

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/AO/38/2012]

**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**

Against

Goodluck Marketing Pvt. Ltd.

[PAN: AAACG5576E]

In the matter of

Promact Plastics Ltd.

Background

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted investigation into buying, selling or dealing in the shares of M/s. Promact Plastics Ltd. (hereinafter referred to as 'PPL') for the period from February 11, 2005 to September 30, 2005. PPL is a public limited company listed at Bombay Stock Exchange and Ahmedabad Stock Exchange. During the period under investigation, at the BSE, the scrip price witnessed a sharp rise from Rs.5.98 on February 11, 2005 to Rs.28 on July 27, 2005.
2. Investigation revealed that un-audited results for the first three quarters of the year ended March 31, 2006 declared by PPL were inflated and manipulated. Goodluck Marketing Pvt. Ltd. (hereinafter referred to as the

- ‘Noticee’), a promoter of PPL, had allegedly sold shares of PPL during the investigation period fraudulently and made disproportionate gains by insider trading by taking advantage of unpublished price sensitive information of the financial results being inflated and manipulated.
3. SEBI has therefore initiated adjudication proceedings under the SEBI Act, 1992 (hereinafter referred to as the ‘SEBI Act’) against the Noticee to inquire into and adjudge the alleged violations of the provisions of Regulations 3 (a), (b), (c), & (d), 4 (1) and 4 (2) (a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the ‘PFUTP Regulations’) and Regulations 3 (i), (ii) and 3A read with Regulation 4 of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the ‘PIT Regulations’) and also Section 12A (d) and (e) of the SEBI Act.

Appointment of Adjudicating Officer:

4. SEBI vide Order dated July 27, 2009 appointed Shri Santosh Kumar Sharma as the Adjudicating Officer (AO) under Section 15-I of the SEBI Act read with Rule 3 of 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 Sections 15HA and 15G of the SEBI Act, the alleged violation of the abovementioned provisions of PFUTP Regulations, PIT Regulations and SEBI Act. SEBI vide Order dated January 04, 2012 appointed the undersigned as the AO.

Notice, Reply & Personal Hearing

5. The AO issued a notice dated September 25, 2009 (hereinafter referred to as ‘SCN’) to the Noticee in terms of Rule 4 of the Adjudication Rules requiring it to show cause as to why an inquiry should not be held against it for the alleged violations.

6. The SCN alleged that the Noticee held 17,99,990 shares constituting 33.15% of the shareholding of PPL as on March 31, 2005 which reduced to 3,02,194 shares constituting 5.57% of the total shareholding as on September 30, 2005. The Noticee had traded after the announcement of issue of bonus shares & declaration of dividend i.e. on June 23, 2005. Shri Babubhai A Patel, who was the director of the Noticee, in the capacity of Chairman and Managing Director of PPL, had declared inflated and manipulative quarterly financial results which were misleading and created curiosity among the investors thereby unduly influencing the decision of the investors. It was alleged that the Noticee acted in concert with Shri Babubhai A Patel by continuously off-loading shares during the investigation period, thereby reducing its shareholding from 33.15% to 5.57% and making disproportionate gains. Further, it was alleged that the Noticee might have indirectly procured the unpublished price sensitive information from Shri Babubhai A Patel which helped the Noticee to off-load shares to the tune of 2 lacs on June 23, 2005 (the date of announcement of issue of bonus shares in the ratio of 1:5 & declaration of dividend @ Rs.1 per equity share). Thus, the Noticee was alleged to have violated Regulations 3 (a), (b), (c), & (d), 4 (1) and 4 (2) (a) of the PFUTP Regulations and Regulations 3 (i), (ii) and 3A read with Regulation 4 of the PIT Regulations and also Section 12A (d) and (e) of the SEBI Act.
7. The SCN was sent to the Noticee by Registered Post Acknowledgment Due and the same was duly delivered. The Noticee did not file any reply to the SCN. Reminder letter dated November 03, 2009 was sent to the Noticee. The Noticee vide letter dated November 10, 2009 expressed desire to file for consent proceedings. Vide Office Note dated December 30, 2009 the AO was asked to keep the matter in abeyance as the Noticee had filed a consent application. Vide Office Note dated November 02, 2010, the AO was informed that the Noticee's consent application was recommended for settlement by the HPAC and letter for payment was

sent to it. However, the Noticee did not make payment and thus the consent application was rejected. The undersigned provided an opportunity of personal hearing to the Noticee on February 27, 2012 vide letter dated February 08, 2012. The Noticee attended the personal hearing and submitted a written reply dated February 27, 2012 to the SCN.

Consideration of Issues, Evidence and Findings

10. I have carefully perused the charges against the Noticee mentioned in the SCN, the written submissions of the Noticee and the materials and documents as available on record. The issues that arise for consideration in the present case are:

- a) Whether the Noticee has violated the provisions of Regulations 3 (a), (b), (c), & (d), 4 (1) and 4 (2) (a) of the PFUTP Regulations and Regulations 3 (i), (ii) and 3A read with Regulation 4 of the PIT Regulations and also Section 12A (d) and (e) of the SEBI Act?***
- b) Does the violation, if any, on the part of the Noticee attract any penalty under Sections 15HA and 15G of the SEBI Act?***
- c) If yes, what should be the quantum of penalty?***

11. Before moving forward, it will be appropriate to refer to the relevant provisions of PFUTP Regulations, PIT Regulations and the SEBI Act which read as under:-

PFUTP Regulations

Prohibition of certain dealings in securities

3. No person shall directly or indirectly—

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;***
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any***

manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;

(c) *employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*

(d) *engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.*

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) *Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*

(2) *Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely :—*

(a) *indulging in an act which creates false or misleading appearance of trading in the securities market;*

PIT Regulations

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 when in possession of any unpublished price sensitive information; or*

(ii) *communicate 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.

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.

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.

SEBI Act

12A. *No person shall directly or indirectly—*

(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;

12. The Noticee in response to the SCN has submitted that it sold the shares subsequent to the public announcement made by PPL. It had not acted in concert with Shri Babubhai Patel, Director of the company, in selling the shares or making any decision related to such sale of shares. It did not make any disproportionate gain while selling shares. It did not have any unpublished price sensitive information from Shri Babubhai Patel or any person. It sold the shares immediately after the announcement and without waiting for the price to go up.
13. I find from available records that the Noticee was holding 1799000 shares constituting 33.15% of the paid-up capital of PPL as on March 31, 2005 which was reduced to 302194 shares constituting 5.57% as on September 30, 2005. It is alleged that Shri Babubhai Patel, in the capacity of

Chairman and Managing Director of PPL, had declared inflated and manipulative quarterly financial results which were misleading and created investor interest in the scrip. Shri Babubhai Patel was also a director of the Noticee. The allegation against the Noticee is that it acted in concert with Shri Babubhai A Patel and continuously off-loaded shares thereby making disproportionate gains. I have perused the details of the transactions of the Noticee as available on record. I find that the Noticee sold a total of 86,806 shares on June 09, 2005 at an average price of Rs.15 per share. It further sold 200000 shares at an average price of Rs.16.7 on June 23, 2005 i.e. the date on which board meeting was held to recommend issue of bonus shares and declaration of dividends and the annual results for 2004-05 were declared. From the records, it is seen that the quarterly result for the quarter ended June 30, 2005 was declared on July 30, 2005 in the exchange. I thus find that the said sales happened before the quarterly result for the first quarter ending June 30, 2005 was declared. Therefore, the question of Noticee taking advantage of quarterly results for first quarter, alleged to be inflated and manipulated, for the said sales does not arise.

14. It is further alleged in the SCN that the Noticee might have indirectly procured unpublished price sensitive information from Shri Babubhai Patel which helped the Noticee to off-load 200000 shares on June 23, 2005 i.e. the date on which board meeting was held to recommend issue of bonus shares and declaration of dividends and the annual results for 2004-05 were declared. I find from records that the Noticee had sold the shares immediately after the announcements. Even the Investigation Report states that there is no evidence of insider trading by Noticee with respect to the said announcements.
15. I find from records that the Noticee further sold 310000 shares on August 24, 2005, 500000 shares on August 25, 2005 and 168904 shares on

August 26, 2005 at an average price of Rs.23.75, Rs.24.61 and Rs.25.87 respectively. I find that the Noticee's shareholding had reduced to 5.57% by September 30, 2005 and there are no records of any further sale. Thus, I find that the Noticee had sold shares before the quarterly results for second and third quarter for the year 2005-06 could be declared. Therefore, the question of the Noticee taking advantage of allegedly inflated results of the second and third quarter for off-loading shares would not arise.

16. As per the findings of the investigation, PPL had declared a net profit of Rs.3.84 Million, Rs.3.98 Million and Rs.4.02 Million for the quarters ended June 30, 2005, September 30, 2005 and December 31, 2005 respectively (a total profit of Rs.11.84 Million in first three quarters) in its un-audited quarterly results. In the audited annual results for the year 2005-06 PPL declared a net loss of Rs.31.43 Million. The investigation alleged that the quarterly results for the first three quarters for the year 2005-06 were inflated and manipulated. However, the exact reasons for such variation in the un-audited results for first three quarters and the audited yearly result were not available. I find that in the absence of sufficient data and information it cannot be conclusively established that the quarterly results for each of the three quarters was inflated. While the investigation has taken a combined figure of all the three quarters to allege that the figures were inflated, it does not provide the extent of manipulation, if any, in profit figures for each of the three quarters. There is definitely a possibility of only the second and/or third quarterly result to be inflated and manipulated. The Noticee's sale transactions were over before the results for second and third quarter could be declared. Thus, it cannot be conclusively established that the result for first quarter was inflated and the Noticee had sold shares fraudulently taking advantage of inflated results. There is no conclusive evidence to establish that the Noticee took advantage of any unpublished price sensitive information to off-load

shares. Further, there is no case against the Noticee that it sold shares through synchronized/structured/circular deals.

17. In view of the above observations and findings, I conclude that there is not sufficient substantive/corroborative evidence to prove that the Noticee sold the shares fraudulently or that it indulged in insider trading based on unpublished price sensitive information, as alleged in the SCN. Thus, I am inclined to give benefit of doubt to the Noticee. Thus, I conclude that the allegations of violation of the provisions of Regulations 3 (a), (b), (c), & (d), 4 (1) and 4 (2) (a) of the PFUTP Regulations and Regulations 3 (i), (ii) and 3A read with Regulation 4 of the PIT Regulations and also Section 12A (d) and (e) of the SEBI Act by the Noticee do not stand established.

Order

18. From the foregoing and after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby conclude that the alleged violations of Regulations 3 (a), (b), (c), & (d), 4 (1) and 4 (2) (a) of the PFUTP Regulations and Regulations 3 (i), (ii) and 3A read with Regulation 4 of the PIT Regulations and also Section 12A (d) and (e) of the SEBI Act against the Noticee do not stand established. Accordingly the matter is disposed of.
19. In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to Securities and Exchange Board of India.

Date: May 02, 2012

Place: Mumbai

**P K KURIACHEN
ADJUDICATING OFFICER**