

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. MC/AO- 15/2010]

**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

Mahesh Khandelwal
(PAN: AACK8137A)

**In The Matter of
M/s Sayaji Hotels Ltd**

BRIEF BACKGROUND

1. The shares of Sayaji Hotels Ltd. were listed on the Bombay Stock Exchange (“**BSE**”), Ahmadabad Stock Exchange (“**ASE**”), Madhya Pradesh Stock Exchange & the Stock Exchange Vadodara during the period from May 02, 2005 to September 06, 2005. SEBI conducted an investigation in respect of buying, selling and dealing in the shares of Sayaji Hotels Ltd. (hereinafter referred to as ‘SHL’) during the aforesaid period, hereinafter referred to as the investigation period.
2. The price of the scrip increased from Rs.18.35 on May 2, 2005 to Rs.67.60 on September 6, 2005 i.e. an increase of 268% while the Sensex increased from 6195 to 7946 i.e. by 28.2% during the same period.
3. Average daily volume in SHL during May 2005 was 36,632 shares, during June 2005 92,926 shares, during July 2005 83,943 shares, during August 2005 1,60,869 shares, and during September 2005 4,36,792 shares. Average daily traded volume during the period May 2, 2005 to September 6, 2005 was 1,08,883 shares.
4. Mahesh Khandelwal traded through M/s. Joindre Capital Ltd in the scrip of SHL. The investigation report alleged that during the investigation period, the price of the scrip has

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increased by Rs.3.55 on account of the trading of Mahesh Khandelwal, David Reynolds and Satish Sharma among themselves through brokers Joindre Capital Services Ltd. and Renaissance Securities Ltd. in 91 trading days.

5. Mahesh Khandelwal was alleged to have placed buy orders of 10,00,000 shares at a price of Rs. 5 to Rs.8 less than the last traded price. For example, on July 21, 2005, Mahesh Khandelwal had put a buy order for 100,000 shares at Rs.42.45 when the last traded price was Rs.50.5. After some time the order was deleted. In some instances Mahesh Khandelwal put the buy order at a price lower than the last traded price and let the order to expire.
6. It was thus alleged that Mahesh Khandelwal knowingly placed large buy orders much below the market prices even though the earlier buy order had not been executed. The aforesaid findings lead to the allegation that Mahesh Khandelwal created artificial depth in the scrip of SHL by placing large buy orders of 100000 shares and above, at a price lower than the prevailing market price and later deleting them.
7. Thus, the noticee was alleged to have violated Regulations 3(a), 3(b), 4(1), 4 (2) (a), (b), (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations").

APPOINTMENT OF ADJUDICATING OFFICER

8. I was appointed as Adjudicating Officer, vide order dated July 03, 2009 under section 15 I of Securities and Exchange Board of India Act,1992 (hereinafter referred to as "SEBI Act") to enquire into and adjudge the alleged violations of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 by Mahesh Khandelwal as observed during the investigations conducted into the trading in the scrip of M/s Sayaji Hotels Ltd. for the period from May 02, 2005 to September 06, 2005.

SHOW CAUSE NOTICE, REPLY AND HEARING

9. A show cause notice dated February 19, 2010 and March 12, 2010 was issued to Mahesh Khandelwal in the matter wherein the noticee was asked to show cause as to

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why an inquiry should not be held against it in terms of Rule 4 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.

10. A notice of inquiry was sent on October 22, 2010 and opportunity for personal hearing in the matter was provided. Hearing was conducted on November 01, 2010.
11. During the hearing, the noticee submitted, inter alia, as follows:
 - i) The price of Sayaji Hotels increased from Rs. 18.35 to Rs. 67.60 from May 2005 to September 2005. Noticee started buying and selling in the same from the price of Rs. 28.10 – 29.10 on 6th of June 2005, so he does not agree that due to his buying and selling the scrip price went up to 268% times. Regarding the volume the average traded volume in the market was not because of him alone as he used to buy and then used to sell when the price went up. The volume created in his account was unintentional. He had no intention to spurt the volume or price.
 - ii) He used to placed an order of buying of one lakh shares below the last traded price. The volatility and the price movement at that point of time in the scrip was very high. It used to come down at 10 % lower to the previous closing. So to buy at lower price, he used to put 1,00,000 shares buying bid at low levels. Similarly he used to put a selling order at higher levels so that if the transaction happens he may get profit. So his intention to create an artificial volume is not true.
 - iii) Noticee also stated that he had not done any unfair trade practice. He was deleting the heavy buy orders from the scrip as he had certain limits provided by his broker, so if the same was not executed then he used to delete or remove the same to buy in other scrip.

