

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. PKB/AO- 113/2010]

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

Albright Consultants Pvt. Ltd.
(PAN: AADCA8996M)

In The Matter of
Bolton Properties Ltd.

BRIEF BACKGROUND

1. It was observed that price of the scrip M/s Bolton Properties Limited (hereinafter referred to as 'the company' or 'Bolton') had increased from Rs.39. 50 to Rs. 430.00 during the period from 25.07.2003 to 23.08.2004 at the Calcutta Stock Exchange which is a rise of 989% within a period of about 13 months.
2. On analysis of trading data it has been observed that the transactions of five brokers, namely, Prakash Nahata & Co., Bubna Stock Broking Services, Pramod Kumar Kothari, P. K. Agarwal & Co. Limited and Ashok Kumar Kayan constituted 38,11,946 shares i.e., 90.85% of the total market volume (41,95,878 shares) during this period.
3. Analysis of the trading data revealed that most of the trades were executed as cross deals (wherein the buying and selling broker is the same) and the above members acted as counter party of their own transactions. The trades were executed on behalf of a group of clients, namely, Godawari Commercial Pvt Ltd. ('GCPL' or 'Godawari'), Rocky Marketing Pvt. Ltd. ('RML' or 'Rocky'), Albright Consultants Pvt. Ltd. (hereinafter referred to as 'the noticee') and Sirpur Marketing Pvt. Ltd. ("Sirpur") which were related amongst themselves, and these clients have

Adjudication Order In Respect of Albright Consultants Pvt. Ltd. September 7, 2010
In The Matter of Bolton Properties Ltd.

traded amongst themselves and on numerous occasions, they also appeared on both the buying and selling side of the same transaction.

4. The noticee had engaged in synchronised trades in the scrip of Bolton Properties Ltd. and had thereby raised the price of the scrip from Rs. 86/- to Rs. 111/- in concert with other clients.
5. Moreover, the noticee has been alleged to have not responded to summons issued to it during the investigative process, thereby hampering the process of investigation.
6. In view of the above, the noticee was alleged to have violated Regulations 3, 4(1), 4(2)(a), 4(2)(b), 4(2)(e), 4(2)(g), and 8(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Markets) Regulation, 2003 (hereinafter referred to as 'FUTP Regulations') read with Section 11C(2) and (3) of SEBI Act, 1992.
7. Shri D. Sura Reddy was appointed as Adjudicating Officer vide order dated April 22, 2008 under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred as 'said Rules') to enquire into and adjudge upon the alleged violations committed by noticee. Pursuant to the transfer of D. Sura Reddy, I was appointed as Adjudicating Officer vide order dated December 10, 2008.

SHOW CAUSE NOTICE, REPLY AND HEARING

8. A show cause notice dated August 5, 2008 was issued to the noticee in the matter wherein it was asked to show cause as to why an inquiry should not be held against it in terms of Rule 4 (3) of the SEBI (Procedure for Holding Enquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 read with Section 15 I of the SEBI Act, 1992. The trading details of the noticee were enclosed with the SCN.
9. The noticee, vide letter dated September 1, 2008, stated that he would like to opt for consent in the matter. Thereafter the noticee applied for consent and after it

was conveyed to the noticee that the matter could not be settled in accordance with the terms proposed by him, further opportunities of hearing was granted to the noticee on September 10, 2009 and November 23, 2009 but were adjourned at the request of the noticee. A final opportunity of hearing was granted to the noticee on May 20, 2010. The hearing was attended by Shri Pravin Panwar, Authorised Representative of the noticee. Written reply dated May 19, 2010, was submitted by the AR and the same was taken on record.

10. In its reply, the noticee stated as follows:

1. *Please refer to the show cause notice EAD/DSR/ADJ/EIF-213 /134266/2008 dated August 5, 2008 ('Notice'). Based on the investigation conducted by SEBI in the scrip of M/s Bolton Properties Limited ('BPL') for the period of July 25, 2003 to August 23, 2004 ('Investigation Period') on the Calcutta Stock Exchange ('CSE') it is inter alia alleged that, we had violated the provisions of regulations 3, 4(1), 4(2) (a), (b), (e),(g) and 8(1) SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ('FUTP Regulations') read with section 11C (2) and (3) the SEBI Act, 1992 ('Act').*
2. *Vide the said Notice we were called upon to show cause as to why an inquiry should not be held against us in terms of Rule 4 (3) of the SEBI (Procedure for Holding Enquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 ('Rules') read with section 15 I of the Act.*
3. *At the outset, we deny the allegations made against us in the said Notice, save and except those, which are specifically admitted herein. Nothing stated in the said Notice shall be deemed to be admitted by us merely on account of non-traverse, unless the same is specifically admitted in this reply.*
4. *It is submitted that from the perusal of the Notice, it appears that the allegation against us that we have influenced the price of the scrip of BPL during the Investigation Period is because some of our trades between August 11, 2003 to August 19, 2003 have matched with some entity labeled as S003 whose identity and exact details are unknown, and that S003 and we were the major trading clients of the Bubna Stock Broking Services Ltd('Broker'). It is submitted that*

the Notice is vague and does not specify the manner in which we have influenced the price of the scrip of BPL. It is submitted that simply because some of our trades have matched with S003, whose identity is unknown to you, cannot be any basis to arrive at the conclusions that we have influenced the price of the scrip. It is submitted that the Notice attempts to draw connection between us, M/s Godawari Commerce Pvt ('Godawari'), BPL based on common address. It is denied that we share any connection with Godawari and BPL for the purpose of transacting in the scrip. It is submitted that a mere common address cannot be basis for arriving at an adverse conclusion of price manipulation.

5. *It is submitted that we are a company incorporated as per the provisions of the Companies Act, 1956 and carry on the business of investment and trade in shares and securities in the securities market. It is submitted that we have transacted in the scrip of BPL in the ordinary course of business based on our independent commercial wisdom. It is submitted that during the Investigation Period we had transacted in several other scrips besides BPL. All our transactions in the scrip were on the order matching mechanism of the exchange where we have squared off our positions in the ordinary course, with no fraudulent intent.*
6. *Our parawise reply to the Notice is as follows:*
 - A. *With regard to the observations in para 1 of the Notice, it is submitted that, it is a matter of fact and we have no comments to offer.*
 - B. *With regard to the observations in para 2 of the Notice, it is submitted that the same is a matter of record and we have no comments to offer thereof. However, it is denied that the trades carried out by us have influenced the price of the scrip as alleged in the Notice.*
 - C. *With regard to the observations in paras 3 and 4 of the Notice, it is submitted that the same do not pertain to us and we have no comments to offer thereof.*
 - D. *With regard to the observations in para 5 of the Notice, it is submitted that we have transacted only through our Broker, and all our transactions were carried out on the order matching mechanism of the exchange where the*

identity of the counter party is not disclosed. It is submitted that we are not aware of the other brokers or their clients who have also transacted in the scrip of BPL during the Investigation Period. It is submitted that, we share no relationship with our Broker save and except broker- client relationship.

E. With regard to the observations in para 6 of the Notice, it is submitted that we have transacted in scrip of BPL independently based on our commercial wisdom. It is submitted that the transactions carried out by us were in the ordinary course and we are not aware of the nature of transactions of the other clients of our Broker. It is submitted that we have no connection with the other clients for the purpose of trade in the scrip of BPL even if we had a common Broker with the other entities namely M/s Rocky Marketing Pvt Ltd. ('Rocky'), Godawari , and S003.

F. With regard to the observations in para 7 of the Notice, it denied that the transactions carried out by us could have influenced the price of the scrip as alleged. It is denied that we and S003 have trade amongst ourselves as alleged in the para under reference. It is submitted that we have transacted independently through our Broker in the ordinary course. It is submitted that we have carried out trades in the scrip of BPL on the order matching mechanism of the exchange and at the time we are not aware of the counter party . It is submitted that the allegation of us trading along with S003 is based on matching of the trades with that of S003 during the period of August 11, 2003 to August 19, 2003 from the entire Investigation Period. It is submitted that, mere matching of trades with S003 does not establish that we have transacted with it. It is submitted that, from the entire Investigation Period comprising of over a year the only transactions that have matched with S003 have been only on 4 days ie August 11, 2003, August 13, 2003, August 18, 2003 and August 19, 2003. It is submitted that the quantity of shares transacted at the time have also not been a large quantity. It is submitted that, the transactions were carried out at the prevalent market price. It is submitted that the transactions were in the nature of square of transactions executed in the ordinary course with no fraudulent intent. Trading resulting in the squaring off of trades is legally permissible . It is submitted that from the entire Investigation Period comprising of over 365 days, a mere matching of

trades with S003 on the said 4 days cannot be a basis of arriving at the conclusion that our trades have influenced the price of the scrip. It is submitted that the charge of influencing the price is vague and the Notice fails to demonstrate and specify in what manner have we influenced the price of the scrip. It is submitted that the price of the scrip had already risen from Rs 46:30 on July 25, 2003 to Rs 82.50 on August 8, 2003 ie a day (August 11, 2003) before our first trade that is alleged to have influenced the price of the scrip. It is submitted that, the transactions carried out by us were not continuous, there has been a gap of a trade day between our trades. It is further submitted that, after August 19, 2003 the price of the scrip had continued to rise. Thus, the allegation of our trades influencing the price of the scrip on the basis that they have matched with S003 which is also a client of our Broker is absurd.

G. It is submitted that the alleged matching of trades with S003 whose identity is not known to you, does not establish that we were connected to S003 or that we traded along with S003 as, the trades were carried out on the order matching mechanism of the exchange. A mere few stray orders that got matched with S003 does not establish any fraudulent intent. Further it is submitted that the identity of S003 is not known to you, how is it possible for us to know the identity of the counter party when the trades are executed on the order matching mechanism of the exchange.

H. It is submitted that the allegation of price manipulation is based on mere conjectures and surmises, and there is nothing in the Notice that demonstrates that we were connected to S003 or that we had traded along with S003. It is further submitted that there is nothing in the Notice that demonstrates that our trades had influenced the price of the scrip of BPL as alleged.

I. With regard to the observations in para 8 of the Notice, it is submitted that we share no common address with Rocky. It is further submitted that simply because we share a common address with Godawari and also because we have the same Broker does not indicate that we are connected for the purpose of

carrying out transactions in the scrip of BPL. It is submitted that, we have transacted independently based on our own commercial wisdom.

J. With regard to the observations in para 9 of the Notice, it is submitted that we sharing a common address with BPL does not indicate that we are connected with it. It is denied that we had any connection with BPL, its promoters/directors/management. It is submitted that we are an independent entity and have transacted independently based on our own commercial wisdom.

K. With regard to the observations in para 10 of the Notice, it is submitted that the same does not pertain to us.

L. With regard to the observations in para 11 of the Notice, it is submitted that during the year 2008 due to a slow down in the securities market our business had suffered immensely, due to which most of our employees had left their employment with us. In this context it is submitted that, we were unable to provide information or respond to the summons as the person in charge of the matters who was well versed with the facts of the matter had left employment with us. Thus, in the circumstance we were unable to respond to the summons or provide information as sought for from us, was not deliberate or with the intention of hampering the process of investigation.

M. With regard to the observations in para 12 of the Notice, it is submitted that we are not aware of the nature of trades carried out by the other entities namely, Rocky, Godawari or M/s Sirpur Marketing Pvt Ltd. As far as we are concerned we transacted independently, based on our commercial wisdom, in the ordinary course. It is submitted that our transactions were genuine with no fraudulent intent. It is reiterated that our transactions could not have influenced the price of the scrip. It is submitted that from the entire Investigation Period our transactions that have matched with S003 have been miniscule i.e. only on 4 days of the entire Investigation Period comprising of over 365 days. The transaction taken into consideration by you are genuine and were all on the order matching mechanism of the exchange at the prevalent market price. It is submitted that the transactions were not

continuous, there has been a time gap of a day in the transactions, to have influenced the market price.

- 7. It is denied that we have violated the provisions of regulations 3,4(1),4(2) (a),(b),(e),(g) and 8(1) of FUTP Regulations read with section 11C(2) and (3) of the Act.*
- 8. It is submitted that on a careful perusal of the Regulation 4 it is clear that element of deceit is an underlying factor in the transactions. A genuine transaction by itself cannot attract the regulation. It is submitted that in Regulation 4, the intention of the party is relevant. If one is to be charged for the fraudulent and unfair trade practices stated in Regulation 4, it is absolutely necessary to prove that the person had acted intentionally.*
- 9. It is submitted that charge of fraudulent and unfair trade practices under Regulation 4 is a serious charge. In the instant case, as demonstrated hereinbefore there is no evidence at all that when we were trading, along with S003 with a view to carry out fraudulent and unfair trade practices in the scrip of BPL.*
- 10. No where in the Notice it has been demonstrated that we were trading along with others in order to indulge in manipulation and that we have dealt in the shares of BPL with that knowledge. It is further submitted that, unless concrete evidence is shown in support of the same, the charge cannot be sustained. In the instant case, it is respectfully submitted, that there is no evidence on record which establishes the same and therefore sweeping charges of manipulation as alleged are devoid of any basis and need to be set aside.*
- 11. It is submitted that an inquiry under section 15 I is justified only if there is a prima facie contravention of the provisions of law specified in section 15A to 15 HB, since there is no prima facie finding, of any violations of the law backed up with material in support, no inquiry is justified. The notice therefore is unwarranted.*
- 12. It is submitted that as a result of execution of transactions in the scrip of BPL we have not made any disproportionate gain or gained unfair advantage. Further we have also not caused any loss to investors or group of investors.*

13. *Since we have not violated the provisions of FUTP Regulations and the Act and we have not indulged in any fraudulent and unfair trade practices relating to securities market, imposition of penalty under section 15HA of SEBI Act 1992 is not warranted.*

14. *It is submitted that we reserve our right to modify and add additional grounds in our reply. It is respectfully submitted that the allegations in the Notice do not flow out of the factual position and therefore cannot be legally sustained. It is submitted that the reply itself demolishes the charges and therefore it is humbly prayed that the Notice be discharged and the charges as levelled against us be dropped.*

15. *We request that, we be given an opportunity for the personal hearing before any decision is taken by you in the matter."*

CONSIDERATION OF ISSUES

11. On perusal of the Show Cause Notice, the noticee's submissions and other material available on record, I have the following issues for consideration, viz,

1. Whether the noticee has violated Regulations 3, 4(1), 4(2)(a), 4(2)(b), 4(2)(e) and 4(2)(g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Markets) Regulation, 2003?
2. Whether the noticee has violated provisions of Regulation 8(1) of FUTP Regulations read with sections 11C (2) and (3) of the Act?
3. Whether the noticee is liable for monetary penalty under sections 15 HA and 15A (a) of the Act?
4. What quantum of monetary penalty should be imposed on the noticee, taking into consideration the factors mentioned in section 15J of SEBI Act?

FINDINGS

ISSUE 1: Whether the noticee has violated provisions of Regulations 3, 4(1), 4(2) (a), (b), (e) and (g) of FUTP Regulations?

12. I note that the provisions of law alleged to have been violated by the noticee, read as follows:

3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.*

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) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;*
- (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.*

13. I now proceed to discuss the issue of noticee's dealings in the scrip of the company which resulted in a steep increase in the price of the scrip and manipulating the market.

14. After carefully examining the material on record, I find that the price of the scrip M/s Bolton Properties Limited has increased from Rs.39.50 to Rs.430.00 during the period from 25.07.2003 to 23.08.2004 at the Calcutta Stock Exchange which is a rise of 989% within a period of about 13 months.
15. The Financial performance of the company during the period 2002-03, 2003-04, 2004-05, 2005-06 and 2006-07 is given below:

Description	2002-03	2003-04	2004-05	2005-06	2006-07
Total Income (Rs.)	3,10,400.00	2,53,470.00	3,49,700.00	2,37,750.00	1,88,640.00
Total Expenditure	2,95,820.00	2,34,181.00	3,34,003.00	2,22,264.00	1,74,400.00
Profit/loss before tax	14,580.00	19,289.00	15,697.00	15,486.00	14,240.00
Profit/loss after tax	9,040.00	12,538.00	10,988.00	10,840.00	9,968.00

16. It is also observed that the company had not declared the dividend during the above five years. Thus from the available information, it appears that the financial performance of the company had not been so impressive for investment. Therefore it is evident that the company lacked the fundamentals to justify the price rise by a massive 989%.
17. M/s Godawari Commerce Pvt. Ltd., M/s Rocky Marketing Pvt. Ltd., S003 (client details not known) and the noticee were the significant clients of M/s Bubna Stock Broking Services Limited. The four of them had traded around 85.43% of the broker's trading volume.
18. It has been observed that the noticee and S003 had done buy and sell transactions among themselves through M/s Bubna Stock Broking Services Limited during 11/8/2003 to 19/8/2003 which works out to 27.01% of the broker's volume in the scrip and raised the price from Rs. 86/- to Rs.111/-.

19. It is also observed that the noticee and M/s Godawari Commerce Pvt. Ltd. share the same address i.e., P-27, Princep Street, Kolkata - 700 072. Both these companies also share a common address with Bolton Properties Ltd.
20. Shri Anil Purohit, Director of M/s Bolton Properties Limited is also the director of M/s Godawari Commerce Pvt. Ltd. Shri Bimal Kumar Joshi is also the common director of Rocky Marketing Pvt. Ltd. and M/s Godawari Commerce Pvt. Ltd.
21. It has been alleged in the notice that the noticee and client code no. S003 (client details not known) have done buy and sell transactions among themselves through M/s Bubna Stock Broking Services Ltd. during 11/8/2003 to 19/8/2003 which works out to 27.01% of the broker's volume in the scrip and raised the price from Rs. 86/- to Rs. 111/-.
22. The noticee has submitted that allegations against it is that it had influenced the price of the scrip during investigation period as some of their trades between August 11, 2003 to August 19, 2004 have matched with some entity labeled as S003 whose identity and exact details are unknown. It has also been submitted that the alleged matching of trades with S003 whose identity is no known to SEBI, does not establish that were connected with that entity or traded alongwith that entity, as the trades were carried out on the order matching mechanism of the exchange. A mere few stray orders that got matched with S003 does not establish any fraudulent intent. It was further submitted that if the identity of S003 is not known to SEBI, how it is possible for them to know the identity of the counterparty when the trades are executed on the order matching mechanism of the exchange.
23. It has also been submitted that from the entire investigation period comprising of over a year, transactions that have matched with S003 have been only on 4 days, which cannot be a basis of the conclusion that its trades had influenced the price of the scrip.
24. I have examined the material available on record and observed that the identity of the client having code S003 is not available on record. In the absence of the identity of the client with whom the noticee is alleged to have entered into synchronised

trades, it may not be possible to sustain the allegations. In view of the above, I tend to give benefit of doubt to the noticee on this count and do not hold him guilty of violating the provisions of Regulations 3, 4(1), 4(2)(a), 4(2)(b), 4(2)(e) and 4(2)(g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Markets) Regulation, 2003.

ISSUE 2: Whether the Noticee has violated provisions of Regulation 8(1) of PFUTP Regulations read with sections 11C (2) and (3) of the Act?

25. The provisions of Regulation 8 (1) of FUTP Regulations and sections 11C (2) and (3) of the Act read,

Regulation 8: Duty to co-operate, etc.

(1) It shall be the duty of every person in respect of whom an investigation has been ordered under regulation 7 –

(a) to produce to the Investigating Authority or any person authorized by him such books, accounts and other documents and record in his custody or control and to furnish such statements and information as the Investigating Authority or the person so authorized by him may reasonably require for the purposes of the investigation;

(b) to appear before the Investigating Authority personally when required to do so by him under regulation 6 or regulation 7 to answer any question which is put to him by the Investigating Authority in pursuance of the powers under the said regulations.

Section 11 C: Investigation

(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

26. It has been alleged that the noticee did not comply with summons issued to it by the Investigation Authority. A letter dated 19/2/2008 was sent to the noticee

seeking certain information pertaining to its trading in the scrip of the company. The noticee sought time vide its letter dated 27/2/2008 till last week of March, 2008 in this regard. A summons dated 28/2/2008 was issued to the noticee giving time up to March 7, 2008 for submitting the information as specified in the abovementioned letter. The noticee did not submit any reply to the summons. From the material available on record, it is evident that the said letter and summons, delivered by hand, were received by the noticee. The noticee's stamp and acknowledgment of delivery is available on record. Besides, the noticee has not disputed delivery of the summons.

27. The noticee, in its reply, has contended and admitted that it could not comply with the summons because the person who was well-versed with the facts of the matter had left their employment. This contention cannot be accepted.

28. The noticee was asked to provide comments on its dealings in the scrip of Bolton Properties Ltd. This information was vital in enabling the proper conduct of investigation into the matter.

29. It therefore stands established that the information sought from the noticee was important and non submission of the same impaired the investigation and indeed, the information was required to find out the truth in the matter to protect the interest of the investors in the securities market and conclude the investigation. Due to non-submission of the information the investigation process was certainly hampered. Moreover, due to non-cooperation on the part of the noticee, no further material could be obtained by the Investigating Authority to substantiate the reasons for the Noticee's trading in the scrip or its connection with Bubna Stock Broking Pvt. Ltd. Therefore, had the information sought by the Investigating Authority would have been made available to it, the Investigating Authority would have been in a better position to ascertain possible violations of the provisions of Act and Rules and Regulations made thereunder.

30. Therefore, I find that the Noticee has violated provisions of Regulation 8 (1) of PFUTP Regulations read with sections 11C (2) and (3) of the Act.

ISSUE 3: Whether the Noticee is liable for monetary penalty under sections 15 HA and 15 A (a) of the Act?

31. The violation of the provisions of Regulations 3, 4(1), 4(2)(a), 4(2)(b), 4(2)(e) and 4(2)(g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Markets) Regulation, 2003 have not been established and therefore the noticee is not liable for penalty under Section 15 HA of the Act.

32. The provisions of section 15A(a) of the Act reads,

“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, –*

(a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;”

33. In view of the violation of provisions of Regulation 8 (1) of FUTP Regulations read with provisions of sections 11C (2) and (3) of the Act, I find that the noticee is indeed liable for monetary penalty under section 15A(a) of the Act.

ISSUE 4: What quantum of monetary penalty should be imposed on the Noticee, taking into consideration the factors mentioned in section 15J of the Act?

34. Section 15J prescribes the factors to be taken into account by the Adjudicating Officer while adjudging the quantum of penalty under section 15-I, the provisions of which read,

“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.*"

35. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the default. Further, the amount of loss caused to an investor or group of investors also cannot be quantified on the basis of the available facts and data. However, such non-cooperation with investigative authorities leads to delay in the unraveling of unfair market practices, which results in the erosion of investor confidence in the market.

36. It has already been established that the noticee has violated provisions of Regulations 3, 4 (1), 4(2) (a), (b), (e) and (g) of FUTP Regulations and Regulation 8 (1) of PFUTP Regulations read with provisions of sections 11C (2) and (3) of the Act.

37. Considering the facts and circumstances of the case and the material available on record and the violation committed by the noticee, I find that penalty of ₹ 2, 00,000/- (Rupees Two Lakhs only) under section 15A (a) of the Act on Albright Consultants Pvt. Ltd. would be commensurate with the violation committed by the noticee.

ORDER

38. Considering the facts and circumstances of the case, in terms of the provisions of Section 15A (a) of the Act and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹ 2, 00,000/- (Rupees Two Lakhs only) on Albright Consultants Pvt. Ltd. for violation of provisions of Regulation 8 (1) of FUTP Regulations read with sections 11C (2) and (3) of the Act.

39. 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 Shri Jayanta Jash, Regional Manager, Eastern Regional Office, Securities and Exchange Board of India, L&T Chambers, 3rd Floor, 16 Camac Street, Kolkata - 700 017.

40. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are sent to the noticee and to SEBI.

Date: September 7, 2010

Place: Mumbai

**P. K. Bindlish
Adjudicating Officer**