WTM/AB/IVD/ID10/10028/2020-21

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 15I (3) read with Section 19 of the Securities and Exchange Board of India, 1992 – In respect of Adjudication order dated August 14, 2018 passed against Seema Securities Ltd. (PAN: AACCS7683Q) in the matter of M/s. Pipavav Defence & Offshore Engineering Company Ltd., M/s. Parsvanath Developers Ltd, M/s. Glodyne Technoserve Ltd. and M/s. Tulip Telecom Ltd.

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1. Present proceedings have emanated from a show cause notice dated November 09, 2018 (hereinafter referred to as "**SCN**") issued by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") under Section 15-I(3) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") to M/s. Seema Securities Ltd. (hereinafter referred to as "**the Noticee**") calling upon it to show cause as to why appropriate penalty should not be imposed against the Noticee in terms of Section 15HA and Section 15HB of SEBI Act, 1992 for the violation as alleged in the show cause notice dated February 26, 2016 issued by adjudicating officer which led to passing of Adjudication Order dated August 14, 2018 (hereinafter referred to as the '**AO Order'**).

2. Show Cause Notice dated February 26, 2016 by adjudicating officer came to be issued as SEBI had initiated adjudication proceedings under Section 15HA and 15HB of SEBI Act, 1992 against the Noticee, a stock broker and a member of BSE, for allegedly having executed the unauthorized trades in the account of Ramkripa Securities Pvt. Ltd. (hereinafter referred to as '**Ramkripa**') and thereby failing to adhere to Clauses A(1), A (2) and B(1) of the Code of Conduct as prescribed under the Schedule II read with Regulation 9 of SEBI (Stock Broker and Sub broker) Regulations, 1992 and also violating Regulation 4(1) and 4(2)(m) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as '**SEBI (PFUTP) Regulations, 2003**'). Thereafter, the AO Order under Section 15-I of the SEBI Act, 1992 came to be passed wherein the adjudication proceedings initiated against the Noticee were disposed of by the

adjudicating officer with the following observations:

> *"……...7. From the material available on record. I noted that Ramkripa was the client of the Noticee during the investigation period and during the price fall in Glodyne, Ramkripa sold shares of Glodyne, for which 11B proceedings were initiated against Ramkripa for the violation of regulations 3 and 4 of PFUTP Regulations, 2003. OD initiated the instant adjudication proceedings against the Noticee for the said unauthorized trades of Ramkripa in the scrip of Glodyne. Ramkripa had traded the impugned shares of Glodyne through the Noticee. I note from the WTM order dated January 18, 2013 that with regard to the alleged trading through Noticee, Ramkripa has submitted that it had been cheated by the broker i.e. the Noticee and the alleged shares were sold by the broker without its permission and it had complained to the respective stock exchanges for the illegal actions of brokers. However, WTM SEBI vide order dated January 18, 2013 had not acceded to the submission of Ramkripa on the ground that Ramkripa has not produced any evidence in support of its claim that those trades were carried out in its accounts by the Noticee without its instruction/permission. Further, I observe from the material available on record that no evidence had been submitted by IA that the Noticee carried out unauthorized trade for its client Ramkripa except the reply of Ramkripa to OD vide letter dated February 09, 2014. Also, I observe from the order dated June 26, 2014 passed by the WTM SEBI that Ramkripa had been given benefit of doubt as no adverse observation could be found in the investigation.*
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> *8.In view of the above, I am inclined of give benefit of doubt to the Noticee in light of the WTM, SEBI orders dated January 18, 2013 and June 25, 2014."*

Personal Hearing, Replies and Submissions:

3. I note that personal hearing for the Noticee was held on September 14, 2020. The Noticee has filed its merit based reply dated August 27, 2020 to the SCN. The Noticee has also filed its written submissions dated September 24, 2020. The following is a gist of the contentions raised by the Noticee in its reply and in its submissions made during the personal hearing:

   a. We are members of BSE since past 20 years. We have never been found guilty by any authority of illegal trading activities of any scrip which may harm SEBI objectives, either directly or indirectly.

b. The then director, Shri Sureshkumar Nandlal Sharma of Ramkripa, came across us and opened trading account for doing share trading in BSE in the name of Ramkripa.

c. All trading done in the account of Ramkripa was done on the instigation/ instructions of Sureshkumar Nandlal Sharma only.

d. Gradually, it came to our notice that Sureshkumar Nandlal Sharma's intentions were bad since inception and he was a foul player of the share market, as is very much evident from the 21 orders passed by SEBI against two other companies {intermediaries registered with SEBI i.e. Sanchay Fincon Ltd. (active trading member of BSE) and Sanchay Finvest Ltd. (listed at BSE and active trading member at NSE)}.

e. Ramkripa has no locus standi as on date and it is a shell company. It did not file balance sheet with MCA after March 31, 2016 and has not filed balance sheet as on March 31, 2014 with MCA.

f. In view of the acquittal of the actual accused i.e. Ramkripa, we do not find any infirmity in the AO Order of not imposing monetary penalty on us.

g. Sureshkumar Nandlal Sharma traded in the name of his Company i.e. Ramkripa in the scrip of Glodyne, purely in capacity of client with us.

h. Margin funding was also done to him with intention to earn interest and brokerage. As on date of mid-cap crash i.e. July 26, 2012, Ramkripa had a big amount of debit balance with us. Once the scrip started hitting lower circuit, shares were sold as per our Risk Management Policy. However, even after having sold some shares, there was still debit balance of Rs. 4.48 Crores {2.59 Crores (AGSSL) + 1.89 Crores (Seema)} in Ramkripa's account in our books. Every attempt was made to approach Sureshkumar Nandlal Sharma but to no avail. Ultimately the case ended up in arbitration, in BSE giving award in our favor while in NSE giving award in Ramkripa's favor. Till date the arbitration award in BSE is not honoured by Ramkripa.

i. For the alleged trades of July 2012, first show cause notice was issued on February 25, 2016 i.e. after more than 42 months of trades. Second SCN was issued on November 9, 2018 i.e. after more than 75 months of trades and holding hearing on September 14, 2020 i.e. after further more than 22 months. There is an inordinate delay in these proceedings which is unsustainable.

Consideration of submissions and findings thereon:

4. Before dealing with the contentions of the Noticee, it would be appropriate to refer to the brief background of the matter which is important for determination of the issue involved in the present matter. The background facts of the case are as under:

(i) On the basis of market surveillance observation in the downward movement in the price of four scrips namely M/s. Pipavav Defence & Offshore Engineering Company Ltd., M/s. Parsvanath Developers Ltd, M/s. Glodyne Technoserve Ltd. and M/s. Tulip Telecom Ltd., on July 26, 2012, SEBI had passed an ex-parte ad-interim order dated August 3, 2012 against 19 entities including Ramkripa, restraining them from accessing the securities market and further prohibiting them from buying, selling and dealing in securities in any manner till further directions.

(ii) In response to the allegations made against it in the ex-parte ad interim order dated August 03, 2012, during the proceedings before the WTM-SEBI, Ramkripa had *inter- alia* submitted that it had been cheated by the Noticee, as the shares were sold by the Noticee in the scrip of Glodyne Technoserve Ltd. (hereinafter referred to as '**Glodyne**') without its permission and it had complained to the stock exchanges for the illegal actions of the Noticee. However, as Ramkripa had not produced any evidence in support of its claim and hence, WTM-SEBI did not find any reason to differ from the *prima facie* findings in the ex-parte ad interim order and confirmed the directions issued vide the ex-parte ad interim order against Ramkripa, vide the confirmatory order dated January 18, 2013 (hereinafter referred to as the "**Confirmatory**

Order').

(iii) Upon completion of investigation in the matter and as the investigation could not establish anything adverse against 8 out of the 19 entities, benefit of doubt was accorded to the 8 entities concerned including Ramkripa. Accordingly, no further action was called for against the said 8 entities and the directions issued against those 8 entities including Ramkripa, vide the aforesaid ex-parte ad-interim order and confirmed vide different confirmatory orders including the Confirmatory Order, were revoked vide the final order dated June 26, 2014 passed by SEBI.

(iv) It is pertinent to note here that though no adverse findings were observed by the investigation against the suspected entities for price manipulation, but the investigation on the basis of replies of the Noticee and Ramkripa, examination of client KYC documents of Ramkripa and the NSE arbitration panel award, had concluded that the Noticee had conducted unauthorized trades from the account of Ramkripa in the scrip of Glodyne on July 26, 2012, for which SEBI had initiated adjudication proceedings against the Noticee for failing to follow Clauses A(1), A (2) and B(1) of the Code of Conduct as prescribed under the Schedule II read with Regulation 9 of SEBI (Stock Broker and Sub broker) Regulations, 1992 and violating Regulation 4(1) and 4(2)(m) of SEBI (PFUTP) Regulations, 2003.

5. I note that a proceedings under Section 15-I(3) of SEBI Act, 1992 can be undertaken if an order passed by the adjudicating officer is erroneous to the extent that it is not in the interests of securities market.

6. The relevant extract of the Confirmatory Order which has been relied upon in the AO Order which is reproduced as under:

> "……."4. I have considered the written and oral submissions of the noticee (Ramkripa) and the relevant material available on record. The limited issue to be considered in this order is to decide whether, based on the available material on record and after considering the submissions made by the noticee, the directions issued by vide ad interim ex-parte order need to be continued, revoked or modified in any

manner, in so far as it relates to the noticee.

5. ……..

6. With regard to the alleged trading through A.G. and Seema, the noticee has submitted that it had been cheated by them and the alleged 8292 and 12981 shares respectively were sold by the brokers without its permission and it had complained to the respective stock exchanges for the illegal actions of A.G. and Seema. However, the noticee has not produce any evidence in support of its claim that those trades were carried out in its accounts by A.G. and Seema without its instruction/permission. I, therefore, do not find any reason to differ from the prima facie findings in the interim order with regard to this trade of the noticee……"

7. The ex-parte ad interim order was passed against 19 entities including Ramkripa who was the client of the Noticee. As can be noted from the perusal of the observations of WTM-SEBI in the Confirmatory Order, the limited purpose for consideration before the WTM-SEBI in those proceeding was whether Ramkripa has made out a case for revocation of interim directions which were issued against Ramkripa vide the ex parte ad interim order, without hearing the noticees therein. Therefore, the limited scope of the proceedings before WTM-SEBI in passing Confirmatory Order was to confirm or revoke the directions issued vide ex parte interim order against the Noticee, after hearing the explanation furnished by Ramkripa. It is only when Ramkripa claimed during the post decisional hearing before WTM-SEBI about the unauthorized trades in his accounts by the Noticee, that WTM-SEBI, made the observations that no corroborating proof was provided by Ramkripa in support of its claim. I note that the observations made by WTM-SEBI in the Confirmatory Order were merely a remark in respect of inadequacy of evidence to differ from the *prima facie* findings recorded in the ex-parte ad interim order and the said observations were in no way a determination about the dispute in respect of the unauthorized trades. I note that the proceedings against the alleged manipulators including Ramkripa, were the enforcement proceedings initiated by SEBI for the alleged violations of the provisions of the securities laws. The Noticee herein was not even a party to the said enforcement proceedings. Therefore, dispute between the Noticee and Rampkripa with respect to unauthorized trades was never and can never be question for determination in such enforcement proceedings against the violators of securities laws. Therefore, I find that, the reliance placed by the Adjudicating Officer upon the observations in the Confirmatory Order in respect

of the unauthorized trades, was thus misplaced. Hence, I find that the AO Order was erroneous to that extent. I also note that, both the orders i.e. the ex-parte ad-interim order dated August 3, 2012 and the Confirmatory Order, were passed by SEBI against the alleged manipulators on the basis of the preliminary inquiry by SEBI, pending further investigation in the matter. Thus, the AO Order was erroneous in relying on the observations of the Confirmatory Order which itself were transitory in nature.

8. Another error pointed out against the AO Order by the SCN, is that it records that it is observed from the material available on record that no evidence had been submitted by the investigating authority that the Noticee and A G Shares and Securities Ltd. carried out unauthorized trades for their client Ramkripa except the reply of Ramkripa vide its letter dated February 09, 2014. I note that apart from the reply of Ramkripa, the investigating authority has also relied on the client KYC documents of Ramkripa and the award passed by the Arbitration Panel at NSE on December 18, 2013 in arbitration Ref. no. CMM-0041/2013. I note that though the NSE Arbitration panel award dated December 18, 2013 is not relevant for the purpose of action against the Noticee, who is a member of BSE, however, the AO Order was erroneous to hold that no evidence has been provided by the Investigating Authority. I note that investigation found that as per the KYC documents of Ramkripa one Shri Suresh Sharma was appointed as authorised signatory to deal with all financial and non-financial transactions of Ramkripa with the Noticee. I note that investigation report was part of the record of the adjudication proceedings and the same was also an annexure to the show cause notice dated February 26, 2016 issued by the adjudicating officer. Therefore, the AO Order is erroneous when it records that no evidence had been submitted by the investigating authority that the Noticee carried out unauthorized trades for their client Ramkripa except the reply of Ramkripa vide its letter dated February 09, 2014.

9. From the facts and circumstances of the present case, I note that the substratum of the present matter was a dispute between a stock broker and its client with respect to alleged ‘unauthorized trades’. Such claims/counter claims are disputed question of facts between two private parties which cannot be adjudicated by SEBI as proceedings before SEBI are in the nature of enforcement proceedings pursuant to

issue of a show cause notice alleging violations of securities laws by the defaulting entities. For determining such private disputes and adjudging the claims and counter claims arising out of such disputes, an elaborate framework for alternate dispute mechanism has been provided by SEBI under the aegis of the respect stock exchanges. In this regard, reference may also be made to the observations made by Hon'ble SAT which are reproduced hereunder:

a. ***Ibrahim Ahmed vs. SEBI (Appeal No. 40 of 2009) decided on June 30, 2009***– "……This dispute between the parties cannot be gone into by the Board which is a statutory regulator meant to protect the interest of the investors and to regulate the securities market……..."
b. ***MCS Ltd vs. SEBI (Appeal No. 107 of 2008) decided on September 26, 2008-*** "……..The Board rightly directed the appellant to return all the data/records and the same has been complied with by the appellant. As regards the dues which the appellant is claiming, it would be open to it to resort to proceedings before an appropriate forum for recovering the same. The Board cannot take upon itself to adjudicate such contractual issues……"
c. ***Hameed Ullah Lalji alias Tony Ullah vs. SEBI (Appeal No. 123 of 2008) decided on January 12, 2009 -***"……These disputes are obviously of a civil nature and can appropriately be decided by a Civil Court. The Board cannot adjudicate such disputes. It can only regulate the market……"

10. The adjudication proceedings that were initiated in the present matter against the Noticee by the issue of show cause notice, were in the nature of proceedings for violation of provisions of securities laws, against a stock broker acting as an intermediary in the securities market. In light of the foregoing, I note that the errors committed in the AO Order in respect of misplaced reliance on the findings in the Confirmatory Order and incorrect appreciation of evidence on record, as discussed in the pre-paras, are prejudicial to the interests of the securities market and hence warrants the invocation of powers under section 15-I (3) of the SEBI Act, 1992 against the AO Order.

11. I note that for the impugned trades in the scrip of Glodyne, Ramkripa had also initiated arbitration proceedings against the Noticee under the dispute resolution mechanism at BSE for unauthorized trades executed by the Noticee in its account on the platform of BSE. The panel of arbitrators passed an award dated December 6, 2013 vide which the claims made by Ramkripa against the Noticee for the alleged unauthorized trades executed on BSE, were rejected and the counterclaim made by the Noticee against Ramkripa was accepted. I note that Ramkripa had filed Arbitration Petition No. 1095 of 2014 before Hon'ble Bombay High Court, under Section 34 of the Arbitration & Conciliation Act, 1996, thereby impugning the award passed by the arbitration panel of BSE. The said Arbitration Petition filed by Ramkripa was tagged alongwith the Arbitration Petition No. 2 of 2015 filed by A G Shares and Securities Ltd. (sister concern of the Noticee) against an award passed by appellate arbitration tribunal of NSE in favour of Ramkripa, in respect of unauthorized trades executed on NSE, vide a common judgement and order dated January 28, 2019 passed by the Hon'ble Bombay High Court. By the said judgment and order, Hon'ble High Court allowed the Arbitration Petition No. 1095 of 2014 by setting aside the award dated December 6, 2013 passed by arbitration panel of BSE and upholding the award passed by the arbitration panel of NSE as upheld by the Appellate Arbitration Tribunal of NSE. As regards, the consequence of setting aside of an Arbitration award under section 34 of the Arbitration and Conciliation Act, 1996, the observations of the Hon'ble Delhi High Court in the judgement dated July 2, 2014 passed in the matter of ***State Trading Corporation of India Ltd. v. M/s Toepfer International Asia Pte. Ltd. 2014 (144) DRJ 220***, are worth noting:

> "7. Arbitration is intended to be a faster and less expensive alternative to the courts. If this is one" s motivation and expectation, then the finality of the arbitral award is very important. The remedy provided in Section 34 against an arbitral award is in no sense an appeal. The legislative intent in Section 34 was to make the result of the annulment procedure prescribed therein potentially different from that in an appeal. In appeal, the decision under review not only may be confirmed, but may also be modified. In annulment, on the other hand, the decision under review may either be invalidated in whole or in part or be left to stand if the plea for annulment is rejected. Annulment operates to negate a decision, in whole or in part, thereby depriving the portion negated of legal force and returning the parties, as to that portion, to their original litigating positions. Annulment can void, while appeal can modify……."

12. I note that, the material available on record does not indicate that, after the judgement and order dated January 28, 2019 passed by the Hon'ble Bombay High Court, Ramkripa has pursued its claim against the Noticee for unauthorized trades executed on BSE before any court/ forum. Thus, the allegation against the Noticee that it had executed unauthorized trades in the account of Ramkripa on BSE, is not made out.

13. In view of the aforesaid, the SCN issued against Noticee is disposed of without imposition of penalty.

14. This is order comes into force with immediate effect.

15. Copy of the order shall be sent to the recognized stock exchanges, depositories and the Noticee for information and necessary action, if any.

Sd/-

Date: December 29, 2020 **ANANTA BARUA**

Place: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA