

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: - PKK/AO/261/2010]

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

Mr. Sicorp Finlease Limited

PAN: AABCS1719E

In the matter of

JIK INDUSTRIES LIMITED

Background of the case

1. On August 2, 2004, 'The Financial Express' published an article which cited that a lot of bulk deals were executed in the scrip of JIK Industries Limited (hereinafter referred to as '**JIKIL**') on BSE and which interalia referred to circular trading and legalizing unaccounted money. Subsequently, the Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') referred the matter to the exchanges for an investigation. BSE and NSE had carried out inspection and submitted their report on October 11, 2004 and March 16, 2005 respectively.
2. In view of the findings of the investigation conducted by the stock exchanges, SEBI conducted a formal investigation for the period from June 1, 2004 to August 3, 2004 (hereinafter referred to as the '**investigation period**'). During the investigation period the scrip has

witnessed huge fluctuations in volume. During the said period the price fell from ₹ 4 to Rs. 2.80 in NSE and the price fell from ₹ 3.95 to Rs.2.80 at BSE.

3. It was revealed that certain clients had traded amongst themselves, executed large number of off-market transactions and bulk deals. They have also acted in concert with the promoter entities. A number of on and off market transactions were entered into between the promoter entities/PACs with other entities who heavily traded in the scrip. M/s. Sicorp Finlease Limited (hereinafter referred to as the '**Noticee**') was one of the clients traded in the scrip of JIKIL in the above stated manner.
4. In view of the findings of the Investigation as given above, SEBI has initiated adjudication proceedings under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the '**SEBI Act**'), against M/s. Sicorp Finlease Limited, for allegedly violating the provisions of Regulations 3 (a), 3 (c) and 4 (1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**').

Appointment of Adjudicating Officer

5. SEBI vide Order dated March 17, 2008 had appointed Shri Sandeep Deore as Adjudicating Officer (AO) under Section 15-I of the 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 Regulations 3 (a), 3 (c) and 4 (1) of the PFUTP Regulations. SEBI vide Order dated August 17, 2010 appointed the undersigned as the AO subsequent to the transfer of Shri Deore to the Enforcement Department.

Show Cause Notice, Reply & Personal hearing

6. A Notice dated August 21, 2008 (SCN) was issued to the Noticee in terms of the provisions of Rule 4 (1) of the Adjudication Rules to show cause as to why an inquiry should not be held against it in respect of the violations alleged to have been committed. The SCN alleges that the three promoter entities of JIKIL initially transferred their shares to various entities through off-market including the Noticee which were later off-loaded in the market. The Noticee was involved in the cartel which facilitated the off-loading of shares by the promoter entities. The Noticee allegedly aided and abetted the promoter entities in their scheme of off-loading their shareholdings while concealing their identity. The SCN was sent through Registered Post A.D. which returned undelivered. The SCN was later affixed at the last known address of the Noticee on May 12, 2010 as per Rule 7 (3) of the Adjudication Rules.

7. The Noticee did not reply to the SCN and therefore, on considering the facts of the case as available on record, it was decided to conduct an inquiry in the matter. Accordingly, the undersigned had granted an opportunity of personal hearing on September 14, 2010 vide letter dated September 03, 2010. The hearing notice was duly served on the Noticee by affixture on September 06, 2010. The Noticee did not appear before me for the personal hearing, however, sent an e-mail seeking an adjournment. Accordingly, another opportunity of personal hearing was granted to the Noticee on October 28, 2010.

8. On the scheduled date, Advocate Shri R Krishnan appeared before me for the said hearing. Mr. Krishnan submitted that the SCN was received by the Noticee and understood the allegations but could not submit any reply to the SCN as they did not have any papers with them. Mr. Krishnan further submitted as follows: *"I have no papers with me and I am not sure what is the quantum of involvement in the case is. It is vague. We do not know the various parties mentioned in the SCN and*

we have done our dealings in the normal course of the business. There are no malafide intentions in our dealings. We deny all allegations. We will be sending our written submissions within a week. However, a lenient view may be taken.”

9. The Noticee has not sent any written submissions even after the lapse of more than a month though it was submitted that they would do so within a week. In view of the above, it is evident that the Noticee has not put up any defence or challenged the SCN and hence it can be assumed that the charges levelled in the SCN have been accepted by the Noticee. This is in accordance with the principle laid by Hon'ble Securities Appellate Tribunal in the matter of **Classic Credit Ltd. v. SEBI**¹ wherein it was inter-alia 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”.*
- However, in order to pass a speaking order, the undersigned is going to analyse the evidence and allegations against the Noticee.

Consideration of Issues, Evidence and Findings

10. I have carefully perused the documents available on record. The issues that arise for consideration in the present case are :
- a) Whether the Noticee has violated Regulations 3 (a), 3 (c) and 4 (1) of PFUTP Regulations, 2003?
 - b) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15 HA 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?
11. The relevant provisions of the PFUTP Regulations are as follows:
*Regulation 3 reads thus, **Prohibition of certain dealings in securities:***

¹ [2007] 76 SCL 51 (SAT - MUM.)

'No person shall directly or indirectly- (a) buy, sell or otherwise deal in securities in a fraudulent manner; (b).....; (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;

*Regulation 4 read thus, **Prohibition of manipulative, fraudulent and unfair trade practices:** 'Without prejudice to the provisions of Regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities*

12. I find that the entities that had entered into off-market transactions with the promoter/PAC entities had the following demat accounts wherein the name of the Noticee appears at serial no 14 with BO Id 10121628.

S. No	D P Name	BO Id	Client Name
1	Standard Chartered Bank	1026425 1	RAJENDRA GULABRAI PARIKH
2	Standard Chartered Bank	1029934 8	RAJENDRA G PARIKH
3	Standard Chartered Bank	1026423 5	JAGRUTI RAJENDRA PARIKH
4	Standard Chartered Bank	1044485 7	JAGRUTI R PARIKH
5	Stock Holding Corporation of India Ltd	1625008 3	JAGRUTI SECURITIES LTD
6	ABN AMRO Bank N. V.	1010053 6	AMEET PARIKH
7	Action Financial Services (India) Ltd	1011230 0	ASHOK BHAGAT
8	Action Financial Services (India)	1011339	RAJESH JAGANNATH

	Ltd	4	PANCHAL
9	Action Financial Services (India) Ltd	1011340 9	RAVI BHAGWANDAS PANCHAL
1 0	Action Financial Services (India) Ltd	1011384 7	PRASHANT M. NARVEKAR
1 1	Action Financial Services (India) Ltd	1011240 6	PRAKASH A. D'SOUZA
1 2	Action Financial Services (India) Ltd	1011202 2	PRASAD SAKHARAM TANDEL
1 3	Action Financial Services (India) Ltd	1011613 6	RAJESH S TALEKAR
1 4	Action Financial Services (India) Ltd	1012162 8	SICORP FINLEASE LTD
1 5	Action Financial Services (India) Ltd	1000099 0	ENPEE ENTERPRISES PVT. LTD.
1 6	Global Trust Bank Ltd	1007893 9	SMITA JANAK THACKER
1 7	HDFC Bank Ltd	4005800 4	MAHENDRA KUMAR PATODIA
1 8	Infrastructure Leasing & Financial Services Ltd	1075695 7	SAYED MUSTAFA
1 9	Sahara India Financial Corporation Ltd	1004518 5	RAMESH CHANDRA K. JAIN
2 0	Sahara India Financial Corporation Ltd	1008008 7	VIPUL R. JAIN
2 1	Sahara India Financial Corporation Ltd	1008012 6	VIKAS GOURIHAR NARNAVAR
2 2	Sodhani Securities Ltd	1011267 6	VIKAS GOURIHAR NARNAVAR
2 3	Standard Chartered Bank	1028601 7	PRISTINE MARKETING PVT. LTD

13. As per the inspection report, on NSDL a total of 28342084 shares were transferred in 142 off market transactions amongst parties during June and July 2004. The Noticee had entered into such transactions with one Mr. Rajesh Jagannath Panchal.
14. I find that the shares have been initially transferred in off-market by the promoter entities viz., Rajendra G Parikh and JSL to other entities including the Noticee who have off-loaded the shares in the market. In some cases the Noticee who had received the shares in off market from promoters has first transferred the shares in off market to other entities, who have ultimately off-loaded the shares in the market. The details of only some of such off-market deals as extracted from the said Report are given as under, wherein the BO id of the Noticee viz. 10121628, appears at many places and thus effectively facilitated the offloading by promoter entities.

Rajendra Parikh

Date	From	To	Quantity
15-Jun-04	10113394	10121628	100000
15-Jun-04	10121628	Market	100000

Jagruti Securities Limited

Date	From	To	Quantity
15-Jun-04	10113394	10121628	100000
15-Jun-04	10121628	Market	100000

15. From the foregoing, I conclude that it has been the endeavor of the Noticee along with other entities to facilitate substantially the offloading of shares done by the promoters of the company in order to protect the price of the scrip from falling drastically than from what it had already fallen during the said Investigation period from ₹ 4 to 2.80 at NSE and from ₹ 3.95 to 2.80 at BSE. The promoter entities camouflaged the off-loading done by them from the general investor community by roping in other entities including the Noticee. The Noticee along with the other

entities formed a cartel and devised a scheme to facilitate offloading of the shares by the promoter entities.

16. It is also pertinent to note that the disclosures about bulk deals did not indicate that it was the promoters of the company who were off loading the shares so as to mislead the general investors. The demat statements of the Noticee and other entities had their opening balances as zero holding of shares of JIKIL. However, during the said period, the Noticee's account showed huge transactions in the scrip owing to transfer of shares from the three promoter entities. On a general note, the off market deals are not considered transparent and are not helpful to the price discovery process on the stock exchange mechanism as the price of the scrip might have sudden increase or decrease, which is harmful to the investors' interests. In order to protect the interest of the investors in securities and the capital market by taking suitable measures, it is necessary to inform the stock exchange and make necessary disclosures in the case of such off-market deals, which did not take place in the instant matter.
17. From the foregoing it is established beyond doubt that the Noticee violated Regulations 3 (a), (c) and 4 (1) of the PFUTP Regulations warranting imposition of monetary penalty under Section 15HA of the SEBI Act.
18. The Hon'ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund**² 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."*

² (2006) 68SCL 216 (SC)

19. Thus, the aforesaid violations by the Noticee make it liable for penalty u/s. 15HA of the SEBI Act, 1992 which reads thus:

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.

20. While determining the quantum of penalty u/s. 15HA, it is important to consider the factors stipulated in S.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 S.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.*

21. I observe from the material available on record that the extent of any quantifiable gain or unfair advantage accrued to the Noticee as a result of his default cannot be arrived at. The extent of loss suffered by the investors as a result of the default of the Noticee cannot be derived from the material available on record. However, there is no doubt in my mind that the conduct of the Noticee caused losses to the investors and therefore, it needs to be viewed seriously.

ORDER

22. After taking into consideration all the facts and circumstances of the case I come to conclusion that this is a fit case for imposing the monetary penalty against the aforesaid Noticee. I impose a penalty of ₹ 1,00,000/- (Rupees One lakh only) on the Noticee in terms of Section 15HA of the SEBI Act, 1992 exercising the powers conferred upon me u/s 15- I (2) of the SEBI Act for violation of Regulations 3 (a), 3 (c) & 4 (1) of the PFUTP Regulations. I am of the view that the said penalty is commensurate with the violation committed by the Noticee.
23. The penalty shall be paid by way of a duly crossed demand draft drawn 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 shall be forwarded to Shri G Ramar, General Manager, Investigation Department-3 (IVD-ID3), Securities and Exchange Board of India, Plot no.C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai- 400 051.
24. In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India. The matter is disposed of accordingly.

DATE: December 9, 2010

P K KURIACHEN

PLACE: Mumbai

ADJUDICATING OFFICER