

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. MC/AO- 07/2010]

**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
Dhirubhia Sukkarbhai Nakia
(PAN: Not available)
In The Matter of
Genus Commu Trade Limited**

BRIEF BACKGROUND

1. The shares of Genus Commu Trade Limited (hereinafter referred to as 'GCL') are listed on the Bombay Stock Exchange and Ahmedabad Stock Exchange. SEBI conducted an investigation in respect of buying, selling and dealing in the shares of GCL during the time period from September 01, 2004 to November 05, 2004 (hereinafter referred to as investigation period).
2. During the investigation period, the scrip opened at Rs. 2.00 on September 01, 2004 and touched a period high (intra day) of Rs. 2.91 on October 04, 2004. The price reached the period low (intra day) of Rs. 1.16 on October 26 & 27, 2004 and finally closed at Rs. 1.53 on November 05, 2004. During the said period the total traded quantity was 1,63,78,953 shares, the daily average being around 3,48,488 shares for 47 days.
3. For the two months (July 01, 2004 to August 31, 2004) just prior to the investigation period, the total volume traded was 37,91,271 shares, the daily average being around 88,169 shares for 43 days. For the two months (November 08, 2004 to January 04, 2005) after the investigation period, total volume traded was 1,45,88,129 shares, the average daily volume traded was 3,64,703 shares.

4. The daily average volume traded during the period under investigation increased significantly i.e. by around 295% from the daily average volume traded for the preceding two months of the investigation period. This average daily volume remained so for two months following the investigation period as well.
5. During this period, the valid buy order quantity of 7,75,26,940 shares and valid sale order quantity of 3,18,71,640 shares was available in the market. Out of the total orders 51.39% of available sell orders were executed, where as only 21.12% of buy orders were executed implying that valid buy orders entered into the system far exceeded the valid sell orders.
6. M/s. Action Financial Services Pvt. Ltd., a BSE broker, was accounted for 57.92% and 14.89% of the total valid buy and sell orders during the investigation period. Mukti Enterprise, a sub broker of Action Financial Services Pvt. Ltd. placed majority of these orders (amounting to 57.83% of total buy orders and 14.86% of total sell orders) on behalf of clients A H Desurabhai, Ramesh Sukkarbhai Talaviya and Dhirubhai Sukkarabhai Nakia.
7. Ramesh Sukkarbhai Talaviya (hereinafter referred to as “**RS Talaviya**”) and Dhirubhai Sukkarabhai Nakia (hereinafter referred to as “**D S Nakia**”) were found to be connected to each other as both are having the same address i.e. 113, S.K. Industrial Society, Udhna Magdalla Road, Surat 359 001
8. **D S Nakia** through Mukti Enterprises placed large buy orders at lower price and sell orders at higher price. During the investigation period, **D S Nakia** placed 16 buy orders through Mukti Enterprises creating demand of 407480 shares contributing to 0.53% of the total buy orders. These orders were entered at prices lower than the prevailing market prices, and **D S Nakia** was actually a net seller in the market. These orders thus gave an impression of artificial buying interest in the scrip. This also provided an exit route to Shri. Ramniklal Patel who indirectly received shares from RS Talaviya and **D S Nakia** and offloaded the same in the market.
9. The aforesaid findings lead to the allegation that through collusion with the brokers and other clients, D S Nakia transacted in such a manner which created artificial volume in the scrip, with the intention of creating false appearance of trading in the shares of GCL during the investigation period, thereby distorting the market equilibrium of shares
10. Thus, D S Nakia was alleged to have violated regulations 4(1) and 4(2) (a),(b), (e) and (g) of PFUTP Regulations.

11. As **D S Nakia** had acquired more than 5%, 10%, and 14% shares/voting rights in GCL, but did not make any disclosure regarding the same, he was alleged to have violated regulation 7(1) read with regulation 7(2) of SAST Regulations and Regulation 13 (1) of PIT Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

12. I was appointed as Adjudicating Officer, vide order dated May 07, 2009, under section 15 I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) to enquire into and adjudge the alleged violations of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”), SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as “**SAST**”) and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter to as “**PIT**”) by D S Nakia as observed during the investigations conducted into the trading in the scrip of M/s Genus Commu Trade Limited for the period from September 01, 2004 to November 05, 2004 (investigation period).

SHOW CAUSE NOTICE, REPLY AND HEARING

13. A show cause notice dated November 05, 2009 was issued to R S Talaviya in the matter wherein he was asked to show cause as to why an inquiry should not be held against it in terms of Rule 4 of the SEBI (Procedure for Holding Enquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 read with Section 15 I of the SEBI Act, 1992. The same was duly delivered on November 09, 2010 (proof of delivery/ acknowledgement is present on record). A reminder letter was also sent on December 04, 2009. A notice of inquiry was sent on December 22, 2009 and opportunity for personal hearing in the matter was also provided. However, the noticee failed to avail of the opportunity.

CONSIDERATION OF ISSUES

14. On perusal of the Show Cause Notice, and other material available on record, I have the following issues for consideration, viz,
- (1) Whether the noticee has violated Regulations 4(1) and 4(2) (a),(b), (e) and (g) of PFUTP Regulations.
 - (2) Whether the noticee has violated Regulation 7(1) read with regulation 7(2) of SAST Regulations and Regulation 13 (1) of PIT Regulations.

- (3) Whether the noticee is liable for monetary penalty under sections 15 HA and 15A(b) of the SEBI Act.
- (4) What quantum of monetary penalty should be imposed on the noticee, taking into consideration the factors mentioned in section 15J of SEBI Act.

FINDINGS

15. On Perusal of the materials available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

Issue 1: Whether the noticee has violated 4(1) and 4(2) (a),(b), (e) and (g) of PFUTP Regulations

PFUTP Regulations

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;*
- (b) *dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;*
- (e) *any act or omission amounting to manipulation of the price of a security;*
- (g) *Entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;*
16. It is seen that the price of GCL ranged between Rs.1.16 and Rs.2.91 during the investigation period. However, the volume of trading was significantly higher in the investigation period at an average of 3.48 lac shares per day, which was 295% higher than the average daily volume of around 88,488 shares in the preceding two months.

17. M/s. Action Financial Services Pvt. Ltd., a BSE broker placed 993 buy orders for 4,49,06,818 shares and 546 sell orders for 47,46,564 shares which accounted for 57.92% and 14.89% of the total valid buy and sell order respectively. Against these total buy orders of 4,49,06,818 shares and sell orders of 47,46,564 shares, orders for only 19,11,245 and 33,00,390 shares were executed in the market, which accounts for only 4.25% and 69.53% of the total valid buy orders and sell order respectively. Mukti Enterprise, a sub broker of Action Financial Services Pvt. Ltd. placed majority of these orders (947 buy order amounting to 57.83% of total buy orders and 523 sell orders amounting to 14.86% of total sell orders) on behalf of A H Desurabhai, R S Talaviya and D S Nakia.
18. **D S Nakia** placed 16 buy orders through Mukti Enterprise, creating demand of 407480 shares contributing to 0.53% of total buy orders. Out of 16 buy orders, there were 2 large buy orders for 302500 shares. **D S Nakia** placed 35 sale orders through Mukti creating a supply of 419350 shares contributing to 1.32% of the market. **D S Nakia** was a net seller in both on and off market during the investigation period. The net selling position of **D S Nakia** 3,03,373 shares.
19. D S Nakia along with R S Talaviya also transferred 15,00,000 shares off-market of which 14,50,000 shares were eventually transferred to Shri Ramniklal Patel, who off-loaded them in the market.
20. **D S Nakia** through Mukti Enterprise placed large buy orders at lower price and sell orders at higher price to manipulate the order book. Also entering buy orders of large volume at prices lower than the prevailing market prices, when **D S Nakia** was the net seller in the market, was intended to give an impression of buying interest in the scrip. This order book manipulation also provided an exit route to Shri. Ramniklal Manjibhai Patel who indirectly received shares from **D S Nakia** and RS Talaviya and offloaded the same in the market.
21. The trades executed by D S Nakia as explained hereinabove in detail show that whereas D S Nakia placed 16 buy orders creating a demand of 4,07,480 shares contributing to 0.53%, he was actually a net seller in the market of 3,03,373 during the investigation period. During the same period, D S Nakia also placed 35 sale orders for 419350 shares contributing to 1.32% of the market. Thus, while being a net seller, D S Nakia indulged in order book manipulation by placing 16 buy orders without intention of actually buying the shares.
22. Regulation 4(2)(a) of FUTP, inter alia, prohibits a person from indulging in an act which creates false or misleading appearance of trading in the securities market. Regulation 4(2)(b) of FUTP, inter alia, prohibits dealings in a security intended to operate as a device to inflate, depress or cause fluctuations in the price of such security for wrongful

gains. Regulation 4(2) (e) of FUTP prohibits a person to act in a way to manipulate the price of the security. Regulation 4(2) (g) of FUTP prohibits a person from entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security.

23. D S Nakia repeatedly and knowingly placed large buy orders much below the market prices even though his earlier buy order had not been executed, with the intention to create impression of buying interest, whereas he was actually a net seller in the market. I find that the orders entered by D S Nakia also enabled off-loading of shares transferred by him and R S Talaviya off-market to Ramniklal Patel. I find therefore that the orders placed and trades executed by D S Nakia created a misleading appearance of trading in the shares of GCL, thereby distorting the market equilibrium of shares.
24. The trades executed by D S Nakia as explained hereinabove in detail establish that the same created a misleading appearance of trading in the shares of GCL. In view of the foregoing, I hold that the allegation of violation of provisions of regulations 4(1) and 4(2) (a),(b), (e) and (g) of PFUTP Regulations stands established.

ISSUE 2: Whether the noticee has violated Regulation 7(1) read with regulation 7(2) of SAST Regulations and Regulation 13 (1) of PIT Regulations.

SAST Regulations

7. Acquisition of 5 per cent or more shares or voting rights of a company

(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five percent or ten percent or fourteen percent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where the shares of the target company are listed.

(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of,—

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

PIT Regulations

13. Disclosure of interest or holding by directors and officers and substantial shareholders in a listed company – Initial Disclosure

(1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company [in Form A], the number of shares or voting rights held by such person, on becoming such holder, within 4 working days of :—

- a. the receipt of intimation of allotment of shares; or*
- b. the acquisition of shares or voting rights, as the case may be.*

25. The investigation has brought out that the shareholding of D S Nakia in GCL increased from 3,55,248 (3.51%) to 6,67,498 shares (6.59%) on May 11, 2004. On May 25, 2004, D S Nakia's shareholding in GCL increased from 8,70,782 (8.60%) to 11,12,706 shares (10.98%) of GCL. Finally on June 09, 2004, D S Nakia's shareholding in GCL increased from 14,14,275 (13.96%) to 14,48,426 shares (14.30%) of GCL.

26. At no stage, any disclosure was made by D S Nakia to the company or the stock exchange as required under regulation 7(1) of SAST Regulations and Regulation 13 (1) of PIT Regulations. I therefore find that D S Nakia violated regulation 7(1) read with regulation 7(2) of SAST Regulations and Regulation 13 (1) of PIT Regulations.

ISSUE 3: Whether the noticee is liable for monetary penalty under sections 15 HA and 15HB of the Act?

27. As the allegations against the noticee stand established, he is liable for monetary penalty under Section 15 HA and 15A of the SEBI Act, 1992, which read as follows:

“Penalty for fraudulent and unfair trade practices.

15HA. 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.”

15A. Penalty for failure to furnish, information , return etc.

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 therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

ISSUE 4: What quantum of monetary penalty should be imposed on the noticee, taking into consideration the factors mentioned in section 15J of SEBI Act?

28. While deciding the quantum of penalty, the factors laid down under Section 15J of SEBI Act have to be given due regard, which are as follows –

- (i) *the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of default,*
- (ii) *the amount of loss caused to an investor or group of investors as a result of the default and*
- (iii) *the repetitive nature of default.*

29. From the material available on record, it is difficult to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. The investigation report also does not dwell on the extent of specific gains made by the noticee. I note that the orders placed by the noticee contributed 0.53% and 1.32% respectively to the total buy and sell orders during investigation period.

30. The noticee also failed to disclose information about his holding in GCL as required under the SEBI (SAST) and SEBI (PIT) Regulations. While the amount of loss caused to investors by this failure to disclose cannot be quantified, the investors were deprived of information considered to be vital to the process of price formation.

31. Considering the facts and circumstances of the case and the material available on record and the violation committed by the noticee, I find that penalty of Rs. 25,000/- (Rs. Twenty five thousand only) under Section 15 HB and Rs. 25,000/- (Rs. Twenty five thousand only) under Section 15 A of the SEBI Act will be commensurate with the violations committed by the noticee.

ORDER

32. After taking into consideration all the facts and circumstances of the case, I hereby impose a penalty of Rs. 25,000/- (Rs. Twenty five thousand only) under Section 15 HB and Rs. 25,000/- (Rs. Twenty five thousand only) under Section 15 A of the SEBI Act (i.e. total penalty of Rs. 50,000/- (Rs. Fifty Thousand Only) on the noticee, D S Nakia for violation of Regulations 4 (1) and 4(2) (a),(b), (e) and (g) of PFUTP Regulations and Regulation 7(1) read with regulation 7(2) of SAST Regulations and Regulation 13 (1) of PIT Regulations.

33. The noticee shall pay the said amount of penalty by way of demand draft 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 should be forwarded to Mr. G Ramar, General Manager, SEBI, SEBI Bhavan, C4-A, 'G' Block, Bandra Kurla Complex, Bandra (East). Mumbai- 400 051.
34. In terms of rule 6 of the Rules, copies of this order are sent to the noticee and also to the Securities and Exchange Board of India.

Date: June 10, 2010
Place: Mumbai

Maninder Cheema
Adjudicating Officer