

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO.: - PKK/AO/265/2010]

**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

Ms. Smita Hate

[PAN: Not Available]

In the matter of

Shukun Construction Limited

Background

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, in respect of trading 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.

2. Investigation revealed that a group of clients interconnected with each other had concentrated trading in the scrip of SCL and they had indulged in circular trading and reversal of deals and interchange of funds and securities. Ms. Smita Hate (hereinafter referred to as the 'Noticee') was a

director of SCL from October 17, 2003 and became the Managing Director of the Company from October 01, 2004. Her residential address was the office address of some of the clients who had indulged in unfair trade practice and manipulation in the scrip of SCL. She had also introduced some of the clients for opening DP account. During the investigation period, she dealt in the scrip of SCL which resulted in a change in the shareholding to the extent of more than 25,000 shares and 1% share capital of SCL. She failed to make disclosures as required under the provisions of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'Insider Trading Regulations').

3. SEBI has therefore, initiated adjudication proceedings under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act') against the Noticee to inquire and adjudge the alleged violations of the provisions of Regulations 4 (1) and 4 (2) (a) & (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the 'PFUTP Regulations') and Regulation 13 (4) & (5) of the Insider Trading Regulations.

Appointment of Adjudicating Officer

4. In view of the above SEBI vide order dated August 08, 2007 appointed Ms. Babita Rayudu 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 Sections 15HA and 15A (b) of the SEBI Act, the alleged violation of the provisions of Regulations 4 (1) and 4 (2) (a) & (e) of the PFUTP Regulations and Regulation 13 (4) & (5) of the Insider Trading Regulations by the Noticee. Consequent to Ms. Babita Rayudu proceeding on deputation to IRDA, Shri Sandeep Deore was appointed as the Adjudicating Officer in the instant

matter vide SEBI Order dated November 23, 2007. Consequent to the transfer of Mr. Deore to the Enforcement Department, SEBI vide order dated August 17, 2010 appointed the undersigned as the AO in the instant matter.

Show Cause Notice, Reply and Personal Hearing

5. The AO issued a notice dated June 27, 2008 (hereinafter referred to as the 'SCN') under Rule 4 of the Adjudication Rules to the Noticee to show cause as to why an inquiry should not be held against her and penalty be not imposed under Section 15 HA and 15A (b) of the SEBI Act for her alleged violation of the provisions of Regulations 4 (1) and 4 (2) (a) & (e) of the PFUTP Regulations and Regulation 13 (4) & (5) of the Insider Trading Regulations.

6. It was alleged in the SCN that the Noticee was a Director of SCL from October 17, 2003 and was connected to Mahesh Mistry, Jalaj J Batra and Dharmendra Thapa, who had allegedly indulged in manipulation in the scrip of SCL. The residence address of the Noticee at 52, 3rd Marine Street, Mumbai-400 002, was found to be the office address of Jalaj Batra and Dharmendra Thapa. The Noticee had introduced Mahesh Mistry and Dharmendra Thapa to the DP Nirmal Bang Securities Pvt. Ltd. The Noticee and Mahesh Mistry were employees of Strategic Capital Ventures Ltd. and continued to be an employee of the company till December 2003. She also received salary from Software Horizon India Ltd. during January 2004 to April 2004. Mahesh Mistry was the authorized signatory in that company and its directors had the same address as Jalaj Batra. Thus, the Noticee was connected to the abovementioned clients. The Noticee as the director and managing director of SCL at the relevant time had aided and facilitated the activities of the above entities in their manipulation in the scrip of SCL. The Noticee was alleged to have violated Regulations 4(1) and 4 (2) (a) & (e) of the PFUTP Regulations.

