

**SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: M. S. SAHOO, WHOLE TIME MEMBER**

**IN THE MATTER OF DEALINGS IN THE SHARES OF NISSAN COPPER
LIMITED – DEALINGS BY MR. MAHESH KUMAR P. GANDHI**

Date of Hearing: 17.10.2008

Appearances :

For Noticee : Mr. Anish Kharidia, Authorized Representative

For SEBI : Mr. A. S. Mithwani, Deputy General Manager
Mr. Susanta Kumar Das, Assistant General Manager
Mr. Mohamed Rahaz, Legal Officer
Ms. Sudha Rani, Legal Officer

ORDER

**UNDER SECTIONS 11(4) AND 11B OF THE SEBI ACT, 1992 READ WITH
REGULATION 11 OF THE SEBI (PROHIBITION OF FRAUDULENT AND
UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET)
REGULATIONS, 2003**

1. Nissan Copper Limited (NCL) made an initial public offer (IPO) of 64.10 equity shares during December 4-8, 2006. On noticing abnormal price movements after listing of the said shares on December 29, 2006, SEBI advised the stock exchanges on January 2, 2007 to withhold the pay-out of securities and funds for 15 days in respect of the trades in the shares of NCL executed on December 29, 2006 and January 2, 2007. After carrying out preliminary examination, vide an interim order dated January 17, 2007, SEBI directed the stock exchanges to withhold the profits made by certain persons from their alleged irregular trading. Accordingly, BSE and NSE withheld Rs.1,23,839.30 and Rs.1,33,09,846.10 respectively (Total: Rs.1,34,33,685.40) in respect of transactions by Mr. Mahesh Kumar P. Gandhi (noticee).

2. According to the show cause notice (SCN) dated November 7, 2007, the initial public offer of NCL required a minimum QIB subscription of 28.85 lakh shares, that is, 45% of the issue size. Only one QIB, namely, Venus Capital Management Inc. (Venus) and its two sub-accounts, namely, Vacuf Ltd. (Vacuf) and ITF Mauritius (ITF) subscribed for 43.67 lakh shares in

the QIB category and received allotment of the entire QIB entitlement of 28.85 lakh shares. The SCN alleges that a set of connected buyers arranged QIB subscription with the assurance of an exit opportunity to the QIB so that the issue could go through. The connected buyers, which included the noticee, bought 97% of 28.85 lakh shares in a structured manner from the QIB on the day of listing and thereby cornered the NCL shares. Therefore, the connected buyers, including the noticee, violated the provisions of regulation 3 (a) and (c) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (PFUTP Regulations). Accordingly, the SCN called upon the noticee to show cause as to why suitable directions under regulation 11 of the PFUTP Regulations read with Section 11(4) and 11B of the SEBI Act, 1992, including a direction to impound and retain the money already withheld, should not be passed against him.

3. The noticee, vide letter dated January 01, 2008, replied to the SCN and appeared before me through his authorized representative, Mr. Anish Kharidia for the personal hearing on October 17, 2008 and made submissions. The summary of the submissions – oral and written - made by the noticee are as under:

- a. The annexures 1 and 2 to the SCN, which details the connection, does not include his name. The SCN does not adduce any evidence to indicate that he was a connected person or his trading pattern was in consonance with the other connected buyers.
- b. He had a short sale position and merely squared off his sale position by buying shares.
- c. It was a mere coincidence that QIB was the counter party to his trades.
- d. He incurred a loss of Rs. 77.30 lakh for the trades in NCL shares on December 29, 2006 and January 2, 2007 as against the claim in the SCN that he made profits. The SCN takes into account trades on the first day only and not those on the second day.
- e. His trades did not influence the price.
- f. There can't be any penal action based on vague and ambiguous SCN.

4. I note that the SCN alleges violation of law by 20 persons, including the noticee, for their role in arranging QIB subscription and / or in providing an exit to the QIB. Of these, 16 persons, including the noticee, bought NCL shares from the QIB. I note that the proceedings under this SCN against 14 persons have been settled through the consent procedure. This order, however, disposes of the proceeding initiated against the noticee on merit. I have carefully considered the SCN, oral and written submissions of the noticee, and the evidence on record.

The only issue to be determined is: whether the noticee was one of the connected buyers who arranged QIB subscription and / or provided an exit to the QIB on the date of listing of NCL. This will be evident from the trading pattern (quantity, time and price of orders) of the QIB, the noticee and the other connected buyers.

5. I note that:

5.1 The connected buyers (other than the noticee) placed buy orders through two brokers for NCL shares at Rs.46.50 on NSE between 10:35:36 AM to 10:35:53 AM on December 29, 2006. Vacuf, who was allotted 9,61,538 NCL shares, placed a sale order of 9,61,538 shares at 10:36:08 through the broker, M/s. Oasis Securities Ltd. at a limit price of Rs.46.50. The noticee placed four buy orders at Rs.46.50 between 10:36:10 AM and 10:36:39 AM, i.e., within 31 seconds of the sale order by Vacuf. Thus, all the buy orders were placed in a 63-second window around the time of sale order of Vacuf. These orders resulted in trades for 9,29,805 shares between Vacuf and the connected buyers, including the noticee, who alone bought 3,01,274 shares. The details of these orders are as under:

Name of Buyer	Order Details	
	Time (AM)	Price (Rs.)
Sonaliben Dhirenbbhai Vora	10:35:36	46.50
Park-Light Securities Limited	10:35:38	46.50
Deep Infrastructure Pvt. Ltd.	10:35:41	46.50
Smitaben N. Shah	10:35:53	46.50
Tejas Patel	10:35:50	46.50
Deven Patel	10:35:47	46.50
Patel Kirtiben Rajeshkumar	10:35:44	46.50
Rupesh Balwantbhai Brambhatt	10:35:41	46.50
Rajesh Balwantbhai Brambhatt	10:35:37	46.50
Noticee	10:36:10	46.50
Noticee	10:36:18	46.50
Noticee	10:36:26	46.50
Noticee	10:36:39	46.50

It is unusual that so many buyers, who are trading through two different brokers, would place orders at the same time and at same price on the same stock exchange, which would so perfectly match the sale order of the QIB, unless it is structured.

5.2 Venus, who was allotted 9,61,539 NCL shares, placed a sale order of 9,61,538 shares at 10:53:47 AM on December 29, 2006 on BSE through the broker, M/s. IKAB Securities and Investment Ltd. at a limit price of Rs.47.50. The connected buyers, who had placed orders through three different brokers prior to the sale order of Venus, modified their orders to Rs.47.50 within 32 seconds of the sale order of Venus during a 15-second window from 10:54:04 AM to 10:54:19 AM as under:

Name of Buyer	Original Order		Last Modification		No. of Modifications
	Time (AM)	Price (Rs.)	Time (AM)	Price (Rs.)	
Noticee	10:44:58	30.00	10:54:04	47.50	2
	10:44:42	30.00	10:54:07	47.50	2
	10:44:26	30.00	10:54:09	47.50	2
Deven Patel	10:09:18	30.00	10:54:19	47.50	2
Kirtiben Patel	10:09:31	30.00	10:54:16	47.50	2
Rupesh Balwantbhai Brambhatt	10:09:44	30.00	10:54:14	47.50	2
Rajesh Balwantbhai Brambhatt	10:09:58	30.00	10:54:12	47.50	2
Dhiren Vora	09:56:04	39.00	10:54:11	47.50	1
Sonali Vora	09:56:20	39.00	10:54:18	47.50	1
Uday Vora	09:55:46	43.00	10:54:06	47.50	3
Inducto Steel Ltd.	10:22:31	39.00	10:54:19	47.50	2
Shanti Sarup Reniwal HUF	10:21:45	39.00	10:54:14	47.50	2
Sanjeev Reniwal HUF	10:21:02	39.00	10:54:09	47.50	2

These modifications immediately resulted in trades for 9,20,638 shares between Venus and the connected buyers. Such swift modification as soon as Venus placed the sale order and modification of orders (time and price of orders) in tandem, by so many buyers dealing through three different brokers do not happen unless it is premeditated.

5.3 The noticee placed a buy order for 26,000 NCL shares at Rs.30.00 per share at 10:44:58 AM on December 29, 2006 on BSE, updated the same at 10:50:08 AM to Rs.46.00, and further updated at 10:54:04 AM to Rs.47.50. The said order resulted in purchase of 10,624 NCL shares from Venus. He placed another buy order for 99,000 shares at Rs.30.00 per share at 10:44:42 AM, updated the same at 10:50:10 AM to Rs.46.00, and further updated at 10:54:07 AM to Rs.47.50. This order resulted in purchase of 98,000 NCL shares from Venus. He placed yet another buy order for 99,000 shares at Rs.30.00 at 10:44:26 AM, updated the same at 10:50:13 AM to Rs.46.00, and further updated at 10:54:09 AM to Rs.47.50. This order resulted in purchase of 95,800 NCL shares from Venus. Thus, the noticee purchased a total of 2,04,424 NCL shares from Venus by adopting similar modification pattern as under:

Placement / Modification	Order for 26,000		Order for 99,000		Order for 99,000	
	Time (AM)	Price (Rs.)	Time (AM)	Price (Rs.)	Time (AM)	Price (Rs.)
Placement	10:44:58	30.00	10:44:42	30.00	10:44:26	30.00
First Modification	10:50:08	46.00	10:50:10	46.00	10:50:13	46.00
Second Modification	10:54:04	47.50	10:54:07	47.50	10:54:09	47.50

The noticee modified all three orders in tandem (time and price) with other connected buyers and remodified them in tandem with them as soon as Venus placed its sale order.

5.4 ITF, who was allotted 9,61,538 NCL shares, placed a sale order of 9,60,000 shares at 10:54:29 AM and another sell order of 1538 shares at 10:54:48 AM on December 29, 2006 on NSE through the broker, M/s. Oasis Securities Ltd. at a limit price of Rs.47.50. The connected buyers, who had placed orders prior to this sale order, modified their orders to Rs.47.50, during a

15-second window from 10:54:14 AM to 10:54:29 AM. This resulted in trades for 9,53,064 shares between ITF and the connected buyers.

5.5 The QIB had bought 45% of the IPO size. It sold the entire purchase within an hour of the listing. Venus, Vacuf and ITF placed sale orders between 10:36:08 AM to 10:54:48 AM on two exchanges through two brokers namely, M/s. IKAB Securities and Investment Ltd. and M/s. Oasis Securities Ltd.

5.6 The following table presents the summary of the trades between the QIB and the connected buyers:

Name of Buyer	No. of NCL shares bought from					
	Vacuf on NSE		Venus on BSE		ITF on NSE	
	Quantity	Time (AM)	Quantity	Time (AM)	Quantity	Time (AM)
Noticee	99,000	10:36:10	10,624	10:54:04	--	--
	98,996	10:36:18	98,000	10:54:07	--	--
	81,557	10:36:26	95,800	10:54:09	--	--
	21,721	10:36:39			--	--
Deven Patel	70,000	10:36:08	70,000	10:54:19	--	--
Kirtiben Patel	70,000	10:36:08	70,000	10:54:17	--	--
Rupesh Balwantbhai Brambhatt	70,000	10:36:08	70,000	10:54:15	--	--
Rajesh Balwantbhai Brambhatt	70,000	10:36:08	70,000	10:54:12	--	--
Dhiren Vora	--	--	70,000	10:54:11	--	--
Sonali Vora	68,531	10:36:08	70,000	10:54:18	--	--
Uday Vora	--	--	57,054	10:54:06	--	--
Inducto Steel Ltd.	--	--	99,460	10:54:19	--	--
Shanti Sarup Reniwal	--	--	69,700	10:54:14	63,000	10:54:29
Sanjeev Reniwal HUF	--	--	70,000	10:54:09	63,000	10:54:29
Deep Infrastructure Pvt. Ltd.	70,000	10:36:08			72,064	10:54:29
					1,00,000	10:54:29
					1,00,000	10:54:29
					1,40,000	10:54:29
Hariyana Ship Breakers Ltd.					4,15,000	10:54:29
Park Light Securities Ltd.	70,000	10:36:08				
Smitaben N. Shah	70,000	10:36:08				
Tejas Patel	70,000	10:36:08				
Total	9,29,805		9,20,638		9,53,064	

5.7 The connected buyers bought over 97% of sales by the QIB. The noticee alone bought about 18% of sales by the QIB. The quantities of NCL shares bought by the connected buyers, including the noticee, from the QIB through the aforesaid trades are as under:

QIB	Transactions between the QIB and Connected Buyers			Transactions between the QIB and the Noticee	
	Sale by QIB	Purchase by the connected buyers	% of Purchase to Sale	Purchase by Noticee	% of Purchase to Sale by QIB
1	2	3	4	5	6
Venus	9,61,538	9,20,638	95.75	2,04,424	21.26
Vacuf	9,61,538	9,29,805	96.70	3,01,274	31.33
ITF	9,61,538	9,53,064	99.12	NIL	NIL
Total	28,84,614	28,03,507	97.19	5,05,698	17.53

5.8 The annexure to the reply dated January 1, 2008 indicates that the noticee sold 2,24,000 NCL shares on BSE between 10:26:55 AM and 10:27:51 AM. He placed orders for exactly 2,24,000 shares and bought the same between 10:54:04 AM to 10:54:09 AM and thereby squared of the position. Of the 2,24,000 shares, he bought 2,04,424 from Venus and the balance from others. He made fresh purchases of 99,000 shares at 1:12:11 PM and sold the entire 99,000 at 3:15:23 PM on the same day. The noticee also sold 3,24,000 on NSE between 10:24:23 AM and 10:28:23 AM and bought exactly 3,24,000 shares between 10:36:10 AM and 10:36:43 AM and thereby squared of the position. Of the 3,24,000 shares, he bought 3,01,274 from Vacuf and the balance from others. He made fresh purchases of 5,00,000 shares and sold the entire 5,00,000 in the afternoon on the same day. In the process he made huge profits on the day of listing. Thus, he made a total sale of 5,48,000 (about 9% of the issue size) NCL shares within first half an hour of the listing. It is unusual for a person to take such huge sale positions in the absence of any pre-arrangement to acquire at least that many shares.

5.9 The striking features of the deal are: Only one QIB subscribed for entire QIB entitlement (45% of the IPO size), it offered to sell the entire 45% within one hour of listing, the connected buyers bought 97% of the shares sold by the QIB, the QIB and the connected buyers placed the orders in tandem, the noticee sold about 9% of the issue size within half an hour of listing, he bought back the entire short position within next half an hour, he bought 18% of the sales by the QIB, he bought 92% of his total market purchase from the QIB only, he placed the orders and modified them in tandem with the connected buyers, there was fine synchronization of order placement and modification even though it involved the QIB, a number of buyers, a number of brokers and two exchanges. This would lead to the inevitable conclusion that the noticee was one of the connected buyers and the connected buyers arranged QIB subscription for the issue with the assurance of an exit to the QIB.

6. Now, I will deal with the defence arguments of the noticee:

6.1 The noticee has submitted that he was not a connected buyer because his name does not appear in annexures 1 and 2 to the SCN and his trading pattern was different from that of other connected buyers. I find that while annexure 1 indicates the funds transactions among the parties, annexure 2 indicates the relationship among them. These two annexures make it clear that there was no fund flow to and from the noticee and the noticee was not related to other noticees. These do not any way indicate that the noticee was not a connected buyer. The SCN uses the

term 'connected' in the sense that the buyers jointly designed and executed certain trades. This is corroborated by the similar order pattern that the group of buyers had. In case of orders on BSE, they modified the orders in tandem. In case of orders on NSE, they placed buy orders in harmony with the sale orders of the QIB. They used the same set of 3 brokers for trading on both the exchanges. All these establish that the noticee was a connected buyer.

6.2 The noticee has denied that he modified the orders. The order log does not support his claim. From the table under Para 5.3, I find that the noticee modified all his buy orders on BSE. The noticee is correct to the extent that he did not modify orders on NSE. What is, however, important is the pattern of order placement or modification, and not order modification as such. In case of trades on BSE, he modified the orders in tandem with other connected buyers. In case of Vacuf, there was no modification by any of the connected buyers. Thus, his conduct is similar to that of other connected buyers.

6.3 The noticee has submitted that he had placed buy orders to square off his short sale position. I find that he short sold a total of 5,48,000 NCL shares between 10:26:56 AM and 10:28:33 AM at BSE and NSE. He bought 5,49,000 NCL shares between 10:30:56 AM and 10:54:10 AM at BSE and NSE. Out of the 5,49,000 shares, he bought 5,05,698 shares from the QIB. It is very unusual for a person to short sell such a large quantity of shares (about 9% of the IPO size) within first half an hour of the first day of listing when market is relatively uncertain. It is too much to expect that one would be able to buy such huge quantities even if he is willing to pay any price. Such huge short sale by the noticee strengthens the allegation that he had the comfort that he would be able to buy such large quantity from the impending sale by the QIB under the scheme devised by the connected buyers.

6.4 The noticee has argued that the matching of trades with the QIB was only a coincidence. The total traded quantity at NSE and BSE on the day of listing was over 13 crore of NCL shares. The buy order book is usually many times of the trades executed. When the order book is so huge, it is too much of a coincidence that the entire sale order of the QIB matched with the buy orders of the connected buyers only. It is also too much of a coincidence that most of the buy orders of the connected buyers matched only with the sale order of the QIB. It is very unlikely, almost impossible, that the noticee could purchase of 5,05,698 NCL shares from the QIB in an anonymous order driven system out of his total purchase of 5,49,000 from the market. These can happen only if both sides placed their orders in a pre-planned manner.

6.5 The noticee has argued that he eventually incurred a loss of about Rs.77 lakh while trading on December 29, 2006 and January 02, 2007. From the annexure to his reply dated January 1, 2008, I note that he made profits of Rs.1,33,99,835.25 (Rs.1,32,89,666.10 on NSE + Rs.1,10,169.15 on BSE) from his trades on the day of listing. If his trades on the second day are taken into account, probably he incurred a loss. But I have no reason to club his trades for 2 days or over a longer period of time. Nor is it material to the charge whether he incurred loss or profit from the transactions on the exchanges. The charge is that he provided an exit route to the QIB through structured deals and thereby facilitated the IPO, which would have otherwise failed, to go through. The success of IPO was the consideration for the connected buyers. They do not have to make a profit from the purchase of shares from the QIB.

6.6 It is not possible to conclude with scientific precision that transactions of the noticee and the connected buyers did influence the price. Nor also is it possible to conclude that the transactions did not influence the price. In any case, this is not the charge. I, however, notice that the connected buyers cornered 45% of floating stock within an hour of listing. Even after the noticee squared off the short positions, he continued to buy on both NSE and BSE. He made a gross purchase of about 20% of the issue size on the first day. This in all probability contributed to rise in price.

6.7 The noticee has contended that there cannot be any penal action based on vague and ambiguous SCN. I note that this proceeding is not a penal proceeding. Further, the SCN has been issued pursuant to a detailed investigation. It contains all the details with regard to modus operandi of the connected buyers, including the noticee. Therefore, I do not find any ambiguity in the SCN.

7. It is evident from above facts that the noticee had dealt in shares of NCL in a fraudulent manner. The connected buyers, including the noticee, had employed a scheme to grant assured exit to the QIB on the day of listing and accordingly, purchased its entire allotment of NCL shares through structured deals. Therefore, the noticee violated regulation 3(a) and (c) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003. The nature and gravity of charges established above call for suitable directions to preserve the safety and integrity of the securities market.

8. Now, therefore, in exercise of the powers conferred upon me under Section 19, read with Sections 11 (4) and 11 B of the SEBI Act, 1992 and regulation 11 of the SEBI (Prohibition of

Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003, I, hereby direct as under:

- (a) The gains made by the noticee on first day of listing amounting to Rs.1,33,99,835.25 (Rs.1,32,89,666.10 on NSE + Rs.1,10,169.15 on BSE), as claimed by him in his reply to SCN, shall be impounded from the amounts withheld by NSE and BSE, as stated at Para 1 above; and
- (b) Mr. Mahesh Kumar P. Gandhi (PAN ABDPG8899D) is restrained from buying, selling or dealing in securities market in any manner whatsoever or accessing the securities market, directly or indirectly, for a period of 5 years from the date of this order.

9. BSE and NSE shall remit the amounts, as specified in Para 8 above, along with interest accrued thereon, to SEBI within 15 days from the date of this Order. This amount shall be transferred by SEBI to Consolidated Fund of India.

10. A copy of this Order shall be served on all the recognized stock exchanges and depositories to ensure that the noticee is not allowed to undertake transactions prohibited in Para 8 above.

11. This Order shall come into force with immediate effect.

PLACE: MUMBAI
DATE: October 28, 2009

M. S. SAHOO
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA