BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: - SD/AO/08/2011]

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. Vijay Textiles Ltd.
[PAN: ACVPG2070K]

In the matter of
Vijay Textiles Ltd.

BRIEF FACTS OF THE CASE:

1. Investigations were conducted by Securities and Exchange Board of India (hereinafter referred to as 'SEBI') in the scrip of Vijay Textiles Ltd. (hereinafter referred to as 'VTL') for the period from November 01, 2004 to March 11, 2005. The scrip of VTL was listed on Stock Exchange, Mumbai (BSE) and Hyderabad Stock Exchange (HSE) at the relevant time. The scrip of VTL witnessed huge spurt in volumes and wide fluctuations in the price.

2. It was observed by the Investigating Authority (hereinafter referred to as 'IA') that the scrip of VTL traded infrequently before the Investigation Period (hereinafter referred to as 'IP') but traded frequently during the IP.

IA also observed that VTL made certain announcements and one of the announcements which were made on February 21, 2005 and February 24, 2005 regarding bagging of export order from a Swiss Firm was false and misleading. The said announcement did not materialised and the same was not brought to the notice of public thereby making public to believe on these announcements. The price of the said scrip on February 21, 2005 reached ₹ 48.85 which was the highest during the second period. From February 21, 2005 to February 25, 2005 the promoters, directors and their relatives sold 47,11,021 shares which is 54.21% of the total quantity sold by them during the IP. In view of the above, SEBI has therefore, initiated adjudication proceedings under the SEBI Act against VTL (hereinafter referred to as the 'Noticee') on account of allegedly violating the provisions of Regulations 4(1), 4(2)(e) and 4(2)(r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations').

APPOINTMENT OF ADJUDICATING OFFICER:

3. Ms. Babita Rayudu was appointed as the Adjudicating Officer vide order of SEBI dated August 31, 2007 under section 15-I of the Securities and Exchange Board of India Act (hereinafter referred to as 'Act') r/w rule 3 of SEBI (Procedure for holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the Adjudicating Rules) to inquire into and adjudge under Section 15HA of the Act, the alleged violation of the provisions of Regulations 4(1), 4(2)(e) and 4(2)(r) of PFUTP Regulations.

4. Subsequently, the then Adjudicating Officer was sent on deputation and thereafter the undersigned was appointed as the Adjudicating Officer in the instant matter vide SEBI order dated November 23, 2007.

NOTICE, REPLY & HEARING

5. A Show Cause Notice (hereinafter referred to as 'SCN') bearing no. EAD-2/SD/AB/125046/2008 dated May 08, 2008 was issued to the Noticee in terms of the provisions of Rule 4 of the Adjudication Rules, requiring the Noticee to show cause as to why an enquiry should not be held for the violations alleged to have been committed by the Noticee. It is noted that Noticee has filed replies dated December 09, 2008 and July 31, 2010.

6. Noticee vide its reply dated December 09, 2008 inter-alia submitted that

i) The price of the scrip was in upward mode since October 2004. All the announcements were made independently in the ordinary course of business in order to maintain transparency and to disseminate information amongst the shareholders about the development taking place in the company and as per legal requirements and obligations.

ii) All the announcements were backed by adequate basis and were not fraudulent or misleading or which the company did not believe to be true. The Noticee submitted a chart giving the basis and reasoning for the announcements made.

iii) Noticee for its announcement dated February 21, 2005 submitted that the announcement regarding receipt of export order was made pursuant to receipt of the letter of intent from Simran Enterprises for the purchase of furnishing fabric.

iv) Further, with regard to an announcement made on February 24, 2005, the Noticee submitted that it was a routine announcement.

v) The Noticee further submitted that a company based in Switzerland approached it and expressed an interest in

purchasing fabrics. Accordingly, a presentation was made to Swiss Firm. Subsequently in February 2005, the Noticee received a letter by way of fax from Simran Enterprises wherein it inter-alia expressed a desire to source their requirement of furnishing fabrics worth USD$4.6 millions within a period of 12 months. Based on the said letter, the Noticee had made disclosure to the BSE as the same was price sensitive information and complied the provisions of Listing Agreement.

vi) The Noticee vide its letter dated March 10, 2005 requested the Simran Enterprises to expedite the submission of Irrevocable Letter of Credit in favour of the Noticee for the value of the order placed by it. Since, no reply was received from Simran Enterprises, the Noticee again vide its letter dated May 02, 2005 reminded it about the Letter of Credit and vide its letter dated February 02, 2006 requested Simran Enterprises to confirm about the status of Letter of Credit and informed that if it failed, the Noticee would not be in a position to process the order. Since, no response was received from Simran Enterprises, the Noticee finally made a disclosure in its audited accounts for the quarter ending September 2006 about the non materialisation of the said export order. The same was published in Business Standard dated October 28, 2006. Therefore, the announcement made by the Noticee was not false/misleading.

vii) With regard to the trading done by the Promoters during February 21-25, 2005, Noticee submitted that the same does not pertain to the Noticee, nothing to do with selling of shares by the promoters and therefore, not concerned with it. The Noticee submitted that as per the records the promoters were selling shares quite a long time i.e. prior to February 21, 2005 and

therefore no correlation between the announcement made and selling of shares by the promoters.

viii) The Noticee for the charge that the investors were allured by the false and corporate announcement submitted that price and volume in the said scrip was in upward mode since October 2005 and after post split.

7. The Noticee had submitted another reply dated July 31, 2010 wherein Noticee inter-alia submitted that the promoters were selling their shares much prior to February 21, 2005 and the same can be gathered from the disclosure made by them to the Stock Exchange in compliance with Insider Trading Regulations and Takeover Regulations. All the announcements made by the Noticee were fulfilled. Noticee also submitted that since export order did not fructify, everything is being viewed suspiciously and a sinister colour is being given to the announcements made genuinely.

8. Considering the facts of the case, it was decided to conduct an inquiry in the matter and the Noticee was granted an opportunity of personal hearing and accordingly was advised to attend the hearing on July 15, 2010 but Noticee had requested for an adjournment and in the interest of Natural Justice another opportunity of personal hearing was given to the Noticee and accordingly Noticee was asked to attend the hearing on July 26, 2010. The Noticee through its authorised representative viz. Mr. Vinay Chauhan appeared before me on the said date.

9. Thus, an inquiry is proceeded with taking into account the facts and material available on record.

CONSIDERATION OF ISSUES:-

10. The issues that arise for consideration in present case are:-

a) Whether the Noticee has violated the provisions of Regulations 4(1), 4(2)(e) and 4(2)(r) of PFUTP Regulations, 2003?

b) Does the violation, if any, on the part of the Noticee attract any monetary penalty u/s. 15HA of SEBI Act?

c) If so, what should be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

11. Before moving forward, it will be appropriate to refer to the relevant provisions of PFUTP Regulations, 2003 which inter alia reads 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 :—

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

(r) planting false or misleading news which may induce sale or purchase of securities.

14. It is observed from the records that the Noticee had made an announcement through BSE regarding bagging of export order from an European firm. These disclosures were made on February 21 and again on February 24, 2005. The Noticee on February 21, 2005 had informed BSE that the Noticee received an Export Order worth US$ 4.60 million (about ₹ 200 million) from Simran Enterprises of Europe for supply of an exclusive range of Home Furnishings. The Noticee has submitted that on receipt of letter from Simran Enterprises, the Noticee made such a disclosure to the BSE as the same was required by law. However, It is observed from the letter of Simran Enterprises on which Noticee had placed reliance and made public announcements that it was actually not an order but, simply an intent to purchase USD $ 4.6 Million worth of furnishing fabrics from the Noticee within a period of 12 Months. The Noticee falsely informed the BSE about the receipt of order where actually it was just intent to purchase and not an actual purchase. The Noticee further failed to inform that it was during 12 months period that the Simran Enterprises intended to purchase furnishing fabrics from Noticee and not just in one flow. Moreover, the said letter is unsigned and did not carry any stamp of Simran Enterprises which raised doubt about the genuineness of the said letter. I further observe that Noticee again on February 24, 2005 made a corporate announcement acquiring of space area on long lease for its retail Showroom and in that announcement again mentioned that Noticee recently received an export order worth USD $ 4.6 million. I find that Noticee again used the words received the order whereas actually the Noticee had never received such order. In view of the above, I conclude that the Noticee had not correctly informed BSE about the export order and deliberately made such misleading corporate announcement.

15. It is further observed that the said export order did not materialize and Noticee failed to disclose about the failure in a proper manner. The

Noticee disclosed the cancellation/non-materialization of the said intent in the notes to the un-audited financial results for the quarter and half year ended September 30, 2006. It is pertinent to mention here that the notes to unaudited financial results relate to the financial results and not to ancillary matters. The notes are there to serve as an explanation to the figures disclosed. The intent of export order was no where pertaining to financial results as it had not materialized and the Noticee did not even receive any advance for the same. Hence, the said intent was not crystallized in monetary terms to be reflected under any item of the financial results. Even in the said notes the information about the non-materialization was mentioned on at point 3 and on not on point 1. On point 1 it mentioned about the financial results which were approved by the Board of Directors. I observe that except point 3 all the points in Notes to unaudited Financial Results (Provisional) for the quarter and half year ended September 30, 2006 contain about the items mentioned / figures in financial results.

16. In the case of ***Werner v. Werner***, 267 F.3d 288 the 'Buried Facts' doctrine was propounded. Buried facts doctrine is a rule whereby a disclosure is considered inadequate if a reasonable shareholder cannot understand the risks presented by facts scattered in the disclosure. Under the buried facts doctrine, a court will consider disclosure to be false and misleading only if its overall significance is obscured because material information is "buried," for example, in footnotes or appendices. In the present case also the fact of non-materialization has been disclosed, but in a fashion where either the investors would not notice it or fail to understand its significance. If the Noticee was so prompt in reporting to BSE about bagging on the order merely on receiving an letter of intent, it should have been equally prompt in disclosing the non-materialization and the disclosure should have been made in the same manner.

17. Further, the Noticee was so enthusiastic about the order that the disclosure was made not once but twice, but the news of non-materialization did not even get once proper disclosure. By informing public through BSE about the receipt of Export Order from Europe based company and not disclosing about non materialization of the said order to public through BSE, the Noticee misled the public and investors were lured by such false and misleading corporate announcement. I have no doubt that receiving of export order is price sensitive information and Noticee in its replies has admitted that the said announcements were price sensitive. As the announcements were price sensitive, the investors were lured by such announcement and invested in said scrip. The price of the said scrip on February 21, 2005 touched a high of ₹ 48.85 because of said announcement. The closing price of the said scrip on February 18, 2005 (Friday) was ₹ 44.45. Thus, there was an increase of around ₹ 4.4 and the same was due to the said false and misleading announcement made on February 21, 2005 about the receipt of Export Order. I also found that from February 21 to February 25, 2005, the promoters and or directors Viz. Mr. Vijay Kumar Gupta, Mani Bai Gupta and their relative Shashikala Gupta sold 4711021 shares which accounted for 54.21% of the total quantity sold by the promoters during the IP. I also observed that there was higher volume during February 21 – February 25, 2005 than its previous days. I also observed that the price of the said scrip started falling gradually after February 25, 2005 and as on March 11, 2005 the price of the said scrip was ₹ 29.65. All these things reveal that Noticee deliberately made such false and misleading corporate announcement so that when price of the said scrip increases the promoters and directors could sale their shares and earn a huge profit at the behest of the gullible investors. In view of the above, I am of the opinion that the allegations of violations of provisions of Regulations 4(1), 4(2)(e) and 4(2)(r) of PFUTP Regulations against the

Noticee stands established and the same warrants imposition of penalty as per the provisions of Section 15 HA of SEBI Act.

18. The Hon'ble Supreme Court of India in the matter of SEBI .. v/s...Shri Ram Mutual Fund (2006) 68SCL 216 (SC) held - ***"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".***

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

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.*

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:-

Factors to be taken into account by the adjudicating officer.

15J. *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.

21. It is difficult in case of such nature, to quantify exactly the disproportionate gains on unfair advantage by an entity and the consequent losses suffered by the investors. I have noted that the investigation report also does not dwell on the extent of specific gains made by Noticee. Suffice to state that keeping in mind the practice indulged in by the Noticee, gains per se were made by the Noticee

22. The Noticee is a listed company and as a listed company it had certain duties towards its investors and general public. Giving proper and correct disclosures in one of the fundamental duties of a listed company. A proper disclosure helps the investors and the public to decide on their investment and the price of the scrip also changes to reflect the positive/ negative sentiments of people. Generally positive news brings about a rise in price and also helps in increasing the volume while negative news has the reverse effect. The Noticee by making incorrect and improper disclosures has misled the public. The retail investors in India are a gullible community and are easily carried away by the unusual fluctuations in the volumes. It is primary responsibility of the Regulator to ensure that the investors are protected and such devices to artifice the investors seriously undermine the attempts of the Regulator to create safer market and encourage the participation of investors.

ORDER

23. In view of the above, after considering all the facts & circumstances of the case & exercising the powers conferred upon me U/S 15-I(2) of the SEBI Act, 1992, I hereby impose a penalty of Rs.25,00,000/- (Rupees Twenty Five Lakhs Only) on the Noticee viz. M/s. Vijay Textiles Ltd.

24. The above penalty amount shall be paid 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 Division Chief, IVD ID-2 Securities & 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 Adjudicating Rules, copy of this order is sent to the Noticee and also to Securities & Exchange Board of India.

Date: January 13, 2011 **SANDEEP DEORE**

Place: Mumbai **ADJUDICATING OFFICER**