

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. PG/AO-12/2011]**

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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 BY ADJUDICATING  
OFFICER) RULES, 1995**

In respect of

**Mr. Dharmendra Kumar** (PAN- Not available)

In the matter of

**Tulip IT Services Limited**

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**FACTS OF THE CASE IN BRIEF**

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation in respect of buying, selling and dealing in the shares of M/s Tulip IT Services Limited (hereinafter referred to as “**Tulip/the Company/scrip**”), to inquire into and adjudge under section 15 HA of the SEBI Act, the alleged violations of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as ‘**PFUTP Regulations**’) at the Bombay Stock Exchange Ltd. (hereinafter referred to as ‘**BSE**’) and the National Stock Exchange of India Ltd. (hereinafter referred to as ‘**NSE**’) on the day of listing of the scrip i.e. January 5, 2006 (hereinafter referred to as the “**investigation period**”).
2. The shares of Tulip are listed on BSE and NSE. It was observed that Mr. Dharmendra Kumar (hereinafter referred to as the

“**Noticee**”), client of sub-broker Ganpati Investments (hereinafter referred to as ‘**Ganpati**’), had dealt through Ganpati in the scrip of Tulip as well as other scrips namely: PVR Films Ltd. (hereinafter referred to as ‘**PVR**’), Compulink System Ltd. (hereinafter referred to as ‘**Compulink**’) and Repro India Ltd. (hereinafter referred to as ‘**Repro**’), and placed large sell/buy orders at unrealistic prices to distort the market equilibrium. These trades were done on the first trading day of these scrips where circuit filters were kept open to enable efficient price discovery. Ganpati Investments is a sub broker of Uttam Financial Services.

3. The Order logs show that the Noticee, Mr. Dharmendra Kumar placed a single buy order for 2,00,000 shares @₹1.00 at 11:05:08 hrs. from terminal No. 58 on the first day of trading at the exchanges in the scrip of Tulip and later deleted it at 11:11:06 hrs. An analysis of the order log of Tulip shows that actual trades done by the Noticee were very less compared to the total orders placed. The Noticee repeatedly placed buy orders in the scrip of the Company at an unrealistic price not related to ruling market price which created a false and misleading appearance of orders. By indulging in such acts, it was alleged that the Noticee violated regulations 4(2)(a), 4(2)(e) and 4(2)(g) of PFUTP Regulations and consequently was liable for penalty under section 15HA of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ‘**SEBI Act**’).

#### **APPOINTMENT OF ADJUDICATING OFFICER**

4. Mr. V.S. Sundaresan was appointed as the Adjudicating Officer, vide Order dated May 02, 2008 under section 15I of the SEBI Act, to inquire into and adjudge under section 15 HA of the SEBI Act the

alleged violations of the provisions of PFUTP Regulations by the Noticee, as observed during the investigation conducted by SEBI into the affairs, trading and dealings in the scrip of Tulip IT Services Ltd.

5. Subsequently, on the transfer of Mr. Sundaresan, the undersigned was appointed as the Adjudicating Officer in the matter, vide order dated November 12, 2009.

### **SHOW CAUSE NOTICE, HEARING AND REPLY**

6. A Show Cause Notice (hereinafter referred to as “**SCN**”) dated August 28, 2008 was sent to the Noticee through ‘Registered Post Acknowledgement Due’. The SCN returned undelivered. Thereafter, vide letter dated December 4, 2009 the aforesaid SCN was once again sent to the Noticee through sub-broker Ganpati Investments. Vide letter dated February 16, 2010 the aforesaid sub-broker submitted that the Noticee refused to accept the SCN given to him in person. Accordingly, vide notice dated April 10, 2010, the same was published in the Hindustan Times (English Newspaper) and Sakal (Marathi Newspaper). It was also informed that the SCN has been made available on the SEBI website ([www.sebi.gov.in](http://www.sebi.gov.in)) under the heading “Unserved Summons/Notice”. Moreover, the Noticee was also given an option to collect the aforesaid SCN from SEBI, Head Office.
7. The Noticee has not replied to the aforesaid SCN. The Noticee was also granted opportunities of hearing on several occasions through various modes of communications, the details of which are being tabulated below:

<b>Date of notice</b>	<b>Date of hearing</b>	<b>Mode of communication/status of delivery</b>	<b>Appearance/response</b>
May 07, 2010	June 22, 2010	Speed Post Acknowledgment Due (SPAD), newspaper advertisement and SEBI website/ SPAD undelivered	None
October 06, 2010	November 23, 2010	Speed Post Acknowledgment Due/ SPAD undelivered	None
December 14, 2010	February 07, 2011	Speed Post Acknowledgment Due/ SPAD undelivered	None
January 11, 2010	February 21, 2011	Speed Post Acknowledgment Due, newspaper advertisement/ SPAD undelivered	None

8. I am convinced that ample opportunities have been given to the Noticee to put forward his defense and explain his case. Despite being given opportunities, the Noticee has failed to file reply or appear for personal hearing. In view of this, I am compelled to proceed with the matter *ex-parte* according to rule 4(7) of the Rules and decide this case on the basis of material available on record.

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

9. The issues that arise for consideration in the present case are :
- a. Whether the Noticee attracts the provisions of regulations 4(2)(a), (e) & (g) of PFUTP Regulations?
  - b. Does the non-compliance, if any, attract monetary penalty under section 15HA of SEBI Act?
  - c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

**ALLEGED VIOLATION OF REGULATION 4 (2)(a), (e) & (g) of PFUTP REGULATIONS**

10. It is observed that the Noticee Mr. Dharmendra Kumar (client code - VK608), proprietor of Ganpati, had indulged in the activity of placing of large orders at unrealistic prices on the day of listing in four scrips (viz., Tulip, PVR, Compulink and Repro), the details of which are given below:-

Date	Name of IPO	Client Code	Buy order (no. of Shares)	Order Price (Rs.)	Prevailing Market Price	Sell order	Time	Order No.
05/01/2006	Tulip IT	VK608	2,00,000	1	187.25	-	11:05:08	77905800020222757
28/12/2005	Compulink	VK608	100,00,000	0.1	76	-	13:00:02	77905900020204143
		VK608	90,00,000	0.1		-	12:50:33	77905900020204143
28/12/2005	Compulink	VK608	9,00,000	0.50		-	12:46:44	77905900020204143
		VK608	1,00,000	1		-	12:41:06	77905800020221894
		VK608	1,00,000	0.50		-	12:45:02	77905900020204143
		VK608	1,00,000	1		-	12:49:36	77905900020204140
		VK608	1,00,000	1		-	13:00:02	77905800020221890
		VK608	1,00,000	1		-	13:00:03	77905800020221894
		VK608	90,000	1		-	12:33:54	77905800020221890
		VK608	90,000	1		-	12:42:19	77905900020204140
		VK608	90,000	1		-	12:42:26	77905900020204140
		VK608	1,00,000	1		-	14:59:08	77905800020221978
		VK608	4,00,000	1		-	15:00:16	77905800020221979
		VK608	5,00,000	1		-	15:00:35	77905800020221980
4/1/2006	PVR Films Ltd.	VK608	2,00,000	1	294	-	10:27:52	77905800020222483
		VK608	2,00,000	1		-	10:44:59	77905800020222483
		VK608	3,00,000	1		-	11:00:44	77905800020222507
		VK608	3,00,000	1		-	11:49:19	77905800020222507
22/12/2005	Repro India Ltd.	VK608	2,00,000	1	216-220	-	12:07:12	77905900020203850
		VK608	2,00,000	1		-	12:06:59	77905900020203850
		VK608	1,00,000	1		-	12:06:13	77905900020203844
		VK608	90,000	1		-	12:02:25	77905900020203844
		VK608	90,000	1		-	12:02:18	77905900020203844
		VK608	9900	1		-	12:01:32	77905900020203844
		VK608	1,00,000	1		-	13:44:11	77905800020221330

		VK608	1,00,000	1		-	13:55:42	77905800020221330
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11. The scrip of Tulip was listed on the Exchanges on January 5, 2006. The issue price was ₹120/- and the opening market price was ₹180/-. As per the normal practice followed by Stock Exchanges, circuit filters were not applied on the first day of listing. The Noticee, Mr. Dharmendra Kumar placed a single buy order for 2,00,000 shares @ ₹1.00 at 11:05:08 hrs on the first day of trading at the exchanges and later deleted it at 11:11:06 hrs.
  
12. This scrip of PVR was listed on BSE on 4<sup>th</sup> January, 2006. The order log for January 04, 2006 of Uttam Financial Services Ltd. relating to the terminals allotted to Ganpati in the scrip were analysed and it was observed that 119 orders were placed with 63 buy orders and 56 sell orders. The sell orders were in the range of ₹288.55 to ₹315 with small quantities. However, on buy side there were 2 orders placed on behalf of Mr. Dharmendra Kumar. The first large order was for 2,00,000 shares @ ₹1/- at 10:27:52 hrs when the ruling market price of the scrip was ₹294/-. The said order was deleted at 10:44:59 hrs. Again at 11:00:44 hrs, a buy order for 3,00,000 shares @ ₹1/- was placed when the ruling market price ₹291/-. The said order was deleted at 11:49:19 hrs. The actual trade done by the sub-broker on the day of listing in the scrip PVR was 1058 shares (490 shares were bought and 568 shares were sold) in 74 trades having average value Rs.296.80.
  
13. Again, the scrip of Compulink was listed on BSE on 28<sup>th</sup> December, 2005. The order log for December 28, 2005 of Uttam Financial Services Ltd. from the terminals allotted to Ganpati in the scrip was analysed. It was observed that a total of 147 orders were placed with 87 buy orders and 60 sell orders. The sell orders were in the

range of Rs.73.10 to Rs.80 with small quantities. However, on buy side there were orders placed which were of large quantities with price at or below Re.1/-. The first large order was for 10,000 shares @ ₹0.10 at 12:33:37 hrs when the ruling market price was around ₹76/-. The said order was modified by adding 90,000 shares at 12:33:54 hrs. At 12:41:06 hrs, the Noticee put another buy order for 1,00,000 shares @ ₹1/-. Again at 12:42:03 hrs another buy order for 10,000 shares @ ₹1/- was placed which was modified at 12:42:26 hrs by adding 90,000 shares. At 12:45:02 hrs, another order for 1,00,000 shares was placed @ ₹0.50 which was updated by adding another 9,00,000 shares at 12:46:44 hrs. The order placed at 12:42:03 hrs was deleted at 12:49:36 hrs. The order placed at 12:45:02 hrs was updated by revising the price to ₹0.10 at 12:50:10 hrs. At 12:50:33 hrs the order was further updated by adding 90,00,000 shares which took the order quantity to 1 crore shares @ ₹0.10. The large orders so placed at such unrealistic prices were deleted between the time 13:00:02 hrs to 13:00:03 hrs. The order of 1 crore shares was deleted at 13:19:24 hrs. Towards closing session also another order for buying 1,00,000 shares @ ₹1/- was placed at 14:59:08 hrs and updated by adding another 4,00,000 shares at 15:00:16 hrs. The said order was deleted at 15:00:35 hrs. All these orders were placed by Mr. Vivek Kumar (Proprietor: Ganpati) on behalf of the Noticee. The actual trade in the scrip done by Ganpati on the day of listing were of 2650 shares (1350 shares were bought and 1300 shares were sold) in 76 trades.

14. The scrip of Repro was listed on BSE on 22<sup>nd</sup> December, 2005. The order log of Uttam Financial Services Ltd. from the terminals allotted to Ganpati in the scrip were analysed for December 22, 2005. It was observed that 83 orders were placed with 47 buy

orders and 36 sell orders. The sell orders were in the range of ₹216 to ₹270 with small quantities. However, on buy side Vivek Kumar (Proprietor: Ganpati) on behalf of Dharmendra Kumar had placed orders which were of large quantity with the price being ₹1/-. At 12:01:14 hrs, an order for 100 shares was placed @ ₹1/- which was updated at 12:01:32 hrs by adding 9,900 shares and further updated by adding 90,000 shares at 12:02:25 hrs. The said order was deleted at 12:06:13 hrs. At 12:06:59 hrs, an order for 2,00,000 shares was placed which was deleted at 12:07:12 hrs. At 13:44:11 hrs an order for 1,00,000 shares was placed @ ₹1/- which was deleted at 13:55:42 hrs. The actual trade done by Ganpati on the day of listing was 730 shares (365 shares were bought and 365 shares were sold) in 44 trades.

15. Therefore, from the above statistics and analysis of the order logs, it is evident that the Noticee appears to have placed misleading orders in the securities market and in the process has violated Regulations 4 (2) (a), (2) (e) and (2) (g) of PFUTP Regulations.

The said regulations read as under:

**“4. Prohibition of manipulative, fraudulent and unfair trade practices**

*(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities*

*(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely: -*

*(a) indulging in an act which creates false or misleading appearance of trading in the securities market;*

*(b) ...;*

- (c) ...;
- (d) ...;
- (e) *any act or omission amounting to manipulation of the price of a security;*
- (f) ...;
- (g) *entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;*

16. From the above regulations in question, it is evident that any dealing in the securities market is deemed to be fraudulent or unfair in nature if :
- a) such dealing creates false or misleading appearance of trades,
  - b) any act or omission results in price manipulation of a share, &
  - c) any securities transaction is entered into, without the intention of completing the transaction or changing the beneficial ownership of such securities.
17. In the above scenario, the Noticee has put in buy order for large quantity of securities of the scrip at nominal prices which are way below the prevailing prices. The Noticee has placed such orders in 3 other scrips which bear significance as they reflect the fact that such freak orders by the Noticee are not mistakes/errors of input of information on the computer/ terminal. It is also observed that the noticee was well aware of the prevailing price as he himself executed trades at such prices both before and after placing orders at nominal price. It is observed that noticee had purchased 50 shares of Tulip @ ₹ 190 on 05.01.2006 at 10.20.45 vide order No

77905900020204918 and also 25 shares @ ₹ 194.85 at 11:19:10 vide order no 77905900020204945.

18. Such orders put in by the Noticee indicate a misleading intent in the trading behaviour of the Noticee. Therefore the repetitive nature of such freak orders with meager price quotes and large volumes of shares can only be termed as manipulation of order book with an intention to create an illusion of demand in the said scrip in the minds of general investors.
19. The Noticee's conduct in his dealing in the scrip coupled with his similar conduct in the dealing of the three other scrips mentioned before makes it clear that he has attempted to create a false and misleading image of an artificial demand in the scrip (s). Also taking into consideration the fact that each and every scrip has been dealt with in the above fraudulent manner on the first day of their listing with the Exchanges, when there is no circuit filter in order to allow appropriate price discovery in the market, has also added to the conviction that the intent was to create false/misleading image of demand in the scrip of Tulip IT Services Ltd. as well those of Repro, Compulink & PVR. The above actions are in violation of the regulations 4 (2)(a), (2)(e) and (2)(g) of PFUTP Regulations and therefore calls for action against the Noticee. Hence, the aforesaid violations by the Noticee make him liable for penalty under Section 15HA of SEBI Act, 1992 which reads as follows:

**“15HA. Penalty for fraudulent and unfair trade practices.-**

*If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or*

*three times the amount of profits made out of such practices, whichever is higher.”*

20. While determining the quantum of penalty under section 15HA, 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.”*

21. It is difficult, in cases of this nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. It is also difficult to ascertain the exact quantum of trading in the scrip, which has been prompted due to the false/misleading illusion of demand created in the scrip as a result of the misleading orders put in by the Noticee. I have noted that the investigation report also does not dwell on the extent of specific gains made by the Noticee. Further it is also not possible to ascertain the loss to the investors in monetary terms. However, the investors were definitely affected by the misleading

image of artificial demand in the scrip, that was prompted by the Noticee's actions and were thus impaired from taking informed investment decisions due to this activity of the Noticee. The fact that the noticee placed numerous such orders in all of the four scrips mentioned above indicates that such activity is repetitive.

### **ORDER**

22. In terms of provisions of rule 5(1) of the Rules, I impose a penalty of ₹2,00,000/- (Rupees two lakhs only) under section 15 HA of SEBI Act, 1992 on the Noticee, Mr. Dharmendra Kumar, resident of: MIG-99, Chanakya Puri, Gaya – 823001, for the violation of the regulations 4(2)(a), 4(2)(e) and 4(2)(g) of PFUTP Regulations. Considering the facts and circumstances of the case, this penalty will be commensurate with the violations committed by the Noticee.
23. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Mr. Aliasgar Mithwani, Deputy General Manager, ID- 4, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
24. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: <b>February 25, 2011</b>	<b>PIYOOSH GUPTA</b>
Place: <b>MUMBAI</b>	<b>ADJUDICATING OFFICER</b>