BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. GEE/ VFL/AO/DRK/DS/EAD3-344/10-2013]

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5(1) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

Against
Vidya Finvest Ltd.
[PAN: AABCV0280B]
135, 2nd Floor, B.R.B. Basu Road, Kolkata - 700 014

FACTS OF THE CASE IN BRIEF

1. SEBI has conducted an investigation into the trading in the scrip of GEE Ltd. (hereinafter referred to as 'GEE') during the period from April 28, 2009 to August 31, 2009 (hereinafter referred to as 'Investigation Period'). The scrip of the company is listed in Bombay Stock Exchange Ltd. The promoters of the company and the entities connected/related to the promoters were found to be dealing in the scrip.

2. The Company was incorporated on November 24, 1960 and is engaged in the business of manufacturing and dealing in consumable welding electrodes since its incorporation. The Open, High, Low and Close price of the scrip during the period of investigation was as under:

Particulars	**Price (₹.)**	**Date**
Open	36.80	28/04/2009
High	79.00	05/06/2009
Low	34.50	28/04/2009
Close	58.65	31/08/2009

3. During the investigation period, the price of the scrip rose by ₹42.20 in 26 trading days with an average daily volume of 7,290 shares. Prior to the period of investigation, the scrip traded in the range of ₹28.35 and ₹39.00 with an average daily volume of 3,182 shares. The scrip was

transferred to Trade-to-Trade segment w.e.f June 12, 2009 and the circuit filters were revised as follows:

Circuit Filters (w.e.f.)	Revised From (%)	To(%)
05/06/2009	20	10
12/06/2009	10	5

APPOINTMENT OF ADJUDICATING OFFICER

4. I was appointed as the Adjudicating Officer under section 15 I of the Securities and Exchange Board of India Act, 1992 read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules') to inquire into and adjudge under 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act') the violation of the provisions of Regulation 3(a), (b), (c), (d) and Regulation 4 (1), 4 (2) (a), (b) & (e) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the 'PFUTP Regulations') in respect of the dealings of Vidya Finvest Ltd. (hereinafter referred to as the noticee/it) in the scrip of GEE Ltd. during the investigation period.

SHOW CAUSE NOTICE, HEARING AND REPLY

5. A Show Cause Notice dated April 27, 2011 was issued to the noticee in terms of the provisions of Rule 4 of the Rules, requiring it to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed on it under Section 15HA of the SEBI Act, 1992 for the alleged violation of the provisions of Regulation 3(a), (b), (c), (d) and Regulation 4 (1), 4 (2) (a), (b) & (e) of PFUTP Regulations.

6. It was alleged on the basis of the findings of the Investigation Report (hereinafter referred to as 'IR') that during the investigation period the Agarwal Group comprising of noticee (promoter of GEE), Shri. S.L.

Agarwal (Managing Director as well as promoter of GEE) (hereinafter referred to as 'SLA') and Shri S.M.Agarwal (Executive Director as well as promoter of GEE) (hereinafter referred to as 'SMA') along with the Sanganeria Group comprising of the introducer of all the three entities i.e. Basant Kumar Sanganeria (BKS), Basant Kumar Sanganeria's HUF (BKS HUF), Basant Kumar Sanganeria's wife Ms. Sunita Sanganeria (SS) and Basant Kumar Sanganeria's mother Ms. Gayatri Devi Sanganeria (GDS) acted as a group (hereinafter referred to as the main group) and dealt majorly in the scrip during the period of investigation.

7. It was alleged on the basis of IR that the Last Traded Price (LTP) analysis shows that net LTP of the scrip went up by a total of ₹21.90 during the investigation period and if the net LTP variation by main group is taken then the net LTP increased by ₹23.15 on account of trades by the main group. In view of the same, it was alleged that almost the entire upward price variation was caused by the main group. Further it was also observed that the noticee contributed ₹44.45 LTP increase and was trying to push upwards the price of shares of GEE.

8. It was observed that during the investigation period there were total valid buy orders for 20,27,348 shares & total valid sell orders for 16,78,752 shares. On analyzing the valid buy orders placed by the trading members it was observed that trading member SPFL Securities Ltd. placed valid buy orders for a total of 11,99,836 shares for the main group which were 59.18% of total valid buy orders. Of these, buy orders for 9,80,100 shares were placed on behalf of the noticee which accounted for 48.34% of the total valid buy orders placed in the system.

