

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. VSS/AO- 172/2009]

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

Madhav J Valia.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation in the trading in the scrip of Yashraj Containeurs Limited (hereinafter referred to as “**YCL/Company**”) for the period from December 1, 2005 to January 13, 2006 (hereinafter referred to as “**investigation period**”).
2. It was alleged that one of the promoter group entities, viz., Madhav J Valia (hereinafter referred to as “**Noticee**”) violated the provisions of regulations 3 (a), (b), (c) and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (hereinafter referred to as “**PFUTP**”), 3 (i) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT**”) and section 12A (e) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”).

3. The aforesaid alleged violations, if established, make the Noticee liable for monetary penalty under sections 15HA and 15G (ii) of SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as Adjudicating Officer vide order dated May 20, 2008 under section 15 I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules**') to inquire into and adjudge the alleged violations of provisions of PFUTP, PIT and SEBI Act.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show Cause Notice No. EAD-5/VSS/JR/137410/2008 dated September 10, 2008 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be held against the Noticee and penalty be not imposed under sections 15HA and 15G (i) of SEBI Act for the alleged violations specified in the said SCN.
6. Ms. Sangeeta J Valia, one of the promoters and also the natural guardian of the Noticee submitted a reply to the SCN vide letter dated September 19, 2008 stating that the Noticee was a minor and hence, the proceedings against him has to be dropped.
7. In the interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of the Rules, the Noticee was granted an opportunity of personal hearing on September 30, 2009 at SEBI,

Head Office, Mumbai vide notice dated September 7, 2009. Sangeeta J Valia vide letter dated September 23, 2009 sought an adjournment. The second opportunity of hearing was granted on October 28, 2009 vide letter dated October 1, 2009. At the oral request of Sangeeta J Valia, the personal hearing was advanced to October 7, 2009. Sangeeta J Valia, Authorized Representative of the Noticee (hereinafter referred to as “AR”) appeared. During the hearing the AR reiterated the submissions made vide letter dated September 19, 2008. Vide letter dated October 21, 2009 the AR also submitted a copy of the birth certificate of the Noticee in support of her submissions.

CONSIDERATION OF ISSUES AND FINDINGS

8. The issues that arise for consideration in the present case are :
 - a. Whether the Noticee was a minor at the time of the commission of the alleged violation?
 - b. If so, whether the present adjudication proceedings are tenable?
9. From the copy of the birth certificate submitted by the AR, I find that the Noticee was born on January 09, 1988. The alleged off market transaction by the Noticee to Vasparr Shelter Ltd (promoter group company and hereinafter referred to as “VSL”) and Samir Mukundlal Shah were made on October 1, 2005. At that time the Noticee was a minor.
10. In this regard it will be appropriate to refer to the decision of the Hon’ble Supreme Court in the matter of Ritesh Agarwal and Another v. Securities and Exchange Board of India and Others, 2008 INDLAW SC 989 that “*A contract must be entered into by a person who can make a promise or make an offer. If he cannot make an*

offer or in his favour an offer cannot be made, the contract would be void as an agreement which is not enforceable in law would be void. Section 11 of the Indian Contract Act, 1872 provides that the person who is competent to contract must be of the age of majority. If Ritesh Agarwal and Deepak Agarwal were minors, as would appear from their birth certificates, they could not have entered into the contract.”

“We, therefore, are of the opinion that subject to any other or further order which the Board may pass as against Shri Surender Kumar Agarwal and Smt. Rooprekha Agarwal, the impugned directions would not be binding on Ritesh Agarwal and Deepak Agarwal.”

11. In the matter of Babiben Mafatlal Bansali and Others, dated December 31, 2008, the Whole Time Member of SEBI inter -alia stated *“I note that the SCN was issued to the following persons who were minors at the time of commission of the act. I, therefore, do not pass any directions against them except impounding the unlawful gains made in their accounts by their parents on their behalf.”*

ORDER

12. In view of the above, the adjudication proceedings initiated vide order dated May 20, 2008 are infructuous and the matter is, accordingly, disposed of.
13. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: **October 28, 2009**
Place: **Mumbai**

V.S.SUNDARESAN
ADJUDICATING OFFICER