

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. IVD-2/AEL/AO/DRK/SS/EAD3-32/2009]

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5(1) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

Against

**Triumph International Finance India Ltd.
(erstwhile SEBI Registered Stock Broker)**

having its address at

**Oxford Centre, 10 Shroff Lane, Colaba Causeway,
Colaba, Mumbai – 400 005**

FACTS OF THE CASE IN BRIEF

1. Investigations had been conducted by Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') into the dealing in the shares of Adani Exports Ltd. (hereinafter referred to as '**AEL**'). The scope of the investigation included, trading the shares and the movement of shares and funds from AEL / its promoters / associate companies to Ketan Parekh entities / group (where companies associated to Ketan Parekh refer to - Classic Credit Ltd., Classic Share and Stock Broking Services Ltd., Panther Fincap & Management Services Ltd., Panther Investrade Ltd., Triumph International Finance Ltd., and Triumph Securities Ltd., hereinafter together referred to as '**Ketan Parekh entities / groups**').
2. It was seen that substantial quantity of shares was acquired by the Ketan Parekh group. SEBI had advised the National Securities Depository Ltd. to

furnish the details of holdings in the scrip by Ketan Parekh entities on a fortnightly basis for the period October 1999 to March 2001. The details are as given hereinafter:

NAME / DATE	CCL	CSSB	NH	PFMSL	PIPL	PIT	SIML	TIFL	TSL	TOTAL	%
Number of shares of Adani Exports held by the entities											
11/1/1999	0		0	0	0	0	0	0	0	0	0
11/16/1999	0		0	0	0	0	0	0	0	0	0
12/1/1999	0		0	0	0	0	0	0	0	0	0
12/16/1999	0		0	5900	150000	0	0	0	0	155900	0.71
1/1/2000	3100		0	0	150000	0	0	2300	0	155400	0.7
1/16/2000	46100	12000	0	144700	150000	9200	0	2800	85000	449800	2.04
2/1/2000	1000	12000	0	77100	20000	9200	76000	3400	85000	283700	1.29
2/16/2000	172000	12000	0	77100	20000	9200	76000	4200	85000	455500	2.07
3/1/2000	27300	12000	0	77100	20000	9200	76000	31800	85000	338400	1.53
3/16/2000	27300	12000	0	77100	20000	9200	76000	32000	85000	338600	1.54
4/1/2000	0	12000	0	78300	20000	9200	76000	29300	85000	309800	1.41
4/16/2000	0	12000	0	78300	20000	9200	76000	29300	85000	309800	1.41
5/1/2000	0	12000	0	78300	20000	9200	76000	28800	85000	309300	1.4
5/16/2000	0	12000	0	78300	20000	9200	76000	28800	285000	509300	2.31
6/1/2000	0	12000	0	0	0	0	0	28800	285000	325800	1.48
6/16/2000	115400	12000	0	0	0	0	0	3800	185000	316200	1.43
7/1/2000	401400	12000	0	400000	0	400000	0	3800	185000	1402200	6.36
7/16/2000	0	12000	0	200000	0	0	0	638200	210000	1060200	4.81
8/1/2000	295762	12000	0	311857	0	0	0	638200	210000	1467819	6.66
8/16/2000	664762	12000	0	260987	0	0	0	542100	210000	1689849	7.66
9/1/2000	444000	12000	0	327347	0	0	0	602100	180000	1565447	7.1
9/16/2000	164388	12000	0	0	0	0	0	596100	180000	952488	4.32
10/1/2000	543988	12000	0	0	0	0	0	666100	225000	1447088	6.56
10/16/2000	543988	12000	0	0	0	0	0	666100	225000	1447088	6.56
11/1/2000	0	12000	0	0	0	0	0	666100	225000	903100	4.1
11/16/2000	0	12000	0	0	0	0	0	216100	225000	453100	2.06
12/1/2000	0	12000	0	0	0	0	0	216100	225000	453100	2.06
12/16/2000	0	12000	0	0	0	0	0	3900	0	15900	0.07
1/1/2001	0	12000	50000	0	0	0	0	113900	95000	270900	1.23
1/16/2001	0	12000	50000	0	0	0	0	113900	95000	270900	1.23
2/1/2001	0	12000	50000	0	0	0	0	113900	80000	255900	1.16
2/16/2001	4500	12000	0	0	0	0	0	3900	0	20400	0.09
3/1/2001	0	12000	0	7951	0	0	0	3900	0	23851	0.11
3/16/2001	0	12000	0	0	0	0	0	0	0	12000	0.05
4/1/2001	0	12000	0	0	0	0	0	0	0	12000	0.05

Note:

CCL : Classic Credit Ltd., Client ID: 10000650

PFMSL : Panther Fincap and Management Services Ltd. Client ID: 10000391

PIPL : Panther Industrial Products Ltd. Client ID: 10000924

PIT : Panther Investrade Ltd. Client ID: 10000375

NH : NH Securities Ltd Client ID: 10194451

CSSB : Classic shares and Stock Broking Services Ltd. Client ID: 10058149

SIML : Saimangal Investments Ltd. Client ID: 10000383

TIFL : Triumph International Finance India Ltd.

TSL : Triumph Securities Ltd.

3. Investigations also brought out that Triumph International Finance India Ltd. (hereinafter referred to as the 'noticee / Company') and Triumph Securities Ltd. (hereinafter referred to as 'TSL') were holding shares in different Depository accounts. The noticee was holding shares in 4 different accounts having Client IDs: 10052490, 10195838, 10441818 and 10003176. Similarly, TSL was holding shares in 2 different Depository accounts namely having Client IDs: 10055870 and 10000721. Therefore, the shareholding was aggregated for all such accounts to arrive at the total number of shares held by these 2 entities. The break up of the shares held by these 2 entities is as given below:

NAME/ DATE	TIFL	TIFL	TIFL	TIFL	TIFL Total	TSL	TSL	TSL Total
Client ID	10052490	10195838	10441818	10003176		10055870	10000721	
	Number of shares of Adani held by the entities							
11/1/1999	0	0	0	0	0	0	0	0
11/16/1999	0	0	0	0	0	0	0	0
12/1/1999	0	0	0	0	0	0	0	0
12/16/1999	0	2300	0	0	0	0	0	0
1/1/2000	0	800	2000	0	2300	85000	0	0
1/16/2000	0	1300	2100	0	2800	85000	0	85000
2/1/2000	0	2100	2100	0	3400	85000	0	85000
2/16/2000	0	2300	700	28800	4200	85000	0	85000
3/1/2000	0	3200	0	28800	31800	85000	0	85000
3/16/2000	0	500	0	28800	32000	85000	0	85000
4/1/2000	0	500	0	28800	29300	85000	0	85000
4/16/2000	0	0	0	28800	29300	85000	0	85000
5/1/2000	0	0	0	28800	28800	285000	0	85000
5/16/2000	0	0	0	28800	28800	285000	0	285000
6/1/2000	0	0	0	3800	28800	185000	0	285000
6/16/2000	0	0	0	3800	3800	185000	0	185000
7/1/2000	500000	0	0	138200	3800	210000	0	185000
7/16/2000	500000	0	0	138200	638200	210000	0	210000
8/1/2000	403900	0	0	138200	638200	210000	0	210000
8/16/2000	463900	0	0	138200	542100	180000	0	210000
9/1/2000	463900	0	0	132200	602100	180000	0	180000
9/16/2000	463900	0	0	202200	596100	225000	0	180000
10/1/2000	463900	0	0	202200	666100	225000	0	225000
10/16/2000	463900	0	0	202200	666100	225000	0	225000
11/1/2000	13900	0	0	202200	666100	225000	0	225000
11/16/2000	13900	0	0	202200	216100	225000	0	225000
12/1/2000	3900	0	0	0	216100	0	0	225000
12/16/2000	3900	0	0	110000	3900	80000	15000	0
1/1/2001	3900	0	0	110000	113900	80000	15000	95000
1/16/2001	3900	0	0	110000	113900	80000	0	95000
2/1/2001	3900	0	0	0	113900	0	0	80000
2/16/2001	3900	0	0	0	3900	0	0	0
3/1/2001	0	0	0	0	3900	0	0	0
3/16/2001	0	0	0	0	0	0	0	0
4/1/2001	0	0	0	0	0	0	0	0

4. It is seen from the above that on certain dates (6 instances) the total number of shares held by Ketan Parekh entities acting in concert exceeded 5% of the total paid up equity capital of AEL. The tabulated statement in this regard is as under:

	Date	No. of shares of Adani held in lakhs	% of paid up capital of Adani
1.	July 1, 2000	14.02	6.36
2.	August 1, 2000	14.67	6.66
3.	August 16,2000	16.89	7.66
4.	September 1, 2000	15.65	7.10
5.	October 1, 2000	14.47	6.56
6.	October 16,2000	14.47	6.56

5. The total number of paid up shares of the Company as on September 18, 2000 was 2,20,47,400. Hence, in all the above cases in a period of 4 months, the Ketan Parekh entities held more than 5% of the total shares of the Company. When queries were raised with AEL, it was stated that they did not receive any intimation from Ketan Parekh entities when the Ketan Parekh entities acquired shares in AEL exceeding the threshold limit of 5% of the paid up capital of the Company.
6. In view of the above, it is alleged that the Ketan Parekh entities violated Regulation 7 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 by not disclosing within 4 working days when their acquisition of shares in AEL crossed the threshold limit of 5%.

