

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. IVD-ID 4/HDOL/AO/DRK/MD/EAD 3- 275/41-11]

**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
Shri E. Sudhir Reddy
(Vice Chairman, Hindustan Dorr- Oliver Limited)
(PAN No.- AABPE7595F)

FACTS OF THE CASE IN BRIEF

1. An alert was generated by surveillance department of National Stock Exchange of India Limited (hereinafter referred to as 'NSE') in the scrip of Hindustan Dorr- Oliver Limited (hereinafter referred to as '**HDOL / Company**') on February 25, 2009. On this day, the company informed NSE that they have obtained an order for Uranium Ore Processing Plant from Uranium Corporation of India Ltd (herein after referred to as UCIL) worth ₹ 441 crores for their Greenfield Ore Mining and Processing facility at Tumalapalle in Andhra Pradesh.
2. In view of the above, an investigation was carried out by Securities and Exchange Board of India (hereinafter referred to as 'SEBI') to examine the trading activity in the scrip of HDOL for the period from February 02, 2009 to March 25, 2009.

APPOINTMENT OF ADJUDICATING OFFICER

3. I was appointed as the Adjudicating Officer and the same was communicated by the proceedings of the competent Authority appointing the Adjudicating Officer dated December 28, 2010, under section 15 I of the SEBI Act read with Rule 3 of Securities and Exchange Board of India (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 15G of the SEBI Act, for the violations of Section 12A (d) & (e) of SEBI Act read with Regulations 3(i) & 4 of SEBI (Prohibition of Insider Trading) Regulations, 1992 {hereinafter referred to as 'SEBI (PIT) Regulations'}

SHOW CAUSE NOTICE, HEARING AND REPLY

4. A Show Cause Notice A&E/HDOL/DRK/MD/5563/2011 dated February 17, 2011, (hereinafter referred to as '**SCN**') was issued to the noticee by Registered Post Acknowledgement Due, seeking reply of the noticee as to why an inquiry should not be held against the noticee in respect of the violations alleged to have been committed by the noticee. The aforesaid Show cause notice was served on the noticee and proof of the same is on record.
5. Noticee vide letter dated NIL requested for time till first week of April to submit reply to the SCN. As requested by the noticee, time was granted to the noticee till first week of April to submit reply to the SCN. Considering the facts and circumstances of the case, it was decided to conduct an inquiry in the matter and an opportunity of personal hearing was granted to the noticee vide hearing notice dated March 21, 2011, granting personal hearing to the noticee on April 20, 2011.
6. It is alleged on the basis of Investigation Report (hereinafter referred to as '**IR**') that the noticee had traded in the scrip of HDOL while possessing / holding unpublished price sensitive information/non public information, during the investigation period February 02, 2009 to March 25, 2009. From the investigation report it is noted that HDOL bagged an order/ contract for Uranium Ore Processing Plant from Uranium Corporation of India Ltd. (UCIL) worth ₹ 441 crores. Similarly the company bagged an order / contract worth ₹ 24.00 crores from HPCL-Mittal Energy Ltd. for detailed engineering, shop & site fabrication, transportation and supply of Process Pressure Vessels weighing from 50 MT to 250 MT each.
7. It is noted from the IR that during the investigation period noticee was the Non Executive Vice Chairman of the company and was also on the Board

of Directors of HDOL. Noticee had traded through CIL Securities Ltd and bought 40,000 shares during the investigation period. It is further noted from the IR that noticee had also purchased 10,000 shares of HDOL on October 21, 2008 i.e. the period during which the negotiation for the above deal was in progress. Day wise trading activity of the noticee in the scrip of HDOL during the Investigation period is as follows:

Period	Date	Buy Qty	Sell Qty	Net Qty	Buy Avg Pri	Sell Avg Pri	% to Day Mkt Net	% to Day Gross
Pre announcement period	9-Feb-09	9,721	0	9,721	25.62	0	54.31	22.15
	10-Feb-09	10,000	0	10,000	28.55	0	32.94	11.14
Post announcement period	5-Mar-09	10,279	0	10,279	35.13	0	9.11	2.70
	13-Mar-09	10,000	0	10,000	35.66	0	14.67	4.67
Total		40,000	0	40,000				

8. Thus from the above it is alleged that noticee had traded in the shares of HDOL while in possession of unpublished price sensitive information / non public information of receiving order / contract to the tune of ₹ 441 crores from UCIL and ₹ 24.00 crores from HPCL-Mittal Energy Ltd., and thus you have violated Section 12A (d) & (e) of SEBI Act read with Regulation 3(i) & 4 of SEBI (PIT) Regulations.
9. Noticee vide letter dated April 6, 2011 submitted reply to the SCN. In his reply noticee submitted that:-
 - In para 3, a mention is made that I am Vice – Chairman of the company and a board member and negotiations are being made to get the contracts. Kindly note that UCIL and HPCL are GOI companies and the contracts were obtained by tender process and by due process of law for awarding contracts by GOI companies. There are no negotiations that are done like between 2 private companies when they negotiate for a supply contract or delivery contract.
 - Further, nowhere in the show cause notice it is mentioned that the board of directors are negotiating with anyone to get the contract. Further, show cause is silent on my role in the whole process of getting contracts. Kindly note that after the announcement that we are L1 (Lowest bidder) by UCIL, all technical discussions were held by GM/ PRESIDENT level and I was not involved. In case of the HPCL order, DGM was contacted by Engineers India Ltd, a GOI company in charge of awarding contracts for the HPCL project.

- In public tendering process, after submission of bids by various parties, once we are declared L1, the information is available in public domain and there is no insider information held by us.
- Also it has to be taken into account that, none of the Directors to whom show cause notice was issued or myself was involved in any manner with the award of this contract, or in discussions, or negotiations or in any other manner.
- The said orders were an addition to our order book which is a routine matter and in normal course of business for a contracting Company like our Company. As already explained by Mr. S. C. Sekaran, Executive Director, HDOL while appearing in related matter that for EPC contracting companies where most orders are obtained by tender process the opening of tenders cannot be said to be insider information. And more so both our orders were negotiated and discussed by Asst. Manager/DGM/G.M./President level and Directors were not involved in these discussions at all.
- Further, none of the events involved any secretive or closed door meetings between the Directors of the UCIL and directors of HDOL (including me) for any price sensitive information to be generated. The orders were received by the due process of law involving tendering process by GOI undertakings and the technical meetings on the Company's behalf were attended by President/ GM level and the opening of tender was a public event which HDOL's competitors and employees of UCIL attended. Hence there was no information that could be considered price sensitive, which was in possession of any insider or any Director for them to take advantage of.
- It may kindly be noted that, as per SEBI insider trading provisions, "THE INSIDER HAS TO BE IN POSSESSION OF PRICE SENSITIVE INFORMATION" for Section 3 and 3A as well as penalty section of 15G to be applicable. And also the regulation says that, it has to be something special (not applicable to communication in ordinary course of business) i.e., the information has to be obtained by special means like in the SEC case against RAJARATNAM, where he as a director of a hedge fund was getting information from Rajat Gupta of Mckinsey.
- In my case there were no negotiations with UCIL for getting the order by the board or myself, as it was a GOI company and the contract was awarded by tender process. I DID NOT DEAL IN SHARES, before Jan 27, 2009, when UCIL declared HDOL as the lowest bidder and UCIL opened the bids in public. As such there was no insider information available surrounding this order as a tender process is involved.

10. In response to the personal hearing notice, noticee authorised Shri S C Sekaran – Executive Director as his Authorized Representative (hereinafter referred to as ‘AR’). On April 20th, 2011 Shri S C Sekaran – Executive Director appeared for the hearing and made the following submissions :-
- AR denied that obtaining the orders of UCIL and HPCL – Mittal Energy Ltd were price sensitive information as the same was by inviting open tenders and the same were in public domain.
 - AR further submitted that noticee had never been a part of the meeting for negotiation for orders and similarly the noticee was not a part of the meeting held on February 9, 2009 between UCIL and HDOL.
 - The AR undertook to submit copies of Demat Statement of the noticee to support his statement that the noticee had never sold the shares of HDOL.
 - As requested by the AR, 5 days time was granted to them to submit the above referred documents and further submissions if any.
11. As undertaken during the personal hearing, Noticee vide letter dated April 24, 2011, submitted demat account statement from April 1, 2008 to March 31, 2011

CONSIDERATION OF EVIDENCE AND FINDINGS

12. I have taken into consideration the facts and circumstances of the case, and the material made available on record. It is alleged on the basis of **IR** that, noticee had traded in the scrip of HDOL while possessing / holding unpublished price sensitive information/non public information, during the investigation period February 02, 2009 to March 25, 2009. In this regard it is further noted from the IR that during the investigation period Shri E. Sudhir Reddy, Vice Chairman of HDOL and also on the Board of Directors of HDOL traded through CIL Securities Ltd and bought 40,000 shares during the investigation period and thus noticee had violated Section 12A (d) & (e) of SEBI Act read with Regulation 3(i) & 4 of SEBI (PIT) Regulations. The day wise trading activity of the noticee in the scrip of HDOL during the Investigation period is as follows:

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	13-Mar-09	10,000	0	10,000	35.66	0	14.67	4.67
Total		40,000	0	40,000				

13.The first issue to be decided is whether the information of receiving such huge orders for executing projects is price sensitive information or not. The noticee in its reply dated April 6, 2011 had submitted that:-

- “... as per SEBI insider trading provisions, ”THE INSIDER HAS TO BE IN POSSESSION OF PRICE SENSITIVE INFORMATION” for Section 3 and 3A as well as penalty section of 15G to be applicable. And also the regulation says that, it has to be something special (not applicable to communication in ordinary course of business) i.e., the information has to be obtained by special means like in the SEC case against RAJARATNAM, where he as a director of a hedge fund was getting information from Rajat Gupta of Mckinsey.”
- The said orders were an addition to our order book which is a routine matter and in normal course of business for a contracting Company like our Company. As already explained by Mr. S. C. Sekaran, Executive Director, HDOL while appearing in related matter that for EPC contracting companies where most orders are obtained by tender process the opening of tenders cannot be said to be insider information. And more so both our orders were negotiated and discussed by Asst. Manager/DGM/G.M./President level and Directors were not involved in these discussions at all.

14. On the issue of Price sensitive Information, it is noted at item no. 4 of the Code of Conduct for Prevention of insider trading in equity shares and other listed securities of HDOL as submitted by HDOL states that

“The following shall be deemed to be price sensitive information :

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- Any major expansion plans or execution of new projects”
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15. Further the definition of “Price Sensitive Information” as defined under Regulation 2 (ha) of SEBI (PIT) Regulations is as follows :-

(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;]

16. However it is equally important and relevant to decide whether bagging order from UCIL worth ₹ 441 crores is covered under the clause of “execution of new projects” or not as contended by the noticee. HDOL during the adjudication proceeding in related matter had submitted that :-

“Further, the definition of Price Sensitive Information in the Insider Trading includes “expansion of Capacity and execution of new projects”. This does not apply to these announcements for a Company like ours, and is more relevant to a manufacturing company having certain capacity or when such a company diversifies into a new line of activity. We are an EPC contracting company engaged in contracting business and executing turnkey projects for its various clients. UCIL- 2 expansion project was expansion of facility of UCIL, our client and not our Company.”

17. The above submissions of HDOL was not accepted in related Adjudication proceedings because when the company’s Code of Conduct for Prevention of insider trading in equity shares and other listed securities of HDOL is examined it is found that at several places the clause regarding “execution of new projects” is mentioned. Thus in my opinion bagging a large order for execution of project to the tune of ₹ 441 crores are covered under the clause i.e. execution of new projects even for EPC companies like HDOL or else for these kind of companies this aforementioned code of conduct itself may become irrelevant which is not the case as per the Model Code of Conduct.

18. As per the above definitions “**any major expansion plans or execution of new projects**” is also price sensitive information and in my view bagging order for ₹ 441 crores is a Price Sensitive Information. My view is further strengthened by the fact that after the company informed NSE & BSE about

the receipt of this order, the volume has jumped significantly coupled with price rise of the scrip. The details of Price and volume of trade in the scrip of HDOL in tabular form is as follows:-

Sr. No.	Date	Volume	Close Price (₹)
1.	24/02/2009	96,377	26.50
2.	25/02/2009	2,65,275	31.65
3.	26/02/2009	10,87,056	33.85

19. Thus it can be concluded from the above table that there was a volume jump of more than 10 times and a jump of more than 25% in price after the company informed NSE & BSE on February 25, 2009 (11:56:50 am for BSE) about the receipt of ₹ 441 crores order. Thus it can be concluded that the information regarding above mentioned order was in the nature of price sensitive information as per the definition under Regulation 2 (ha) of SEBI (PIT) Regulations.

20. The second issue to be decided is whether the information regarding obtaining of the order was in public domain or not as submitted by the noticee. Noticee submitted that “Since the opening of tenders is not a secretive event and involves employees of UCIL, employees of our competitors and since it involves a GOI undertaking, it cannot be said to be an event requiring closure of our trading window.” This submission is also not acceptable as the information regarding the obtaining of the order was unpublished till February 25, 2009 at 11:56:50 am, as per the definition of “Unpublished Information”. The definition of the same as per item no. 4 of the Code of Conduct for Prevention of insider trading in equity shares and other listed securities of HDOL is

“unpublished information” means information which is not published by the company or its agents and is not specific in nature.

21. The knowledge / information regarding obtaining of order with some employees of HDOL, employees of UCIL and employees of competitors cannot be termed as published information in terms of the above definition and thus the plea of the noticee is not convincing. The information regarding

the bidding by HDOL was with a set of people and the same cannot be treated as information was made available to the public.

22. It is noted from IR that UCIL informed vide its letter dated December 18, 2009 that HDOL submitted its offer in association with Bateman, South Africa on June 27, 2008. Subsequently, HDOL again along with the only bidder MBE submitted their clarification/confirmations on September 22, 2008. Noticee had also bought 10,000 shares on October 21, 2008. HDOL and MBE had further discussion with UCIL on 10th through 12th November and 4th through 6th December, 2008 in DCPL Office, Kolkata. Another discussion was held at Jaduguda between 8th to 9th January 2009 and HDOL agreed all the terms and conditions as per Notice Inviting Tender (NIT).

23. Further it is noted from IR that both the parties were requested for submission of revised price bid and the price part of both the qualified bidder i.e. HDOL and MBE was opened on January 27, 2009. HDOL was the lowest bidder for Uranium Ore Processing and was called on February 09, 2010 at Jaduguda for price negotiation. On the same day noticee bought 9,721 shares of Hindustan Dorr with an average price of Rs.25.62 per share and the next day he bought 10,000 shares of Hindustan Dorr Oliver with an average price of Rs.28.55. The information regarding bagging of UCIL order by HDOL was made public only on February 25, 2009 and noticee being Vice Chairman of HDOL was reasonably expected to have access to this unpublished price sensitive information in terms of Regulation 2 (e) of SEBI (PIT) Regulations and the same is reproduced below:-

Regulation 2 (e) - “insider” means any person who, is or was connected with the company or is deemed to have been connected with the company, and who is reasonably expected to have access to unpublished price sensitive information in respect of securities of [a] company, or who has received or has had access to such unpublished price sensitive information;

24. In context of the above, it may also be noted that the final meeting of UCIL and HDOL officials took place on February 9, 2009 at 10:30 am. From the order / trade log it is observed that the noticee started placing orders on the

same day from 11:22:53 am onwards till 14:34:40. Further on February 10, 2009 noticee started placing orders from 10:05:31 am and he kept on placing orders till 13:42:09.

25. Noticee was also charged in the SCN for trading in the scrip of HDOL while possessing / holding unpublished price sensitive information for the HPCL-Mittal Energy Ltd order worth ₹ 24 crores, however it is noted that all his purchases were subsequent to the information made public about this order and thus the allegation of insider trading in the matter of HPCL-Mittal Energy Ltd order is not established.

26. From the above facts, records and submissions it can thus be stated that the noticee had violated Section 12A (d) & (e) of SEBI Act and Regulation 3(i) & 4 of SEBI (PIT) Regulations and the same is reproduced below:-

Section 12A (d) & (e) of SEBI Act 1992

PROHIBITION OF MANIPULATIVE AND DECEPTIVE DEVICES, INSIDER TRADING AND SUBSTANTIAL ACQUISITION OF SECURITIES OR CONTROL

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

- (a)
- (b)
- (c)
- (d) engage in insider trading;
- (e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- (f)

Regulation 3(i) & 4 of SEBI (PIT) Regulations 1992.

PROHIBITION ON DEALING, COMMUNICATING OR COUNSELLING

Prohibition on dealing, communicating or counselling 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 ³[when in possession of] any unpublished price sensitive information; or
- (ii)

Provided that nothing contained above shall be applicable to any communication required in the ordinary course of business²[or profession or employment] or under any law.]

3A. No company shall deal in the securities of another company or associate of that other company while in possession of any unpublished price sensitive information.]

3B.

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.

27. The said non compliance attract penalty under Section 15G of the SEBI Act. The text of section 15G is reproduced below:-

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 any body 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.

28. 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;
- the amount of disproportionate gain or unfair advantage wherever quantifiable, made as a result of the default
 - the amount of loss caused to an investor or group of investors as a result of the default
 - the repetitive nature of the default
29. The Investigation report has not quantified the profit / loss for the nature of violations committed by the noticee and no quantifiable figures are available on record with respect to the amount of loss caused to an

investor or group of investors as a result of violation by the noticee. However it is noted from the IR that the noticee had purchased 19,721 shares of HDOL at an average price of ₹ 26.52. Further it is noted from IR that after the information about the UCIL order was made public, the price of the scrip rose to ₹ 33.85 on February 26, 2009, thus approximately the notional profit made by the noticee works out to (₹ 7.33 * 19721) ₹ 1,44,555.

30. In view of the facts and circumstances of the case and material made available on record, I impose a penalty of ₹ 3,00,000 (₹ Three Lakhs) only on the noticee under Section 15 G of the Securities and Exchange Board of India Act, 1992, which is appropriate in the facts and circumstances of the case.

ORDER

31. In exercise of the powers conferred under Section 15 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 ₹ 3,00,000 (₹ Three Lakhs) only on the noticee, Shri E. Sudhir Reddy, Vice Chairman of HDOL in terms of the provisions of Section 15 G of the Securities and Exchange Board of India Act, 1992 for violation of Section 12A (d) & (e) of SEBI Act read with Regulations 3(i) & 4 of SEBI (PIT) Regulations. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the violation 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, General Manager, Investigation Department, 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 are being sent to Shri E. Sudhir Reddy, Vice Chairman of HDOL and also to the Securities and Exchange Board of India, Mumbai.

Place: Mumbai
Date: June 30, 2011

D. RAVI KUMAR
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER