

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO.: - SD/AO/136/2009]

**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

M/s. Olypab Commercial Pvt. Ltd.

[PAN: Not Available]

In the matter of

M/s. S. T. Services Ltd.

BRIEF FACTS OF THE CASE:

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had conducted investigation into the alleged irregularity in the trading in shares of M/s. S.T. Services Ltd. (hereinafter referred to as 'STSL'), a public company listed on Calcutta Stock Exchange (hereinafter referred to as the 'CSE'), and into possible violation of the provisions of the SEBI Act and various Rules and Regulations made there-under, for the period from March 17, 2005 to September 16, 2005. The shares of STSL witnessed a sharp rise in price during the period from March 18, 2005 to September 16, 2005 at the CSE. It was found that the average price of the scrip of STSL at CSE was Rs.12.10 on March 18, 2005 and it went up to Rs.96.50 on September 16, 2005, thereby witnessing manifold rise within a period of 5 months and 28 days. The weak fundamentals of STSL could not justify the said price movement.

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 September 20, 2006 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 (2) (a) and 4 (2) (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the 'PFUTP Regulations') by M/s. Olypab Commercial Pvt. Ltd.

SHOW CAUSE NOTICE/REPLY/PERSONAL HEARING:

3. Accordingly, a notice to show cause (SCN) dated February 12, 2007 under Rule 4 of the Adjudication Rules was issued to M/s. Olypab Commercial Pvt. Ltd. (hereinafter referred to as the 'Noticee'), asking it to show cause as to why an enquiry should not be held under the provisions of the Adjudication Rules 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.
4. The SCN was sent by 'Registered Post Acknowledgement Due' to the Noticee at the address '47, Karnani Mansion, 18 Park Street, 2nd Floor, Room No. 18, Kolkata-700 016' and also at the address '201, Ashokgarh, PWD Road, Kolkata-700 035'. However, the same returned undelivered from both the said addresses. Ultimately, the SCN was served on the Noticee by way of affixture at the address '47, Karnani Mansion, 18 Park

Street, 2nd Floor, Room No. 18, Kolkata-700 016' on June 01, 2007, as indicated by the affixture report available on record.

5. Consequent to Ms. Babita Rayudu, the then Adjudicating Officer, proceeding on deputation out of SEBI, the undersigned was appointed as the Adjudicating Officer vide SEBI Order dated November 23, 2007.
6. It was decided to grant the Noticee an opportunity personal hearing in the matter. The hearing was scheduled on November 20, 2009 at SEBI, Mumbai. The notice of hearing was served on the Noticee by affixing the same at its address at '47, Karnani Mansion, 18 Park Street, 2nd Floor, Room No. 18, Kolkata-700 016' as well as at '201, Ashokgarh, PWD Road, Kolkata-700 035' on November 16, 2009, as indicated by the affixture report available on record. The Noticee has failed to appear before me on the said date.
7. In the absence of any reply from the Noticee to the said SCN, I am proceeding in this matter based on the 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 (2) (a) and 4 (2) (e) of the PFUTP Regulations.**
9. Before proceeding any further, it is pertinent to have a look at the abovementioned provisions of law as they existed at the relevant time, stated below.

PFUTP Regulations:

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) indulging in an act which creates false or misleading appearance of trading in the securities market;

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

10. As per the findings in the Investigation Report (IR), the Noticee, had bought a total of 225550 shares of STSL through the broker Ram Mohan Sarda during the period under investigation. The same constituted 31% of the broker's buy volume in the scrip.
11. It is alleged that said the trades of the Noticee in the scrip of STSL were fraudulent transactions which had created false and misleading appearance of trading in the securities market and had manipulated the price of the scrip of STSL. It is alleged that the Noticee in collusion with his broker had executed transactions in the shares of STSL which were artificial and were designed to create a false market when the shares lacked fundamentals.
12. As per the IR, there was nexus between the Noticee and STSL whose shares the Noticee had traded in. The IR makes inter alia the following findings in respect of STSL and the Noticee, showing nexus between them:
 - *As per NSDL data, M/s. Suyash Shares Pvt. Ltd., one of the top shareholders of STSL has acquired 2,3,400 shares during the period February 2005 to September 2005. Shri Chittaranjan Ghosh was*

inducted as the Director of the said company on July 01, 1997 and continuing as Director till date. Shri Susanta Mondal was inducted as the Director of the company on March 25, 2004 and continuing as Director till date.

- *From the companies submission dated February 14, 2006 it has been observed that Shri Susanta Mondal was appointed as the Director of STSL since June 09, 2003. During the period of investigation Shri Mondal was also the director of the company.*
- *Shri Chittaranjan Ghosh was the Director of M/s. Olypab Commercial Pvt. Ltd. during the period under investigation.*
- *M/s. Olypab Commercial Pvt. Ltd. vide their letter dated June 22, 2006 have also confirmed that Shri B.K. Gupta was a director common to both Olypab Commercial Pvt. Ltd and M/s. S.T. Services Ltd. However Shri Gupta was resigned from M/s. Olypab Commercial Pvt. Ltd on October 6, 1998.*
- *Bank account statement dated July 21, 2005 received from Allahabad bank has been submitted by M/s. Olypab Commercial Pvt. Ltd vide their letter dated June 22, 2006. From the bank statement it has been observed that the address of M/s. Olypab Commercial Pvt. Ltd. i.e. 92, B, Chitta Ranjan Avenue, 2nd Floor, Kolkata-700 012 is same as the Registered office address of M/s. S.T. Services Ltd.*

13. From the abovementioned observations and findings, it is seen that STSL and M/s. Suyash Shares Pvt. Ltd. (SSPL), one of the top shareholders of STSL, had Shri Susanto Mondal as a common director during the period under investigation. STSL in its letter dated June 29, 2007 has submitted that SSPL is a promoter group company and was holding 2,33,400 shares of STSL as on the date of the said letter. This clearly establishes close nexus between STSL and SSPL as both belong to the same promoter group.

14. It is further observed from the abovementioned findings of the IR that Shri Chittaranjan Ghosh was a common director of SSPL and the Noticee during the period under investigation. As the Noticee and SSPL, which is a promoter group company of STSL, had a common director, it is beyond doubt that the Noticee, SSPL and STSL were interconnected and had clear nexus. In fact, it is observed from the IR that in the past, Shri B.K. Gupta had acted as a common director of both STSL and the Noticee. The close relation between the Noticee and STSL is further proved by the fact, as observed from the IR, that the bank account statement of the Noticee showed that the address of the Noticee i.e. 92, B, Chitta Ranjan Avenue, 2nd, Floor, Kolkata-700 012, was same as the registered office address of STSL. Thus, nexus between STSL and the Noticee has been established beyond doubt.
15. As regards the trades of the Noticee, it is observed from IR that the Noticee had only bought position in the scrip. The Noticee had purchased a total of 225550 shares through the broker Ram Mohan Sarda at prices ranging from Rs.60.10 to Rs.94.85. His total volume constituted 31% of the broker's total buy volume in the scrip.
16. It is seen from the Trade and Order log pertaining to the trades of the Noticee, which is available in the IR, that the Noticee had executed all his trades, which were only buy trades, on different days through the broker Ram Mohan Sarda in the price range of Rs.60.10 to Rs.94.85. From the Trade and Order log pertaining to all the trades of the broker Ram Mohan Sarda, it is observed that almost all the trades of the Noticee were cross trades wherein the counterparty clients of the Noticee were trading through the same broker, Ram Mohan Sarda. It is further observed that for almost all the trades of the Noticee where his counterparty clients were trading through the same broker, the buy orders and the sell orders were placed within a gap of few seconds or minutes only. Further, the Noticee

had mostly executed his buy trades at increasing prices even though the fundamentals of STSL were not strong.

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."

18. It has already been proved above that the Noticee had close nexus with STSL, in whose scrip the Noticee had traded for huge volume. As stated above, it is seen that almost all the trades of the Noticee were cross trades wherein the Noticee and his counterparty clients were trading through the same broker, that the buy orders and sell orders on almost all occasions were placed within a gap of few seconds or minutes and that the buy trades were mostly executed at increasing prices. The whole pattern of trading suggests that there was a well-orchestrated plan to execute fraudulent transactions in the scrip which was executed by the

Noticee in collusion with some other entities having common goal of manipulation in the scrip. All these factors cumulatively lead to the inextricable conclusion that the trades of the Noticee were not genuine. It is therefore proved that the Noticee, in collusion with his broker and other entities, had executed fraudulent trades in the scrip of STSL which had created false and misleading appearance of trading in the scrip and had manipulated the price of the scrip.

19. In view of the above observations, findings and material on record I conclude that the allegation of violation of Regulations 4 (2) (a) and 4 (2) (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.

20. The provisions of section 15HA of the SEBI Act 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.*

21. 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.”*

22. I observe that from the material available on record, the extent of any quantifiable gain or unfair advantage accrued to the Noticee as a result of his default can not be ascertained. The extent of loss suffered by the investors as a result of the default of the Noticee can not be derived from the material available on record. Further, there is no material available on record showing any past record of default by the Noticee.

ORDER

23. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me U/s 15-I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a monetary penalty of Rs.3,00,000/- (Rupees Three Lakh Only) under Section 15HA of the Act on the Noticee viz. M/s. Olypab Commercial Pvt. Ltd. In my view, the penalty is commensurate with the defaults committed by the Noticee.

24. 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 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.

25. 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: November 30, 2009

Place: Mumbai

**SANDEEP DEORE
ADJUDICATING OFFICER**