

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA**

[ADJUDICATION ORDER NO. EAD-2/DSR/KM/PU/71-72/2014]

**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 Chirantan Mukherji [PAN : AFAPM5112L]**
- 2. Smt. Chandra Mukherji [PAN :ADMPM9145K]**

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 Chirantan Mukherji (Noticee at Serial No.1 above), was the Chairman and Promoter of SIPL and Smt. Chandra Mukherji (Noticee at Serial No.2 above) is the wife 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period of unpublished price sensitive information (UPSI) was considered to be from May 21, 2009 to August 06, 2009.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 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 Regulation 3 (i), (ii), 4 and Regulation 12 (1), read with Clause 4.2 of Schedule I, Part A of the PIT Regulations as mentioned above. The Noticees submitted their replies vide letters dated September 10, 2012.
6. After considering the replies submitted by the Noticees, the then AO, Shri P.K. Kuriachen, decided to conduct an inquiry in the matter and accordingly granted an opportunity of personal hearing to the Noticees on October 18, 2012 vide letter dated October 03, 2012. Shri T. K. Bhattacharya, the authorized representative of the

Noticees appeared on their behalf. He reiterated the written submissions and requested for a lenient view to be taken in the matter. Consequent to deputation of Shri P.K. Kuriachen, Ms. Anita Kenkare was appointed as the Adjudicating Officer, who granted another opportunity of personal hearing only to the Noticee No. 2 on August 19, 2013 vide letter dated August 05, 2013 as the Noticee's son Shri Mahiruha Mukerjee had submitted the Noticee No.1's certificate of death vide his letter dated July 15, 2013. Noticee No. 2 vide her letter dated August 13, 2013 submitted that she has filed her written submissions inclusive of all the relevant documents and that she will not be able to attend the personal hearing. Consequent to my appointment, in the interest of natural Justice, another opportunity of personal hearing was granted only to the Noticee No. 2 on December 04, 2013 vide letter dated November 21, 2013 as the certificate of death of Noticee No.1 was already available on record. Noticee No. 2 vide her letter dated November 27, 2013 resubmitted that she has no new information to provide and that she has filed her written submissions, along with all the relevant documents and that she will not be able to attend the personal hearing.

Consideration of Issues, Evidence and Findings

7. I have carefully perused the charges made against the Noticees as mentioned in the SCN, written and oral 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 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 the Noticee at Serial No. 2 is liable for monetary penalty under Section 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 Chairman and Promoter 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 Unpublished Price Sensitive Information (UPSI). Additionally, he has also communicated or counseled, directly or indirectly, the UPSI to Noticee No.2, who in turn has also traded in the shares of SIPL.

11. In order to examine as to whether the Noticees have traded on the basis of UPSI and have violated the Insider Trading Regulations, the following issues must be established.

- a. Whether there was any UPSI?
- b. Whether the Noticees were insiders under the PIT Regulations?
- c. Whether the Noticees traded 'on the basis' of the UPSI?

12. I find that the Noticee No. 1, against whom the proceedings were initiated, expired on March 03, 2013 and the certificate of death (submitted by the Noticee's son Shri Mahiruha Mukerjee vide letter dated July 15, 2013) has been taken on record. In the light of the above, I am of the opinion that the proceedings against Noticee No. 1 are liable to be abated without going into the merits of the case. However, I shall examine the role of Noticee No. 1 for the limited purpose of examining the role and findings against Noticee No. 2 in the matter.

13. The relevant provisions of the PIT Regulations are as follows:

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.

14. 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 acquisition of at least 20% shares from the shareholders and therefore, it is deemed to be price sensitive information under Regulation 2(ha) (v) and (vii) of the PIT Regulations.

15. 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 onwards of June 22, 2009, 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 has not been contested or denied by the Noticees.

16. Now I will proceed to examine whether the Noticees are “connected persons” or “insiders” as defined under the PIT Regulations. The PIT Regulations defines a “connected person” and an “insider” as:

“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;*

17. I find that Noticee No. 1 was the Chairman and Promoter of SIPL (then Central Concrete and Allied Products Private Limited) since its incorporation on May 09, 1972. Therefore, there is no dispute as to that Noticee No. 1 is a “connected person” as defined under Regulation 2(c)(i) of the PIT Regulations and therefore an insider. Further, Noticee No. 1 is the key person in the negotiations on behalf of the target company and was also the representative and signatory of the sellers in the SPA dated July 31, 2009. I find that since Noticee No. 2 is the wife of Noticee No. 1, she 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.

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

Table No. 1

Chirantan Mukherji				Chandra Mukherji			
Bought				Bought			
TRADE_DATE (dd/mm/yyyy)	QTY	AVG RATE (Rs.)	Trade Value (Rs.)	TRADE_DATE (dd/mm/yyyy)	QTY	AVG RATE	Traded Value (Rs.)
22/6/2009	150	21.65	3247.5	3/7/2009	5000	32.7	163500
23/6/2009	50	22.5	1125	Total	5000		163500

24/6/2009	5000	23.8	119000				
3/7/2009	5000	32.5	162500				
Total	10200		285872.5				
Sold				Sold			
TRADE_DATE (dd/mm/yyyy)	QTY	AVG RATE	Traded Value (Rs.)	TRADE_DATE (dd/mm/yyyy)	QTY	AVG RATE	Traded Value (Rs.)
8/7/2009	5000*	34.37	171850	Nil	Nil	Nil	Nil
Total	5000		171850	Total	Nil	Nil	Nil

19. The Noticee No. 2 had submitted vide letter dated September 10, 2012, that *"In reply to the allegation of my violation of Insider Trading Regulations when purchasing the 5000 shares in the company in question, I put my humble submission that I purchased the said shares on 3/7/2009 on the same understanding that the Price Sensitive Period was from 31st July, 2009 (SPA execution date) to 7th August, 2009 (Date of Public Announcement) as was advised to Mr. Chirantan Mukherji by the Compliance officer of the said Company"*. Further, she has submitted that she still holds 24294 shares in the company which may include the said 5000 shares.

20. I do not find any merit in the arguments put forth by Noticee no. 2 that it was the duty of the compliance officer to have informed/advised her husband Mr. Chirantan Mukherjee correctly about the price sensitive period and I hold that the same cannot be considered a plausible reason for transacting in contravention of the provisions of PIT Regulations. It is a settled principle of law that ignorance of law is not an excuse. 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 Noticee No. 2 has admitted and accepted that she had traded in the scrip of SIPL on the basis of UPSI given by her husband who is a connected person in the company. However, I have also noted from the table above that the Noticee No. 2 has not sold any of the shares.

21. From the above, 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, i.e. her

late husband. 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, which reads as under:

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.*

22. As stated above, Noticee No. 1, Shri Chirantan Mukherji expired on March 03, 2013. In the matter of **Girijandini vs Bijendra Narain (AIR 1967 SC 2110)**, the Hon'ble Supreme Court, inter-alia, observed that in case of personal action, i.e. the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives and in such cases the maxim actio personalis moritur cum persona (personal action dies with the death of the person) would apply. In view of the above, the proceedings against Noticee No.1 Shri Chirantan Mukherji stand abated.

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. I observe from Table No. 1 above, that the Noticee No. 2 has not sold any of the shares she has bought in the scrip and has therefore not realized any profit.

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 said Rules, I hereby impose a penalty of ₹ 1,00,00,000/- (Rupees One crore Only) on Noticee No.2, i.e. Smt. Chandra Mukherji under Section 15 G of the SEBI Act. In my view, the penalty is commensurate with the defaults committed by the Noticee.
26. The penalty amount as mentioned above shall be paid by the Noticee 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.
27. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee No. 2 i.e. Smt. Chandra Mukherji and also to Securities and Exchange Board of India.

Date: March 07, 2014

Place: Mumbai

**D. SURA REDDY
ADJUDICATING OFFICER**

