

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. PKK/AO/268/2010]

**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

Shri Sunil Kuril

[PAN: Not Available]

In the matter of

Adani Exports Ltd.

Background

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted investigation in respect of buying, selling and dealing in the shares of M/s. Adani Exports Ltd. (hereinafter referred to as 'AEL ') for the period from between July 09, 2004 and January 14, 2005 (hereinafter referred to as the 'First Period') and August 01, 2005 to September 05, 2005 (hereinafter referred to as the 'Second Period'). The scrip of AEL was traded on the exchanges with a face value of Rs.10 per share up to July 27, 2004 and thereafter with a face value of Rs.1. The price of the scrip of AEL witnessed wide fluctuations in the price ranging from Rs.481 to Rs.756 during the first period and from Rs.64.35 to Rs.74.20 during the second period.

2. The role of the main brokers and clients who had traded heavily during the period under investigation in the scrip of AEL was scrutinized. The Investigations revealed that certain entities, including Shri Sunil Kuril (hereinafter referred to as the 'Noticee'), transacted in the shares of AEL in a fraudulent manner that led to creation of artificial volume and a false market. Their trading distorted market equilibrium leading to spurt in the price which did not have any correlation with the performance of the company.
3. SEBI has therefore, initiated adjudication proceedings under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'Act') against the Noticee to inquire into and adjudge the alleged violations of the provisions of Regulations 4 (1), 4 (2) (a), (b), (e) and (g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the 'PFUTP Regulations').

Appointment of Adjudicating Officer:

4. SEBI vide Order dated July 24, 2007 appointed Ms. Babita Rayudu as the Adjudicating Officer (AO) under section 15-I of the Act read with Rule 3 of SEBI (Procedure for holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') to inquire into and adjudge under Section 15HA of the Act, the alleged violation of the above mentioned provisions of PFUTP Regulations. Thereafter, SEBI vide Order dated November 23, 2007 appointed Shri Sandeep Deore as the AO in the instant matter. SEBI vide Order dated August 17, 2010 appointed the undersigned as AO, consequent to the transfer of Shri Deore to the Enforcement Department.

Notice, Reply & Personal Hearing

5. The AO issued a Notice bearing no. EAD-2 /SD/AB/129607/2008 dated June 23, 2008 (hereinafter referred to as 'SCN') to the Noticee in terms of Rule 4 of the Adjudication Rules requiring him to show cause as to why an inquiry should not be held against him for the alleged violations.

6. It is alleged that the Noticee have traded substantially in the scrip of AEL during the first period through M/s. Triveni Management Consultancy Services Ltd. and M/s. S.P. Jain Securities Pvt. Ltd. The Noticee had allegedly entered into reversal of trades throughout the first period. He, along with a few other entities, had created a volume of 1,29,81,714 shares on NSE and 1,30,92,580 shares on BSE during the above period. These trades were mostly reversal in nature and of these trades orders for 90,97,854 shares on NSE and 1,30,66,084 shares on BSE were synchronized as the buy and sell orders were placed within time gap of one minute. The Noticee's orders for buying 7,81,893 shares on NSE and 23,34,834 shares on BSE and selling 7,78,003 shares on NSE and 19,44,385 on BSE were synchronized.

7. The AO sent the SCN by Registered Post Acknowledgment Due and the same was returned undelivered. The SCN was served on the Noticee by affixture on June 02, 2010. However, the Noticee did not file any reply to the SCN. In the interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of the Rules, the undersigned vide letter dated November 11, 2010 granted an opportunity of personal hearing to the Noticee on November 19, 2010. The hearing notice was served on the Noticee by affixture on November 12, 2010. However, the Noticee did not appear for the personal hearing. Therefore, I am proceeding with the inquiry taking into account the documents and material as available on record.

Consideration of Issues, Evidence and Findings

8. 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), (b), (e) & (g) of PFUTP Regulations?

b) Does the violation, if any, on the part of the Noticee attract any monetary penalty under Section 15HA of the Act?

c) If yes, what should be the quantum of monetary penalty?

9. Before moving forward, it will be appropriate to refer to the relevant provisions of PFUTP Regulations which read as 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;

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

10. 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)
11. I have carefully examined all the materials and records available with me. I find from the Annexure 8 to the Investigation Report that the Noticee had traded on many days. He had executed a large number of reversal trades. He was executing buy/sell trades and reversing them on the same day or the next day with the same counterparties. From the same, it is amply clear that the Noticee was executing trades which merely created artificial volume and did not result in transfer of beneficial ownership. The trades of the Noticee were fictitious which created false and misleading appearance of trading and price manipulation in the scrip of AEL.
12. The abovementioned observations and findings establish beyond doubt that the Noticee had executed fraudulent trades in the scrip of AEL which did not result in transfer of beneficial ownership and had created false and

misleading appearance of trading and price manipulation in the scrip. As has been stated above, the Noticee has failed to file any reply to the allegations contained in the SCN. The Hon'ble SAT in the matter of **Classic Credit Ltd v. SEBI (Date of Decision: 06/12/2006, Appeal No. 68/2003)** has 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."

13. In view of the aforesaid observations and findings, I conclude that the Noticee has violated Regulations 4 (1), 4 (2) (a), (b), (e) & (g) of the PFUTP Regulations which makes the Noticee liable for monetary penalty under Section 15HA of the Act.

14. The provisions of Section 15HA of the Act as prevailing at the relevant time 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.*

15. While imposing monetary penalty it is obligatory to consider the factors stipulated in Section 15J of the 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.

16. 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

17. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the 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 15HA of the Act on the Noticee viz. Shri Sunil Kuril. In my view, the penalty is commensurate with the default committed by the Noticee.
18. 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, Investigation Department (ID-1), Securities and Exchange Board of India, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
19. 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 21, 2010

Place: Mumbai

**P K KURIACHEN
ADJUDICATING OFFICER**