BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. SD/AO/02/2011]

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

Shri Nrupesh C. Shah

[PAN: AVMPS6287L]

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 Bombay Stock Exchange (BSE) and National Stock Exchange (NSE) with a face value of Rs.10 per share up to July 27, 2004 and thereafter with a face value of Re 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 Nrupesh C. Shah (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.

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 into and adjudge the alleged violations of the provisions of Regulations 4 (1) and 4 (2) (a), (b), (e) & (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 SEBI 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 SEBI Act, the alleged violation of the above mentioned provisions of PFUTP Regulations by the Noticee. Thereafter, consequent to Ms. Rayudu proceeding on deputation to IRDA, SEBI vide Order dated November 23, 2007 appointed the undersigned as the AO in the instant matter.

Notice, Reply & Personal Hearing

5. The undersigned issued a Notice bearing no. EAD-2 /SD/AB/129573/2008 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. The SCN was sent by Registered Post Acknowledgment Due and the same was duly delivered. In response to the same, the Noticee sent a letter dated July 07, 2008 expressing his intention to file a consent application in this matter. Vide Office Note dated March 23, 2009 the undersigned was requested to keep the adjudication proceedings in abeyance as the Noticee had filed a consent application in this matter. Vide Office Note dated September 22, 2009 the undersigned was informed about the rejection of the said consent application and was requested to revive the adjudication proceedings. In the interest of natural justice and in order to conduct an inquiry as per Rule 4 (3) of the Adjudication Rules, the undersigned granted an opportunity of personal hearing to the Noticee on February 23, 2010 which was attended by him. During the personal hearing, the Noticee undertook to submit a detailed reply to the SCN by March 26, 2010. On being asked whether he wished to seek or inspect any further documents in this matter, the Noticee submitted that he had seen all the documents and did not wish to seek any further documents in this regard. The Noticee vide letter dated March 25, 2010 submitted that he was ill and requested for extension of time for submitting reply to the SCN. However, subsequently, he did not submit any reply to the SCN.

7. In view of the above, I am proceeding with the inquiry taking into account all 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, the submissions of the Noticee 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 SEBI 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. It is alleged that the Noticee had traded substantially in the scrip of AEL during the First Period through M/s Grishma Securities Pvt. Ltd and

had entered into reversal of trades with clients dealing through ASE Capital Market, on BSE. The Noticee had allegedly entered into reversal of trades throughout the period from 28.07.2004 to 14.01.2005. It is alleged that the Noticee, along with a few other entities, had created a volume of 3,48,53,139 shares during the above period which is around 51% of total traded volumes. These trades were mostly in the nature of reversal trades and of these trades, orders for 3,04,68,762 shares (87.39 % of their trades) appeared to be synchronized as the buy and sell orders were placed within time gap of one minute, out of which for 2,99,82,524 shares buy and sell order quantity and rate were identical and were placed within a time gap of one minute from each other. Further, in case of 17,801 trades for 2,31,84,498 shares the time gap between the buy and sell orders was between 0-10 seconds which defied the probability of coincidence. The Noticee's orders for buying 67,46,999 shares and selling 66,16,275 shares are allegedly synchronized.

11. Further, for the period between 15.10.2004 to 14.01.2005, on NSE the Noticee had entered into trades of which 25,65,912 shares on buy side and 24,19,058 shares on sell side appeared to be synchronized as majority of the order were entered with a time difference of 0-10 seconds which defied the probability of coincidence.

12. Thus, the Noticee is alleged to have executed fraudulent trades by creating false and misleading appearance of trading and price manipulation in the scrip of AEL.

13. The Noticee has failed to offer any explanation in respect of the allegations mentioned in the SCN.

14. 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)*

15. I have carefully examined the allegations against the Noticee and the material available on record. I find from the Investigation Report (IR) that the Noticee had traded for a huge volume of shares in AEL during the period under investigation. I find from trade and order logs contained in Annexure 5 of the IR that during the period from July 28, 2004 to January 14, 2005 the Noticee (client code-S043) had executed a large number reversal trades. Almost all his trades were with a single counterparty client, namely Shri Saumil Bhavnagari (Client Code-087V001), on BSE. Throughout the said period, the Noticee was continuously buying from and selling to the same counterparty client thereby reversing his trades without change of beneficial ownership. It is seen that the time difference between the buy and sell order for each of the trades between the Noticee and the said counterparty client was less than 60 seconds. Similarly, I further

observe from Annexure 8 of the IR that during the period from October 15, 2004 to January 14, 2005 the Noticee had also executed a large number of reversal trades in similar fashion with another client, V & S Intermediaries (Client Code-V501), which was a proprietary firm of Shri Saumil Bhavnagari, for a huge volume of shares on the NSE. The Noticee and the said client had acted as the counterparty client for each other's trades and had created a huge volume i.e. they purchased from and sold to each other thereby reversing their trades between themselves. Further, the time difference between the buy order and the sell order for all such trades was less than 60 seconds. I find that the Noticee has created a huge volume in the scrip by trading in the abovementioned fashion.

16. The abovementioned trading pattern of the Noticee by which he created a very large volume in the scrip clearly proves that the Noticee had executed trades which did not result in transfer of beneficial ownership but merely created artificial volume in the scrip. Taking into consideration the test laid down in the abovementioned SAT Order, I conclude that the trades of the Noticee were fictitious which created false and misleading appearance of trading and price manipulation in the scrip of AEL. As stated above, the Noticee has not offered any explanation in respect of the allegations against him mentioned 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."

17. In view of the aforesaid observations and findings, I conclude that the allegations of violation of the provisions of Regulations 4 (1), 4 (2) (a), (b), (e) & (g) of the PFUTP Regulations by the Noticee stand established

which makes the Noticee liable for monetary penalty under Section 15HA of the SEBI Act.

18. The provisions of Section 15HA of the SEBI Act read 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.*

19. While imposing monetary penalty it is obligatory to consider the factors stipulated in Section 15J of the 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 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 Noticee is also not computable.

Order

21. 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 SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a monetary penalty of ₹ 5,00,000/- (Rupees Five Lakh Only) under Section 15HA of the SEBI Act on the Noticee. In my view, the penalty is commensurate with the default 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 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.

23. 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: September 26, 2011 **SANDEEP DEORE**

Place: Mumbai **ADJUDICATING OFFICER**