

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BS/AO/53-60/2018-19]

UNDER SECTION 23-I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956, READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of:

Sr. No.	Name	PAN
1.	Shri Chetan Dogra	ABNPD1798C
2.	CRS Traders and Exporters Pvt. Ltd.	AACCC7337B
3.	Daffodil Tradex Pvt. Ltd.	AACCD5773A
4.	Shri Pavan Kumar Satyanarayan	AOAPA3018C
5.	Shri Rajesh Mishra	AAXPM3208P
6.	Shraddha Entertainment Pvt. Ltd.	AAKCS8199P
7.	Subah Multimedia Pvt. Ltd.	AAKCS8196C
8.	Tulip Expotrade Pvt. Ltd.	AACCT6697B

In the matter of IFL Promoters Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted investigation into the alleged irregularities in the scrip of IFL Promoters Ltd. (hereinafter referred to as 'the company/IFL') for the possible violation of the provisions of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as SCRA) by Shri Chetan Dogra, CRS Traders and Exporters Pvt. Ltd., Daffodil Tradex Pvt. Ltd., Shri Pavan Kumar Satyanarayanan, Shri Rajesh Mishra, Shraddha Entertainment Pvt. Ltd., Subah Multimedia Pvt. Ltd. and Tulip Expotrade Pvt.Ltd. (hereinafter referred to as the Noticees and Noticee Nos. 1 to 8 respectively) during the period January 04, 2010 to September 30, 2010 (hereinafter referred to as the Investigation Period).
2. It was observed that the Heena Developers P. Ltd. (hereinafter referred to as Heena) had transferred 5,19,000 shares of the company to the Noticees in off market transactions. It was observed that Heena did not receive the payment of a total consideration of ₹88,18,600 from the Noticees, which is in violation of Section 2(i) of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "SCRA") for a spot delivery contract. It is, therefore, alleged that the Noticees had violated Section 16 of SCRA, 1956, read with SEBI Notification no. S.O. 184(E) dated March 01, 2000 (hereinafter referred to as "Notification").

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri S.V. Krishnamohan was appointed as the Adjudicating Officer vide order dated August 08, 2016 to inquire and adjudge under Section 23H of the SCRA, the alleged violation of Section 16 of the SCRA read with SEBI Notification No. G.S.R. 219 (E) dated March 02, 2000 and Sections 13 and 18 of SCRA read with Section 2(i) of the SCRA.
4. Subsequently, vide order dated September 15, 2017, the undersigned was appointed as the Adjudicating Officer in the place of Shri S.V. Krishnamohan.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Common Show Cause Notice dated August 31, 2016 (hereinafter referred to as 'SCN') was issued to the Noticees in terms of Rule 4 of SCRA (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as the Rules) read with Section 23I of SCRA for the violations as specified in the SCN.
6. The SCNs issued to the Noticees 1 to 3 and 6 to 8 could not be delivered to the Noticees, Hence, the same were published in the newspaper on February 27, 2018.
7. Vide his reply dated June 02, 2017, Noticee No. 4 filed his reply to the SCN and submitted that :
 - I. The Noticee No. 4 had some commercial dealings with Mr Chetan Dogra pursuant to which the Noticee No. 4 had to receive Rs 11, 25,000/- from Mr Chetan Dogra, who had also issued cheque to the No. 4 in this regard.
 - II. Mr Chetan Dogra then promised Noticee No. 4 to transfer the shares worth Rs. 11-12 lacs and asked the Noticee No. 4 to sell the same in the market and realize the amount due to him. The Noticee No. 4 then received about 74,000 shares of the company IFL Promoters Ltd. in off-market on 16.06.2010
 - III. The Noticee No. 4 then sold these shares in the open market and realized about Rs.1055004.57/-.
8. Noticee No. 5 vide his reply dated March 18, 2017 submitted that he had purchased the shares of the company on 10.06.2016 and on 16.06.2016. The shares in question were purchased through one Shri Bhavneet Singh sub-broker of M/s Fairwealth Securities Ltd. On purchase of the said shares, Noticee No. 5 had immediately, on the same day made the entire payment for the said shares.

9. Subsequently vide Hearing Notice dated March 08, 2017, Noticees were granted an opportunity of being heard on March 21, 2018. However none of the Noticees appeared for the aforesaid hearing.
10. Subsequently vide hearing notice dated April 02, 2018, Noticees were granted a final opportunity of being heard on April 13, 2018. The hearing Notices addressed to Noticee Nos. 1 to 3 and 6 to 8 were returned undelivered which were subsequently published in the newspaper on May 30, 2018 in terms of SCR Adjudication Rules.
11. Noticee No. 4 appeared for the hearing on April 13, 2018 and submitted that he had to receive 11.25 Lakhs from Noticee No. 1. However, Noticee No. 4 received the shares of the company in lieu of the said money as the cheque tendered by Noticee No. 1 bounced on account of insufficient funds. Noticee No. 4 later sold those shares in the market and could recover only 10.50 Lakhs. The Authorized Representative of Noticee No. 4 had also undertaken to provide bank statement of Noticee No. 4 and other relevant documents to show that he was to receive money from Noticee No. 1 by April 19, 2018. However, Noticee No. 4 have failed to provide the said documents till date.
12. Noticee No. 5 also appeared for the hearing on April 13, 2018 and submitted that he bought the shares of the company in an off-market transaction and made payment in cash. Noticee No. 5 had also undertaken to provide details of the transaction including proceeds of the sale by April 21, 2018. However, Noticee No. 5 have failed to provide the same till date.

CONSIDERATION OF ISSUES AND FINDINGS

13. I have carefully examined the material available on record. The issues that arise for consideration in the present case are :

- a. Whether the Noticees have violated Section 16 of the SCRA read with SEBI Notification No. G.S.R. 219 (E) dated March 02, 2000 and Sections 13 and 18 of SCRA read with Section 2(i) of the SCRA.
- b. Does the violation, if established, attract monetary penalty under Section 23H of SCRA?
- c. If yes, then what should be the quantum of penalty?

FINDINGS

14. Before I proceed with the matter, it is pertinent to mention the relevant legal provisions which are reproduced below:

2(i) "spot delivery contract" means a contract which provides for,-

(a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depositor

13. Contracts in notified areas illegal in certain circumstances.

If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or States or area] that it is necessary so to do, it may, by notification in the Official Gazette, declared this section to apply to such State or States or area, and thereupon every contract in such

State or States or area] which is entered into after the date of the notification otherwise than between members of a recognised stock exchange or recognised stock exchanges in such State or States or area] or through or with such member shall be illegal :

Provided that any contract entered into between members of two or more recognised stock exchanges in such State or States or area, shall—

(i) be subject to such terms and conditions as may be stipulated by the respective stock exchanges with prior approval of Securities and Exchange Board of India;

(ii) require prior permission from the respective stock exchanges if so stipulated by the stock exchanges with prior approval of Securities and Exchange Board of India.

Section 16:-Power to prohibit contracts in certain cases.

(1) "If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.

(2) All contracts in contravention of the provisions of sub-section (1) entered into after the date of notification issued thereunder shall be illegal."

18. Exclusion of spot delivery contracts from sections 13, 14, 15 and 17.

(1) Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.

(2) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that in the interest of the trade or in the public interest it is

expedient to regulate and control the business of dealing in spot delivery contracts also in any State or area (whether section 13 has been declared to apply to that State or area or not), it may, by notification in the Official Gazette, declare that the provisions of section 17 shall also apply to such State or area in respect of spot delivery contracts generally or in respect of spot delivery contracts for the sale or purchase of such securities as may be specified in the notification, and may also specify the manner in which, and the extent to which, the provisions of that section shall so apply.

Notification No. SO 184(E), dated 1-3-2000

“In exercise of the powers conferred by sub-section (1) of section 16 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), read with Government of India Notification No. S.O. 573(E), dated 30th July, 1992 and Notification No. 183 (E), dated 1st March, 2000 issued under section 29A of the said Act, the Securities and Exchange Board of India (hereinafter referred to as ‘the Board’) being of the opinion that it is necessary to prevent undesirable speculation in securities in the whole of India, hereby declare that no person in the territory to which the said Act extends, shall, save with the permission of the board, enter into any contract for sale or purchase of securities other than such spot delivery contract or contract for cash or hand delivery or special delivery or contract in derivatives as is permissible under the said Act or the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations made under such Acts and rules, regulations and bye-laws of a recognized stock exchange :

Provided that any contracts for sale or purchase of Government securities, gold related securities, money market securities and ready forward contracts in debt securities entered into on the recognized stock exchange shall be entered into in accordance with,—

(a) the rules or regulations or the bye-laws made under the Securities Contracts (Regulation) Act, 1956 (42 of 1956), or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or the directions issued by the Securities and Exchange Board of India under the said Acts;

(b) the rules made or guidelines or directions issued under the Reserve Bank of India Act, 1934 (2 of 1934) or the Banking Regulations Act, 1949 (10 of 1949) or the Foreign Exchange Regulation Act, 1973 (46 of 1973) by the Reserve Bank of India;

(c) the provisions contained in the notifications issued by the Reserve Bank of India under the Securities Contracts (Regulation) Act, 1956 (42 of 1956).”

