

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PG/AO/30/2013]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING (OFFICER) RULES, 1995

In respect of

Mr. Ramesh Yerramsetti

[PAN: ABEPY9309B]

In the matter of

M/s GSS America Infotech Limited.

Background of the case

1. On analysis of the trading pattern of the promoters of GSS America Infotech Limited ("**the company**") for the period between 01.01.2009 and 30.04.2012, it was observed that the trading activity of certain promoters had resulted in opposite transactions i.e, sell or buy shares of the company during the next six months following the prior transaction. It was revealed that Shri Ramesh Yerramsetti ("**the Noticee**") who was the Managing Director (MD)

of the company, had allegedly entered into such opposite transactions.

2. In view of the findings of the investigation as given above, SEBI, vide order dated August 28, 2012, appointed the undersigned as Adjudicating Officer ("**AO**") under Section 15-I of the SEBI Act, 1992 ("**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 ("**Adjudication Rules**") to inquire into and adjudge under Section 15HB of the SEBI Act, the alleged violation of the provisions of Clause 4.2 of Schedule I of Model Code of Conduct for prevention of insider trading for listed companies under regulation 12 (1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 ("**PIT Regulations**") by the Noticee.

Show Cause Notice, Reply & Personal hearing

3. Show Cause Notice dated October 08, 2012 (SCN) was issued to the Noticee in terms of the provision of Rule 4 (1) of the Adjudication Rules to show cause as to why an inquiry should not be held against him in respect of the violations alleged to have been committed by him. The SCN alleged that the Noticee, being the MD of the company had allegedly entered into opposite transactions. The details of trades were furnished to the noticee along with the SCN.
4. In response to the SCN, the Noticee, vide letter dated October 23, 2012 sought extension of time for filing the reply. The request of the Noticee was partially acceded to and he was granted time till November 05, 2012 for submitting the reply. As no response was

received from the Noticee, vide letter dated November 07, 2012, the Noticee was advised to appear for personal hearing on November 20, 2012. As the Noticee did not appear for hearing on November 20, 2012, vide letter dated November 20, 2012, the Noticee was given a final opportunity of hearing on November 27, 2012. In response, the Noticee, vide letter dated November 24, 2012 requested for additional time for submitting the reply. The Noticee, vide e-mail dated November 27, 2012 submitted that the reply to the SCN will be filed in one week and the personal hearing may be scheduled after filing reply. Vide letter dated November 28, 2012, the Noticee submitted his reply. Subsequently, vide letter dated December 05, 2012, the Noticee was advised to appear for personal hearing on December 12, 2012. In response, the Noticee, vide e-mail dated December 07, 2012 intimated that he has filed consent application with SEBI for settling the proceedings. Vide office note dated April 02, 2013, SEBI intimated that the Noticee has withdrawn the consent application filed by him. Subsequently, vide letter dated April 04, 2013 the Noticee was advised to appear for personal hearing. On April 12, 2013, Shri Ravichandra Hegde, Senior Associate of M/s J Sagar Associates, Advocates appeared on behalf of the Noticee and made submissions. The Noticee, vide email dated April 22, 2013 forwarded further documents and additional submissions.

5. The important submissions made by the Noticee vide letter dated November 28, 2012 and e- mail dated April 22, 2013 are as under:-

- i) That the impugned sell trades were as a result of lender entities (to whom the Noticee had pledged the shares of the company) invoking the said pledge. The said transactions were outside the control and power of the Noticee.

- ii) that the purchase of 9,85,121 shares was done in order to maintain minimum promoter holding in the company as per the terms of arrangements made with the lender entities.
- iii) The alleged trades were not done on the basis of any price sensitive information received by the Noticee and the Noticee has not made any profits out of the alleged transactions.

Consideration of Issues, Evidence and Findings

- 6. I have carefully perused the documents available on record, written and oral submissions made by the Noticee.
- 7. The issues that arise for consideration in the present case are:
 - a. Whether the Noticee has violated the provisions of Clause 4.2 of Schedule I under Regulation 12 (1) of PIT Regulations?
 - b. Does the violation, if any, on the part of the Noticee attract penalty under section 15HB of SEBI Act?
 - c. If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act?

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

PIT Regulations, 1992.

Regulation 12 - Code of internal procedures and conduct for listed companies and other entities

Schedule I - Part A, Clause 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.

9. Moving on to the merits of the matter, I find that the noticee was the Managing Director of the company during the relevant time. I further find that the Noticee was trading in the shares of the company and the following buy and sell trades entered by the Noticee resulted in opposite transactions i.e. buy or sell of shares of the company during the next six months following the prior transaction.

Clnt PAN	Date	Gr Buy Vol	Gr Sell Vol	Net Trd Vol	Gr Trd Vol
ABEPY9309B	03-11-2009	30000	0	30000	30000
ABEPY9309B	04-11-2009	17770	0	17770	17770
ABEPY9309B	05-11-2009	17230	0	17230	17230
ABEPY9309B	06-11-2009	15000	0	15000	15000
ABEPY9309B	04-02-2010	25000	0	25000	25000
ABEPY9309B	30-03-2010	250000	250000	0	500000
ABEPY9309B	17-08-2010	50000	0	50000	50000
ABEPY9309B	20-08-2010	50000	0	50000	50000
ABEPY9309B	21-09-2010	50000	0	50000	50000
ABEPY9309B	22-09-2010	50000	0	50000	50000
ABEPY9309B	06-12-2010	87253	0	87253	87253
ABEPY9309B	08-12-2010	6400	0	6400	6400
ABEPY9309B	16-12-2010	0	30000	-30000	30000
ABEPY9309B	20-12-2010	0	383000	-383000	383000
ABEPY9309B	20-06-2011	120000	0	120000	120000
ABEPY9309B	09-08-2011	36225	0	36225	36225
ABEPY9309B	26-09-2011	1293	0	1293	1293
ABEPY9309B	28-09-2011	230	0	230	230
ABEPY9309B	29-09-2011	1598	0	1598	1598
ABEPY9309B	30-09-2011	4100	0	4100	4100
ABEPY9309B	03-10-2011	1959	0	1959	1959
ABEPY9309B	04-10-2011	3306	0	3306	3306
ABEPY9309B	05-10-2011	4975	0	4975	4975
ABEPY9309B	07-10-2011	1994	0	1994	1994
ABEPY9309B	10-10-2011	666	0	666	666
ABEPY9309B	11-10-2011	3466	0	3466	3466
ABEPY9309B	12-10-2011	1237	0	1237	1237
ABEPY9309B	13-10-2011	4941	0	4941	4941
ABEPY9309B	14-10-2011	10300	0	10300	10300
ABEPY9309B	17-10-2011	2235	0	2235	2235
ABEPY9309B	18-10-2011	10000	0	10000	10000
ABEPY9309B	19-10-2011	5000	0	5000	5000
ABEPY9309B	20-10-2011	4531	0	4531	4531
ABEPY9309B	21-10-2011	1000	0	1000	1000

ABEPY9309B	24-10-2011	1312	0	1312	1312
ABEPY9309B	25-10-2011	427	0	427	427
ABEPY9309B	26-10-2011	30	0	30	30
ABEPY9309B	31-10-2011	643	0	643	643
ABEPY9309B	01-11-2011	3000	0	3000	3000
ABEPY9309B	09-11-2011	62000	0	62000	62000
ABEPY9309B	21-11-2011	50000	0	50000	50000
ABEPY9309B	12-01-2012	0	590000	-590000	590000

Note : ABEPY9309B – PAN of Ramesh Yerramsetti

The above table shows that the Noticee had entered into numerous buy and sell transactions in the shares of the company during the period from 03.11.2009 to 12.01.2012. During the period from 03.11.2009 to 04.02.2010, the Noticee purchased 1,05,000 shares of the company in five transactions. On 30.03.2010 he purchased and sold 2,50,000 shares. From the period 17.08.2010 to 08.12.2010 he again purchased 2,93,653 shares in six transactions. On 16.12.2010 and 20.12.2010 he sold a total of 4,13,000 shares. From the period 20.06.2011 to 21.11.2011 he was continuously purchasing shares of the company when he purchased 3,36,468 shares. On 12.01.2012 he sold 5,90,000 shares of the company.

10. I have considered the contentions of the Noticee made vide letter dated November 28, 2012, during the personal hearing before me and also the documents/additional submissions forwarded by him vide letter dated April 22, 2013. The main argument of the Noticee regarding the sale of shares is that the said sale was not done by him but was done by various lender entities from which he had availed margin funding and loans by pledging shares of the company. He has contended that the sale was a result of invocation of pledge by the said lending entities and was outside his control and therefore should not be considered as sale made by him. With regard to the purchases, he has contended that he had to maintain a minimum promoter holding in the company as per the loan

agreements he had entered into with those lender entities while availing the said loans. In view of the above, he states that he is not in violation of 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.

I have also perused the affidavit executed by the compliance officer of the company in support of the above contentions of the Noticee and also the copies of the disclosures made to the stock exchanges regarding the creation/invocation of the pledge.

11. I find that the Noticee was very actively purchasing and selling the shares of the company in large quantities and on many occasions. I find that during the period from 03.11.2009 to 12.10.2012, the Noticee has altogether purchased a total of 9,85,121 shares and sold 12,53,000 shares of the company. On some days the Noticee has both purchased and sold the shares.
12. Regarding the contention of the Noticee that the sell transactions were not done by him but were a result of invocation of pledge by the lending entities and thus were outside his control, I am of the opinion that the said contention has to be seen in the light of the purchases made by him. The Noticee's contention that the purchases made by him were towards keeping minimum shareholding in the company in terms of the agreements entered with the lending entities does not appear logical. The purchases also imply that he had the funds to purchase the company's shares. It does not appear rational that on one hand the Noticee was purchasing shares and on the other hand his shareholding was decreasing on account of invocation of pledge on his shares. Hence, I am of the opinion that the Noticee is using the device of

sales by lending entities to circumvent the regulatory requirement of 6 months interval between buy and sell transactions.

13. I further note that the documents submitted by the Noticee in support of the invocation of pledge do not substantiate the sale transactions appearing in his account. The only documents produced are the copies of disclosures made to stock exchanges regarding creation/invocation of pledge. On perusal of the said copies, it is seen that most of them relate to creation of pledge and not to invocation of pledge. Further, it is observed that the Noticee has sold 2,50,000 shares of the company on March 30, 2010. The Noticee has submitted that this transaction was done for the purpose of tax planning exercise. Considering the fact that he has been purchasing shares during the relevant period from November 2009 onwards, it is clear that the Noticee has deliberately violated the stipulation of not entering into opposite transactions within the period of six months. It is also observed that Noticee has also purchased 2,50,000 shares on March 30, 2010. Thus, on March 30, 2010, the Noticee has done both purchase and sale transactions for 2,50,000 shares each. I am of the view that being a designated employee of the company, the Noticee should have been aware of the Code of Conduct applicable to designated employees. The contentions made by the Noticee do not appear to be reasonable for justifying the number of opposite transactions made by him.

14. I also find that the compliance officer in his affidavit dated April 22, 2013 has supported the contentions of the Noticee. The compliance officer has *inter alia* stated that in terms of the clarification to PIT Regulations issued by SEBI, he has exercised his discretion and waived the six month prohibition on entering into opposite

transactions. As already mentioned in foregoing paragraphs, the issue of sales out of personal exigency does not hold water in the light of the fact that the Noticee was regularly purchasing the shares of the company on the other hand.

15. It is clear that the noticee has violated the restrictions deliberately and on numerous occasions. In view of the foregoing discussions, I find that the Noticee has violated the provisions of Clause 4.2 of Part A, Schedule I under Regulation 12 (1) of PIT regulations.
16. I note that the Noticee has quoted certain cases while defending his case. I have perused the said judgments and am of the view that they are not directly relevant to the instant case. The Noticee has contended that the Adjudicating Officer in his order dated 11.12.2012 in respect of P.N Deshpande in the matter of Orchid Chemicals and Pharmaceuticals Limited had not imposed penalty for similar violations. On perusal of the said order, I note that the comparison is not relevant as in the said case there was a solitary instance of opposite transaction of only 50 shares and further the company had initiated disciplinary action against Mr. Deshpande. In the instant case the number of transactions is numerous and the volume is also considerable.
17. The Hon'ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund** 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.”*

18. Thus, the aforesaid violations by the Noticee make him liable for penalty u/s. 15HB of the SEBI Act which reads thus:

15HB. Penalty for contravention where no separate penalty has been provided.-

"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"

19. While determining the quantum of penalty, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

Factors to be taken into account by the adjudicating officer.

While adjudging quantum of penalty under S.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."*

20. It is difficult, in cases of such nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the Investors. It is observed that the Noticee has repeatedly done opposite transactions i.e. buy or sell of shares during the next six months following the prior transaction in shares of the company.

21. I am of the considered opinion that directors/ officers/ designated employees are senior functionaries who are reasonably expected to be aware of major developments in a company. By virtue of their position, they would be aware of the day-to-day working of the company. It is of utmost importance that such persons should not be doing buy & sell transactions in the shares of that company at short intervals but should have a long term view. This is also necessary to ensure a sense of fair play and instill confidence amongst ordinary investors. In the instant case, I note that there are numerous instances of violation of 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 wherein large quantity of shares of the company have been transacted. I further note that the Noticee is the Managing Director of the company.

ORDER

22. After taking into consideration all the facts and circumstances of the case, I come to conclusion that this is a fit case for imposing the monetary penalty on the aforesaid Noticee. I, in exercise of the powers conferred upon me under section 15- I (2) of the SEBI Act, impose a penalty of ₹ 3,00,000/- (Rupees Three Lakhs only) on the Noticee, Ramesh Yerramshetti in terms of Section 15HB of the SEBI Act for violation of Clause 4.2 of Part A, Schedule I under Regulation 12 (1) of PIT Regulations. I am of the view that the said penalty is commensurate with the violation committed by the Noticee.

23. The penalty shall be paid by way of a duly crossed 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 the Chief General Manager, Integrated Surveillance Department Securities and Exchange Board of India, Plot no.C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai- 400 051.
24. In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

DATE: April 29, 2013
PLACE: Mumbai

PIYOOSH GUPTA
ADJUDICATING OFFICER