

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: - SD/AO/65/2010]

**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

M/s. Suresh Kumar Somani

[SEBI Regn. No.: INB 030066713]

[PAN:ATLPS8273P]

In the matter of

M/s. Aurangabad Cryogenics 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 Aurangabad Cryogenics Ltd (hereinafter referred to as 'ACL'), 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 from April 2002 to December, 2003. It was observed by SEBI during the course of the said investigation that the scrip of the ACL was primarily traded in the physical form, constituting 68% of the total volume, during the period under investigation. The price of the scrip had moved up from Rs.96.50 on April 14, 2002 to Rs.537 on May 26, 2003 in the physical

segment at low volumes ranging from 75 to 200 shares per trade. In the rolling segment, the price moved between Rs.521 on May 08, 2003 to Rs.587 on June 30, 2003. The weak fundamentals of ACL could not justify the price movement of 2017% in the scrip within 3 months and 12 days during the period under investigation.

APPOINTMENT OF ADJUDICATING OFFICER:

2. On the basis of the said investigation, the undersigned was appointed as the Adjudicating Officer vide Order of SEBI dated March 18, 2008 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 Sections 15HA and 15HB of the SEBI Act, the alleged violation of the provisions of Regulations 3, 4 (1), 4 (2) (a), (b), (e), (g), (n) and (o) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the 'PFUTP Regulations) and Clauses A (1), (2), (3), (4) and B (4) (a) of Code of Conduct for stock Brokers as specified in Schedule II under Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as the 'Stock Brokers Regulations') by *inter alia* M/s. Suresh Kumar Somani.

SHOW CAUSE NOTICE/REPLY/PERSONAL HEARING:

3. Accordingly, a notice to show cause dated August 27, 2008 under Rule 4 of the Adjudication Rules was issued to M/s. Suresh Kumar Somani (hereinafter referred to as the 'Noticee'), asking it to show cause as to why an enquiry should not be held against it in terms of Section 15I of the SEBI Act and penalty be not imposed under Sections 15HA and 15HB of the

SEBI Act for the alleged violation by it of the abovementioned provisions of the PFUTP Regulations and the Stock Brokers Regulations.

4. In response to the said notice to show cause (hereinafter referred to as the 'SCN'), the Noticee submitted a written reply dated December 27, 2008. The submissions of the Noticee have been discussed later in this order.
5. The Noticee was granted an opportunity of personal hearing before me on July 30, 2009 at ERO, SEBI, Kolkata. The said hearing was attended by the Noticee. The Noticee filed a consent application in the instant matter in terms of SEBI Circular No. EFD/ED/ Cir-1/2007 dated April 20, 2007. However, the same was rejected.

CONSIDERATION OF ISSUES AND FINDINGS:

6. I have carefully perused the charges against the Noticee mentioned in the SCN, the written and oral submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are stated and determined as follows:
 - **Whether the Noticee has violated Regulations 3, 4 (1), 4 (2) (a), (b), (e), (g), (n) and (o) of the PFUTP Regulations and Clauses A (1), (2), (3), (4) and B (4) (a) of Code of Conduct for stock Brokers as specified in Schedule II under Regulation 7 of the Brokers Regulations.**
7. Before proceeding any further, it is pertinent to have a look at the abovementioned provisions of law stated below.

PFUTP Regulations:

Prohibition of certain dealings in securities

3. 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 thereunder;*
- (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;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.*

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;*
 - (g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;*
 - (n) circular transactions in respect of a security entered into between intermediaries in order to increase commission to provide a false appearance*

of trading in such security or to inflate, depress or cause fluctuations in the price of such security;

(o) encouraging the clients by an intermediary to deal in securities solely with the object of enhancing his brokerage or commission.

Stock Brokers Regulations

“Stock brokers to abide by Code of Conduct.

7. The stock broker holding a certificate shall at all times abide by the Code of Conduct as specified in Schedule II.

SCHEDULE II

CODE OF CONDUCT FOR STOCK BROKERS

A. General.

(1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(2) Exercise of due skill and care: A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

(3) Manipulation: A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.

(4) Malpractices: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stock-broker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

B. Duty to the Investor.

(4) Business and Commission:

(a) A stock-broker shall not encourage sales or purchases of securities with the sole object of generating brokerage or commission.

8. As per the findings in the Investigation Report (IR), an analysis of the trading data in the scrip of ACL pertaining to the period under investigation revealed that the Noticee was one of the brokers who had traded substantially in the scrip at CSE during the period under investigation. The summary of his trades in ACL during the period under investigation, as observed from the Investigation Report (IR), is provided below.

Price range and volume of the broker:

Name of the broker	Address	Shares traded	% to total volume at CSE	Price range
Suresh Kumar Somani - D0018	(2 Lal Bazar Street, 1 st Floor, Room No. 105A, Kolkata 700 001)	24002	26%	Rs 289 to Rs 587

The turnover contribution of the broker in the shares of ACL:

Member Name	Trading Data					
	Buy	% to Total Buy	Sell	% to Total Sell	Total	% to Total Buy & Sell
Suresh Kumar Somani	15,251	33%	8,751	19%	24,002	26%

9. As per the findings of the IR, 71 % of the Noticee's volume comprised of synchronized trades. A summary of the synchronized trades of the Noticee, as observed from the IR, is provided below.

Name of the broker	Cross deals and Synchronized transactions							
	Pradeep Kumar Bansal		Suresh Kumar Somani		Ashish Stock Broking Pvt. Ltd		Sonthalia & Co.	
	Qty	%	Qty	%	Qty	%	Qty	%
Suresh Kumar Somani	9912	41.3%	40	0.2%	6315	26.3%	700	2.9%

10. As per the findings in the IR, the Noticee had traded 99.9% of his trades in self account at the CSE which indicated that at the exchange the Noticee had executed proprietary trades. It is alleged that the self code trades of the broker were at successively increasing prices which had had the effect of increasing the price of the illiquid scrip. It was found that the Noticee had traded for 24,002 shares during the period under investigation which amounted to 26% of the overall volumes traded in the scrip during the said period. His trades were at prices ranging from Rs.289 to Rs.587. He had purchased 15,251 shares at successively rising prices from Rs.289 to Rs.587 and had sold 8,751 shares at prices ranging from Rs.294.10 to Rs.585.25. The Noticee is alleged to have executed synchronized trades with three other brokers, namely Pradeep Kumar Bansal, M/s. Ashish Stock Broking Pvt. Ltd. and M/s. Sonthalia & Co. The IR makes a finding that from the trade and order log it was noted that there were order time gap of few minutes in the orders placed by the above brokers when there was no genuine demand for these illiquid shares in the market. The IR notes that through self trade of brokers, artificial demand was created. In absence of genuine demand from the investors, it was possible to enter counterparty orders even after a few minutes. Thus, it is alleged that the trades of the Noticee were fraudulent and had created artificial volume, false and misleading appearance of trading without change in beneficial ownership and price manipulation in the scrip.
11. The Noticee, in respect of the said allegations, has made inter alia the following submissions vide its letter dated December 27, 2008.
- *That they are member only at CSE and have been carrying on business as market intermediary since 1985 with due diligence, fairness and in accordance with the provisions of law. Over the years they have had an impeccable track record in terms of compliance with the applicable Rules and Regulations.*

- *That the allegations of manipulation/ cross deals and synchronized trading are erroneous. They had no nexus/connection/link whatsoever with the other brokers as alleged and all the transactions were executed by them independently and in normal course of business.*
- *That they deny that they had executed trade in the scrip of ACL in a manner that increased the price of the scrip.*
- *That they had traded in scrip of ACL for themselves as well as for clients. The proprietary trades were independent of the trades of the clients and were based on their commercial wisdom.*
- *That while trading for clients, they had inadvertently not entered the client code as required. Hence, it appeared as though all the trades were carried out as proprietary trades. The details of the clients trades and proprietary trades are as under:*

<i>Name of client</i>	<i>Purchase</i>	<i>Sold</i>	<i>Total</i>
<i>Hemlata Saraogi</i>	<i>300</i>	<i>700</i>	<i>1000</i>
<i>Kusum Churiwala</i>		<i>2200</i>	<i>2200</i>
<i>Mitu Saraogi</i>	<i>700</i>	<i>1000</i>	<i>1700</i>
<i>Pradeep K Churiwala</i>	<i>700</i>	<i>3100</i>	<i>3800</i>
<i>Ritu Saraogi</i>		<i>500</i>	<i>500</i>
<i>Total Volume</i>		<i>9200</i>	

Transactions that are self trades:

<i>Name of the client</i>	<i>Purchase</i>	<i>Sold</i>	<i>Total</i>
<i>Suresh K Somani</i>	<i>7026</i>	<i>7851</i>	<i>14877</i>

- *That when they first executed trade in the scrip i.e. Sept. 05, 2002 the price of the scrip had already increased.*
- *That the total volume of their proprietary trade was only 16.33% and that of their clients was 10.10% of the total market volume, which is not very high.*

- *That while trading they had inadvertently missed putting their client codes.*
- *That they cannot be held responsible for the trades of clients as they never question their commercial wisdom. All trades have been genuine with no intent of fraud.*
- *That their entire trading in the scrip was delivery based as opposed to trading in the nature of squaring off.*
- *That they had not executed cross deals or synchronized trades with other brokers as alleged.*
- *That they had no relationship /nexus /link /connection with counterparty brokers/ their clients as alleged and were not even aware of them as in the screen based trading mechanism, the identity of counterparty broker/ clients is not revealed.*
- *That they had not violated any provisions of the PFUTP Regulations as well as the clauses of the Code of Conduct for Stock Brokers as alleged.*

12. I have perused the allegations against the Noticee, its reply to the SCN and other material available on record. It appears from the trade and order log pertaining to the trades of the Noticee that the Noticee had executed almost all of his trades as proprietary trades. The Noticee has submitted that he had also executed trades for 9200 shares for various clients whose names along with trade volume he has provided. However, he has not submitted any documentary proof in support of the same. In the absence of any supporting documentary evidence the said contention of the Noticee cannot be relied upon and thus, the trades of the Noticee are viewed as its proprietary trades. Further, he has himself admitted that the volume of his proprietary trades stood at 14,877 shares. Now, it is to be seen whether the Noticee had executed the trades fraudulently.

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.”

14. From the trade and order log pertaining to the trades of the Noticee, it is observed that the Noticee had traded both in the physical segment and the rolling segment of the market. Analysis of the said trade and order log shows that the Noticee has executed a large number of both buy and sell trades over many days. In fact, the trades of the Noticee (both buy and sell) accounted for 26% of the total traded volume in the scrip at CSE during the period under investigation. The Noticee's buy trades amounted to 33% of the total buy volume in the scrip at CSE during the said period. It is further noticed that the Noticee has on many occasions executed his trades at increasing prices (at prices higher than that of previous trade). It is observed that the Noticee had executed his buy trades at prices ranging from Rs.289 to Rs.588.50. It is noted from the IR that the financial

performance of ACL was not impressive that the share price would reach the level it did. It is further noticed that the Noticee had executed each of his trades for small quantities of shares (in physical segment each trade was for 100 shares and in rolling segment each trade was for quantity ranging from 5 to 200 shares). It is found from the trade and order log pertaining to the trades in the physical segment that on many days the Noticee was the lone buyer in the scrip. On several such days while trading in the physical segment he had executed singular buy trades of 100 shares which were often at prices higher than that of the last trade. Thus, there is strong evidence that the Noticee has raised the price of the scrip through thin volume. As per the IR, the scrip of ACL was illiquid one for which there was no genuine demand in the market as the total volume traded at the exchange was 91,064 shares during the period under investigation. The Noticee's buy trades constituted 33% of the total buy volume in the scrip at CSE which he had executed over many days in form of multiple trades of small quantity and many times at increasing prices. The said fact coupled with the fact that the Noticee's total trades accounted for 26% of the total traded volume in the scrip clearly establishes the role of the Noticee in steep rise in the price of the scrip without any apparent justification. It is further observed from the said trade and order log that on several days, in both the physical and rolling segments, the Noticee had executed both buy and sell trades on the same day in the scrip. It is further noted that on many days the Noticee has executed sell trades after executing buy trades on the previous day and vice versa. Thus, he was executing both buy trades and sell trades in close proximity which indicates that the trades were reversal in nature. He has bought a total of 15,251 shares and sold a total of 8,751 shares during the period under investigation. All the above observations viewed in totality strongly support the allegation that the trades executed by the Noticee were fraudulent and manipulated and were designed to create

artificial volume and price rise in the scrip. I have considered the reply of the Noticee and do not find them to be satisfactory.

15. In view of the above observations, findings and material on record I conclude that the allegation of violation of Regulations 3, 4 (1), 4 (2) (a), (b), (e), (g) & (n) 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.
16. The Noticee is also alleged to have violated Clauses A (1), (2), (3), (4) & B (4) (a) of the Code of Conduct for Stock Brokers, specified in Schedule II under Regulation 7 of the Stock Brokers Regulations. The abovementioned provisions of the said Code of Conduct are quite clear in their import and prescribe certain duties for a broker and stipulate certain norms to which the behavior of a broker must conform while transacting business. The said provisions expressly prohibit a broker from indulging in certain acts which may be detrimental to the interests of the securities market in general and that of investors in particular.
17. In the above paragraphs, I have already concluded that the Noticee had indulged in price manipulation and fraudulent transactions in the scrip of ACL. In view of the observations and findings already recorded above, I am of the view that the Noticee has violated the provisions of Clauses A (1), (2), (3) and (4) of the Code of Conduct for Stock Brokers, specified in Schedule II under Regulation 7 of the Stock Brokers Regulations. The same makes the Noticee liable for monetary penalty under Section 15HB of the SEBI Act.
18. The provisions of sections 15HA and 15HB 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.*

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

19. 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.*

20. 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 on record showing any past record of default by the Noticee.

ORDER

21. 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.2,00,000/- (Rupees Two Lakhs Only) under Section 15HA of the Act and Rs.50,000/- (Rupees Fifty Thousands Only) under Section 15HB of the Act [i.e. a total penalty of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousands Only)] on the Noticee viz. M/s. Suresh Kumar Somani. In my view, the penalty is commensurate with the defaults committed by the Noticee.
22. 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.
23. 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: May 21, 2010

Place: Mumbai

SANDEEP DEORE

ADJUDICATING OFFICER