9. It was observed that during the investigation period the main group bought 2,16,885 shares (1,76,630 shares[Agarwal Group] + 40,255 shares[Sanganeria Group]) and sold 41,695 shares (2156 shares[Agarwal Group] + 39,539 shares[Sanganeria Group]). Of these the noticee bought 1,58,311 shares and sold 1956 shares contributing ₹44.45 to the LTP increase.

10. It was alleged based on the investigation that large quantity orders were placed by the main group during May and June 2009 i.e. during the investigation period. All these orders were not reflected in the trade log. i.e. the orders expired after the trading day without execution. It was alleged that most of the orders were placed early in the morning and lay in the system throughout the day without execution. Further in most cases the entire quantity was revealed in the market. It was alleged that the orders were placed much below the prevailing market price and hence could not get executed.

11. It was alleged that the noticee placed buy orders for 9,13,401 shares contributing to 93.19% of the total buy orders during the period May 04, 2009 to June 11, 2009 with large orders for 10,000 shares and at the rate ranging from ₹37.00 to ₹75.35. It was further alleged that out of these total buy orders for 9,13,401 shares placed by the noticee during the said period, buy orders for only 29,166 shares got executed as the orders were placed significantly away from the prevailing market rate, thus giving an imression that buy orders by the noticee were placed to create an artificial buying depth in the market.

12. Therefore it was alleged that main group was trying to create artificial buying depth in the market and the noticee as a part of the group had indulged in manipulative, fraudulent and unfair trade practices while dealing in the scrip of GEE. In view of same, it was alleged that the notice had violated the provisions of Regulation 3(a), (b), (c),(d) and Regulation 4 (1), 4 (2) (a), (b) & (e) of the PFUTP Regulations.

13. The SCN stated that the reply shall reach within 15 days from date of receipt of the notice, failing which it shall be presumed that the noticee has no reply to submit and the matter shall be proceeded on the basis of material available on record.

14. SMA on behalf of the noticee vide letter dated May 31, 2011 sought inspection of relevant documents and material relied upon by SEBI for the purpose of issue of SCN. Vide letter dated June 09, 2011, the noticee

was granted 10 days time to complete the inspection. The noticee took inspection of the documents on June 30, 2011.

15. SMA on behalf of noticee further, vide letter dated July 08, 2011 sought inspection of some more documents. Vide letter dated July 25, 2011, the noticee was granted 10 days time to conclude the entire inspection of documents and submit the reply within one week of completion of the inspection. Vide hearing notice dated March 05, 2012 the noticee was informed that the Adjudication order will be passed only on the basis of the documents provided to the noticee. Further vide the said hearing notice, the noticee was also advised to submit its reply on or before March 21, 2012 and was granted an opportunity of personal hearing on March 27, 2012. The noticee vide its email and letter dated March 22, 2012 sought an adjournment and requested to schedule the hearing on March 30, 2012 as the counsel appearing on its behalf was appearing before Hon'ble SAT on March 27, 2012. However, vide letter dated March 25, 2012, the noticee submitted its reply to the SCN. From the protracted correspondences, it is noted that the noticee took almost an year to submit its reply. The summary of the submissions of the noticee are:
    a. There is no commonality or coordination in relation to the trading undertaken by the Agarwal Group and the Sangneria Group during the relevant period. There was no common objective or purpose, whether of acquisition of shares or voting rights or control, and also of any price fixation. If we were purchasers, it would not be in our interests to push the price up. In any case, it is evident that the proceedings initiated against the Sangneria Group in relation to their trading in the scrip of the Company during the Relevant Period have been dropped.
    b. SEBI had introduced an amendment to the provisions of Regulation 11(2) of the Takeover Regulations on October 27, 2008 allowing consolidation of holding through creeping acquisition upto 5% ("Amendment"). The Amendment applied to persons holding 55% and above but below 75% shareholding in the target company. Such acquisition and consolidation of shareholding applied only to purchases made through the open market and not to acquisitions via bulk/block/negotiated deal or through

preferential allotment. It is submitted that the Agarwal Group, being part of the promoter group of the Company, wanted to consolidate its shareholding in the Company in line with the Amendment. The purchases by members of the Agarwal Group in the paragraph under reply were pursuant to this decision to consolidate their shareholding in the Company. It is submitted that a minor number of shares were sold from time to time at the current market price. The purchases were made from time to time in compliance with legal requirements in this regard.

c. It is pertinent to note that the trading by the Agarwal Group ought not to be consolidated with the trading by the Sangneria Group. As stated above, the trading by the Agarwal Group was independent of the trading by the Sangneria Group, a fact that has already been established. It is submitted therefore that the amount of shares traded by the Agarwal Group ought not be consolidated with the amount of trades executed by the Sangneria Group.

d. It is denied that the upward price variation was caused by the group. The trading by the Agarwal Group was not as a group with the Sangneria Group. The trading by the Agarwal group was with a view to consolidating their shareholding in the Company pursuant to the Amendment. It is denied that the Agarwal Group was seeking to push the price of the scrip of the Company upwards. If there was an increase in the price of the scrip of the Company, it could only be incidental and cannot be surmised to be the objective of such trading. The Agarwal Group did not intend for the price to rise. There is no advantage or benefit that the Agarwal Group (or any other person) has attained on account of the trading by the Agarwal Group. neither has anyone suffered any disadvantage or prejudice on account of such rise in price.

e. At the outset, the orders placed by the Sangneria Group ought not to be consolidated with the orders placed by the Agarwal Group. The number of orders placed in the system is irrelevant. The orders were placed early in the day at slightly lower prices than the prevailing market price. It is apparant the orders would be placed at slightly lower price since the buyer would want to purchase shares at the lowest possible price. In the event that there were

sellers willing to sell at such lower prices, the purchase orders would have matched and the Agarwal Group would have been able to buy such shares at a lower price. However, in light of the fact that there were no sellers for the shares at such lower prices, the purchase orders did not match and the same lapsed at the end of the day.

f. Several orders placed by the Agarwal Group at prices lower than the prevailing market price is demonstrative of the fact that the Agarwal group did not intend to hike the market price of the scrip of the Company. Since there were no sellers available for such lower price, the Agarwal Group had no option but to buy shares at the prevalent market prices.

g. The facts demonstrate that there was no intention on part of the Agarwal Group to 'create artificial buying depth in the market'. Further, the Agarwal Group did not act as a group to indulge in manipulative, fraudulent or unfair trade practices while dealing in the scrip of the Company. It is denied that the Agarwal Group has violated the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(b) and 4(2)(e) of the PFUTP Regulations. Therefore, no penalty is required to be imposed upon the Agarwal Group under Section 15HA of the SEBI Act or otherwise.

h. It is prayed that the Show Cause Notice be dropped without any adverse order, direction or observations against the Agarwal Group.

16. Further, as requested by the noticee, vide hearing notice dated March 26, 2012 an opportunity of personal hearing was granted to the noticee in SEBI Bhavan, Head Office, Mumbai on April 11, 2012. However, the noticee failed to appear on the said date without furnishing any reasons. Subsequently, vide hearing notice dated April 19, 2012, the noticee was granted last and final opportunity of personal hearing on April 24, 2012. The noticee vide letter dated April 23, 2012 authorised Shri. Paras K Parekh, Associate J. Sagar Associates; Mrs. Payal Agarwal, Vice President (Finance), GEE and Mr. Babulal Pradhan, Asst. Company Secretary, GEE to appear on its behalf for the hearing on April 24, 2012. The Authorised Representatives (ARs) of the noticee appeared for the

hearing and made following common submissions for the Agarwal Group—

a. The ARs reiterated submissions made by the noticee vide letter dated March 26, 2012. The ARs submitted that the purchase by the noticees was on account of consolidation of holding made under Regulation 11(2) of the SEBI Takeover Regulations. In this reference, the ARs had undertaken to confirm that they had complied with all the requirements of SEBI Takeover Regulations detailing the steps involved in this regard.
b. The ARs also submitted that the noticees still holds the shares of GEE purchased pursuant to the consolidation of holding and have undertaken to confirm the same along with the documentary proof. The ARs had also undertaken to confirm that no other promoter group entities/PACs have placed orders during the investigation period.
c. With reference to the placing of the buy orders by the noticees way below the market price, the ARs had confirmed that on the same days orders were also executed and had undertaken to submit the quantity and prices of the said executed orders.
d. The ARs were granted 10 days time to submit the aforesaid details/confirmations as undertaken along with further submissions, if any.

17. However, none of the details/confirmations and submissions as undertaken by the ARs were received inspite of lapse of 9 months from the date of hearing. Therefore, I am compelled to pass the order based on the material available on record.

CONSIDERATION OF EVIDENCE AND FINDINGS

18. I have taken into consideration the facts and circumstances of the case, and the material available on record.

19. It was alleged in the SCN that the noticee along with SMA and SLA along with the introducer of all the three entities i.e. BKS and his HUF acted as a group and dealt majorily in the scrip during the period of investigation. In this regard, it has been observed by the Adjudication Orders dated

August 29, 2011, that BKS, BKS HUF, SS and GDS did not act as a part of the main group comprising of the Agarwal Group and therefore the Adjudication proceedings were dropped.

20. It is noted from the LTP analysis of the scrip of GEE that the noticee alone contributed ₹44.45 to the LTP increase.

21. It is also noted that during the investigation period the Agarwal Group bought 1,76,630 shares and sold 2,156 shares. Of these, the noticee bought 1,58,311 shares and sold 1,956 shares.

22. It is observed from the investigation report that the orders were placed by the noticee significantly away from prevailing market rate and hence could not get executed. In this reference the noticee submitted that the orders were placed at prices lower than the prevailing market price is demonstrative of the fact that the noticee did not want to hike the market price of the scrip of the Company. The noticee further submitted that since there were no sellers available for such lower prices, the noticee had no option but to buy shares at the prevalent market rate.

23. From the records it is observed that the noticee being part of the Agarwal Group majorly contributed to an LTP increase of ₹44.45 and also created artificial buying depth in the market by placing the orders significantly away from the market price (considering the quantum of valid buy orders placed by the noticee as stated in pre-para 8) and indulged in manipulative, fraudulent and unfair trade practices while dealing in the scrip of GEE.

24. Further, it is submitted by the noticee that the Agarwal Group, being part of the promoter group of GEE, wanted to consolidate its shareholding in GEE. However, it has been noted that the Agarwal Group kept selling shares in small quantities which does not gel with the submissions of noticee regarding consolidation of shares in GEE.

CONCLUSION:

25. In view of the facts and material made available on record, I am inclined to take a view that the noticee has violated the provisions of Regulation 3(a), (b), (c), (d) and Regulation 4 (1), 4 (2) (a), (b) & (e) of PFUTP Regulations. The text of the said provisions is as follows:-

- **PFUTP Regulations**

"**3. Prohibition of certain dealings in securities**

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 there under;

(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;"

26. The aforesaid violation makes the noticee liable to penalty under Section 15HA of the SEBI Act which is reproduced below:

- **SEBI Act**

"**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."

27. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Rules require that while adjudging the quantum of penalty, 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.*

28. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that the IR has not quantified the profit / loss for the nature of violation committed by the noticee and no quantifiable figures are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the violations committed by the noticee.

29. At this juncture, I would like to quote the judgement of the Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) wherein it was held that :

> "*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*".

30. Having considered the facts and circumstances of the case and after taking into account the factors under section 15J of the SEBI Act, 1992, I find that a penalty of ₹18,00,000 [Eighteen Lakh Only] on the noticee would be commensurate with the violations committed by the noticee in this case.

ORDER

31. In exercise of the powers conferred under Section15 I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby, impose a penalty of ₹18,00,000 [Eighteen Lakh Only] on Vidya Finvest Ltd. in terms of the provisions of Section 15HA of the Securities and Exchange Board of India Act,1992 for the violation of the provisions of Regulation 3(a), (b), (c), (d) and Regulation 4 (1), 4 (2) (a), (b) & (e) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the violations committed by the noticee.

32. The penalty shall be paid by way of Demand Draft drawn in favour of "SEBI – Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this order. The said demand draft shall be forwarded to the General Manager, IVD-ID-4, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

33. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this order is being sent to Vidya Finvest Ltd. and also to the Securities and Exchange Board of India, Mumbai.

Place: Mumbai
Date: January 31, 2013

D. RAVI KUMAR
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER