Shilpa Shetty Kundra
(PAN: ACPPS6622P)

Viaan Industries Limited
(PAN: AABCH2363M)

In the matter of
Viaan Industries Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had conducted an investigation into the trading/dealings in the scrip of Viaan Industries Limited (formerly known as Hindustan Safety Glass Industries Limited), during the period September 01, 2013 to December 23, 2015 (hereinafter referred to as the '**investigation period**'). Pursuant to the investigations, it was observed that Mr. Ripu Sudan Kundra (hereinafter referred to as '**Noticee no.1**'/'**Mr. Ripu**'), Ms. Shilpa Shetty Kundra (hereinafter referred to as '**Noticee no. 2**'/'**Ms. Shilpa**') and Viaan Industries Ltd. (hereinafter referred to as '**VIL**'/'**Noticee no. 3**'/'**Company**') had allegedly violated the provisions of Regulations 7(2)(a) and 7(2)(b) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations**'). In view of the same, adjudication proceedings have been initiated against Noticee nos. 1, 2 & 3 under the provisions of section 15 A (b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**'). In the context of the present proceeding, Noticee nos. 1 to 3 are also hereinafter collectively referred to as '**Noticees**'.

2. The shares of VIL are listed on the Bombay Stock Exchange ('**BSE**') and Noticee nos 1 and 2 are the promoters of VIL. It is observed that, on October 29, 2015, VIL made a preferential allotment of 5,00,000 equity shares to four persons and in the said preferential allotment 1,28,800 shares each were allotted to Noticee nos 1 & 2. In this regard, pursuant to the allotment of the shares through the preferential allotment, both Noticee nos 1 & 2 were required to make the necessary disclosure to the company in terms of the provisions of Regulation 7(2) (a) of the PIT Regulations, as the relevant transactions in question through the aforementioned preferential allotment exceeded Rupees Ten Lakh in value. Further, in terms of Regulation 7 (2) (b) of the PIT Regulations, the Company was required to make the necessary disclosures to the stock exchange within two trading days of the receipt of the disclosures from Noticee nos 1 and 2 or from becoming aware of such information pertaining to the transactions. During the course of investigation, it is observed that the Noticees allegedly failed to make the relevant disclosures required under Regulations 7 (2) (a) and 7 (2) (b) of the PIT Regulations within the stipulated time period. In view of the same, it is alleged that Noticees have violated the aforementioned provisions of the PIT Regulations and therefore, adjudication proceedings have been initiated against the Noticees under the provisions of section 15 A (b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide Order dated February 01, 2021 under Section 19 of the SEBI Act r/w Section 15-I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**'), the undersigned has been appointed as the Adjudicating Officer in the matter to inquire into and adjudge under section 15 A(b) of the SEBI Act, the aforementioned alleged violation of the provisions of law by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice ('**SCN**') ref no. SCN/SEBI/EAD1/SBM/KL/9354/2021 dated April 26, 2021 was issued to the Noticees in terms of Rule 4 (1) of the Adjudication Rules r/w Section 15-I of the SEBI Act to show cause as to why an inquiry should not be

held against the Noticees and why penalty be not imposed on them in terms of the provisions of section 15A(b) of the SEBI Act for the violations alleged to have been committed by the Noticees. The SCN, *inter-alia*, alleged the following :-

- a. *VIL was incorporated as Hindustan Safety Glass Industries Limited on October 19, 1982, as a public limited company. It was initially listed on the Calcutta Stock Exchange (CSE) and thereafter, it got listed on Bombay Stock Exchange (BSE) with effect from February 20, 2014, under direct listing. It is observed that the trading at CSE had stopped since 2013 and thereafter no trading took place in the scrip at CSE. Further, the shareholding pattern of the company and the promoters' shareholding observed during the investigation period/examination period are given in the following tables.*

Table 1 – Promoters' shareholding during the investigation period/ examination period

Qtrr ended March, 2015			Qtrr ended June, 2015		Qtrr ended September, 2015		Qtrr ended December, 2015	
Name	No of shares	% of share holding	No of shares	% of share holding	No of shares	% of share holding	No of shares	% of share holding
Ripu Sudan Kundra	786830	25.75	786830	25.75	786830	25.75	915630	25.76
Shila Shetty Kundra	786830	25.75	786830	25.75	786830	25.75	915630	25.76
Total	1573660	51.51	1573660	51.51	1573660	51.51	1831260	51.51

- b. *Upon analysis of the shareholding pattern of VIL during the examination period, as given in the table above, it is observed that the promoters' shareholding had increased during the quarter ending March, 2015 and quarter ending December, 2015. Therefore, SEBI sought information from the company/BSE/CSE in respect of the aforesaid change in promoter shareholding and the disclosures made by the promoters therein. In reply, VIL vide its e-mails dated May 14, 2019, and June 04, 12, 13, 2019 submitted the details of the disclosures made by it and BSE vide its e-mail dated June 13, 2019, submitted the details of disclosures made by the company and the Noticees.*

c. In this regard, it is observed that during March 2015, Noticee no.1 and Noticee no.2 had acquired 15,73,660 shares of VIL (7,86,830 shares each and a total of 51.51% share capital of VIL), and also became the promoters of VIL. Subsequently, it is observed that during the quarter ended December 2015, there was a change in the promoters' shareholding of VIL and also in the total paid-up share capital of VIL. It is seen that, on October 29, 2015, the company had made a preferential allotment of 5,00,000 shares to four persons and in the said preferential allotment a total of 2,57,600 equity shares (1,28,800 shares each) were allotted to the two promoters viz. Mr. Ripu/Noticee no. 1 and Ms. Shilpa/Noticee no. 2 under preferential basis. The transaction details and the disclosures made by the Noticees (promoters) in this regard are given below: -

Table - 2

Date of transaction	No of shares held - pre Acquisition /disposal	% of shareholding held - pre Acquisition/ disposal	No of shares Acquired	No of shares Acquired/ as a % of paid up capital	Value of transaction (Rs.)	No of shares held - post Acquisition/disposal	% of shareholding held - post Acquisition/disposal	Date of disclosure to stock exchange u/s 29 (2) & (3) of SAST Regulations, 2011	Date of disclosure to the Company u/s 29 (2) & (3) of SAST Regulations, 2011 and u/s 7 (2) (a) of PIT Regulations, 2015	Disclosure by Company to stock exchange u/s 7 (2) (b) of PIT Regulations, 2015
a) Ripu Sudan Kundra.										
29/10/2015	786830	25.75	128800	3.62	2,57,60,000	915630	25.76	20/05/2019	20/05/2019	21/05/2019
b) Shilpa Shetty Kundra										
29/10/2015	786830	25.75	128800	3.62	2,57,60,000	915630	25.76	22/05/2019	22/05/2019	22/05/2019

d. From the observations made in the above table, the following allegations are made against the Noticees:

- i. It is observed that the promoters (Noticee no.1 and Noticee no.2) acquired 1,28,800 company shares each through the preferential allotment, valuing Rs. 2.57 crores (valued more than Rupees Ten Lakhs) on October 29, 2015. In this regard, as per the provisions of the PIT Regulations, they were required to disclose the aforementioned transactions in the

prescribed format to the company within two trading days, from the day of acquiring the aforementioned shares. However, it is alleged that they had disclosed the same to the company only in the month of May 2019, i.e. with a delay of more than three years. Therefore, it is alleged that Noticee no.1 and Noticee no.2 had violated Regulation 7(2) (a) of PIT Regulations.

- ii. *Further, it is noted that the aforementioned acquisition of 2,57,600 equity shares by Noticee no.1 and Noticee no.2 was done under preferential allotment basis by the company i.e. the company allotted 1,28,800 shares each (valuing Rs. 2.57 crores) to Noticee no.1 and Noticee no.2 on October 29, 2015. In this regard, as per the provisions of Regulation 7(2) (b) of the PIT Regulations, the company viz. VIL/Noticee no. 3 was required to disclose the aforementioned details/particulars in the prescribed format to the Stock exchange (BSE) within two trading days, from the day of acquisition of aforementioned shares by Noticee no. 1 and Noticee no. 2 and disclosures made by Noticee nos 1 & 2 or upon becoming aware of such acquisition of shares by the promoters. However, it is alleged that VIL had disclosed the same to the stock exchange only in the month of May 2019, i.e. with a delay of more than three years. Therefore, it is alleged that VIL had violated the provisions of Regulation 7(2) (b) of the PIT Regulations.*

5. Vide letter dated May 08, 2021, Noticees submitted their reply to the SCN, details of which are given below: -

Reply of Noticee no.1 and Noticee no.2

- a. *I request you to kindly treat this as a reply from me (Noticee no.1) and on behalf of Mrs. Shilpa (Noticee no.2).*
- b. *Paragraph 3 states that VIL was incorporated as Hindusan Safety Glass Industries Limited and was listed on the Calcutta Stock Exchange and there has been no trading on the exchange since 2013. The shares of the company got listed on BSE Limited in February 2014. We confirm that these facts are true.*

- i. We would like to submit that Ms Shilpa held 786830 shares constituting 25.75% of the share capital and Mr Raj Kundra held 786830 shares constituting 25.75% of the share capital aggregating Rs. 15,73,660 constituting 51.51% of the total paid up capital of the company and were classified as promoters from the quarter ended March 31, 2015. The company made a preferential allotment of 2,57,600 shares to the promoter (1,28,800 shares each to the two promoters) on October 29, 2015 which increased their individual shareholding by 0.01% to 25.76% each and aggregate shareholding remained at 51.51% of the total paid up capital of the company.
- ii. We confirm that we made disclosures under Regulation 7(2) of PIT Regulations with a delay on May 20/21/22, 2019.
- iii. We have made the disclosures under the PIT Regulations with a delay and this was only due to inadvertence with no malafide intention.
- iv. In view of the above we request you to kindly condone the delay and drop all further proceedings against us.

Reply of Noticee no.3/VIL

- i. The shareholding of our promoters, Mr Ripu and Ms Shilpa remained at 51.51% of the total paid up capital post a preferential allotment of 2,57,600 shares (1,28,000 shares each) on October 29, 2015. Since the value of each acquisition exceeded Rs. 10 lakhs, they were required to make a disclosure under Regulation 7 (2) of PIT Regulations within 2 trading days of the transaction. However, since we received the disclosure only in May 2019, we made the disclosure immediately on receipt without any delay.
- ii. In light of the above submissions, we would like to submit that we have not violated the provisions of Regulation 7(2) of PIT Regulations and request you to kindly drop all proceedings against us.

6. The Noticees were provided with an opportunity of personal hearing in the matter on July 05, 2021, through the online webex platform. Ms. Shailashri Bhaskar appeared as the Authorized Representative ('AR') on behalf of the Noticees on the stipulated date

of hearing. During the course of hearing, the AR reiterated the submissions made by the Noticees in their letter dated May 08, 2021.

CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully perused the allegations leveled against the Noticees in the SCN, the reply of the Noticees and also the documents/evidence on record.

The issues that arise for consideration in the present matter are :-

- I. Whether Noticee no.1 and Noticee no.2 have violated the provisions of Regulation 7 (2) (a) of the PIT Regulations and whether Noticee no. 3 has violated the provisions of Regulation 7 (2) (b) of the PIT Regulations?
 - II. If yes, whether the violations would attract monetary penalty on the Noticees under the provisions of Section 15A (b) of the SEBI Act?
 - III. If yes, what should be the quantum of monetary penalty?
8. Before moving forward, the relevant provisions of the PIT Regulations, allegedly violated by the Noticees are mentioned as under:

SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

DISCLOSURES OF TRADING BY INSIDERS

7. (2) Continual Disclosures.

(a). Every promoter and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;

(b). Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information.

Explanation. — It is clarified for the avoidance of doubts that the disclosure of the incremental transactions after any disclosure under this sub-regulation, shall be made when the transactions effected after the prior disclosure cross the threshold specified in clause (a) of sub-regulation (2).

ISSUE no. I: - Whether Noticee no.1 and Noticee no.2 have violated the provisions of Regulation 7 (2) (a) of the PIT Regulations and whether Noticee no.3 has violated the provisions of Regulation 7 (2) (b) of the PIT Regulations?

ISSUE no. II: - If yes, whether the violation committed by the Noticees would attract monetary penalty under Section 15A(b) of the SEBI Act?

9. I note that during the period March 2015, Mr.Ripu/Noticee no.1 and Ms. Shilpa/Noticee no. 2 became the promoters of the Company i.e Noticee no. 3 and individually held 25.75% stake in the Company. Subsequently, on October 29, 2015, the Company came out with a preferential allotment of 5,00,000 equity shares of Rs 10/- each at a premium of Rs 190/- per share to four persons, including the two promoters i.e Noticee nos. 1 & 2. I note that Noticee nos 1 and 2 were allotted a total of 2,57,600 equity shares of the Company i.e 1,28,800 shares each were allotted to the two promoters viz. Noticee nos 1 & 2 on preferential allotment basis. In this regard, I find that the value of the aforementioned acquisition of 1,28,800 shares each by Noticee nos 1 & 2 had amounted to Rs. 2.57 crores individually as on the date of the transactions in question i.e. on October 29, 2015. As the value of the aforementioned transaction was more than Rs. Ten Lakh (Rs. 10,00,000/-), they were required to make the necessary disclosures to the Company i.e Noticee no 3 within two trading days of such transaction in terms of the provisions of Regulation 7 (2) (a) of the PIT Regulations. However, as per records and the confirmation of the disclosures obtained from BSE, it is observed that Noticee no. 1 and Noticee no. 2 made the relevant disclosures to the Company on May 20, 2019 and May 22, 2019 respectively and the Company in turn made the disclosure to the BSE on May 21, 2019 and May 22, 2019. Therefore, it is on record that the relevant disclosures under the PIT Regulations were made by the Noticees with a delay of more than three years. I also find that Noticee nos 1 & 2 have not disputed the above facts. In view of the same, I hold that both Noticee nos 1 & 2 have failed to make the necessary disclosures within the prescribed time period required under Regulation 7 (2) (a) of the PIT Regulations.
10. Further, the Company i.e Noticee no.3 in its reply to the SCN mentioned that as soon as it received the disclosures from Noticee nos.1 & 2 in the month of May 2019, it had immediately disclosed the same to the stock exchange (i.e BSE) without any delay. As

stated above, the company made the disclosures u/r 7 (2) (b) of the PIT Regulations on May 21, 2019 and May 22, 2019. It was contended by the Company i.e Noticee no.3 that it had not violated the provisions of Regulation 7 (2) (b) of the PIT Regulations, as alleged against it in the SCN and therefore requested to drop the proceedings initiated against it in this regard. In this context, I find that the Company had made the preferential allotment of 5,00,000 shares on October 29, 2015 to four persons, including its promoters i.e Noticee nos 1 & 2, who were allotted 1,28,800 shares each through the preferential allotment. The beneficiary position/list of the shareholders (who are also the promoters of the company) and who had received the shares through the aforementioned preferential allotment in demat form was available with the company as on October 29, 2015 i.e the date of allotment of the shares to Noticee nos 1 & 2. Thus, the information pertaining to the acquisition details of Noticee nos 1 & 2 through the above mentioned preferential allotment was available with Noticee no. 3 w.e.f October 29, 2015. Further, it is pertinent to mention that the decision of the company to issue the shares on preferential allotment basis was also approved in the AGM of the shareholders dated September 28, 2015. Therefore, from the above facts, it can reasonably be concluded that Noticee no. 3 was aware of the allotment of 1,28,800 shares each made to Noticee nos 1 & 2 on October 29, 2015 i.e the date of allotment of the shares and in view of the same, Noticee no 3 was expected to make the necessary disclosures to BSE under Regulation 7(2)(b) of the PIT Regulations within two trading days from the date of allotment of the shares i.e two trading days from October 29, 2015. As already stated, Noticee no 3 has admittedly made the disclosures to BSE, belatedly during May 2019 i.e with a delay of more than three years. In view of the same, the contention of Noticee no 3 that it had not violated the provisions of Regulation 7 (2) (b) of the PIT Regulations is baseless and without any merit. Therefore, I hold that Noticee no 3 has violated the provisions of Regulation 7(2)(b) of the PIT Regulations.

11. The contention of the Noticees that the delay in making the necessary disclosures under the PIT Regulations was due to inadvertence and without any malafide intention cannot be accepted. It is pertinent to mention that the disclosure requirements mandated under the respective regulations serve very important purposes. The stock exchange is informed so that the investing public will come to know of the position enabling them to

stick on with or exit from the company. Timely disclosures of the details of the shareholding of the persons acquiring substantial stake is of significant importance as such disclosures also enable the regulators to monitor such acquisitions. In the instant matter, the acquisition of shares by the promoters through the preferential allotment having value of more than Rs Ten Lakh is of relevance from an investors' perspective. In this context, I note that the Hon'ble SAT in the matter of Akriti Global Traders Ltd vs SEBI (in Appeal No.78 of 2014) and decided on September 30, 2014 has held that *"Argument of the appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as the provisions under the regulations are violated and that penal liability is neither dependent upon intentions of parties nor gains accrued from such delay"* . Further, In the matter of Mr. Ankur Chaturvedi vs SEBI (Appeal no. 434 of 2014 and Order dated August 04, 2015), Hon'ble SAT has held that *"As rightly pointed out by the adjudicating officer the entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Therefore, omission on the part of the appellant in failing to make disclosures was detrimental to the interest of the investors in the securities market and hence no fault can be found with the decision of SEBI in imposing penalty"*.

Therefore, considering these facts and circumstances, I hold that this case deserves imposition of monetary penalty upon the Noticees under section 15 A (b) of the SEBI Act, which reads as under :

SEBI Act

PENALTIES AND ADJUDICATION

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, -

(a).....

(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 which shall be not less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

ISSUE no. 3: If yes, what should be the quantum of monetary penalty?

12. For the purpose of adjudication of the penalty, it is relevant to mention that under section 15I of the SEBI Act imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The guidelines in this regard are provided by the legislature in section 15J of the SEBI Act. As per the explanation appended to section 15J, vide Part VIII of Chapter VI of the Finance Act, 2017, which was brought after the Judgment of Hon'ble Supreme Court in the case of Roofit Industries, while adjudging the quantum of penalty, the adjudicating officer has discretion and such discretion should be exercised having due regard to the factors specified in section 15J of the SEBI Act, which reads as under:-

15J. While adjudging the 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 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.”

13. Having regard to the factors listed in section 15J, it is noted from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default by the Noticees in this case cannot be computed. The records do not show any repetitive default of this nature by the Noticees. It is an admitted fact that Noticees made the relevant disclosures under the provisions of PIT Regulations in the month of May, 2019 i.e. with a delay of more than three years. However, timely disclosures to the Company/stock exchange as required under the provisions of the PIT Regulations, as aforesaid, are of significant importance from the point of view of the investors and regulators.

ORDER

14. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15 I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose monetary penalty of Rs. 3,00,000/- (Rupees Three Lakh only) on the Noticees viz. Mr. Ripu Sudan Kundra, Ms Shilpa Shetty Kundra and Viaan Industries Ltd under the provisions of section 15A(b) of the SEBI Act for their violations as mentioned in the table below. The penalty shall be paid jointly and severally by the Noticees. In my view, the said penalty is commensurate with the violation committed by the Noticees in this case.

Sl no.	Name of person/Entity	Violations	Penal Provisions	Penalty
1	Mr. Ripu Sudan Kundra /Noticee no. 1	Regulation 7 (2) (a) of PIT Regulations.	Section 15 A(b) of the SEBI Act.	Rs. 3,00,000/- (Rupees Three Lakh only)
2	Ms Shilpa Shetty Kundra /Noticee No. 2	Regulation 7 (2) (a) of PIT Regulations.		
3	Viaan Industries Ltd /Noticee no. 3	Regulation 7 (2) (b) of PIT Regulations.		

15. The Noticees shall remit/pay the said total amount of penalty within 45 days of the receipt of this order either by way of Demand Draft in favor 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 Noticees may contact the support at portalhelp@sebi.gov.in.
16. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD1-DRA-I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
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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)	

17. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees viz. Mr. Ripu Sudan Kundra, Ms. Shilpa Shetty Kundra and Viaan Industries Limited and also to the Securities and Exchange Board of India.

Date: July 28, 2021

Place: Mumbai

Suresh B Menon

ADJUDICATING OFFICER