

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. NP/JS/AO/19/2017]

**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**

In respect of

S.NO.	NAME OF THE ENTITY	PAN
1.	Kaynet Capital Ltd	AAACK3482B

FACTS OF THE CASE IN BRIEF

1. SEBI conducted investigation in the matter of trading activities of certain entities in the shares of M/s Pipavav Defence & Offshore Engineering Company Ltd (Pipavav, hereinafter), M/s Parsavnath Developers Limited (Parsvanath), Glodyne Technoserve Limited (Glodyne) and M/s Tulip Telecom Limited (Tulip), all of which are listed at both BSE and NSE. The stock price of all these companies witnessed sharp and quick fall on both NSE and BSE on July 26, 2012. There was no corporate announcement/ price sensitive information disclosed to the stock exchanges by the above mentioned four companies, which would have impacted the share prices of these scrips negatively, yet the stock price in case of all these four companies fell sharply within few minutes on July 26, 2012. The sharp fall in price happened within a short time span
2. Investigation revealed that that price of Parsvanath decreased from Rs. 61.50/- to Rs. 57.75/- during period prior to Investigation period and from Rs. 57.30/- to Rs. 46.25/- on July 26, 2012 (Rs. 11.05/- or 19.28% decrease from opening price). On July 26, 2012, Sensex moved from 16887.84 to 16639.82 and Nifty moved from 5126.30 to 5043. Investigation also

revealed that on July 26, 2012 the price of the stock of Parsvanath fell sharply and one M/s Kuvam Plast Pvt Ltd sold large quantity of 17,799 shares which accounted for 3.29% of total Market Volume on NSE. On being questioned the reasons for the impugned trade Kuvam Plast Private Limited stated in its reply to the investigation team that orders for the impugned trades were unauthorized and placed by their stock broker Kaynet Capital Limited(noticee, hereinafter). The noticee, stated that orders were placed at the request of Kuvam Plast Pvt. Ltd, however, it was alleged that the noticee executed unauthorized trades in the account of M/s Kuvam Plast Pvt Ltd, which was in violation of Regulations 4(1) and 4(2) (m) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003. It was alleged that the noticee was involved in fraudulent transactions in the scrip of Parsvanath and did not inform its client of the same. As also, the noticee failed to exercise due skill and care while dealing with its client. The notice, therefore, failed to adhere to Clauses A (1), A (2) and B (1) of the Code of Conduct for stock Broker as specified under Schedule II read with Regulation 9 of SEBI (Stock Broker and Sub broker) Regulations, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Jayanta Jash, Chief General Manager, SEBI, vide an order of Whole Time Member, SEBI, dated July 08, 2014, was appointed as the Adjudicating Officer to inquire into and adjudge under Section 15HA & 15HB of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, for the alleged violations of provisions under Clauses A(1), A(2) and B(1) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 9 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 and Regulation 4(1) and 4(2)(m) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (PFUTP Regulation hereinafter) by M/s Kaynet Finance Limited having PAN AAACK3482B (hereinafter referred to as noticee). Subsequently, vide order dated 28th October, 2015, Shri S. V. Krishnamohan, Chief General Manager, was appointed Adjudicating Officer to enquire into and adjudge under Section 15HA & 15HB of the SEBI Act 1992. Vide the internal noting of the Whole Time Member, SEBI, dated December 14, 2015, the undersigned was appointed as the Adjudicating officer to adjudge the matter.

SHOW CAUSE NOTICE (SCN), REPLY AND PERSONAL HEARING

4. The noticee was issued a show-cause notice, dated February 26, 2016 and a copy of the investigation report was also shared with the noticee. The allegation against the noticee was that it carried out unauthorized trade on behalf of its client, and therefore, failed to maintain high standards of integrity, promptitude and fairness in its conduct as mentioned at Clause A(1), A(2), & B(1) of the code of conduct for stock brokers as specified under Schedule II read with Regulation 9 of SEBI (Stock Broker and Sub Broker) Regulations, 1992 and by executing unauthorized transaction in securities on behalf of its client has also violated provision of Regulation 4(1) and 4(2) (m) of PFUTP Regulations. The noticee was, therefore, called upon to show cause as to why an inquiry should not be held against them in terms of Rule 4 of SEBI Adjudication Rules and penalty be imposed under section 15HA & 15HB of SEBI Act, 1992 for executing unauthorized trade on behalf of its client in violation of Regulation 4(1) and 4(2)(m) of SEBI(Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 and for its failure to abide by the code of conduct for stock brokers) (As mentioned at Clause A(1), A(2), & B(1) of the code of conduct for stock brokers as specified under Schedule II read with Regulation 9 of SEBI (Stock Broker and Sub Broker) Regulations, 1992.

REPLIES TO THE CHARGES IN SCN

5. The noticee, vide its reply dated 14.09.2016 stated that the SCN dated 26.02.2016 was misplaced by it and it forgot to reply to the SCN and it sought fifteen days of extension to file its reply. Subsequently, vide its reply dated 06.10.2016, it submitted, inter-alia, as under:

“That the allegations marked by the client on us that the trades of 26th July were executed in an unauthorized manner. The facts are completely baseless as relevant procedures were duly followed. The client was informed on recorded line about his trade execution and was issued Electronic Contract Note which was duly delivered at his registered email id. That it is pertinent to note that we did not receive any written or verbal complaint from the above mentioned client M/s Kuvam Plast Pvt. Ltd about the said trades that the same were executed without their knowledge.

That it is pertinent to note that Kaynet Capital Ltd who is a member of BSE did not execute any trade pertaining to M/s Kuvam Plast Pvt Ltd dated 26th July, 2012. However, the said trades as

mentioned by the Honourable Regulator were executed in NSE as per direction of the client in Kaynet Finance Ltd who is a member of NSE. The trades that were executed in NSE were duly ratified by the client as per compliance procedures.”

The noticee also enclosed the recorded conversation between M/s Kuvam Plast Pvt Ltd and them and also a copy of ECN Delivery Report. The transcript of the conversation made in Hindi is produced below:

The bell rings and the phone is picked up by the other party to whom the call is made

Receiver: Hello!

Caller: Hello, Good Moring, Sir, I am Sanjeev speaking from Kaynet.

Receiver: Speak up.

Sanjeev: Sir, this is a confirmation call regarding your equity transactions. You have been running a debit balance on July 26, 2012 and your code is 301K05. Against that in Parsvanath Developers a quantity of 17799 was sold at Rs. 50.56 – this is for July 26, and even today, you were running debit balance so we sold 4,32,397 quantity @ 37.05.

Ok, Sir.

Receiver: Hmmm.

Sanjeev: Thank you Sir.

The noticee vide its further submissions dated December 3, 2016, inter-alia, submitted that *“All necessary precautions were taken on trades executed dated 26th July, 2012. The client was informed about his order call through recorded call line. Further, the client was issued ECN well on time as per Regulators guidelines. The client never objected and raised his voice against impugned trades. Further it is evident to note that client did give us a cheque of Rs 1 Crore dated 31st July 2012. Thus with the above facts in place it is evident that all trades were legitimate as recorded voice order call was duly accepted, Electronic Contract Note was duly accepted and never questioned by the client, further client gave Rs 1 Crore to clear his outstanding debit balance. Further, till date we have not received any complaint from the clients end either verbal or in writing about the impugned trade dated 26th July 2012.”*

PERSONAL HEARING

6. The noticee, vide letter dated November 15, 2016, was given an opportunity of a personal hearing on November 29, 2016. The noticee vide its letter dated November 24, 2016 intimated that they would be represented by Mr Mukesh Shah, Chairman and Managing Director of the noticee and Mr Manoj Tikoo, Vice President of the noticee. During the course of personal hearing, noticee relied upon submissions made in its replies to SCN.

CONSIDERATION OF ISSUES AND FINDINGS

7. The issues under consideration in respect of the case are as under:
 - a) Whether there is any violations of Regulation 4(1) and 4(2) (m) of SEBI (PFUTP) Regulations, 2003 and Clause A (1), A (2), & B (1) of the Code of Conduct for Stock Brokers as prescribed schedule II read with Regulation 9 of SEBI (Stock Broker and Sub Broker) Regulations, 1992 by the noticee.
 - b) Does the violation, if any, attract monetary penalty under section 15HA & 15 HB of the SEBI Act, 1992?
 - c) If so, what should be the quantum of monetary penalty to be imposed?
8. It would be important to refer to the relevant provisions of the Code of Conduct for Stock Brokers as prescribed under SEBI (Stock Broker and Sub Broker) Regulations, 1992 & Regulation 4(1) 4(2) (m) of PFUTP Regulations which read as under:
 - 8.1 *Clause A (1) of the Code of Conduct for Stock Brokers states, "INTEGRITY: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business."*
 - 8.2 *Clause A (2) of the Code of Conduct for Stock Brokers states, Exercise of due skill and care: "A stock-broker shall act with due skill, care and diligence in the conduct of all his business."*
 - 8.3 *Clause B (1) of the Code of Conduct for Stock Brokers states says, ".... A stock-broker, in his dealings with the clients and the general investing public, shall faithfully execute the orders for buying and selling of securities at the best available market price and not refuse to deal with a Small Investor merely on the ground of the volume of business involved. A stock-broker shall promptly inform his client about the execution or non-*

execution of an order, and make prompt payment in respect of securities sold and arrange for prompt delivery of securities purchased by clients.”

8.4 Regulation 9 of the SEBI (Stock Brokers & Sub-brokers) Regulations, 1992 states, “Any registration granted by the Board under Regulation 6 shall be subject to the following conditions, namely,-

(b) he shall abide by the rules, regulations and bye-laws of the stock exchange which are applicable to him;

(f) he shall at all times abide by the Code of Conduct as specified in Schedule II,”

8.5 Regulation 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulation, 2003, states, “Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

8.6 Regulation 4(2) (m) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulation, 2003 states, “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:—an intermediary not disclosing to his client transactions entered into on his behalf including taking an option position.”

FINDINGS

9. Upon perusal of the documents available on record and submissions made by the noticee, I find that noticee is a stock broker registered with SEBI and has executed orders for trade in shares of Parsvanath on behalf of its client Kuvam for total 17,799 shares on July 26, 2012 which constituted 3.29% of total volume in the stock at NSE. Following observations are made in this regard:

- i. Noticee has submitted document log report that shows transmission of digital contract note issued to Kuvam Plast Private Limited/Manoj Tikoo on July 27, 2012 at his email id kuvam.plast@yahoo.com. On record, there is no dispute upon issuance and receipt of contract note by the client of the noticee. Even, the investigation report has not brought out any adverse findings on the same.

- ii.* Noticee had submitted compact disc containing recorded conversation with authorized person of Kuvam on the registered number, where client had been informed of the trade executed on its behalf.
 - iii.* Further, Kuvam had made payment of Rs 1 crore on 31st July 2012 to clear its outstanding balance to stock broker Kaynet. This is also corroborated by the copy of ledger statement submitted by the noticee wherein a credit entry of Rs 1,00,00,000 is reflected vide an instrument reference no BR010700069 dated July 31, 2012.
 - iv.* The client had not made any complaint of unauthorized trade to Stock Exchange/SEBI. Kuvam Plast in its replies to SEBI Investigation team submitted that orders for the impugned trades were unauthorized and placed by their broker Kaynet Capital Limited, however, the records, evidences, call recording & statement of account speak contrary to the claim made by Kuvam Plast Ltd.
10. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the noticee, I find that Kaynet Capital Limited has not executed unauthorized trade while dealing and trading for its client M/s Kuvam Plast Private Limited(Kuvam). The trading member has submitted documents that show electronic contract note was delivered to Kuvam at its registered email id well within the stipulated time and there has not been any objection raised by Kuvam to Stock Exchange/SEBI. Also the recorded conversation clarifies that Kuvam was aware of the trading done by the Kaynet in its account. Further, Kuvam had made a payment of Rs 1 Crore on July 31, 2012 after the date of transaction on July 26, 2012 to clear its outstanding. There does not appear to be a case that stock broker had executed any unauthorized trade or trade without knowledge of its client Kuvam. In view of the same, I am inclined to accept the contention of the noticee.

ORDER

- 11. In view of the above, this SCN stands disposed of accordingly.
- 12. 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, a copy of this order is being sent to the Noticee viz. Kaynet Capital Private Ltd and also to Securities and Exchange Board of India.

Date: January 31, 2017
Place: Mumbai

Nagendraa Parakh
Adjudicating Officer