APPOINTMENT OF ADJUDICATING OFFICER

7. I was appointed as the Adjudicating Officer vide (subsequent to transfer of the previous Adjudicating Officers) vide order dated February 24, 2009, under section 15 I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the '**SEBI Act**'), read with Rule 3 of 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 Section 15A(b) of the SEBI Act, the violation of Regulation 7 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the **'Takeover Regulations'**) alleged to have been committed by the noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

8. A Show Cause Notice EAD/ACR/42600/2005 dated June 14, 2005 (hereinafter referred to as **'SCN'**) was served in terms of the provision of Rule 4(1) of the Adjudication Rules, seeking reply of the noticee as to why an inquiry should not be held against it in respect of the violation alleged to have been committed by the noticee.

9. In the SCN it was alleged that the noticee had acquired shares of AEL in substantial quantities (more than 5%) along with the other Ketan Parekh related entities. It was alleged that the noticee had not disclosed within 4 working days, when its acquisition of shares of AEL crossed the threshold limit of 5% and was thus in violation of Regulation 7 of the Takeover Regulations.

10. The noticee vide its letter dated July 1, 2005, requested time till July 15, 2005, to submit its detailed reply to the SCN. As requested, time was granted till July 15, 2005, vide letter dated July 8, 2005. The noticee submitted its reply to the SCN dated July 15, 2005. It was submitted that:
 - i. The conclusion arrived at, that the noticee along with five other entities acting in concert had acquired shares exceeding 5% of the total paid up capital of AEL on six instances, was erroneous. It was submitted by the noticee that it had been wrongly associated as an

entity managed by and / or affiliated and / or otherwise connected with Mr. Ketan Parekh (Mr. Ketan) and / or Mr. Kartik Parekh (Mr. Kartik). The noticee also denied having acted in concert with Classic Shares & Stock Broking Services Ltd., Classic Credit Ltd., Panther Fincap & Management Services Ltd., TSL and Panther Investrade Ltd.

- ii. The noticee submitted that Mr. Ketan and / or Mr. Karthik were Non-Executive Directors without any substantial powers of management. Ms. Ami Parekh was a shareholder and had never been a director of the Company. Classic Credit Ltd. and Panther Fincap & Management Services Ltd. had been its clients and the noticee had no relationship with them other than that as clients.
- iii. The noticee also submitted that Mr. Ketan was never instrumental in the process of and in the management of the Company. He was appointed as the Director of the Company for the first time only on 16.12.2000 and he ceased to be the Director of the Company with effect from 31.3.2001. During his association with the Company, Mr. Ketan neither had any executive powers, nor any authority to sign cheques. He also did not attend any Board meetings. The business of the Company was entirely managed by Mr. Dharmesh Doshi, Managing Director, and by Mr. Jatin Sarvaiya, Joint Managing Director.
- iv. The noticee submitted that it does not carry on any large proprietary business in equity of its own on the National Stock Exchange of India Limited and does not take position except in respect of failed / disputed trades, which is accounted in its book of accounts, which are exceptional in nature. The noticee also submitted that for the year 2000-2001, it had a gross total broking income of approximately Rs.59 crores, which is a clear reflection of its business approach and an indication that it is in business of Broking and Merchant Banking and not into buying / selling shares on own account, which may have required the services and guidance of Mr. Ketan.
- v. It was submitted by the noticee that it could not be accused of having acquired shares as a person acting in concert and having a

common objective or purpose and pursuant to an agreement or understanding acquiring shares in the target Company as per Regulation 2(e) of the Takeover Regulations, since the shares of AEL lying in the noticee's account were its client's shares. The noticee did not have any position or beneficial interest in the said shares and they were lying in its account in ordinary course of business of a stock-broker. The beneficial interest in the shares belonged to its clients Classic Credit Ltd. and Panther Fincap & Management Services Ltd.

- vi. It was also submitted that it was not under the same management, as defined in Section 370 of the Companies Act 1956, with the remaining entities, which were considered to be a part of the Ketan Parekh group. The noticee also submitted that it was neither the holding nor the subsidiary company of any of the entities in the Ketan Parekh group nor was it under the same management, since the directors and the shareholders were substantially different.
- vii. It was further submitted that even if it was assumed that the noticee had acted in concert with the other entities and the exemption under Regulation 3(1)(f)(i) available to stock brokers was not available to the noticee, the alleged default of not disclosing could be considered, at the most, as an unintentional technical irregularity which had not caused loss to any investor nor had resulted into disproportionate gains or unfair advantage to the noticee. Besides the alleged technical irregularity, was only for few days.
- viii. It was also submitted that if the noticee's transactions were taken independently of the other entities, then the acquisition of shares had not at any point exceeded the limit of 5%.

11. On October 6, 2005 a notice was issued by the then Adjudicating Officer to the investigating authority wherein he was required to produce all those documents collected during the course of investigation, and the statements made by persons before the investigating authority, which prove that the noticee acted in concert etc., based on which it was concluded by the investigating authority that the noticee had violated the

provisions of the Takeover Regulations, by October 17, 2005, to the Adjudicating Officer and also to the noticee.

12. On October 06, 2005 a letter was also sent to the noticee, informing it about the notice the Adjudicating Officer had sent to the investigating authority as per the above paragraph and also giving it an opportunity to file any other additional submissions it may have. The noticee made additional submissions vide its letter dated November 08, 2005.

13. Vide letter dated May 28, 2007, the noticee was sent copies of the documents it had requested for, and also given an opportunity of personal hearing on June 18, 2007. However, due to some administrative reason, the hearing was postponed and the noticee was informed of the same vide letter dated June 11, 2007.

14. The noticee vide its letter dated November 19, 2007 submitted its intention to go for the consent proceedings. Since no communication in this regard was received from the noticee, it was issued another personal hearing notice dated January 24, 2008, advising it to attend the hearing on January 31, 2008. The noticee failed to attend the hearing.

15. Vide notice dated May 25, 2009, the noticee was granted a final opportunity of personal hearing on June 19, 2009. However, the noticee failed to appear for the final hearing too, without providing any reasons.

CONSIDERATION OF EVIDENCE AND FINDINGS

16. I have taken into consideration the facts and circumstances of the case, the submissions made by the noticee and the material made available on record.

17. The allegation against the noticee in the SCN is that it is in violation of the Takeover Regulations since it failed to disclose within 4 working days its acquisition (along with other entities) of shares in AEL after it crossed the threshold limit of 5% of the paid up share capital of AEL.

18. The noticee had submitted that it was not an entity managed by and / or affiliated and / or otherwise connected with Mr. Ketan and / or Mr. Kartik. The noticee had also denied having acted in concert with Classic Shares & Stock Brokers Ltd., Classic Credit Ltd., Panther Fincap & Management Services Ltd., TSL and Panther Investrade Ltd.

19. However, it was observed from the records made available even to the noticee that:

- i. 15.84% (7.92% each) of the equity share capital of the Company were held by Mrs. Mamta Parekh (wife of Mr. Ketan) and Mrs. Ami Parekh (wife of Mr. Kartik), where Mr. Ketan and Mr. Kartik were cousins.
- ii. The noticee held 49% in TSL, which was under the management and control of Mr. Ketan and Mr. Kartik. An Option agreement dated March 18, 1999, was executed by and between the noticee and Mr. Ketan. The noticee paid consideration to Mr. Ketan to acquire 51% equity share capital of TSL on 21/03/1999. TSL was to become a 100% subsidiary of the noticee by June 2001. The noticee had earlier admitted to have nominated 2 directors on the Board of TSL.
- iii. The noticee did not have membership of the Bombay Stock Exchange Limited and TSL did not have membership of the National Stock Exchange of India Limited. Both the entities complemented each other in executing trades in the other stock exchanges as admitted by the noticee on earlier occasions. Both, the noticee and TSL, shared a common address and employee.

- iv. For the promoters of Afttek, the Company belonged to Mr. Ketan.
- v. Kopran had advanced an Inter Corporate deposit of Rs.78 crores to Classic Credit Ltd. – controlled by Mr. Ketan. It was stated by Kopran that Classic Credit Ltd. was represented by Mr. Ketan, Mr. Dharmesh Doshi and Ms. Aditi. Mr. Dharmesh Doshi was the Managing Director of the Company and he was neither a director nor an employee of Classic Credit Ltd.
- vi. During October 1999, Mr. Ketan had approached the promoters of Lupin Laboratories and dealt on behalf of the noticee for the transaction of 60,000 shares of Lupin Laboratories between Zyma Laboratories and Almel Investments which were executed by the noticee. This shows that Mr. Ketan was working for the noticee even in 1999, when he was neither an employee nor a director of the noticee, during that period.
- vii. The noticee and TSL were enjoying a joint over draft facility of Rs.50 crores each from Global Trust Bank Ltd. against a common security to be provided by either of them.
- viii. It was also noticed that on 08.03.2001, the noticee had pledged 75,50,000 shares of Global Ecomm. to Global Trust Bank Ltd. for the loan taken by it. Prior to this pledge, Panther Fincap & Management Services Ltd. (which had Mr. Ketan as director) had transferred these shares to the noticee.
- ix. Also Classic Share and Stock Broking Services Ltd., Panther Investrade Ltd., Classic Credit Ltd. and TSL, all had the same address, i.e. Radha Bhavan, 121, Nagindas Master Road, Fort, Mumbai – 400023.
- x. All the entities, Classic Share and Stock Broking Services Ltd., Panther Investrade Ltd., Classic Credit Ltd., Panther Fincap & Management Services Ltd., TSL and the noticee, had either Mr. Ketan or Mr. Kartik or both as Directors. Kirti Parekh was also a Director in 4 of the above entities.

20. Hence all the above point out to the fact that the noticee was connected / affiliated to Mr. Ketan at least from the year 1999 onwards. Thus, the

noticee's plea that it was not affiliated to or managed by Mr. Ketan Parekh or Mr. Kartik Parekh does not hold ground. Neither does the plea that the noticee was not acting in concert with the other entities as mentioned in the above paragraphs hold ground, since the shares had been acquired with a common objective of the Ketan Parekh group, of which the noticee also forms a part. Also the noticee's claim that Classic Credit Ltd. and Panther Fincap & Management Services Ltd. had been its clients and the noticee had no relationship with them other than that as clients cannot be accepted in view of the facts discussed in the previous paragraphs.

21. Further, the noticee has failed to attend any of the hearings granted to it. Ample time and opportunities were provided to the noticee to attend personal hearings; however the noticee has chosen not to appear for the personal hearings. In this scenario, I am compelled to pass an order against the noticee as per the records made available.

22. In view of the above findings it can be concluded that the noticee has violated Regulation 7 of the Takeover Regulations. The provisions of the said regulation as during the period of violation is as under:

“Acquisition of 5 percent and more shares or voting rights of a company.

7. [(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five percent shares or voting rights in a company, in any manner whatsoever, shall disclose the aggregate of his shareholding or voting rights in that company to the company.]”

23. The violation mentioned in above paragraphs makes the noticee liable to penalty under Section 15A(b) of the SEBI Act. The relevant text of the section as it stood during the period of violation is stated hereinafter:-

“Penalty for failure to furnish information, return, etc.

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

(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 not exceeding five thousand rupees for every day during which such failure continues];”

24. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the 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

25. It is also to be noted that the Investigation report has not quantified the profit / loss for the nature of violation / transactions carried out by the noticee and no quantifiable figures 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 by the noticee.

26. Considering the violations committed by the noticee, I hereby impose a penalty of Rs.5,00,000/- (Rupees Five Lakhs only), on the noticee, which is appropriate in the facts and circumstances of the case.

ORDER

27. In exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing

Penalties by Adjudicating Officer) Rules, 1995, I hereby impose a penalty of Rs.5,00,000/- (Rupees Five Lakhs only), on Triumph International Finance India Ltd. having its address at Oxford Centre, 10 Shroff Lane, Colaba Causeway, Colaba, Mumbai – 400 005, in terms of the provisions of Section 15A(b) of the Securities and Exchange Board of India Act, 1992 for its failure to abide by the provisions of Regulation 7 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the violation committed by the noticee.

28. The penalty shall be paid by way of demand draft drawn 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 shall be forwarded to the Officer on Special Duty, IVD, Securities and Exchange Board of India, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

29. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this order are being sent to Triumph International Finance India Ltd. having its address at Oxford Centre, 10 Shroff Lane, Colaba Causeway, Colaba, Mumbai – 400 005, and also to the Securities and Exchange Board of India, Mumbai.

Place: Mumbai
Date: June 30, 2009

D. RAVI KUMAR
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER