BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-2/DSR/KM/PU/74-75/2014]

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

1. **Shri Sisir Kumar Saha [PAN :AELPS0255G]**
2. **Shri. Soura Sekhar Saha [PAN :BNUPS0753A]**

In the matter of

Shelter Infra Projects Ltd.

Background

1. The Securities and Exchange Board of India (hereinafter referred to as "SEBI") carried out an investigation into the alleged irregularity in the scrip of M/s Shelter Infra Projects Limited (previously known as Central Concrete and Allied Products Private Limited)(hereinafter referred to as '**SIPL**' or '**the company**') for the period from April 01, 2009 to September 22, 2009 (hereinafter referred to as the '**investigation period**') during which the price of the scrip increased from ₹ 9.0 to a high of ₹ 62.05, i.e. a rise of 589%.

2. The Investigation, *inter-alia,* had revealed that SIPL had entered into a Share Purchase Agreement, to be executed between SIPL and the proposed acquirers, M/s Ramayana Promoters Pvt. Ltd. on July 31, 2009 for the sale of the issued and subscribed equity share capital of the company held by the erstwhile promoters, as also change in management of the company. Shri Sisir Kumar Saha (Noticee at Serial No.1 above), was the Whole Time Director of SIPL and Shri Soura Sekhar Saha (Noticee at Serial No.2 above) is the son of Noticee No.1 (hereinafter collectively referred to as the 'Noticees'). Noticee No.1, was involved in the negotiation for fixing the share price according to the details of the parties involved in the negotiation in fixing the price. Despite the inconsistency in the exact date on which the share price was fixed, the

period of unpublished price sensitive information (UPSI) was considered to be from May 21, 2009 to August 06, 2009. It is alleged that the Noticee No.1 being the director of SIPL was privy to the UPSI and traded in the shares of SIPL. Further, he has also communicated or counseled, directly or indirectly, the UPSI to Noticee No.2 who also traded in the shares of SIPL.

3. SEBI has therefore initiated adjudication proceedings under the SEBI Act to inquire into and adjudge the alleged violations of Regulations 3 (i), (ii) and 4 of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as PIT Regulations) and Regulation 12 (1), read with Clause 4.2 of Schedule I, Part A of the PIT Regulations against the Noticee No. 1 and Regulations 3 (i), (ii) and 4 of the PIT Regulations, against Noticee No. 2.

Appointment of Adjudicating Officer

4. I have been appointed as the Adjudicating Officer (AO), in place of previous Adjudicating Officer, vide order dated August 29, 2013 under section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Adjudication Rules") to inquire into and adjudge under Section 15 G and 15 HB of the SEBI Act, the alleged violation of the provisions of law committed by the Noticees.

Show Cause Notice, Reply and Personal Hearing

5. A common show cause notice dated August 28, 2012 (hereinafter referred to as "SCN") was issued to the Noticees under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on them under Sections 15 G and 15 HB of the SEBI Act for the alleged violation of the provisions of law. Noticees submitted their replies vide letters dated September 05, 2012.

6. After considering the replies submitted by the Noticees, the then AO granted an opportunity of personal hearing to the Noticees on October 18, 2012 vide letter dated October 03, 2012. The Noticees sought an adjournment vide their letter dated October 10, 2012. The then AO granted another opportunity of personal hearing to the

Noticees on November 19, 2012 vide letter dated November 01, 2012. Noticee No.1 appeared on behalf of himself and Noticee No. 2, and submitted that the clarification regarding the lock in period of shares that was clarified by SEBI during end of July 2009 as a number of agencies sought clarification on this because of ambiguities and reiterated the written submissions and requested for a lenient view to be taken in the matter. Consequent to his deputation, another AO was appointed who granted another opportunity of personal hearing on August 19, 2013 vide letter dated August 05, 2013. The Noticees vide their common reply dated August 16, 2013 stated that they had submitted all the relevant documents and that they did not wish to attend the said hearing. Consequent to my appointment, I granted another opportunity of personal hearing to the Noticees on December 04, 2013 vide letter dated November 21, 2013 in the interest of natural justice and the same has been delivered to the Noticees. However, the Noticees did not appear for the hearing.

Consideration of Issues, Evidence and Findings

7. I have carefully perused the charges made against the Noticees as mentioned in the SCN, written submissions and all the documents available on record. In the instant matter, the following issues arise for consideration and determination:

   a) **Whether the Noticee at serial No. 1 has failed to comply with Regulation 3 (i), (ii) & 4 of the PIT Regulations read with Regulation 12 (1), read with Clause 4.2 of Schedule I, Part A of the PIT Regulations and Whether the Noticee at Serial No. 2 has failed to comply with Regulation 3 (i), (ii) & 4 of the PIT Regulations?**

   b) **Whether Noticee at serial No. 1 is liable for monetary penalty under Sections 15 G and 15 HB of the SEBI Act and whether Noticee at Serial No. 2 is liable for monetary penalty under Sections 15 G of the SEBI Act?**

   c) **If so, what should be the quantum of monetary penalty?**

8. Now, I would like to refer to the relevant provisions of the PIT Regulations which read as under:

Insider Trading Regulations

Prohibition on dealing, communicating or counseling on matters relating to insider trading.

"3. *No insider shall—*

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or

(ii) communicate or counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities :

Provided *that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law.*

Violation of provisions relating to insider trading.

4. *Any insider who deals in securities in contravention of the provisions of regulation 3 or 3A shall be guilty of insider trading.*

Regulation 12 (1)

Code of internal procedures and conduct for listed companies and other entities.

12. *(1) All listed companies and organizations associated with securities markets including:*

(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;

(b) the self-regulatory organizations recognized or authorised by the Board;

(c) the recognized stock exchanges and clearing house or corporations;

(d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and

(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies, shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same.

Schedule I – Part A

Model Code of Conduct for prevention of Insider Trading for Listed Companies

4.2 *All directors/ officers/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction. All directors/ officers/ designated employees shall also not take positions in derivative transactions in the shares of the company at any time.*

In the case of subscription in the primary market (initial public offers), the above mentioned entities shall hold their investments for a minimum period of 30 days. The holding period would commence when the securities are actually allotted."

9. It is observed that the Board of Directors of SIPL approved a Shares Purchase Agreement at its meeting held on July 30, 2009 to be executed between SIPL and the proposed acquirers, M/s Ramayana Promoters Pvt. Ltd., on July 31, 2009 for the sale of 35.50% of the issued and subscribed equity share capital of the company held by the erstwhile promoters, as also change in management of the company. The scrip of SIPL was traded in for 117 days, which resulted in a volume of 1599314 shares at BSE, while the daily average volume was 13670 shares. There was a price rise from ₹ 9.0 to ₹ 62.05

i.e. 589% during the relevant period. The price of SIPL during the three months prior and after the investigation period was ₹ 13.21 (open price) on January 01, 2009 and ₹ 57.2 (open price) on December 22, 2009, respectively. The Shares Purchase Agreement was signed on July 31, 2009 and on August 07, 2009 the managers to the offer on behalf of the acquirer issued a public announcement to the equity shareholders of SIPL.

10. It has been alleged in the SCN that Noticee No.1 being the Whole Time Director of SIPL was involved in the negotiation for fixing the share price (according to the details provided by the parties involved in the negotiation in fixing the price) and traded in the shares of SIPL and taking opposite positions on several occasions while being privy to the price sensitive information. Therefore, it is alleged that Noticee No.1 had dealt in the shares of SIPL while in possession of or on the basis of the UPSI. Additionally, he has also communicated or counseled, directly or indirectly, the UPSI to Noticee No.2, his son, who in turn has also traded in the shares of SIPL.

11. I find that in order to establish whether the Noticees have traded on the basis of UPSI and have violated the PIT Regulations, the following issues must be established.

a. Whether there was unpublished price sensitive information?
b. Whether the Noticees were insiders under the PIT Regulations?
c. Whether they have traded 'on the basis' of the UPSI?

12. Firstly, I shall examine the existence of UPSI in the matter and in order to do so it is necessary to refer to the relevant provisions of the regulations which defines or explains what UPSI is. The PIT Regulations defines UPSI as:

2. (ha) "price sensitive information" means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.

Explanation.—The following shall be deemed to be price sensitive information :—

(i) periodical financial results of the company;

(ii) intended declaration of dividends (both interim and final);

(iii) issue of securities or buy-back of securities;

(iv) any major expansion plans or execution of new projects.

(v) amalgamation, mergers or takeovers;

(vi) disposal of the whole or substantial part of the undertaking; and

(vii) significant changes in policies, plans or operations of the company;

(k) "unpublished" means information which is not published by the company or its agents and is not specific in nature.

Explanation.—Speculative reports in print or electronic media shall not be considered as published information.

13. Therefore, UPSI has been defined in the regulations to mean any information which relates to any of the matters referred to in sub clauses (i) to (vii) of regulation 2(ha) and is not generally known or published by the company for general information but which, if published or known, is likely to materially affect the price of the securities of the company in the market. In other words, any information which is not known but, if known, could either way affect the price of the scrip of the company. I find that the UPSI in the present case was that Ramayana Promoters Pvt. Ltd. was to acquire in aggregate 12,67,410 fully paid up equity shares of ₹ 10/- each, representing about 35.50% of the issued and subscribed equity share capital of SIPL from the existing promoters at a price of ₹ 80/- per share and consequently would have to make an open offer for acquiring at least 20% of the share capital from the shareholders and therefore it is deemed to be price sensitive information under Regulation 2(ha) (v) and (vii) of the PIT Regulations.

14. Mr. Ajit Baid, one of the consultants for Ramayana Promoters Pvt. Ltd. had, after the price deal was finalized, forwarded the first draft of the SPA on or about May 28, 2009. Taking into consideration when the mandate was given, the time to prepare the draft and the primary focus of the investigation being on the trading by the Parekh group from June 22, 2009 onwards, the date of the UPSI was taken as May 21, 2009. In view of the above, the UPSI is considered to have originated on May 21, 2009 and remained as UPSI till August 07, 2009 on which date the public announcement was made. This position has not been contested or denied by the Noticees.

15. Now I will proceed to examine whether the Noticees are "connected persons" or "insiders" as defined under the PIT Regulations which are as follows.

"2(c) "connected person" means any person who—

(i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act; or

(ii) occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company.

Explanation :—For the purpose of clause (c), the words "connected person" shall mean any person who is a connected person six months prior to an act of insider trading;

(e) "insider" means any person who,

(i) is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of company, or

(ii) has received or has had access to such unpublished price sensitive information;

(h) "person is deemed to be a connected person", if such person—

(i) is a company under the same management or group, or any subsidiary company thereof within the meaning of sub-section (1B) of section 370, or subsection (11) of section 372, of the Companies Act, 1956 (1 of 1956), or sub-clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) as the case may be;

(ii) is an intermediary as specified in section 12 of the Act, Investment company, Trustee Company, Asset Management Company or an employee or director thereof or an official of a stock exchange or of clearing house or corporation;

(iii) is a merchant banker, share transfer agent, registrar to an issue, debenture trustee, broker, portfolio manager, Investment Advisor, sub-broker, Investment Company or an employee thereof, or, is member of the Board of Trustees of a mutual fund or a member of the Board of Directors of the Asset Management Company of a mutual fund or is an employee thereof who has a fiduciary relationship with the company;

(iv) is a Member of the Board of Directors, or an employee, of a public financial institution as defined in section 4A of the Companies Act, 1956;

(v) is an official or an employee of a Self-regulatory Organisation recognized or authorized by the Board of a regulatory body;

(vi) is a relative of any of the aforementioned persons;

(vii) is a banker of the company.

(viii) relatives of the connected person; or

(ix) is a concern, firm, trust, Hindu undivided family, company or association of persons wherein any of the connected persons mentioned in sub-clause (i) of clause (c), of this regulation or any of the persons mentioned in sub-clause (vi), (vii) or (viii) of this clause have more than 10 per cent of the holding or interest;

16. I find that Noticee No. 1 was a Whole Time Director in the company. I note from the SPA that the Noticee No. 1 was one of the ten sellers (represented by Shri Chirantan Mukherjee,) who were very much a part of fixing the price of the shares, even though he did not sign the SPA. Therefore, there is no dispute to the fact that Noticee No. 1 is a "connected person" as defined under Regulation 2(c)(i) of the PIT Regulations and therefore an insider. I find that since Noticee No. 2 is the son of Noticee No. 1, he is deemed to be a connected person as per Regulation 2(h)(viii) of the PIT Regulations. Their respective positions have not been disputed by the Noticees.

17. Since it is established that the Noticee No. 1 and 2 are 'connected person' and 'deemed to be a connected person' as per the PIT Regulations and therefore insiders who had access to UPSI, I shall now proceed to examine whether they traded in the scrip of SIPL 'on the basis' of the UPSI. The trading details of the Noticees are given below:

Table No. 1

Bought (SK Saha)				**Bought (SS Saha, Son)**			
TRADE_DATE (dd/mm/yyyy)	QTY	AVG RATE (approx)	value (Rs.)	TRADE_DATE (dd/mm/yyyy)	QTY	AVG RATE	value (Rs.)
3/7/2009	1000	32.7	32700	21/7/2009	1000	36	36137
13/7/2009	246	35	8610	28/7/2009	1000	44.8	44687
Total	**1246**		**41310**	**Total**	**2000**		**80824**
Sold (SK Saha)				**Sold (SS Saha, Son)**			

TRADE_DATE (mm/dd/yyyy)	QTY	AVG RATE (approx)	value (Rs.)	TRADE_DATE (mm/dd/yyyy)	QTY	AVG RATE	value (Rs.)
6/7/2009	500	33.7	16850	Nil	Nil	Nil	Nil
8/7/2009	500	33.75	16875				
13/7/2009	246	34.25	8425.5				
Total	**1246**		**42150.5**				

18. I find that the Noticee No.1 had been buying and selling the shares of SIPL and taking opposite positions, on several occasions. He initially traded in the shares of SIPL when he bought 1000 shares at the rate of ` 32.7 on July 03, 2009 and then continued to trade in the shares of SIPL between June 2009 and July 2009. I note that, Clause 4.2 of Schedule I of Model Code of Conduct for Prevention of Insider Trading for Listed Companies under Regulation 12(1) of PIT Regulations, clearly specifies that the directors cannot take opposite position during the six months following their initial transaction.

19. The Noticee No.1 had submitted vide letter dated September 09, 2012 that he being an engineer was not conversant with the SEBI Regulations and acted upon the advice of the Compliance Officer of the company, who did not inform him of the requirement of closing the Trading window before the Public Announcement, resulting in the lapse. He served the company for a year after it was acquired by new promoters and was still not informed about the lapse. He was a paid whole time director at SIPL, in charge of business operation of the company, but however he did not participate in any discussion /negotiation in selling shares and fixing of price by the promoters.

20. He further submitted that he sold shares of SIPL on July 06, 2009 and July 08, 2009 upon the advice of the compliance officer and the shares sold had a holding period of more than six months. Further, that his broker wrongly sold 246 shares on July 13, 2009 and as soon as the mistake was identified, it was bought back on the same day at a loss. The Noticee No. 1 also submitted on behalf of Noticee No. 2, his son, that he was a medical student during the period and wanted to invest his fellowship money. That the Noticee No. 2 had purchased the shares of SIPL only upon the advice of Noticee No.1. The Noticees did not have any information as regards the share price

being negotiated and that it was the duty of the compliance officer to have pointed out the price sensitive period.

21. I do not find any merit in the arguments put forth by Noticee No. 1 to the extent that it was the duty of the compliance officer to have informed him correctly about the price sensitive period. I hold that the same cannot be considered a plausible reason for transacting in contravention of the provisions of PIT Regulations. It is a well settled principle of law that ignorance of law is not an excuse. Therefore, as the then Whole time director, the Noticee No.1 should have been aware of the requirements under the model code of conduct, therefore, compliance officer cannot be blamed for the same. Further, the Hon'ble SAT vide its order dated May 09, 2008 in the matter of ***Rajiv Gandhi and Others v. SEBI***, had held that "*We are of the considered opinion that if an insider trades or deals in securities of a listed company, it would be presumed that he traded on the basis of the unpublished price sensitive information in his possession unless he establishes to the contrary. Facts necessary to establish the contrary being especially within the knowledge of the insider, the burden of proving those facts is upon him".* Nevertheless, I find that the Noticees have admitted and accepted that they had traded in the scrip of SIPL during the price sensitive period. Therefore, I hold that Noticee No.1 has violated Regulation 3 (ii) and Clause 4.2 of Schedule I of Model Code of Conduct under Regulation 12(1) of the PIT Regulations and thus liable for penalty under Section 15 HB of the SEBI Act.

22. Noticee No. 2 vide his reply dated September 05, 2012 submitted that he was a medical student at that point of time, having surplus money and therefore upon the advice of his father decided to invest in the stock market. He was never in possession of any knowledge as regards the proceedings of the company. He purchased shares prior to the Shares Purchase Agreement being signed on July 31, 2009. Therefore, I find that the Noticee No. 2 has admitted to have traded in the scrip of SIPL during the price sensitive period on the advice given by his father who is a Whole Time Director, a connected person and thus an insider in the company who had access to UPSI. Further, I find that Noticee No 2 has dealt in the shares of SIPL on the basis of the UPSI communicated or counseled by Noticee No.1, his father. Therefore, I conclude that Noticee No.2 has violated Regulation 3 (i), 3 (ii) and 4 of the PIT Regulations and thus liable for penalty under Section 15 G of the SEBI Act.

Penalty for insider trading.

15G*. If any insider who,—*

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or

(ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii) counsels, or procures for any other person to deal in any securities of anybody corporate on the basis of unpublished price-sensitive information, shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

Section 15 HB of SEBI Act reads as under:

Whoever fails to comply with any provision of this Act, the Rules or the Regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

23. 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.

24. Persons in a company or otherwise concerned with the affairs of the company are in possession of information before it is actually made public. Knowledge of such UPSI in the hands of persons connected to the company puts them in an advantageous position over the ordinary shareholders and the general public. Such information can be used to make gains by buying shares anticipating rise in the price of the scrip or it can be also used to protect themselves against losses by selling the shares before the price falls. Such trading by the insider is not based on level playing field and is detrimental to the

interest of the ordinary shareholders of the company and general public and it is with this view that SEBI had made stringent regulations to curb such practices. Therefore, with regard to the above factors to be considered while determining the quantum of penalty, it is observed that the investigation report has quantified that noticee's profits through the aforementioned trades as mentioned in Table No. 1 above. I find that the Noticee No. 2 has not sold any of the shares he has bought in the scrip and therefore the profit cannot be quantified. Whereas, the Noticee No. 1 has made a profit of ₹840/- only from his trades in the scrip of SIPL during the relevant period.

ORDER

25. 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 penalty of ₹ 10,00,000/- (Rupees Ten lakh Only) under Section 15HB of the SEBI Act and ₹ 20,00,000/- (Rupees Twenty lakh Only) under Section 15 G of the SEBI Act on Noticee No.1 i.e. Mr. Sisir Kumar Saha.

26. I further impose a penalty of ₹ 20,00,000/- (Rupees twenty lakh Only) under Section 15 G of the SEBI Act on Noticee No.2 i.e. Mr. Soura Sekhar Saha. In my view, the penalty is commensurate with the defaults committed by the Noticees.

27. The penalty amount as mentioned above shall be paid by the Noticees 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, Investigations Department (IVD-6), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee No. 1 & 2 i.e. Mr. Sisir Kumar Saha and Mr. Soura Sekhar Saha and also to Securities and Exchange Board of India.

Date: March 07, 2014 **D. SURA REDDY**

Place: Mumbai **ADJUDICATING OFFICER**