

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BM/AO-01 /2011]

**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..Amit Shantilal Mehta

PAN NO. Not Available

In the matter of Nandan Exim Ltd

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation into trading in the scrip of Nandan Exim Ltd (hereinafter referred to as “**NEL/Company**”) for the periods June 13, 2005 to September 30, 2005 and September 20, 2006 to November 23, 2006 (hereinafter referred to as “**Investigation period**”). The shares of the company were listed at National Stock Exchange (NSE), The Stock Exchange, Mumbai (BSE) and Ahmedabad Stock Exchange (ASE). The trading in the scrip of the company was investigated to ascertain whether any provision of the SEBI Act, 1992 and various Rules and Regulations made there under had been violated as there was sharp rise and fall in the price of the scrip and heavy volumes were traded in the scrip during the investigation period.
2. It was observed that, the price of the scrip opened at ₹ 48/- on June 13, 2005 and moved to a high of ₹ 127.75 (166.15% rise) on June 30, 2005 with an average traded

- volume of 615234 shares on BSE. On NSE the scrip was listed w.e.f. December 29, 2005. It was observed that the price of the scrip was rising between September 20, 2006 to October 16, 2006 (₹ 14.50 to ₹ 18.25) and the price of the scrip started falling from October 17, 2006 to reach a low of ₹ 10.60 by November 23, 2006 at BSE. On NSE the price opened at ₹. 13.50 on September 20, 2006 and touched high of ₹.19 on October 16, 2006. During this period no trading was observed in the scrip of NEL on ASE.
3. The company came out with IPO of 60 lakhs shares at ₹.10/- per share at cash with a premium of ₹.10/- per share. Investigation observed that during the period June 13, 2005 to June 30, 2005 the price of the scrip went up from ₹.48/- to ₹.127.75/-. From the analysis of trade and order log during the investigation period it was observed that there were scattered brokers and clients and no major concentration was observed.
 4. During the period September 20, 2006 to November 23, 2006 price of the scrip fell down from ₹.18.25/- to ₹.10.60/- at BSE. From the analysis of trade and order log it was observed that the top ten members aggregately constituted 55% of gross volume, on BSE and 52% on NSE. On BSE, the trading member Ford Brothers Capital Service Ltd had the highest concentration of 13% in gross purchases and had the highest concentration of 13% in gross sales.
 5. From order book analysis it is further observed that, during the period September 20, 2006 to November 23, 2006, 87502 valid buy order for 30,98,34,423 shares and 89932 valid sell orders for 21,88,20,506 shares were placed in the system while 81664 trades for 10,39,53,791 shares only were executed. Out of buy orders for 30,98,34,423 shares placed in 45 days, buy orders for 24 crore shares were placed in 13 trading days by broker Ford Brothers Capital Services Ltd. Out of these buy orders for 24 crore shares, buy orders for 9.62 crore shares representing 40.08% of total buy orders quantity were placed by broker Ford Brothers Capital Services Ltd on behalf of Mr. Shailesh M Ved (**hereinafter referred to as Shri Shailesh**). Investigation revealed that Shri Shailesh was pacing big buy orders and also was placing the buy orders at lesser price to the last traded price and was deleting such orders after some time. Further he was putting buy orders at lesser price when there

were no seller in the market thereby netted off the transactions on most of the days and were also placing big buy orders and was later updating them with minor change or without any changes thus creating buying pressure in the scrip. Investigation also observed that he traded in huge volume in the scrip and the value of the order placed by him was disproportionate to the income as shown in the income tax return submitted by him.

6. From the bank account statement of Shri Shailesh of Union Bank of India, Rajkot for the period July 1, 2006 to November 30, 2006 it was found that fund of ₹ 2,79,55,000/- was credited from different sources in the account of Shri Shailesh and the same were transferred to member Ford Brother Capital Services Ltd's account. It was observed that Mr. Amit Shantilal Mehta (hereinafter referred to as "**Noticee**") transferred ₹. 75 lakh on 10.10.2006 and ₹. 2 lakh on 13.10.2006 to the account of Shri Shailesh which in turn was transferred by Shri Shailesh to the account of M/s. Ford Brothers Capital Services Ltd. Investigation observed that the amount of ₹.75 lakh in the account of noticee was received from Krishna Capshares Pvt Ltd. As per KYC form of Krishna Capshares with Union Bank of India, Shri. Shailesh was the 1st applicant and the authorized signatory of Krishan Capshares and thus it was a company connected to Shri Shailesh. It was also observed that Anil Gandhi, director of Galaxy Broking Ltd was the introducer in the bank account of Shri Shailesh. Further Priti Gandhi, wife of Anil Gandhi and Amrutlal Gandhi father of Anil Gandhi were directors in Amrut Securities Ltd who also advanced fund to Shri Shailesh. It was alleged that the Noticee and other entities were connected to Shri Shailesh and the Noticee by providing fund to Shri Shailesh aided and abetted for the alleged manipulative trading by Shri Shailesh in the scrip of NEL.
7. In view of the above it was alleged that the Noticee violated provisions of regulations 3 (b),(c), and (d), regulation, 4(2)(d), and 4(2)(e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations). Consequently the Noticee becomes liable for monetary penalty under section 15HA of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

8. I was appointed as Adjudicating Officer vide order dated March 31, 2010 under section 15 I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules') to inquire into and adjudge the alleged violations committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

9. Show Cause Notice No. EAD-6/BM/DJ/18082/2010 dated August 30, 2010 (hereinafter referred to as "SCN") was issued to the Noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be held against the Noticee and penalty be not imposed on the Noticee under section 15HA of SEBI Act for the alleged violation specified in the said SCN. It was alleged in the SCN that Shri Shailesh was not having financial capacity to trade in huge volume and the Noticee along with other connected entities provided huge fund to Shri Shailesh and aided and abetted him in the alleged manipulative trades. The SCN was duly acknowledged by the Noticee. However, the noticee failed to submits it reply to the SCN.
10. In order to conduct an inquiry as per Rule 4 (3) of the Rules, the Noticee was granted an opportunity of hearing on 22.11.2010 at SEBI, Head Office, Mumbai vide letter dated 04.11.2010. The said hearing notice was duly acknowledged by the Noticee. However the Noticee failed to appear on 22.11.2010 and did not request for any adjournment. The second opportunity of hearing was given on 16.12.2010 vide letter dated 03.12.2010 and the said hearing notice was duly acknowledged by the Noticee. The Noticee failed to appear on 16.12.2010 and also failed to submit its reply to the SCN.
11. For the reasons mentioned above, I observe that the Noticee was provided with enough opportunity to submit reply and be heard. Hence, I am constrained to proceed with the matter exparte taking into account the facts and material available on record.

CONSIDERATION OF ISSUES AND FINDING

12. The allegations in the SCN were as follows:

- Shi Shailesh showed income of ₹.1 to ₹2 lakh whereas he traded in large volume in the scrip of NEL. He was putting huge buy orders at lesser price than the last traded price and was constantly updating and deleting the orders thereby creating artificial buying pressure in the scrip of NEL.
- Shi. Shailesh received huge funds from entities like Amrut Securities Ltd., Krishna Capshares Pvt Ltd and the Noticee which were transferred to his broker Ford Brothers for trading in the shares.
- The Noticee transferred ₹. 75 lakh to Shri Shailesh which was received by him from the company of Shri Shailesh i.e., Krishna Capshares Pvt Ltd. The Noticee further transferred ₹. 2 lakh to Shri Shailesh. These funds were thereafter transferred by Shri Shailesh to the broker Ford Brothers.
- Noticee is found connected to Galaxy Broking Ltd, Krishna Capshares Pvt Ltd and Shailesh M Ved and thus belongs to one group.
- The Noticee transferred fund to Shri Shailesh who was not having financial capacity to trade in huge volume and thus aided and abetted him in the alleged manipulative trading in the scrip of NEL.

In view of the above Noticee was alleged to have violated 3, (b),(c) and (d), regulation 4(2)(d), and 4(2)(e) of SEBI PFUTP Regulations.

The issues that arise for consideration in the present case are:

- a) Whether the Noticee aided and abetted Shri Shailesh and has violated regulations 3, (b),(c) and (d), regulation 4(2)(d), and 4(2)(e) of SEBI PFUTP Regulations in the scrip of NEL?
- b) Does the violations, if any, on the part of the Noticee attract monetary penalty under sections 15 HA and 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?

FINDINGS

13. Before moving forward, it will be appropriate to refer to the relevant provisions of PFUTP which reads as under:

SEBI (Prohibition of fraudulent and Unfair Trade Practices relating to the Securities Market) Regulation, 2003:

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) ...

(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

(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)...

(b)...

(c) ...