CONSIDERATION OF ISSUES

12. On perusal of the Show Cause Notice, and other material available on record, I have the following issues for consideration, viz,
 - (1) Whether the noticee has violated Regulations 3(a), 3(b), 4(1), 4 (2) (a), (b), (e) of PFUTP Regulations.
 - (2) Whether the noticee is liable for monetary penalty under sections 15 HA of the SEBI Act.
 - (3) What quantum of monetary penalty should be imposed on the noticee, taking into consideration the factors mentioned in section 15J of SEBI Act

FINDINGS

13. On perusal of the materials available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

Issue 1: Whether the noticee has violated Regulations 3(a), 3(b), 4(1), 4 (2) (a), (b), (e) of PFUTP Regulations.

PFUTP Regulations

“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 there under;*

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

14. The investigation report mentions the following orders placed by Mahesh Khandelwal:

Date	Order No	Buy or Sell	Quantity	Order Time	AUD Code	Order Price	Last Traded Price
7/21/2005	8920200001146176	B	100000	10:02:51	A	42.45	50.50
7/21/2005	8920200001147469	B	100000	10:46:04	A	43.00	50.55
7/21/2005	8920200001147469	B	100000	12:42:12	D	43.00	51.45
7/21/2005	8920200001149340	B	100000	12:42:30	A	43.00	51.45
7/25/2005	8920200001156754	B	100000	10:00:33	A	48.00	54.00
7/26/2005	8920200001161803	B	100000	09:58:08	A	48.00	53.50
8/01/2005	8920200001172453	B	100000	10:32:01	A	43.70	48.90
8/01/2005	8920200001175724	B	100000	10:04:24	A	46.50	51.00
8/04/2005	8920200001188104	B	200000	12:11:37	A	45.35	53.00
8/04/2005	8920200001190201	B	100000	14:59:23	A	53.35	53.40
8/04/2005	8920200001190201	B	0	15:10:26	U	53.35	53.35
8/04/2005	8920200001190201	B	100000	15:18:58	D	53.35	53.40
8/08/2005	8920200001197055	B	100000	11:22:50	A	48.70	53.70

15. It has been submitted by the noticee that he placed an order of 1,00,000 shares on various dates which is borne out by the details given above. The noticee has contended that the orders were placed below market price as the scrip came down 10% and he expected the price to fall. I do not find anything manipulative in an order placed below the current market price. A buyer need not necessarily place orders at market price only. Depending on his view of the expected market movement and the price at which he is willing to buy, a trader or buyer may place an order below the current traded price.
16. It has been alleged in the investigation report that the noticee placed an order and subsequently deleted it. Further data given above, the report has cited two instances of deleting orders. In one case a fresh order is added immediately after deleting the order. In the absence of any other evidence of manipulative intent or linkages, the mere act of deleting an order after entering it cannot be construed to be an act amounting to manipulation. The noticee has contended that he deleted the order as he had to trade within the limits given to him by the broker. Even if this was not so, a buyer can delete an order if he no longer wishes to be in the market for a trade.

17. In view of the foregoing, I am of the opinion that the charge of violation of Regulations 3(a), 3(b), 4(1), 4 (2) (a), (b), (e) of PFUTP Regulations is not established.

ISSUE 2: Whether the noticee is liable for monetary penalty under sections 15 HA of the SEBI Act

18. As the allegations against the noticee stand are not established, he is not liable for monetary penalty under Section 15 HA of the SEBI Act, 1992,

ORDER

1. After taking into consideration all the facts and circumstances of the case, it is felt that no penalty needs to be imposed on the noticee.
2. 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: December 29, 2010

Place: Mumbai

**Maninder Cheema
Adjudicating Officer**