

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/75-82/2012]

**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. Pratik Bhanushali [PAN :AMMPB6578N]
2. Shri Dinesh Nandwana [PAN :AAFPN9185Q]
3. Dr. N. K. Hayatnagarkar [PAN :ABQPH8414C]
4. Shri Ramesh M. Joshi [PAN :ACMPJ1824D]
5. Shri Anil Patodia [PAN :AFMPP7771G]
6. Shri Sunil Agarwal [PAN :ABRPA9442L]
7. Shri B. L. Meena [PAN :ABUPM0206F]
8. Shri B. K. Gupta [PAN :ABTPG6730D]

In the matter of

Vakrangee Softwares Ltd.

Background

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') has conducted investigation into the trading in the shares of Vakrangee Softwares Ltd. (hereinafter referred to as VSL') during the period from June 01, 2009 to July 13, 2009 (hereinafter referred to as 'investigation period') following an observation that Shri Prem Meiwai, Head of Finance had sold significant quantities of the shares of VSL prior to the announcement of results for the quarter ended March 2009. During the quarter ended March 31, 2009 VSL incurred a loss of ₹ 29.72

crore compared to a profit of ₹ 4.03 crore made by the company in the quarter ended December 31, 2008 due to write off of certain IT assets. The investigation could not conclusively establish that Shri Prem Meiwal has traded on the basis of and while in possession of Unpublished Price Sensitive Information (UPSI). However, the investigation revealed that Shri Pratik Bhanushali, Compliance Officer of VSL (hereinafter referred to as Noticee No. 1) failed to implement code of conduct as amended on November 19, 2008 prescribed under SEBI (Prohibition of Insider Trading) Regulations, 1992 (PIT Regulations) and Shri Dinesh Nandwana, Dr. N. K. Hayatnagarkar, Shri Ramesh M. Joshi, Shri Anil Patodia, Shri Sunil Agarwal, Shri B. L. Meena and Shri B. K. Gupta, Directors of VSL (hereinafter referred to as Noticees - 2 to 8) have failed in supervision and ensuring that the required compliances with regard to implementation of the code of conduct as specified in Part A of Schedule I of the PIT Regulations.

2. SEBI has therefore initiated adjudication proceedings under the SEBI Act against the Noticees to inquire into and adjudge the alleged violations of Clause 1.2 of the Code of Conduct specified under Part A of the Schedule I read with Regulation 12 (1) of PIT Regulations.

Appointment of Adjudicating Officer

3. SEBI vide order dated May 10, 2012 appointed me as Adjudicating Officer under Section 15-I of the 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 the 'Adjudication Rules') to inquire into and adjudge under section 15 HB of the SEBI Act, the alleged violation of the Noticees.

Show Cause Notice, Reply and Personal Hearing

4. I issued a common Show Cause Notice dated June 27, 2012 ('SCN') to the Noticees under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be held against them and penalty be not imposed under Section 15 HB of the SEBI Act for their alleged violation of the provisions of Regulations Clause 1.2 of the Code of Conduct specified under Part A of the Schedule I read with Regulation 12 (1) of the Insider Trading Regulations. The Noticees submitted their reply vide letter dated August 17, 2012.
5. After considering the reply submitted by the Noticees, I decided to conduct an inquiry in the matter and accordingly granted an opportunity of personal hearing to the Noticees on September 14, 2012 vide letter dated September 04, 2012. The Noticees vide letter dated September 13, 2012 sought for an adjournment. I granted another opportunity of personal hearing to the Noticees on September 21, 2012 vide letter dated September 13, 2012. The hearing was attended by the Chairman and Managing Director of the VSL, Shri Dinesh Nandwana on behalf of himself and other Noticees who reiterated the written submissions made earlier.
6. The Noticees inter alia submitted that VSL had adopted model code of conduct prescribed by SEBI under the PIT Regulations and there is no failure in supervision by the Board in implementing the code of conduct in order to prevent insider trading. The Clause 4.2 of the Schedule I read with Regulation 12 (1) of the Insider Trading Regulations has since been duly adopted and incorporated in the model code of conduct by the company. The company has continuously adhered to a good corporate governance policy and has been always one step ahead in implementing timely compliances and best corporate practices.

7. In view of the above, I am proceeding with the inquiry taking into account the submissions made by the Noticees, documents and material as available on record.

Issues, Evidence and Findings

8. I have carefully perused the charges against the Noticees mentioned in the SCN, the written and oral submissions of the Noticees and all the materials as available on record. The issues that arise for consideration in the present case are:
- a) *Whether the Noticees have failed to comply with provisions of Clause 1.2 of the code of conduct under Part A of Schedule I of the Insider Trading Regulations read with Regulation 12 (1) of the Insider Trading Regulations?*
 - b) *Do the violations, if any, on the part of the Noticees attract any penalty under Section 15 HB of the SEBI Act?*
 - c) *If yes, what should be the quantum of monetary penalty?*
9. The provisions of Clause 1.2 of the code of conduct and Regulations 12 (1) of the Insider Trading Regulation are as under:

Insider Trading Regulations

Schedule I – Part A

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

1.2 *The compliance officer shall be responsible for setting forth the policies, procedures, monitoring adherence to the rules for the preservation of 'Price Sensitive Information', pre-clearing of designated employees' and their dependent trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the board of the listed company.*

Explanation: For the purpose of this schedule, the term 'designated employee' shall include:-

- (i) *Officers comprising of the top three tiers of the company management*
- (ii) *The employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objective of this code of conduct.*

Regulation 12 (1) – Insider Trading Regulations

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.*

10. It is mentioned in the SCN that VSL did not modify their internal model code of conduct for prevention of insider trading with respect to Clause 4.2 of Schedule I, Part A of the PIT Regulations as amended by SEBI with effect from November 19, 2008. Therefore, it is alleged that the Noticee No. 1 being the compliance officer, failed in the implementation of the code of conduct for the prevention of insider trading while Noticees Nos 2 to 8, being Board of Directors of VSL have failed to monitor the implementation of code of conduct and to ensure the required compliances in this regard. The amended Clause 4.2 read as under:

“4.2 All directors/officers/designated employees who buy or sell any number of shares of the company shall not enter into opposite transactions, 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.”

11. The Noticees inter alia submitted that VSL has appointed a qualified Full time Company Secretary to take care of compliance of Company Law, Listing Agreement and SEBI Regulations. Code of Conduct as per the PIT Regulations has been framed as near thereto as to the Model Code of Conduct prescribed by SEBI without anyway diluting it. The allegation of violation of Clause 1.2 of the Model Code is unsustainable and there is no failure in supervision by the Board in implementing Code of Conduct in order to prevent Insider Trading.
12. The non inclusion of Clause 4.2 in the Code of Conduct of the Company shall never mean that the same has not been followed inside the organization. Mere non inclusion of any clause in the Model Code of Conduct with respect to PIT Regulations does not establish that provision of the Code has not been implemented and supervised by the Compliance Officer and the Board. Non inclusion of one clause out of the 227 sub clauses of the PIT guidelines cannot amount to a violation or the dilution of the code. The Noticees thought that inclusion of Clause 4.2 is not necessary as the Schedule as contained in the guidelines are believed to be universally binding on every person who has adopted the code i.e there is no need to specifically amend the code of conduct of every listed company who has adopted the code as the amendment would automatically become applicable to the listed companies who have adopted the same.
13. The amended Regulation came into effect from the date of its notification, however the modification of the amended Regulation was not done as SEBI has not prescribed any time period within which the listed Companies are required to modify their company code; had it been

the intension of SEBI, it should have specified the date. The Noticees drew a parallel to the listing agreement and stated that every amendment becomes automatically binding on the listed companies and it is not signed after every amendment. However, following the investigation by the SEBI officials during the investigation period, the Noticees have inserted the same to the model code of conduct of the Company.

14. The need to amend a company's code of conduct every time there is an amendment may prove to be counterproductive to the objective of the Regulation as the insiders who violate the PIT Regulations will take a stance that they cannot be acted against even in the absence of an amendment, despite the schedule to the PIT Regulations being amended. They submit that in the case of Manmohan Shetty v. SEBI, Hon'ble Securities Appellate Tribunal (SAT) ruled that the schedule to the PIT Regulations is an integral and operative part of the PIT Regulations. They quoted Supreme's Court Judgment in Hindustan Steel's Case which was further appreciated by SAT in Cobot International Capital V SEBI.

15. VSL has a history of continuously adhering to good corporate governance policy and complying with all the clauses of the listing agreement and code of conduct and has never received any notice from NSE, BSE or SEBI. VSL has been vigilant and prompt in putting corporate Governance and Secretarial standard in place and has always won laurels from various credit rating agencies for achievement in different spheres.

16. I agree that no specific date has been mentioned in SEBI notification for incorporating the said amendment in the model code of conduct of the listed companies. However it is implied that the listed companies shall incorporate the amendment in their internal code immediately or at the

earliest possible time by virtue of Regulation 12 (1) of the PIT Regulations. I also concede with the understanding of the Noticees that once the said amended Regulation came into force, i.e from the date of notification, it is applicable to all concerned and SEBI can enforce the same. However, a listed company gets empowered to exercise its regulatory and supervisory oversight with regard to the internal code of conduct for prevention of insider trading on its officers only to the extent adopted and incorporated in the internal code by it. In this context the parallel of the listing agreement drawn by the Noticees with the model code of conduct is not strictly comparable. The application of the code of conduct of the company maybe compared with the application of the listing rules of the Stock Exchanges while the listing agreement may be compared with the contractual agreement the company has with the officers.

17. However I observe from the material available on record that initially VSL has incorporated the model code of conduct for prevention of insider trading as per PIT Regulations. In the instant case, the only allegation is that the amended portion of clause 4.2 has not been incorporated by VSL in their internal code of conduct. In this context I cannot ignore the fact that the notification made by SEBI on November 19, 2008 and VSL in pursuance of the said notification has incorporated the same on April 26, 2012. In support of the same, the Noticees have produced before me a copy of the code of conduct of VSL for prevention of insider trading incorporating clause 4.2 as amended by SEBI. Besides, there is no material available on record to show any instance of violation or non-compliance on the part of VSL and the Noticees of the clauses of the model code of conduct as prescribed by SEBI in Schedule I, Part A of the PIT Regulations. I also observe from

the material available on record that there is no history of any irregularity/indulgence of any violation by the Noticees/VSL.

18. Therefore, in view of the above mitigating factors I am inclined to take a lenient view and conclude that this is not a fit case for imposition of monetary penalty under Section 15 HB of the SEBI Act and the Noticees are to be exonerated from the charges leveled against them in the SCN.

Order

19. 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 exonerate the Noticees from the charges leveled against them in the SCN. Accordingly the matter is disposed of.

20. In terms of the provisions of Rule 6 of the Adjudicating Rules the copies of this order are sent to the Noticees and also to Securities and Exchange Board of India.

Date: October 10, 2012

Place: Mumbai

P. K. KURIACHEN
ADJUDICATING OFFICER