7. The Noticee had acquired 2,30,000 shares, constituting 4.5% of total shares of SCL, during the period October 01, 2003 to December 31, 2003. Since the Noticee was a director of SCL during the said period and after the said acquisition, the change in her total shareholding exceeded 25,000 shares and 1% in terms of number and percentage respectively, she was required to make disclosures under Regulation 13 (4) & (5) of the Insider Trading Regulations. She had failed to make the said disclosures.
8. The SCN was sent to the Noticee through 'Registered Post with A/d' and the same was returned undelivered. In view of the above, SEBI has published in the newspapers the intimation regarding the issuance of SCN on June 10, 2010. However, neither the Noticee nor her authorised representative submitted any reply to the SCN.
9. In the absence of any reply by the Noticee, the AO considered the matter on the basis of material available on record and accordingly decided to conduct an inquiry. The undersigned granted an opportunity of personal hearing to the Noticee by issuing a letter dated August 26, 2010 advising the Noticee to appear before him on September 09, 2010 for the personal hearing. The notice of hearing was served on the Noticee by hand delivery on September 03, 2010. The Noticee did not appear for the hearing.
10. In view of the above, I am proceeding with the inquiry taking into account the documents and material as available on record.

Consideration of Issues, Evidence and Findings

11. I have carefully perused the charges made against the Noticee mentioned in the SCN and the materials and documents available on record. The issues that arise for consideration in the present case are:

- a) **Whether the Noticee has violated the provisions of Regulations 4(1), 4(2) (a) & (e) of PFUTP Regulations and Regulation 13 (4) & (5) of the Insider Trading Regulations?**
- b) **Does the violation, if any, on the part of the Noticee attract any monetary penalty under Sections 15HA and 15A (b) of the SEBI Act?**
- c) **If yes, what should be the quantum of monetary penalty?**

12. 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

“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;

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

Insider Trading Regulations

13. (4) *Any person who is a director or officer of a listed company, shall disclose to the company in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.*

(5) *The disclosure mentioned in sub-regulations (3) and (4) shall be made within 4 working days of:*

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

13. 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)

14. I find from the Investigation Report (IR) that the scrip was traded on the Bombay Stock Exchange (BSE) for 66 days during the investigation period and total volume in the scrip was 26,35,858 shares. The price of the scrip moved from Rs.4 as on July 16, 2003 to reach a high of Rs.47.50 on November 17, 2003. The volume in the scrip witnessed significant increase 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, which was a rise of around 200%.
15. I find that the Noticee was connected to Mahesh Mistry, Jalaj J Batra and Dharmendra Thapa who had allegedly indulged in manipulation in the scrip of SCL. The Noticee as the director and managing director of SCL at the relevant time is alleged to have aided and facilitated the activities of the above entities in their manipulation in the scrip of SCL.
 16. However, I find that the material available on record do not show any transaction she had with the above entities in the scrip of SCL. There is not sufficient evidence available on record against the Noticee which proves her involvement in manipulating the scrip of SCL. Mere sharing common address and having introduced few entities for opening DP account are not sufficient to prove the charges of PFUTP against the Noticee. It is quintessential that some fraudulent or manipulative transaction or dealing be attributed to the Noticee for finding her guilty under PFUTP Regulations. I do not find any corroborative evidences to establish that the Noticee had dealt in scrip of SCL in a fraudulent manner and indulged in manipulation. I am therefore inclined to give benefit of doubt to the Noticee.
 17. In view of the foregoing, I conclude that the allegations of violation of the provisions of Regulations 4 (1) and 4 (2) (a) & (e) of the PFUTP Regulations against the Noticee are not established.
 18. I find that the Noticee had acquired 2,30,000 shares, constituting 4.5% of total shares of SCL on December 18, 2003. The Noticee was a director of SCL at that time. The acquisition of shares as above changed her total shareholding by more than 25,000 shares and 1% in terms of number and percentage respectively of the SCL. The Noticee had to disclose to SCL in

the prescribed format, the total number of shares or voting rights held by her and the said change in her shareholding or voting rights, within four working days of such change, under Regulation 13 (4) & (5) of the Insider Trading Regulations. The material available on record does not indicate that she had made such disclosures.

19. From the foregoing, I conclude that the Noticee has violated Regulation 13 (4) & (5) of the Insider Trading Regulations warranting imposition of monetary penalty under Section 15A (b) of the SEBI Act.

20. The provisions of section 15A (b) of the SEBI Act as prevailing at the relevant time are reproduced hereunder :

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

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 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

23. 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 ₹ 1,00,000/- (Rupees One Lakh Only) under Section 15A (b) of the SEBI Act on the Noticee. 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 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.

25. 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: December 20, 2010

Place: Mumbai

**P K KURIACHEN
ADJUDICATING OFFICER**