

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: - SD/AO/76/2010]

**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**

Against

Shri Dharmendra Thapa

[PAN: Not Available]

In the matter of

M/s. Shukun Construction Limited

BRIEF FACTS OF THE CASE:

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had conducted investigation in the scrip of M/s. Shukun Construction Limited (hereinafter referred to as 'SCL'), a public company listed at the Bombay Stock Exchange (hereinafter referred to as the 'BSE') and Ahmedabad Stock Exchange, to examine the possibility of violation of provisions of various SEBI Regulations in respect of trading in the scrip for the period from July 16, 2003 to November 17, 2003. The price of the scrip had increased steeply from Rs.4.00 on July 16, 2003 to a high of Rs.47.50 on November 17, 2003, closing at Rs.46.35 on the latter date.

APPOINTMENT OF ADJUDICATING OFFICER:

2. On the basis of the said investigation, Ms. Babita Rayudu was appointed as the Adjudicating Officer vide Order of SEBI dated August 08, 2007 under section 15-I of the SEBI Act, 1992 (hereinafter referred to as the 'SEBI Act') read with Rule 3 of SEBI (Procedure for holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') to inquire into and adjudge under Section 15HA of the SEBI Act, the alleged violation of the provisions of Regulations 4 (1) and 4 (2) (a), (b), (d) & (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the 'PFUTP Regulations') by, *inter alia*, Shri Dharmendra Thapa.
3. Consequent to Ms. Babita Rayudu, the then Adjudicating Officer, proceeding on deputation out of SEBI, the undersigned was appointed as the Adjudicating Officer in the instant matter vide SEBI Order dated November 23, 2007.

SHOW CAUSE NOTICE/REPLY/PERSONAL HEARING:

4. Accordingly, a notice to show cause dated June 27, 2008 under Rule 4 of the Adjudication Rules was issued to Shri Dharmendra Thapa (hereinafter referred to as the 'Noticee'), asking him to show cause as to why an enquiry should not be held against him in terms of Section 15I of the SEBI Act and penalty be not imposed under Section 15HA of the SEBI Act for the alleged violation by it of the abovementioned provisions of the PFUTP Regulations.

5. The said notice to show cause (hereinafter referred to as the 'SCN') was sent to the Noticee by 'Registered Post Ack. Due' and was delivered to him. However, the Noticee has failed to reply to the said SCN.
6. The Noticee was granted an opportunity of personal hearing before me on July 21, 2009. However, the notice of hearing could not be delivered to the Noticee. The Noticee was again granted an opportunity of personal hearing before me on May 19, 2010. The notice of hearing for the same was attempted to be served on the Noticee by affixture at his last known address. However, the said notice was not allowed to be pasted.
7. In absence of any response from the Noticee, I am proceeding in this matter based on material available on record.

CONSIDERATION OF ISSUES AND FINDINGS:

8. I have carefully perused the charges against the Noticee mentioned in the SCN and the material available on record. The issue that arises for consideration in the present case is stated and determined as follows:
 - **Whether the Noticee has violated Regulations 4 (1) and 4 (2) (a), (b), (d) & (e) of the PFUTP Regulations.**
9. Before proceeding to decide the above issue, it is important to have a look at the abovementioned provisions as they existed at the relevant time. The same read as follows.

PFUTP Regulations, 2003

"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;

(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;"

10. As per the findings of the Investigation Report (hereinafter referred to as the 'IR') pertaining to the said investigation, the analysis of the price-volume data of the scrip of SCL for the period under investigation i.e. July 16, 2003 to November 17, 2003 revealed that the scrip was traded on 66 trading days during the said period and total volume of trade in the scrip amounted to 26,35,858 shares. The price of the scrip had moved steeply from Rs.4 as on July 16, 2003 to a high of Rs.47.50 on November 17, 2003. The scrip registered a closing price of Rs.46.35 on November 17, 2003. It was observed that volume of trade in the scrip witnessed significant rise from October 09, 2003 accompanied by a sharp rise in price of the scrip from Rs.15.69 to Rs.47.50 in 30 trading days. The said rise in the price of the scrip did not appear to be in sync with the financial performance of the company SCL.

11. During the course of the said investigation, it was found that the Noticee, a director of SCL, was one of the major clients who had traded in the scrip of SCL during the period under investigation. A summary of his trades in the scrip of SCL is provided below. The details of other major clients who had traded in SCL are also provided in the table below. It was observed that the Noticee's buy volume in the scrip of SCL amounted to 1,66,250 shares constituting 6.31% of the total buy volume and his sell volume amounted to 87,804 shares amounting to 3.33% of the total sell volume in the scrip during the period under investigation.

Sl. No.	Name of the client	Purchase	% cont. to total volume	Sell	% cont. to total volume	Net Purchase/ (Sell)
1.	Mahesh Mistry	8,52,194	32.33	3,72,609	14.14	4,80,850
2.	Piyush Shah	6,46,962	24.54	6,00,193	22.77	46,769
3.	Aishwarya Housing	40,000	1.52	4,19,000	15.90	-3,79,000
4.	Jalaj Batra	0	0.00	2,50,000	9.48	-2,50,000
5.	Dharmendra Thapa	1,66,250	6.31	87,804	3.33	78,446
6.	Narendra Ganatra	1,48,660	5.64	73,100	2.77	75,560

12. During the said investigation it was found that the Noticee and some of the major clients who had traded in the scrip during the period under investigation, namely Mahesh Mistry, Piyush Shah, Jalaj Batra and Narendra Ganatra, were connected entities. The connection between the said entities has been shown in the Investigation Report (hereinafter referred to as the 'IR') in the following manner:

Sl. No.	Name of the entity	Related to	Nature of Relationship
1.	Mahesh Mistry	Piyush Shah	Piyush Shah introduced Mahesh Mistry to the broker Jitendra Harjivandas.
		Jalaj J Batra	Made payment to the broker Jitendra Harjivandas for the trades of Mahesh Mistry.
		Dharmendra Thapa	Have the same office address as 52, 3 rd Marine Street, 1 st floor, Dhobi Talao Mumbai, 400 002. Jalaj Batra introduced Dharmendra Thapa to the broker Sovereign Securities.
		Narendra Ganatra	Pay-in and pay-out of shares for the transactions of Narendra Ganatra were done through demat a/c number 16481986 (with Stock Holding Corp.), which belongs to Mahesh Mistry.
2.	Dharmendra Thapa	Shukun Construction	Appointed as a director of the SCL with effect from October 17, 2003.
3.	Piyush Shah	Dimple Shah	Dimple Shah is the wife of Piyush Shah.

13. The Noticee was also found to be connected to Smita Hate, Ex-MD of SCL, who is alleged to have facilitated manipulation in the scrip of SCL by the abovementioned clients, as her residence address was found to be same as office address of the Noticee and that of Jalaj Batra. She was also found to have introduced the Noticee and Shri Mahesh Mistry to the DP Nirmal Bang Sec. Pvt. Ltd. The Noticee was also found to be related to SCL as he was appointed as a director of SCL w.e.f. October 17, 2003. It was found that the Noticee had started trading in the scrip of SCL just after being appointed as a director of SCL and had purchased and sold shares of SCL in huge volumes after being made a director of SCL. During the period under investigation, the Noticee bought 1,66,250 shares and sold 87,804 shares of SCL, with a net increase in shareholding by 78,446 shares.

14. During the investigation. It was found that the abovementioned connected clients viz. the Noticee, Mahesh Mistry, Jalaj J Batra, Piyush Shah, Aishwarya Housing Finance Co. and Narendra Ganatra had traded among themselves in a way of circular trading during the period under investigation. It was found that all the said clients had acted as the counter party clients for a very large part of each other's trades, thereby allegedly indulging in circular trading. Investigation revealed that Aishwarya Housing Finance Ltd. had received 3.15 lakh shares from Mahesh Mistry and 84,000 shares from the Noticee and both of them were found to be counterparty clients for sell transactions of Aishwarya Housing Finance Ltd. Further, the Noticee was found to have acted as the counterparty client for the sell transactions of Shri Mahesh Mistry. It was further found that Shri Mahesh Mistry and Shri Jalaj Batra had rotated shares between themselves through market and off-market transactions. Thus, it is alleged that the Noticee and the abovementioned clients had rotated shares among themselves without any change of beneficial ownership and had created artificial volume and market in the scrip of SCL, thereby indulging in fraudulent and unfair trade practice and manipulation in the scrip.

15. The investigation further found that the Noticee and Jalaj Batra had made payments of Rs.1.99 crores and Rs.49 lakhs respectively to the broker Jitendra Harjivandas for the trades of Mahesh Mistry during the period under investigation. Investigation further revealed that Mahesh Mistry used to receive huge payments from the Noticee and Jalaj Batra in his bank account on regular basis by account transfer. The Noticee and Shri Batra were found to have made payments of Rs.1.73 crores and Rs.7.97 crores respectively to Mahesh Mistry during the period under investigation. It was found that Shri Mistry used to make payments to his broker Jitendra Harjivandas immediately after receiving payments from the Noticee and Shri Batra. Thus, it is alleged that the Noticee had financed the trades of Mahesh Mistry who had executed fraudulent trades in the scrip of SCL.

16. In view of all the above observations and findings, the Noticee is alleged to have violated Regulations 4(1) and 4(2) (a), (b), (d) & (e) of the PFUTP Regulations.

17. The Hon'ble SAT in the matter of ***Ketan Parekh v. Securities and Exchange Board of India (Appeal no. 2 of 2004, Date of Decision-14.07.2006)***, has held that

*"...Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. **The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties.** This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."* (emphasis supplied)

18. The Noticee and the abovementioned connected clients are alleged to have rotated shares among themselves thereby indulging in circular trading. As per the findings of the IR which have already been mentioned above, the said clients including the Noticee had acted as the counterparty client for each other's trades i.e. the said clients were buying from and selling to each other. As for instance, it is observed from the IR that Shri Mahesh Mistry and Shri Narendra Ganatra had acted as the counterparty

clients of the Noticee for both his buy and sell transactions. This indicates that the said clients including Noticee were merely creating artificial volume and false appearance of trading in the scrip. It is found from the IR that all the abovementioned clients including the Noticee had together executed around 70% of the total buy volume and around 68% of the total sell volume in the scrip of SCL during the period under investigation. The finding that the said clients had rotated shares among themselves coupled with the finding that they had together executed around 70% of the total traded volume in the scrip clearly indicates that the trades of the Noticee and the said connected clients were fraudulent, did not result in any transfer of beneficial ownership and had merely created artificial volume and price rise in the scrip of SCL. The Noticee has failed to reply to the SCN and rebut the said findings.

19. The role of the Noticee in creating manipulation in the scrip of SCL is further established by the flow of fund from the Noticee to Shri Mahesh Mistry. As has been mentioned above, the investigation found that the Noticee and Shri Jalaj Batra had made payments of Rs.1.99 crores and Rs.49 lakhs respectively to the broker Jitendra Harjivandas for the trades of Mahesh Mistry during the period under investigation. As per IR, Mahesh Mistry used to receive huge payments from the Noticee and Jalaj Batra in his bank account on regular basis by account transfer. The Noticee and Shri Batra were found to have made payments of Rs.1.73 crores and Rs.7.97 crores respectively to Mahesh Mistry during the period under investigation. It was found that Shri Mistry used to make payments to his broker Jitendra Harjivandas immediately after receiving payments from the Noticee and Shri Batra. The said flow of funds and the actions of Shri Mistry after receiving the payments show that the Noticee had financed the trades of Mahesh Mistry who had traded fraudulently in the scrip of SCL. It has already been pointed out above that Shri Mahesh Mistry had acted as the counterparty client for buy and sell trades of the Noticee.

Thus, it is clearly established that the Noticee was acting in concert with other clients to execute fraudulent trades in the scrip of SCL.

20. The Noticee's role in manipulation is also established by the fact that he was closely related to SCL in whose scrip he was trading. As per the IR, the Noticee was appointed as a director of SCL w.e.f. October 17, 2003. He had started trading in the scrip of SCL just after being appointed as a director of SCL and had purchased and sold shares of SCL in huge volumes after being made a director of SCL. During the period under investigation, the Noticee bought 1,66,250 shares and sold 87,804 shares of SCL, with a net increase in shareholding by 78,446 shares. Further, the Noticee was connected to Smita Hate, Ex-MD of SCL, who is alleged to have facilitated manipulation in the scrip of SCL by the abovementioned clients, as her residence address was found to be same as office address of the Noticee and that of Jalaj Batra.
21. All these abovementioned observations and findings together lead to the conclusion that the Noticee had executed fraudulent trades in the scrip of SCL which did not result in transfer of beneficial ownership, had created false and misleading appearance of trading and price manipulation in the scrip and had funded the fraudulent trades of other entity. As has been stated above, the Noticee has failed to file any reply to the allegations contained in the SCN. The Hon'ble SAT in the matter of ***Classic Credit Ltd v. SEBI (Date of Decision: 06/12/2006, Appeal No. 68/2003)*** has held that :
"... .. the appellants did not file any reply to the second show cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them."
22. In view of the above observations, findings and material on record I conclude that the allegation of violation of Regulations 4 (1) and 4 (2) (a),

(b), (d) & (e) of the PFUTP Regulations by the Noticee stands established. The same makes the Noticee liable for monetary penalty under Section 15HA of the SEBI Act.

23. The provisions of section 15 HA of the SEBI Act as prevailing at the relevant time are reproduced hereunder :

Penalty for fraudulent and unfair trade practices.

15HA. *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.*

24. While imposing monetary penalty it is obligatory 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.*

25. I observe that from the material available on record it is difficult to quantify any gain or unfair advantage accrued to the Noticee as a result of the default. From the records, the extent of loss suffered by the investors as a result of the default of the broker is also not computable. Further, there is no material on record showing repetitive nature of the defaults committed by the Noticee.

ORDER

26. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a monetary penalty of Rs.5,00,000/- (Rupees Five Lakhs Only) under Section 15HA of the Act on the Noticee viz. Shri Dharmendra Thapa. In my view, the penalty is commensurate with the defaults committed by the Noticee.
27. The above penalty amount shall be paid by the Noticee through a duly crossed demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to the Division Chief, IVD-ID 2, Securities and Exchange Board of India, SEBI Bhavan, Plot No, C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai-400 051.
28. In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to Securities and Exchange Board of India.

Date: June 28, 2010

Place: Mumbai

**SANDEEP DEORE
ADJUDICATING OFFICER**