

ORDER UNDER SECTION 15I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 (1) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 IN THE MATTER OF ADJUDICATION PROCEEDINGS AGAINST SHRI HEMANT HEMNANI (PAN NO. AAUPH1100J)

BACKGROUND

1. Pursuant to the investigation conducted by Securities and Exchange Board of India (herein after referred to as 'SEBI') in the dealing in the scrip of M/s. Scintilla Software Technologies Ltd. (herein after referred to as 'SSTL'), SEBI vide Order dated February 10, 2005 appointed the undersigned as an Adjudicating Officer to inquire into and adjudge under Section 15I read with 15A of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act'), the violation alleged to have been committed by Shri Hemant Hemnani (herein after referred to as the noticee) by not complying with the summons issued by SEBI.
2. SSTL was incorporated in 1985 under the name of M/s. Noveau Trading Company Ltd. The name was changed to M/s. Lan Eseda International Ltd. in 1990. The name of the company was further changed to M/s. Scintilla Software Technologies Ltd. (SSTL) in the year 1994. On Bombay Stock Exchange Ltd. (herein after referred to as 'BSE'), the price of SSTL moved from Rs. 51.40 on October 07, 1998 to Rs. 8.25 on April 28, 1999. On the National Stock Exchange of India Ltd. (herein after referred to as 'NSE'), the price of SSTL moved from Rs. 51.26 to Rs. 9.40 during the same period. The price of the scrip had started decreasing from around June 1998. Conversely, the volume of trading in the scrip appeared to be increasing during this period. Further, from the comparison of the price of SSTL with the movement of the SENSEX, it was seen that the price of the scrip of SSTL moved conversely to the movement of the Sensex. BSE and NSE were requested to look into the price manipulation and similar developments alleged to have taken place in the scrip of SSTL during the period.

3. SEBI also conducted investigation into the trading in the scrip of SSTL during the period and it prima facie appeared that the entities construed to be part of the Lan Eseda Group had accounted for a large portion of the trading in the scrip of SSTL during the period under consideration. The details of the trading were sought from the shortlisted brokers. Rander Holdings Pvt. Ltd was one of such short listed brokers from whom trading details were sought. It appeared at the time of investigation that the authorized signatory who had signed on behalf of clients of Rander Holdings Pvt. Ltd., who were supposed to be related to or associated with Lan Eseda Group, might be the same. In the course of his statement recorded on March 13, 2003, Shri Radhe Shyam Manihar, Director, Rander Holdings Pvt. Ltd. stated that one Shri Hemant Hemnani used to do all the transactions money-wise and security-wise on behalf of clients who were supposed to be related to or associated with Lan Eseda Group. In case of Moneycare Securities and Financial Services Ltd., one of the other shortlisted brokers from whom details of trading were sought, investigation prima facie revealed that Shri Hemant Hemnani's name was mentioned as introducer for their clients who were supposedly related to the Lan Eseda Group and who had traded in the scrip of SSTL during the period. The investigation has further alleged that Shri Hemant Hemnani was instructed to produce two persons Shri Sunil Mehta and Shri Rajan Raut before the Investigating Authority when his statement was recorded on July 05, 2004; however, he neither produced these two persons nor provided the contact addresses of these two entities. Hence, adjudication proceedings have been initiated against Shri Hemant Hemnani.

LETTERS/SUMMONS ISSUED TO THE NOTICEE AND THE REPLY

4. The details of the correspondence by the Investigation Department with the noticee are given below:
 - a) Summons dated February 27, 2004 were issued to about 11 entities. The noticee Shri Hemant Hemnani was one of them. The summons were sent to the address of the entities available on record. Summons of 8 entities came back undelivered.

The summons sent to the noticee Shri Hemant Hemnani was amongst one of the summons which came back undelivered.

- b) Summons dated June 08, 2004 was again issued to Shri Hemant Hemnani for personal appearance. The date for compliance was scheduled for June 18, 2004. The following information was sought vide the said summons:
- (i) The names and addresses of the companies/ concerns of which he was the promoter/ director/ proprietor/ partner or having more than 15% stake;
 - (ii) The details of his shareholding in SSTL as on September 01, 1998;
 - (iii) The details of the trading in the scrip of SSTL during the period from September 01, 1999 to May 31, 1999;
 - (iv) The details of any acquisition of shares of SSTL after May 31, 1999.
- c) The statement of Shri Hemant Hemnani was recorded on July 05, 2004. In the course of his statement, Shri Hemnani denied having introduced the clients to any broker/ sub-broker except for introducing two bodies corporate to Moneycare Securities Ltd. He stated that he came to know the two bodies corporate through Shri Rajan Raut, a practicing Chartered Accountant and Shri Sunil Mehta, a practicing Company Secretary. He stated that he was given to understand that the two entities were clients of Shri Rajan Raut and Shri Sunil Mehta and, hence, he introduced the entities to the broker. In his statement, Shri Hemant Hemnani further stated that he will request Shri Sunil Mehta and Shri Rajan Raut to appear before SEBI to reply queries. He denied any relationship with the Lan Eseda Group or SSTL.
- d) Shri Hemant Hemnani vide his letter dated July 23, 2004 informed that he had traced the contact addresses of Shri Rajan Raut and Shri Sunil Mehta. However, the investigation has alleged that neither Shri Hemant Hemnani furnished the contact addresses of Shri Sunil Mehta or Shri Rajan Raut to the Investigating Authority, nor, did he produce them before the Investigating Authority.

In view of the alleged non compliance of summons issued by SEBI, Adjudication Proceedings were initiated against the noticee Shri Hemant Hemnani.

ADJUDICATION NOTICE AND REPLY

5. Notice dated April 04, 2008 was issued to the noticee in terms of Rule 4 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the “Rules”) seeking the reply of the noticee as to why an inquiry should not be held against the noticee for the violation alleged to have been committed by him.
6. In reply to the same, vide letter dated April 16, 2008, the noticee had sought certain documents/ material for filing his reply. An opportunity of inspection of the available documents was given to the noticee on July 15, 2008.
7. Subsequent to the said inspection, the noticee vide letter dated July 31, 2008 submitted his part of the reply based on the documents made available to him. The noticee has stated that he has fully complied with summons dated June 08, 2004 issued by the Investigating Authority. In his reply, the noticee has stated that though the date for appearing before the Investigating Authority was June 18, 2004 as per the aforesaid summons issued to him, he had vide letter dated June 11, 2004, sought an extension of time and requested for fresh date for appearance to be fixed to June 25, 2004. The noticee has further stated that SEBI had considered his request and fixed the date of appearance to June 25, 2004, on which date he appeared before the Investigating Authority, and, was advised to appear again on July 05, 2004. That further on July 05, 2004, the Investigating Authority recorded his statement. Also, that he appeared on July 12 and July 19, 2004 for status updates. The noticee has replied that as far as providing the information as contained in Annexure to summons is concerned, he had provided the relevant information and details as sought by SEBI.
8. The noticee has further pointed out that while recording his statement on July 05, 2004, SEBI had inter alia directed him to produce Shri Sunil Mehta and Shri Rajan Raut before SEBI on or before July 12, 2004. In his statement, the noticee had stated that he will request Shri Sunil Mehta and Shri Rajan Raut for appearing in SEBI to reply to SEBI’s queries as well as bring their clients along and that in the meantime, he would provide the contact number and the address of Shri Sunil

Mehta and Shri Rajan Raut. The noticee in his reply has stated that the contact numbers of Shri Sunil Mehta and Shri Rajan Raut were provided the next day vide his letter dated July 13, 2004 and that immediately thereafter the noticee tried to contact them, but, there was no response. The noticee has submitted that the said fact was also intimated to SEBI on July 12, 2004 on his personal appearance before the Investigating Authority and also vide his letter dated July 13, 2004 providing the contact numbers. That he again appeared personally on July 19, 2004 for status update. The noticee has further submitted that he intimated SEBI vide letter dated July 23, 2004 that he was able to trace the contact address of Shri Sunil Mehta and Shri Rajan Raut and that he will be writing to them to appear before SEBI for recording their statement. He has further pointed out that upon establishing contact with Shri Sunil Mehta and Shri Rajan Raut, he had requested them to appear before SEBI, however, they agreed to appear before SEBI only if SEBI issued a summons of appearance to them. The noticee has annexed the copy of letter dated August 06, 2004 vide which he had forwarded the copies of letter written by him to the said persons along with the courier receipts. The noticee has submitted that in view of the above, he can not be faulted for reluctance on the part of Shri Sunil Mehta and Shri Rajan Raut to appear before SEBI. The noticee has further submitted that as an individual he has limitations and neither has regulatory authority and control over them, nor, could have physically forced them to appear before SEBI.

9. The noticee in his reply has further submitted that save and except Pactolus Stock Broking and Securities Ltd., in which he is one of the directors, he was not handling any money wise and security wise transactions on behalf of any other entities. The noticee has further denied having introduced any other entities to Moneycare Securities and Financial Services Ltd. besides Paramati Investments Pvt. Ltd. (hereinafter referred to as 'PIPL') and Excellent Finance Ltd. (hereinafter referred to as 'EFL'). The noticee has also submitted that he does not know under what circumstances, his name has been taken as the introducer of other companies by Radhe Shyam, the director of Rander Holdings Pvt. Ltd. The noticee in his aforesaid reply has denied having any relationship with Lan Eseda

Group and has submitted that he is unaware of whether PIPL and EFL were a part of the Lan Eseda Group. The noticee has further denied having any association with the Lan Eseda Group – whether directly or indirectly.

10. The noticee in his reply has also stated that he has always been personally present before SEBI whenever instructed by it, has always co-operated during the course of investigation and has not failed to comply with the said summons issued under provisions of section 11C (3) and section 11 C (5), hence, imposing of penalty under Section 15A(a) is not warranted.

CONSIDERATION OF EVIDENCE AND FINDINGS

11. It is noted from the facts available on record that summons dated June 08, 2004 were issued to the noticee by the investigating authority for personal appearance on June 18, 2004. The summons issued earlier on February 27, 2004 had come back undelivered. The information sought vide summons dated June 08, 2004 was soliciting preliminary details such as names and addresses of companies in which the noticee was promoter/ director/ proprietor/ partner, details of shareholding in SSSL as on September 01, 1998, details of trading in the scrip of SSSL from September 01, 1999 to May 31, 1999 and details of any acquisitions of shares of SSSL after May 31, 1999. The noticee had sought extension of time up to June 25, 2004 vide his letter dated June 11, 2004. The Investigating Authority of SEBI vide its letter dated June 14, 2004 considered the request and advised the noticee to appear before the Investigating Authority on June 25, 2004 along with details sought vide the aforesaid summons. The noticee in his reply has stated that he appeared before the Investigating Authority on June 25, 2004 and was advised to appear again on July 05, 2004. The statement of the noticee was recorded on July 05, 2004.

12. It is noted from records before me that the noticee has submitted the information sought vide summons dated June 08, 2004 vide his letter dated June 25, 2004. Thus, the noticee has submitted information/ documents as sought by the Investigating Authority. While recording of his statement on July 05, 2004, SEBI had inter alia directed the noticee to produce Shri Sunil Mehta and Shri Rajan

- Raut before SEBI on or before July 12, 2004. In response to the same, while giving statement, the noticee had stated that he will request Shri Sunil Mehta and Shri Rajan Raut for appearing in SEBI to reply to queries as well as bring their clients along. Also, that in the meantime, he would provide the contact number and the address of Shri Sunil Mehta and Shri Rajan Raut.
13. It is seen from available records that vide letter dated July 13, 2004, the noticee informed SEBI that he had been trying to reach Shri Sunil Mehta and Shri Rajan Raut, but, had not been able to establish contact. Vide the said letter, he provided their telephone numbers as per his records. It is also seen from records that vide letter dated July 23, 2004, the noticee intimated SEBI that he has been able to trace the contact addresses of Shri Sunil Mehta and Shri Rajan Raut and shall be writing separately to them with a request to co-operate and appear in SEBI for their statements as soon as possible. Vide letter dated August 06, 2004, the noticee forwarded copies of the letters dated July 26, 2004 and July 27, 2004 written by him to the said persons Shri Sunil Mehta and Shri Rajan Raut respectively along with the courier receipts showing that the letters were couriered by him on July 28, 2004.
 14. It is seen from evidence before me that the noticee has provided the information sought vide the aforesaid summons. Further, the above correspondence shows that as regards the statement given by him, he has been updating the status on a regular and continuous basis, thus showing his intention to comply with the statement as well. From the records before me, it appears that SEBI had not issued summons for appearance to either Shri Sunil Mehta or Shri Rajan Raut on its part.
 15. Section 11C(3) of the SEBI Act empowers the Investigating Authority of SEBI to require any person associated with the securities market to furnish such information or to produce such records as may be required by the Investigating Authority. Section 11C(5) empowers the Investigating Authority to examine such persons. From the available records, I find that no steps were taken by SEBI to ascertain the address of Shri Sunil Mehta and Shri Rajan Raut, when it could have easily obtained the same from the noticee Shri Hemant Hemnani, in terms of his

letter dated July 23, 2004. On the other hand, it is seen that the noticee Shri Hemant Hemnani had sent letters to Shri Sunil Mehta and Shri Rajan Raut requesting them to call on the Investigating Authority of SEBI. This shows that on his part, the noticee, Shri Hemant Hemnani had taken possible bonafide efforts to bring Shri Sunil Mehta and Shri Rajan Raut before the Investigating Authority in compliance with his statement.

ORDER

16. In the facts and circumstances of the present case, as stated above, I am of the view that the Shri Hemant Hemnani has complied with the summons issued to him by the Investigating Authority of SEBI and I find that this is not a fit case to impose penalty on Shri Hemant Hemnani. Accordingly, the present adjudication proceedings against Shri Hemant Hemnani are disposed of.
17. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this order are sent to Shri Hemant Hemnani and to Securities and Exchange Board of India.

PLACE : MUMBAI
September 09, 2008

ANITA KENKARE
ADJUDICATING OFFICER