15. In the present case, Noticee Nos. 1 to 3 and 6 to 8 have neither replied to the SCN nor availed the opportunity for hearing. In this context, the silence on the part of the Noticee Nos. 1 to 3 and 6 to in this inquiry clearly indicates that Noticee Nos. 1 to 3 and 6 to do not want to answer any inquiry in respect of alleged violation stated in the SCN.
16. Further, reliance can be placed upon the judgment of the Hon'ble Securities Appellate Tribunal in the matter of Classic Credit Limited Vs. SEBI (Appeal No. 68 Of 2003, Date of Decision December 8, 2006) regarding the significance of the filling the reply to the show cause notice, which stated as follows *“the appellant 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. I also observe that the Hon'ble Securities Appellate Tribunal in the matter of Sanjay Kumar Tayal & Ors. v SEBI (Appeal 68 of 2013 dated February 11, 2014) had inter alia observed that:

“...appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices...”

18. Further, it may be noted that the “Spot Delivery Contract” is defined under section 2(i) (a) of SCRA Act, 1956 as “a contract which provides for, actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality.”
19. Notification SO 184(E) dated March 1, 2000 issued by SEBI under section 16(1) of SCRA provides that it is necessary to prevent undesirable speculation in securities in the whole of India, hereby declare that no person in the territory to which SCRA extends, shall, save with the permission of the board, enter into any contract for sale or purchase of securities other than such spot delivery contract or contract for cash or hand delivery or special delivery or contract in derivatives as is permissible under SCRA, 1956 or the SEBI Act, 1992, and the rules and regulations made under such Acts and rules, regulations and byelaws of a recognized stock exchange.
20. In terms of the aforesaid Section 2(i) (a) of the SCRA, 1956, a contract in securities market will be completed on actual delivery of shares and payment of consideration either on the same day or the next day of the contract. In other words, a spot contract in securities market is said to be completed only if delivery/transfer of securities and payment therefor has been made within the time limit prescribed under Section 2(i) (a) of SCRA, 1956.
21. Therefore, in a ‘spot delivery contract’ the payment of consideration amount must be done either on the same day or the next day of the transaction as stipulated under section 2(i) (a) of SCRA, 1956. However, in the instant case, Heena had transferred 5,19,000 shares of the company to the Noticees in off market transactions. It was observed from the material available on record that Heena did not receive any money against total consideration of ₹88,18,600 due from the Noticees and hence the transaction is not in conformity with the provisions of section 2(i) of the SCRA, 1956. Therefore, the Noticees have contravened the provisions of Section 16 of SCRA,

1956, read with SEBI Notification no. S.O. 184(E) dated March 01, 2000 read with Section 2(i) (a) of the SCRA, 1956. Details of the transactions the Noticees had with Heena are the following:

S. No	Name of Entity/Individual	Whether Payment Received	Date of off-market transaction	No of shares transferred in off market	Mode of receipt of payment- Cash, Cheque, adjusted with other transfers	Amount Received	Date of receipt	Amount adjusted	Amount yet to be received
		Yes/No							
1	Chetan Dogra	No	30/06/2010	50000	N.A.	Nil	N.A.	Nil	16,50,000
			02/07/2010	50000					
2	CRS Traders and Exporters Pvt Ltd	No	16/06/2010	74000	N.A.	Nil	N.A.	Nil	11,21,100
3	Daffodil Tradex Pvt. Ltd.	No	16/06/2010	74000	N.A.	Nil	N.A.	Nil	11,21,100
4	Pavankumar Satyanarayan Agrawal	No	16/06/2010	74000	N.A.	Nil	N.A.	Nil	11,76,600
5	Rajesh Mishra	No	10/06/2010	10000	Cash	Nil	N.A.	Nil	3,86,500
			16/06/2010	15000					
6	Shraddha Entertainments Pvt. Ltd.	No	16/06/2010	74000	N.A.	Nil	N.A.	Nil	11,21,100
7	Subah Multimedia Pvt. Ltd.	No	16/06/2010	74000	N.A.	Nil	N.A.	Nil	11,21,100
8	Tulip Expotrade Pvt. Ltd.	No	16/06/2010	74000	N.A.	Nil	N.A.	Nil	11,21,100
Total				519000					88,18,600

22. Hence, it can be said every contract in securities must be executed through the stock exchange mechanism unless it is a spot delivery contract. Since, the transaction entered into by the Noticees is an off-market transaction, it has to be in conformity with

the provisions relating to spot delivery contract. In order to be a legal transaction, it would have to qualify as a spot delivery contract as defined under section 2(i) of SCRA i.e. actual delivery/ transfer of shares and the payment should be on the same day as date of contract or the next day. In this matter, payment and transfer of shares have not taken place as per the time limit prescribed for spot delivery contract as defined in SCRA.

23. It is to prevent undesirable transactions in securities that such a provision has been inserted in the Act and subsequent notification was issued to prevent dealings outside the stock exchange mechanism. In order to be a legal transaction, it would have to qualify as a spot delivery contract as defined under section 2(i) of SCRA i.e. actual delivery/ transfer of shares and the payment should be on the same day as date of contract or the next day. In this matter payment and transfer of shares has not taken place as per spot delivery contract as defined in SCRA.
24. It is pertinent to mention that the Noticee Nos. 1 to 3 and 6 to 8 mentioned above did not file any reply to the allegations in the SCN nor availed the opportunities for personal hearing. Silence on the part of the Noticee Nos. 1 to 3 and 6 to 8 clearly indicate that they do not have any explanation to offer in respect of the allegations against them. Further, Noticee Nos. 4 and 5 did not file any document in support of their submissions made in their replies and as undertaken during the hearing.
25. At this juncture, it is pertinent to mention Hon'ble SAT in the matter of Mrs. Bhanuben Jaisukhlal Shah v. SEBI (Appeal No. 271/2009) wherein it was observed:

“In the case before us, it is not dispute that the appellant sold 4,50,000 shares in off-market transactions in December, 2004 and had not received the payment till the time she filed her reply before the adjudicating officer. ..This being so, the off-market sales effected by the appellant in December 2004 were not spot delivery contracts within the meaning of the Act and since these were not transacted through or with member(s) of a recognised stock exchange, they are illegal in view of

the provision of Section 13 of the Act. In this view of the matter, no fault can be found with the impugned order passed by the adjudicating officer holding the said transactions to be illegal violating the provisions of Section 2(i) read with Section 13 of the Act.”

26. Thus, it is very clear that the transactions done by the Noticees are not in compliance with the requirements laid down for spot delivery contracts under Section 2(i) of the SCRA. Therefore, in the absence of any compelling evidence to the contrary, I am inclined to conclude that the alleged transactions of the Noticees do not qualify as spot delivery contract as per Section 2(i) of the SCRA.

(b) Does the non-compliance, if any, attract monetary penalty under Section 23H of SCRA?

27. The aforesaid violations attract penalty under Section 23H of SCRA, 1956 which reads as under:-

Penalty for contravention where no separate penalty has been provided.

Section 23H: “Whoever fails to comply with any provision of this Act, the rules or articles or byelaws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.”

28. In this context, it is relevant to quote the judgment of Supreme Court in the matter of SEBI vs. Shri Ram Mutual Fund wherein it was inter alia 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.”*

29. Provisions of Section 23J of SCRA 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.
30. Though no details are available on record to take into account the above factors in determining the quantum of penalty, however, the consideration amount not paid by the Noticees is available on record. Section 13 of SCRA makes a transaction in securities, in an area, illegal which is other than between the members of recognized stock exchange or through or with such member(s). Section 18 excludes spot delivery contracts from the applicability of Section 13 of SCRA. Hence, it can be said every contract in securities must be executed through the stock exchange mechanism unless it is a spot delivery contract. The transactions entered into by the Noticees were neither executed on the stock exchange nor do they qualify to be the spot delivery contract, therefore, such violations attract monetary penalty in terms of the provisions of Section 23H of the SCRA.

ORDER

31. After taking into consideration the nature and gravity of the charges established as discussed in the preceding paragraphs and in exercise of the powers conferred upon me under Section 23-I of the SCRA read with Rule 5 of the Rules, I hereby impose a penalty the following penalties on the Noticees under Section 23H of the SCRA for

entering into transactions which are not in conformity with Section 2(i) of the SCRA and thus, contrary to the provisions of Section 13 of the SCRA:

Sr. No.	Name of Noticee	Penalty (in Rs.)
1.	Shri Chetan Dogra	17,00,000 (Seventeen Lakhs only)
2.	CRS Traders and Exporters Pvt. Ltd.	11,00,000 (Eleven Lakhs only)
3.	Daffodil Tradex Pvt. Ltd.	11,00,000 (Eleven Lakhs only)
4.	Shri Pavan Kumar Satyanarayan	12,00,000 (Twelve Lakhs only)
5.	Shri Rajesh Mishra	4,00,000 (Four Lakhs only)
6.	Shraddha Entertainment Pvt. Ltd.	11,00,000 (Eleven Lakhs only)
7.	Subah Multimedia Pvt. Ltd.	11,00,000 (Eleven Lakhs only)
8.	Tulip Expotrade Pvt. Ltd.	11,00,000 (Eleven Lakhs only)

32. The amount of penalty shall be paid either by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or by e-payment in the account of “SEBI - Penalties Remittable to Government of India”, A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to “The Chief General Manager (Enforcement Department-1 – DRA- 2), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.”

1. Case Name :	
2. Name of Payee :	
3. Date of Payment:	

4. Amount Paid :	
5. Transaction No. :	
6. Bank Details in which payment is made :	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

33. In terms of rule 6 of the Rules, copy of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Place: Mumbai

DATE: 25.06.2018

BIJU. S

ADJUDICATING OFFICER