(d) paying, offering or agreeing to pay or offer, directly or indirectly, to any person any money or money's worth for inducing such person for dealing in any security with the object of inflating, depressing, maintaining or causing fluctuation in the price of such security;

(e) any act or omission amounting to manipulation of the price of a security;

(f) ...

(g) ...

14. From the trade and order log it was observed that during the period September 20, 2006 to November 23, 2006 the top ten members aggregately constituted 55% of gross volume, on BSE and 52% on NSE. On BSE, the trading member Ford Brothers Capital Service Ltd had the highest concentration of 13% in gross purchases and had the highest concentration of 13% in gross sales. From order book analysis it is further observed that, during the above period, 87502 valid buy order for 30,98,34,423 shares and 89932 valid sell orders for 21,88,20,506 shares were placed in the system while 81664 trades for 10,39,53,791 shares were executed. Out of buy orders for 30,98,34,423 shares placed in 45 days, buy orders for 24 crore share were placed in 13 trading days by broker Ford Brothers Capital Services Ltd. Out of these buy orders for 24 crore shares, buy orders for 9.62 crore shares representing 40.08% of total buy orders quantity of Ford Brothers were placed by the broker on behalf of Shri. Shailesh.

15. I note from the income tax return of 2004-2005 of Shri Shailesh that it shows his annual income as ₹ 1.08 lac. From the trading details I observe that Shri Shailesh traded for ₹. 38 crore. I further observed that he met his obligations for trading from the fund received from his connected entities as given in para 18. Further from the order pattern analysis I observed that Shri Shailesh was putting big buy orders during the period 17.10.2006 to 10.11.2006. It is observed that he placed buy orders at lesser price than the LTP and was deleting such orders after some time. He was also placing big buy orders and was later updating them with minor changes or

without any change in price and quantity. By this practice, it was observed that his orders were going back in queue and the orders remained unexecuted and after some time he was deleting the orders. He was also observed to be putting buy orders at lesser price when there were no sell orders in the market at that rate. During this period the price of the scrip went down from ₹. 19.00 to ₹.10.60.

16. Shri. Shailesh was also observed to be revealing the entire large quantity of the order he placed to the market in one stroke, which is an uncommon practice in the market. A genuine buyer of large quantity of shares would not disclose the entire quantity of intended purchase as it would normally impact the price and thereby increase his financial burden by way of higher cost of acquisition. As per the trading norms laid down by the exchanges, a mechanism is provided whereby only a fraction of the total quantity (not less than 10% of total) is revealed for orders of a large quantity. The system then feeds this revealed quantity as order quantity and when this gets exhausted another fraction is revealed automatically for display purposes only, till the total quantity is exhausted. In the 'market picture window,' only the revealed quantity is displayed in the best five orders as well as in the total depth of order book. Therefore, if fully revealed in one stroke, large orders would significantly sway the demand-supply balance in the market at that point in time. Shi Shailesh thus by revealing the entire quantity of order placed influenced the order book and thus artificially created volume in the scrip of NEL.
17. I observe that he placed buy orders for 9.62 crore shares and executed buy trades for 1.24 crore shares which accounted for 12.94% of buy orders placed by him. Further it is observed that the value of the orders placed by Shri. Shailesh is disproportionate to the income as shown in the income tax return form and the KYC forms provided by the broker Ford Brother Capital Services Ltd.
18. I observe that Shri. Shailesh received funds from various sources which were in turn transferred to his broker Ford Brothers. He received funds as follows:
 - ₹.63 lakh was deposited in cash at UBI Mumbai Branch of Shri Shailesh.

- ₹.74.80 lakh was transferred by M/s Krishna Cap Shares Pvt Ltd in the account of Shri Shailesh and the amount was deposited at Rajkot Branch (₹.44.80 lakh on 7-11-06 and ₹.30 lakh on 14-11-06).
 - ₹. 77 lakh was transferred (₹. 75 lakh on 10-10-06 and ₹. 2 lakh on 13-10-06) by the Noticee in the his account and the amount was deposited at Rajkot Branch
 - ₹.13 lakh (₹.9 lakh on 6-10-06 and ₹. 4 lakh on 20-10-06) have been deposited by Amrut Securities Ltd in his account and the amount was deposited at Rajkot Branch.
19. From the documents available i.e bank account of the Noticee and other connected entities it is observed that out of ₹. 77 lakh , ₹. 75 lakh which was transferred to Shri Shailesh by the Noticee was received by the Noticee from the company of Shri Shailesh i.e., Krishna Capshares Pvt Ltd on 10.10.2006. It is observed from the documents available that the Noticee alongwith the other entities who transferred funds to Shri Shailesh were known to each other as follows:
- Anil Gandhi, director of Galaxy Broking was the introducer in the bank account KYC form of Noticee with Union Bank of India.
 - Galaxy Broking was the introducer to the bank account KYC of Shri Shailesh with UBI.
 - Priti Gandhi, wife of Anil Gandhi, and Amrutlal Gandhi father of Anil Gandhi were directors in the Amrut Securities ltd who also transferred funds to Shri Shailesh.
 - Mr. Paresh C Doshi, director of the Amrut Securities ltd was the introducer in the bank account KYC form with UBI of M/s Krishna Capshare Pvt. Ltd. As submitted by Shri Shailesh he was the director of the company.
20. During the investigation Shri Shailesh was enquired about the transfer of ₹. 75 lakh to his account. Shri Shailesh replied that he had sold his plot of land in Ahmendabad for ₹. 1.25 crore to the Noticee on 25-10-2006 and received part payment of ₹. 75 lakh on 10.10.2006 against the sale of the land near Ahmedabad. In support of his claim Shri Shailesh could not produce any valid document showing the receipt of the money for sale of land at Ahmedabad. Further analysis of the bank statement of the Noticee revealed that an amount of ₹.75 lakh was received by him from Krishna

Capshares Pvt Ltd, (in which Shri Shailesh was director as submitted by him), on 10-10-2006 and on the same day the amount was transferred to Shri Shailesh. It is also observed from the bank statement of the Noticee that he received ₹.2 lakh in cash on 13-10-2006 and on the same day it was transferred to Shri Shailesh. The above amount received from the Noticee was transferred by Shri. Shailesh on the same day to his broker Ford Brothers.

21. As observed from the investigation report the Noticee was issued summons but it could not be delivered as he was not found available at the address hence his reply/statement could not be recorded. Therefore going by the available documents it is observed that the amount transferred by the Noticee to Shri Shailesh was not on sale of land but was transferred from the account of company belonging to Shri Shailesh. Noticee therefore acted as a conduit for transfer of the fund to Shri Shailesh who then met his obligations for trading in the scrip of NEL. Even though the explanation of the Noticee could not be sought during investigation, he was given ample opportunity to submit his reply and give explanation to the alleged violation. This further indicates that the Noticee has nothing to say in defence of the charges levelled against him.
22. As stated above Shri Shailesh traded in the market and created artificial volume. He did not possess the financial capacity to undertake such large purchases and the funding for meeting his trading obligations was met by the amount received from the Noticee and other connected entities. Noticee is thus observed to have facilitated Shri Shailesh in the trading in the scrip of NEL and creating artificial volume. I am, therefore, of the opinion that the Noticee aided and abetted Shri Shailesh in his manipulative trading.
23. In the light of the above, I hold that the allegation of the violation of the provisions of regulation 3 (b), (c) and (d) and regulation 4(2) (d) of SEBI (PFUTP) Regulation, 2003 by the Noticee stands established.
With regard to Regulation 4(2)(e) I do not find any evidence in the documents available before me to prove that the Noticee manipulated the price of the scrip of NEL. Hence, I don't find the Noticee guilty of violating provisions of Regulation 4(2) (e) of PFUTP Regulations, which reads, as follows:

4(2) (e) *any act or omission amounting to manipulation of the price of a security;*

24. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that "once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow".

25. Thus, the aforesaid violations by the Noticee makes him liable for penalty under Section 15 HA of SEBI Act, 1992 which read 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."

26. 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."

27. 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 available facts and data. I am of the opinion that these types of irregularity and fraud definitely compromise the securities market regulatory framework to the detriment of investors at large. People who indulge in manipulative, fraudulent and deceptive transactions, or abet the carrying out of such transactions which are fraudulent and deceptive, should be suitably penalized for the said acts of omissions and commissions. It is observed that such transaction by the Noticee was made on more than one occasion and is therefore repetitive in nature.

ORDER

28. After taking into consideration all the facts and circumstances of the case, I impose a penalty of ₹ 5,00,000/- (Rupees – Five lakh only) under section 15HA on the Noticee which will be commensurate with the violations committed by him.
29. 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 Smt. Medha Sonparote, Deputy General Manager, Investigations Department - 01, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
30. 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: **January 12, 2011**
Place: **Mumbai**

BARNALI MUKHERJEE
ADJUDICATING OFFICER