

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO.: - SD/AO/85/2010]**

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**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**

**M/s Cute Productions Pvt. Ltd.  
(PAN: Not Available)**

**In the matter of  
M/s Millenium Cybertech Limited.**

**FACTS OF THE CASE IN BRIEF**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation in respect of buying, selling as well as dealings in the scrip of M/s Millenium Cybertech Limited (hereinafter referred to as '**MCL**') for the period from June 01, 2005 to September 30, 2005. During this period of investigation, the price of the scrip of MCL increased from Rs 65.50 to Rs 242/- witnessing a sharp increase of 269% in just four months.
2. During the process of investigation, various entities like connected clients, brokers were found to be involved in the manipulation of the price of scrip of MCL in a fraudulent manner. The activities of these entities led to the creation of artificial volume and influenced the scrip price of MCL.

3. M/s Cute Production Pvt. Ltd. (hereinafter referred to as the 'Noticee') was one of the promoter entities of MCL, alleged to have violated the provisions of Regulation 3(b),(c), (d), 4(1), 4(2)(a),(d) and 4(2)(e) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as the '**PFUTP Regulations**') and Regulation 13(3) read with 13(5)(b) of the SEBI(Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**') for which the instant proceedings has been initiated and therefore, the Noticee is liable for monetary penalty as prescribed under section 15 HA and 15A(b) of the Securities and Exchange Board of India Act,1992(hereinafter referred to as 'SEBI Act') respectively.

#### **APPOINTMENT OF ADJUDICATING OFFICER :**

4. Ms. Babita Rayudu was appointed as the Adjudicating Officer vide order of SEBI dated 10<sup>th</sup> May, 2007 under section 15-I of the SEBI Act r/w Rule 3 of SEBI (Procedure for holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Adjudicating Rules**') to inquire into and adjudge under Sections 15HA and 15A(b) of the SEBI Act, the alleged violations of aforesaid regulations committed by the Noticee.
5. Subsequently, the undersigned has been appointed as Adjudicating Officer vide SEBI Order dt. 23<sup>rd</sup> November, 2007 in place of Ms. Babita Rayudu to adjudge the said matter.

#### **SHOW CAUSE NOTICE/REPLY/PERSONAL HEARING :**

6. A Show Cause Notice (hereinafter referred to 'SCN') dated June 17, 2008 under Rule 4 of the **Adjudicating Rules** was issued to the Noticee asking

it to show the cause as to why an enquiry should not be conducted against it and penalty as prescribed be not imposed under Section 15HA and Section 15A(b) of SEBI Act for its alleged violation of aforesaid provisions of **PFUTP Regulations** and **PIT Regulations** respectively.

7. The Noticee replied to the said SCN vide letter dated 12<sup>th</sup> July 2008. It is pertinent to note that the Noticee had corresponded the undersigned through the letter having address '38, Ganga Vihar, 3<sup>rd</sup> Floor, Rokadia Lane, Borivali(W), Mumbai- 400 092'. I have carefully examined the reply of the Noticee which *inter alia* are briefly discussed below :

*(i)... Cute Productions private Limited, Cornhill Trading Company Limited Pvt. Ltd were the promoters of MCL. The company during the period under reference were badly in need of Finance for business needs and commitments and because of this requirement approached one of the Financer namely Galaxy Broking Limited.*

*(ii)...Galaxy Broking Limited informed to us that they can arrange finance against pledge of shares and advised us to transfer the shares of MCL for the said purpose.. accordingly we have consolidated our promoters holding under single name i.e. our name and effected 612900 shares.*

*(iii) ... we kept on following with said financer/broker Galaxy Broking Limited for the required funds and to our surprise inspite of our follow up we never received any loan or any facilities or any consideration against the pledge of our shares. We approached them a number of times and finally they returned 612970 shares around August 2005 with an excuse that they failed to arrange for the funds. We are not aware how they dealt with the shares transferred to their accounts by us and on whose behalf. We never ever dealt with the shares or ever facilitated anybody to does so.*

*(iv). ... we transferred 3,00,000 shares each to M/s Goldcity Exports Pvt. Ltd. and M/s Shree Ambey Textiles Pvt. Ltd. and intimated the same to the company.*

8. Subsequently, considering the material available on record it was decided by the undersigned to conduct an inquiry in the instant matter for which an opportunity of personal hearing was given to the Noticee. The hearing notice was sent on address from which the Noticee had made correspondence to the undersigned and filed its reply to the SCN i.e. 'M/s Cute Production (P) Ltd., 38, Ganga Vihar, 3<sup>rd</sup> Floor, Rokadia Lane, Borivali (W), Mumbai 400 092'. However, the said hearing notice was returned undelivered with a comment 'office closed'. Subsequently, another hearing notice issued against the Noticee on the same address which was also returned undelivered with a comment 'this company is not located at given address'.
9. By considering these facts that both the hearing notices could not be delivered at the above address, the hearing notice was therefore sent through Speed Post at 'M/s Cute Production (P) Ltd. 71, Pyramid Tower, J P Road, Andheri, (W), Mumbai- 400 061', the address at which the SCN was duly delivered and subsequent to which the Noticee had filed its reply. The above said hearing notice was duly delivered and the acknowledgement of the same is available on record. The Noticee was advised to attend the said personal hearing on March 08, 2010. However, the Noticee did not appear before the undersigned for the personal hearing.
10. It is seen from the records that, despite acknowledging the hearing notice, the Notice failed to appear before me. Therefore, last opportunity was given to the Noticee to appear before the undersigned by delivering hearing notice at its last known address i.e. 'M/s Cute Production (P) Ltd., 38, Ganga Vihar, 3<sup>rd</sup> Floor, Rokadia Lane, Borivali (W), Mumbai 400 092', its last known address, through affixture as per Rule 7 (c) of Adjudication Rules and the Noticee was advised to attend the hearing proceeding on April 23, 2010. However, the Noticee failed to appear before the

undersigned on the scheduled date of personal hearing. Therefore, the matter is now proceeded on the basis of the material available on record.

### **CONSIDERATION OF ISSUES,EVIDENCE AND FINDINGS**

11. I have carefully perused the charges against the Noticee mentioned in the SCN and the materials available on record. In the instant matter, the following issues arise for consideration and determination:

- a. *Whether the Noticee had violated the provisions of Regulation 3(b),(c),(d), 4(1), 4(2)(a) and 4(2)(e) of PFUTP Regulations and the provisions of Regulation 13(3) read with 13(5)(b) of the PIT Regulations ?*
- b. *Whether the Noticee is liable for monetary penalty prescribed under Sections 15HA and Sections 15A(b) of the SEBI Act respectively, for the aforesaid violations?*
- c. *If, yes, what should be the quantum of monetary penalty?*

12. Before proceeding, I would like to refer the relevant provisions of PFUTP Regulations, PIT Regulations and SEBI Act which reads inter alia as under :

#### ***PFUTP Regulations :***

##### ***Prohibition of certain dealings in securities***

***3. No person shall directly or indirectly—***

***(a)...***

***(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.*

***Reg. 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;*
- (e) *any act or omission amounting to manipulation of the price of a security;*

***PIT REGULATIONS :***

***Continual Disclosure.***

*Reg. 13(3): Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.*

*(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within 4 working days of :*

- (a) *... ..*
- (b) *the acquisition or sale of shares or voting rights, as the case*

may be.

**SEBI Act :**

**Sec 15HA: Penalty for fraudulent and unfair trade practices:-**

*If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

**Penalty for failure to furnish information, return, etc.**

**Sec 15A :If any person, who is required under this Act or any rules or regulations made thereunder,—**

(a) ...

(b) *to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to 3[a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.*

13. I have carefully perused the charges made against the Noticee in the SCN and documents available on record. I have also carefully gone through the Investigation Report (hereinafter referred as 'IR') and observed that the net traded volume in the scrip of MCL during the period of investigation was 29,69,771 shares. The IR revealed that, during the relevant period of investigation the promoter entities of MCL i.e. M/s Cornhill Trading Company Pvt. Ltd.(Cornhill), M/s Stardom Trading company Pvt. Ltd.(Stardom) and the Noticee had off loaded their shares holdings through various private corporate bodies and interconnected entities. These interconnected entities who had traded in the scrip of MCL were Shri Amar Adhav, Shri Deepak Todkar, Shri Deepak Narvekar, Fineline Mercantile Company Private Limited, Sharpline Trading Company Private Limited, Shri Ramdas Kshirsagar, Stockholm Mercantile Company Private

Limited, Shri Rajkishore Singh, Rightstar Trading Company Private Limited, Shri Santosh Pawar, Ritedeal Trading Company Private Limited, Umesh Choukekar etc.

14. In the instant matter, the Noticee had hold 34,000 shares of MCL as on April 01, 2005. However, it had received 53,600 shares from M/s Ampu Traders Pvt. Ltd.(Ampu), one of the private corporate bodies on April 26, 2005. It is pertinent to note that, Ampu had hold 3,600 shares an on April 01, 2005 and received rest 50,000 shares from off market transactions before transferring all these shares to the Noticee. Likewise the Noticee had also received shares of MCL from other promoter entities. On the same day as specified above i.e. on April 26, 2005 the Noticee had received 46,600 shares of MCL from Cornhill. Further, as per the documents available on record the Noticee received 4,37,770 shares of MCL from Stardom. Again the Noticee had received 41,000 shares from Gautam Kamble on June 18, 2005.
15. Subsequently, at one instance the Noticee had transferred all these shares of MCL i.e. 6,12,970 shares to Galaxy Broking Limited (Galaxy) on July 08, 2005. These shares were traded in the market through M/s Galaxy Broking Limited (Galaxy) for various connected entities
16. On August 30, 2005, the Noticee had received back all these shares from Galaxy and transferred these shares i.e. 3,00,000 shares each to M/s Goldcity Exports Pvt. Ltd.(Goldcity) and M/s Shree Ambey Textiles Pvt, Ltd.(Shree Ambey)
17. It is also observed from the IR that the shares received from the Noticee were transferred to various interconnected entities in the off- market by the Goldcity and Shree Ambey. These interconnected entities were involved in buying and selling the scrip of MCL among themselves during the investigation period which created artificial volume in the market and



affected the scrip price of the MCL. Further, it is also brought out in the IR that some of these interconnected clients also received shares from the Noticee through off market which were subsequently off loaded in the market. Moreover, the Noticee had also disposed off the shares in the market by routing these shares through some entities to misguide the trail of transactions. All together, all these trading activities by various entities including the promoter entity (Noticee) created false appearance of trading resulting into creation of volume of trade and influenced the scrip price of MCL. When the scrip price went up gradually, promoter entity Stardom had off loaded its holding in the market.

18. As discussed above, various entities including the Noticee had conducted off market transactions and transfer of shares of MCL among themselves which lead to camouflage the dealings in the scrip of MCL in the securities market. These types of transactions of the Noticee do not appear to be genuine. Ample opportunity had been given to the Noticee by the undersigned as well as the IA, SEBI to clarify or explain regarding its transactions. However, the Noticee had not taken any effective attempt to explain its transactions. In the securities market, it is not possible for a single entity to manipulate the trading; the role of entire group has to be considered in a holistic manner to arrive at any conclusion. In view of the above, such type of trading activities of the Noticee can not be overlooked.
19. It is pertinent to note that the Noticee was as a promoter entity of MCL during the relevant period. As discussed hereinabove, the Noticee had received the shares of MCL from various entities and transferred all the shares to Galaxy. Further, after a gap of short period, the Noticee received back the shares from Galaxy and immediately transferred these shares to Goldcity and Shree Ambey. The manner in which the Noticee, as a promoter entity dealt in the shares of MCL does not appear to be genuine. All the facts stated hereinabove signifies that the Noticee had not dealt in

the scrip of MCL diligently as well as genuinely rather fraudulently.

20. It is pertinent to note that, the Noticee had neither appeared before the undersigned nor before the IA, SEBI. The Noticee had also not cooperated with the IA, SEBI. Further, he had not produced any substantial document or reply before the undersigned to defend the allegations made against it. In his reply the Noticee had claimed that they were badly needed of finance for which they had transferred the shares to Galaxy, Goldcity and Shree Ambey. However, the Noticee had not submitted any documentary evidence in support of his claim. Further, it had also not appeared before the undersigned to defend itself against the allegation made against it. In the absence of the same, I am inclined to take a view that the Noticee is guilty of fraudulent dealing in the scrip of MCL.
21. In view of these facts enumerated above, I would like to refer the findings of Hon'ble SAT in the matter of **Ketan Parekh Vs. SEBI (Appeal no. 02 of 2004, date of decision 14.07.2006)**, in which Hon'ble SAT held that *"Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available."* in the instant matter, I am of the opinion that the above mentioned circumstances i.e off market transactions between several entities, trading pattern of the Noticee as promoter entity, off loading of shares by promoter entities etc are sufficient enough to take a view that the Noticee had not dealt in the securities market genuinely.
22. Further, I would like to refer the definition of 'Fraud' defined in the Regulation 2(1)(c) of the PFUTP Regulations inter alia states 'fraud

includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agents to deal in securities whether or not there is any wrongful gain or avoidance any loss, and shall also include .....  
... .. ‘

23. In the instant matter, the Noticee had tried to conceal the details regarding his trading activities in the scrip of MCL. The Noticee neither appeared before the undersigned not provide any substantial documentary evidence against the allegation made against it. Therefore, I believe that the Noticee had dealt fraudulently in the scrip of MCL.
24. Further, it is observed from the documents available on record that the Noticee had reduced its holding from 6,12,970 shares to 12,970 shares of MCL i.e. from 12.25% to 0.26% of the total holding in the scrip of MCL as on 30<sup>th</sup> August , 2005. By virtue of these transactions the Noticee had reduced its holding to below 5% which also crossed the stipulated limit of 2% for disclosure as per Regulation 13(3) r/w 13(5)(b) of the PIT Regulations. The Noticee was required to disclose its change in share holding pattern in MCL to the company MCL as per the provision of PIT Regulations. In its reply the Noticee has claimed that it had intimated to the company MCL regarding the transfer of shares of MCL to Goldcity and Shree Ambey. However, the Noticee has not submitted any documentary evidence in support of its claim. In the absence of any document regarding its disclosure to MCL, I am of view that the Noticee has failed to fulfill its regulatory obligations required as per the PIT Regulations. Therefore, I hold the Noticee guilty for its failure to make proper disclosure as per the PIT Regulations.
25. The basic purpose of disclosure requirements is to bring about transparency in the securities market about any substantial change (more than 2%) in shareholding of the large shareholders (holding more than 5%

of the share capital) in a listed company. In the present case, the Noticee was also one of the promoters of the company MCL and it had a greater onus of informing the public about the change in its shareholding. Thus, the Noticee has clearly acted in violation of the prevailing laws and has failed to make proper disclosures to the company MCL.

26. Further, I would like to rely upon the findings of Hon'ble SAT in the matter of ***Milan Mahendra Securities Pvt. Ltd. Vs SEBI*** (Appeal No. 66 of 2003 and Order dated November 15, 2006 ), in which SAT has observed that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. We cannot therefore subscribe to the view that the violation was technical in nature. "* Thus I am of view that the by not disclosing the shareholding pattern to the company, the Noticee violated PIT Regulations.
27. The Hon'ble Supreme Court of India in the matter of ***SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)*** 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."*
28. While imposing monetary 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:**  
**15J** - While adjudging quantum of penalty under section 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.”*

29. It is not possible to quantify the gains made by the Noticee or the loss caused to investors as a result of non disclosure of its shareholding pattern as well as the fraudulent dealing in the scrip of MCL . Further, the IR is also silent on the quantum of gain made by the Noticee through such fraudulent trading activities. However, it is established that the Noticee had failed to make the required disclosure as per the PIT regulations and dealt fraudulently in the scrip of MCL in securities market. The activities of the Noticee facilitated to raise the scrip price to Rs 242/-during the investigation period. Hence, the violation committed by the Noticee has to be viewed seriously. The fraudulent transactions in the scrip of MCL raised the demand of the scrip of MCL. This would have attracted the genuine investor to trade in the scrip of MCL. The nature of transactions which were carried out in the scrip of MCL affected the normal price discovery mechanism and also jeopardized the functioning of the securities market. Though it is not possible quantify the exact monetary loss to the investors but the act of the Noticee has indeed jeopardized securities market as well as the interest investors. However, the entity who indulges in manipulative, fraudulent practice in securities market should be penalized for his act of commission and omission. Considering all the facts, circumstances and documents available on record, I find the Noticee indulged in fraudulent activities while dealing in the scrip of MCL and should be penalized under Section 15HA and 15 A(b) of the SEBI Act. Besides these facts the Noticee’s non co-operative attitude towards IA,SEBI and taking quasi judicial proceedings lightly also to be seen seriously which should be discouraged.

### **ORDER**

30. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me U/s 15-I(2) of the

Act, I hereby impose a penalty of Rs. 1,00,000/- (Rupees One Lakh Only) u/s 15A(b) of SEBI Act and Rs 2,50,000/- (Rupees Two Lakh and Fifty Thousand Only) u/s 15HA of SEBI Act [a total of Rs 3,50,000/- (Rupees Three Lakh and Fifty Thousand Only)] on M/s Cute production Pvt. Ltd. I am of view that the said penalty is commensurate with the violations made by M/s Cute Production Pvt. Ltd.

31. The penalty shall be paid by way of 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 General Manager, Investigation Department (ID2), Securities and Exchange Board of India, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
32. In terms of the provisions of Rule 6 of the Adjudicating Rules the copies of this order are sent to the Noticee and also to Securities and Exchange Board of India.

**Date: July 28, 2010**

**Place: Mumbai**

**SANDEEP DEORE**  
**ADJUDICATING OFFICER**