

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

**ORDER**

**Under sections 11(4) and 11B of Securities and Exchange Board of India Act, 1992 read with regulation 14 of SEBI (Prohibition of Insider Trading) Regulations, 1992 and regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 in respect of Silicon Valley Infotech Limited.**

**In the matter of ATN International Limited.**

---

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted investigation into the transactions in the scrip of ATN International Limited (hereinafter referred to as "ATN") for the period from December 1, 2004 to January 15, 2005 (hereinafter referred to as "the investigation period").
2. Pursuant to the investigation, SEBI issued a show cause notice dated June 14, 2011 (hereinafter referred to as "SCN") to the Noticee calling upon it to show cause as to why action under sections 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") should not be initiated against it to disgorge its illegal gains of ₹7,40,759/-.
3. The above allegation of illegal gain has been alleged in the SCN, *inter alia*, in view of the following facts revealed during investigation:-
  - (a) At the relevant time, ATN was listed on Bombay Stock Exchange Limited (hereinafter referred to as "BSE"), National Stock Exchange of India Limited and Calcutta Stock Exchange Limited. The board of directors of ATN (hereinafter referred to as "BoD") comprised Mr. Santosh Kumar Jain (Managing Director), Mr. Arihant Jain, Mr. Kishan Kumar Khadaria and Mr. Santosh Kumar Lahoti. Mr. Santosh Kumar Jain was also the Managing Director of Silicon Valley Infotech Limited (hereinafter referred to as "Noticee").
  - (b) ATN convened a board meeting on November 15, 2004 to consider and approve the proposal for restructuring of its assets and capital. The stock exchanges were informed about the board meeting on the same day.
  - (c) On December 6, 2004, ATN informed BSE that its BoD was scheduled to meet on December 20, 2004 to consider, *inter alia*, the rights issue of shares. It also published an advertisement in Business Standard on December 7, 2004 regarding the proposed rights

issue. Subsequent to the aforesaid advertisement, there was a sudden and unusual movement in the price and volume of the scrip of ATN. The price of ATN's shares rose from ₹3.87 on December 7, 2004 to ₹6 on December 16, 2004 i.e. an increase of 55% in 7 trading days.

- (d) On December 20, 2004, the BoD of ATN held a meeting and decided to defer the decision on rights issue without assigning any reason. However, the BoD decided to reduce the paid up value of the equity share capital of ATN from ₹10 per share to ₹4 per share by cancelling the paid up value of ₹6 per share. When the BoD's decision on capital reduction became public, the price of the scrip fell sharply to ₹2.15. However, the volumes in the scrip remained stable.
  - (e) It was observed that the BoD of ATN spread misleading information to the public that it was considering a rights issue whereas it was actually contemplating the reduction of capital.
  - (f) The information that ATN will not go for rights issue, even though it created an impression in public that it would, was a price sensitive information and was not available in the public domain till December 20, 2004. The said information was available to Mr. Santosh Kumar Jain, since as the Managing Director of ATN he was privy to the decision regarding the rights issue of ATN.
  - (g) The Noticee, possessed with the price sensitive information through its Managing Director Mr. Santosh Kumar Jain, offloaded 6,42,925 shares of ATN in a price range of ₹3.66 to ₹5.30 during the period from December 7, 2004 to December 10, 2004, taking advantage of the price rise, due to the belief of the investors that there was an impending rights issue. It was alleged that the Noticee unlawfully gained ₹7,40,759 by way of 'fraudulently' selling these shares while in possession of the price sensitive information.
  - (h) The public announcement regarding rights issue was made by ATN without any intention to perform it but only as a device to lure the gullible public to trade in the scrip. After creating investor interest in the scrip by such overt acts, the price and volume of the scrip had shot up and the Noticee sold the shares of ATN, taking advantage of the artificially jacked up prices and made unjust profits.
4. In view of the above, it is alleged in the SCN that the act of the Noticee in trading in the scrip of ATN while in possession of the price sensitive information was in violation of section 12A(a), (d) and (e) of the SEBI Act and regulation 3(i) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 ("PIT Regulations").
5. The SCN further describes that *"The sale of shares by the noticee after the share prices had gone up pursuant to the public announcement regarding rights issue which was never intended to be carried out is a fraudulent act on general public while dealing in ATN shares"*. On this basis, it has been alleged in the SCN that *"the act*

*of the noticee in selling the scrip of ATN while concealing the material information is in violation of section 12A(a) of the SEBI Act read with regulation 3(a), (b), (c) and (d) and regulation 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003".*

6. In response to the SCN, the Noticee vide its letter dated June 28, 2011 submitted that the same allegations as stated in the SCN were received by it in the past vide another show cause notice dated June 5, 2008 issued under rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Adjudication Rules"). In respect of the said show cause notice, the Noticee availed the consent scheme of SEBI to settle the matter. Pursuant thereto, SEBI, vide Consent Order dated June 20, 2011, accepted the proposal of the Noticee to settle the allegations made in the said show cause notice dated June 5, 2008 for an amount of ₹1,00,000/- and a voluntary debarment of the Noticee for a period of one year from buying, selling or otherwise accessing the securities market. In view thereof, the Noticee requested SEBI to take note of the aforesaid adjudication proceedings and the Consent Order, and to revoke the SCN issued to it as the matter was already settled.
7. In this regard, SEBI, vide letter dated August 18, 2011, responded to the Noticee stating that on completion of investigation in the matter of ATN, initiation of adjudication proceedings as well as the proceedings under section 11(4) and 11B of the SEBI Act (i.e. the present proceedings) was approved against it. Further, in respect of the adjudication proceedings, a show cause notice dated June 5, 2008 was issued to it under rule 4(1) of the Adjudication Rules in respect whereof, the Consent Order dated June 20, 2011 was passed disposing of the adjudication proceedings. However, SCN in respect of the proceedings under section 11(4) and 11B of the SEBI Act remained to be issued and was subsequently issued on June 14, 2011. Accordingly, the Noticee was advised to reply to the SCN.
8. The Noticee did not file any further reply to the SCN. Opportunities of personal hearing were also granted to the Noticee on November 26, 2013 and February 11, 2015 but it did not avail the same. Since, the Noticee has chosen not to appear for personal hearing, despite reasonable opportunities provided to it, I proceed to deal with the merits of the case on the basis of the material available on record.
9. I have carefully considered the SCN, the reply of the Noticee and material available on record. On perusal of the material available on record, I note that pursuant to the investigation in the matter, it was alleged that the Noticee traded in the scrip of ATN while in possession of '*price sensitive information*' in violation of provisions of regulation 3(i) of the PIT Regulations read with section 12A (d) and (e) of the SEBI Act. With regard to this allegation, apart from adjudication

proceedings under section 15G of the SEBI Act, the proceedings to disgorge alleged unjust gains of ₹7,40,759/ under section 11(4) and 11B of the SEBI Act were also approved as against the Noticee. It is further noted that the adjudication proceedings initiated against the Noticee under section 15G of the SEBI Act have been settled vide Consent Order dated June 20, 2011.

10. From the SCN it is inferred that the basis of entire charge is as following:-
  - a) the information that ATN will not go for its disclosed rights issue and instead will go for the reduction of the value of equity share capital was a price sensitive information;
  - b) the aforesaid price sensitive information was not in public domain till December 20, 2004;
  - c) Mr. Santosh Kumar Jain, Managing Director of ATN was in possession of the aforesaid price sensitive information even before it was disclosed in the stock exchange on December 20, 2004. Thus, Mr. Santosh Kumar Jain being an "*insider*" in ATN was in possession of the '*unpublished price sensitive information*' (UPSI) before the same was published;
  - d) Mr. Santosh Kumar Jain was also Managing Director of Noticee on the above mentioned dates and thus, SCN has sought to impute the knowledge of Mr. Santosh Kumar Jain regarding the aforesaid UPSI on the Noticee when it sold 6,42,925 shares of ATN during the period December 07, 2004 to December 10, 2004.
11. It is, however, noted that though the charge of alleged unjust gain is on account of alleged trading while in possession of *price sensitive information* in violation of section 12A(a), (d) and (e) of the SEBI Act and regulation 3(i) of the PIT Regulations, an ancillary charge, which was not alleged during investigation, has crept in the SCN regarding alleged violation of section 12A(a) of the SEBI Act read with regulation 3(a), (b), (c) and (d) and regulation 4(1) of the PFUTP Regulations. In this regard, it has to be kept in mind that such allegation should be established on the basis of higher degree of probabilities and not merely on the basis of probablising. In this case, the SCN has termed the transaction of Noticee as '*fraudulent selling*' without making out any basis as to how the Noticee indulged in '*fraudulent selling*'. In fact, the SCN does not recite any statement about any alleged role of the Noticee in the issuance of the public announcements by ATN which according to the SCN was a device to lure the gullible public to trade in the scrip and creation of investors interest. The SCN alleges that the public announcement regarding rights issue was made by ATN and the Noticee was in possession of the *price sensitive information* in that regard through its MD, Mr. Santosh Kumar Jain who was also MD in ATN. However, it has not made out as to how the Noticee was instrumental in the alleged price rise and volume. The charge in the SCN in this regard is nothing but merely probablising and endeavouring to state something which is not supported by any basis.

12. In view of the above, I find that the descriptions in the SCN are limited with regard to the charge of violation of section 12A(a), (d) and (e) of the SEBI Act and regulation 3(i) of the PIT Regulations. In this case, the Noticees have not disputed any of the above basis. It is noted that there was increase of 55% in the price of the scrip in 7 trading days when the advertisement about the rights issue was published on December 07, 2004 and subsequently price of the scrip fell when the decision regarding capital reduction became public. These facts indicate that the information that ATN will not go for its disclosed rights issue and instead will go for the reduction of the value of equity share capital was UPSI within the meaning of the expression under regulation 2(ha) read with regulation 2(k) of the PIT Regulations till December 20, 2004.
13. I note that Mr. Santosh Kumar Jain was the MD of ATN at the relevant time. He was also MD of the Noticee on all relevant dates. Therefore, it can safely be inferred that the Noticee had access to the UPSI or at least it was reasonably expected to have access to the UPSI and as such the Noticee is also an '*insider*' within the definition of the term '*insider*' under regulation 2(e) of the PIT Regulations which reads as under-

***Regulation 2(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 ; "*

14. Therefore, having traded in the shares of ATN while in possession of the UPSI, the Noticee has attracted the prohibitions contained in the provisions of section 12A(a), (d) and (e) of the SEBI Act and regulation 3(i) of the PIT Regulations.
15. It is important to note here that the basis of the above allegations and cause of action in the SCN and above mentioned adjudication proceedings is the same. Thus, the cause of action, out of which the allegations levelled in these proceedings have been derived and which was common in both the proceedings (i.e. the adjudication proceedings and the present proceedings), was settled by the consent order dated June 20, 2011. I note that in terms of the said Consent Order, the Noticee had paid the settlement terms of ₹ 1,00,000/- and also underwent a voluntary debarment of one year from buying, selling or otherwise accessing the securities market. Further, in terms of the said Consent Order, Mr. Santosh Kumar Jain also paid settlement terms of ₹20,00,000/- and underwent a voluntary debarment of two years towards settlement of allegations levelled against him in show cause notice dated April 21, 2009, which was issued to Mr. Santosh Kumar Jain

(amongst others) on the basis of the same facts and circumstances and also took note of the sale of shares of ATN by the Noticee which is the subject matter of the present SCN. It is further noted that the Consent Order was passed after the SCN dated June 14, 2011 was issued with regard to the alleged unjust gains made by the Noticee. It is also important to note that at the time of finalization of the settlement terms in respect of the aforesaid Consent Order, the benefit, which accrued to the Noticee because of sale of shares of ATN, was also considered. Thus, in view of the Consent Order, the charge of violation of provisions of section 12A(a), (d) and (e) of the SEBI Act and regulation 3(i) of the PIT Regulations as alleged in the SCN does not survive for any further action.

16. In view of the facts and circumstances of the present case as described above, I do not deem it necessary to issue any direction against the Noticee in respect of the allegations made in the SCN in the present proceedings.
17. The SCN dated June 14, 2011 is accordingly disposed off.

Sd/-

**DATE: May 6<sup>th</sup>, 2015**

**PLACE: MUMBAI**

**RAJEEV KUMAR AGARWAL  
WHOLE TIME MEMBER  
SECURITIES AND EXCHANGE BOARD OF INDIA**