BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. - SRP/JP/AO: 222- 225 /2011]

UNDER SECTION 15 I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of

1.	**M/s. Oregon Commercial Ltd.**	**:**	**PAN – AAACO1582E**
2.	**Mr. Ashok Rupani**	**:**	**PAN - AABPR0488E**
3.	**Mr. Naresh Rupani**	**:**	**PAN - AABPR0487M**
4.	**Mr. Uttam Gada**	**:**	**PAN - AACPG4068L**

In the matter of M/s. Oregon Commercial Ltd.

BACKGROUND IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted investigations into the affairs, trading and dealings in the shares of M/s. Oregon Commercial Limited (hereinafter referred to as '**Company/OCL**'), which had witnessed abnormal spurt in the price and the volumes traded on the Bombay Stock Exchange Ltd. (**BSE**) during the period from November 21, 2008 to June 08, 2009 (**Investigation Period**).

2. It was, *prima facie*, observed during the investigations that the Company had not adopted the model code of conduct as prescribed under regulation 12(1) read with Part A of Schedule I of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **'the PIT Regulations'**). Therefore, it was alleged that the Company and its Directors namely, Ashok Rupani, Naresh Rupani and Uttam Gada, have violated/contravened the provisions of regulations 12 (1) and 12 (3) read with clauses 1.2, 3.2 and 3.3 of the code of conduct as specified under Part A of Schedule I of the PIT Regulations. For the sake of brevity the said four entities i.e. M/s.

Oregon Commercial Limited, Ashok Rupani, Naresh Rupani and Uttam Gada are hereinafter collectively referred to as **"the Noticees."**

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned has been appointed as Adjudicating Officer under section 15 I of the SEBI Act read with rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **'Rules'**) vide order dated March 24, 2011 to inquire into and adjudge under sections 15HB of the SEBI Act, the aforesaid violations alleged to have been committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice dated May 18, 2011 (hereinafter referred to as **'SCN'**) was issued separately to each of the Noticees under rule 4(1) of the Rules. The Noticees were asked to show cause as to why an inquiry be not held and penalty be not imposed on them under section 15HB of the SEBI Act for the alleged violation of the provisions of regulations 12 (1) and 12 (3) read with clauses 1.2, 3.2 and 3.3 of the code of conduct specified under Part A of the Schedule I of the PIT Regulations.

5. The Noticees responded to the SCN and filed a joint reply dated July 04, 2011 in respect of the allegations made therein. The Noticees also sought personal hearing in the matter. On perusal of the aforesaid reply of the Noticees and the information /material available on record, it was decided to conduct an inquiry in the matter and for the purpose an opportunity of hearing on July 28, 2011 was granted to the Noticees vide notice dated July 12, 2011. Hearing on July 18, 2011 was attended by the authorized representatives of the Noticees namely, Mr. Sunil Kapadia - Advocate and Mr. Naresh Rupani (director of the Company and also one of the Noticees) and the oral submissions made by them were recorded.

6. The written and oral submissions made by the Noticees in respect of the allegations referred to in the SCN are briefly mentioned below:

- *The Noticees denied that they had indulged in any manipulative practices in the scrip of OCL or the price of the OCL shares was artificially rigged. They also denied having made huge gains. The price rise in the shares of the Company was unusual and therefore as a cautionary step, on their own they brought the said unusual price movement to the notice of the surveillance department of the Bombay Stock Exchange Ltd. (**BSE**) through various letters, viz. letter dated February 18, 2009, April 01, 2009 and September 22, 2009.*
- *That they have always co-operated with the investigations and furnished correct details to SEBI.*

- *That the non-compliance in adopting the Model Code of Conduct of Internal Procedure by the Company was not intentional. It was an inadvertent lapse that happened due to lack of professional guidance.*
- *That the said non-compliance was a technical lapse and may be condoned.*

Pursuant to the hearing, OCL forwarded, vide its letter dated July 28, 2011, a copy of "Code of Conduct for board of directors and senior management" which has been stated to be implemented and presently being followed at their end.

CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully examined the allegations against the Noticees, the submissions made by them and the material/evidence on record. The issues that arise for consideration before me in the present case are as under :

a. Whether the Noticees had failed to comply with the provisions of the regulations 12 (1) and 12 (3) read with clauses 1.2, 3.2 and 3.3 of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies, as specified under Part A of the Schedule I of the PIT Regulations?

b. Does the contravention/violation of the aforesaid regulations, if any, committed by the Noticees attract monetary penalty under section 15HB of the SEBI Act?

c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15 J of the SEBI Act?

8. Before moving forward, it would be pertinent to refer to the relevant provisions of the PIT Regulations, alleged to have been violated by the Noticees. The provisions of these regulations are reproduced hereunder:

PIT Regulations

Code of internal procedures and conduct for listed companies and other entities.

12. *(1) All listed companies and organisations 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 organisations recognised or authorised by the Board;
(c) the recognised 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.

(2) ……

(3) All entities mentioned in sub-regulation (1), shall adopt appropriate mechanisms and procedures to enforce the codes specified under sub-regulations (1) and (2).

SCHEDULE I (PART A)

1.2 The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing; of designated employees' and their dependents' 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 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 objectives of this code of conduct.

Trading window
3.2.1 The company shall specify a trading period, to be called "trading window", for trading in the company's securities. The trading window shall be closed during the time the information referred to in para 3.2.3 is unpublished.
3.2.2 When the trading window is closed, the employees/directors shall not trade in the company's securities in such period.
3.2.3 The trading window shall be, inter alia, closed at the time :—
(a) Declaration of financial results (quarterly, half-yearly and annually).
(b) Declaration of dividends (interim and final).
(c) Issue of securities by way of public/rights/bonus etc.
(d) Any major expansion plans or execution of new projects.
(e) Amalgamation, mergers, takeovers and buy-back.
(f) Disposal of whole or substantially whole of the undertaking.
(g) Any changes in policies, plans or operations of the company.
3.2.3A The time for commencement of closing of trading window shall be decided by the company.
3.2-4 The trading window shall be opened 24 hours after the information referred to in para 3.2.3 is made public.
3.2-5 All directors/officers/designated employees of the company shall conduct all their dealings in the securities of the Company only in a valid trading window and shall not deal in any transaction involving the purchase or sale of the company's securities during the periods when trading window is closed, as referred to in para 3.2.3 or during any other period as may be specified by the Company from time to time.
3.2-6 In case of ESOPs, exercise of option may be allowed in the period when the trading window is closed. However, sale of shares allotted on exercise of ESOPs shall 63[not] be allowed when trading window is closed.

3.3 Pre-clearance of trades
3.3.1 All directors/officers/designated employees of the company and their dependents as defined by the company who intend to deal in the securities of the company (above a minimum threshold limit to be decided by the company) should pre-clear the transaction as per the pre-dealing procedure as described hereunder.
3.3.2 An application may be made in such form as the company may notify in this regard, to the Compliance Officer indicating the estimated number of securities that the designated employee/officer/director intends to deal in, the details as to the depository with which he has a security account, the details as to the securities in such depository mode and such other details as may be required by any rule made by the company in this behalf.
3.3.3 An undertaking shall be executed in favour of the company by such designated employee/director/officer incorporating, inter alia, the following clauses, as may be applicable :

(a) That the employee/director/officer does not have any access or has not received "Price Sensitive Information" upto the time of signing the undertaking.
(b) That in case the employee/director/officer has access to or receives "Price Sensitive Information" after the signing of the undertaking but before the execution of the transaction he/she shall inform the Compliance Officer of the change in his position and that he/she would completely refrain from dealing in the securities of the company till the time such information becomes public.
(c) That he/she has not contravened the code of conduct for prevention of insider trading as notified by the company from time to time.
(d) That he/she has made a full and true disclosure in the matter.

9. I have carefully examined the alleged charges and reply of the Noticees and the same are dealt on merit as under.

10. It has been alleged in the SCN that during the course of the aforesaid investigations the Company had, vide its letter dated January 08, 2011 (enclosed as Annexure II to the SCN), made the following submissions, which *prima facie*, indicated its failure in adopting the prescribed Model Code of Conduct of Internal Procedures and the corresponding non supervision on the part of its directors towards such implementation –

> *"The company has not specifically placed any code of Internal Procedure and Conduct and Code of Corporate Disclosure Practices. But, we like to inform you that company has made every disclosure which is required time to time in accordance with SEBI (prohibition of Insider Trading) Regulations, 1992. If there is lack of specific code then it was just by mistake and without any malafide intention. The company assures you for taking necessary steps towards the procedure."*

Therefore, it was alleged that the Noticees have violated/contravened the provisions of regulation 12 (1) and 12 (3) read with clauses 1.2, 3.2 and 3.3 of the code of conduct specified under Part A of Schedule I of the PIT Regulations.

11. In respect of the said allegation, the Noticees have made various submissions. A brief summary of such submissions has been placed at Para 6 above. I have perused the said contentions/submissions of the Noticees and also examined the details provided to them in Annexure II of the SCN (i.e. letter dated January 08, 2011 of the Company to SEBI). I have observed that vide aforesaid letter the Company had informed SEBI that during the relevant time it did not have any code of internal procedure and conduct and code of corporate disclosure practices. Further, it has been admitted by the Noticees in their reply to the SCN dated July 04, 2011 that there was non-compliance by them in adopting the Model Code of Conduct of Internal Procedure. However, they have submitted that the said non-compliance was unintentional and it happened inadvertently due to lack of professional guidance and therefore, it may be considered only as a technical lapse and condoned. At the time of hearing also the Noticees admitted the said lapse and apologized for the same.

12. The above said details/submissions made by the Noticees clearly suggest that as has been alleged in the SCN, during the investigation period the Company did not have the required internal code of conduct and to that extent its aforesaid directors had definitely failed in supervision and ensuring the required compliances in this regard. I am of the view that compliance of such mandatory requirements are essential not only for the smooth and fair functioning of the securities market but it also prevents unscrupulous elements from taking undue advantage at the cost of other investors and shareholders. Therefore, I cannot take such non-compliances only as a technical lapse.

13. Further, I would like to refer the judgment dated 23/05/2006, pronounced by the Hon'ble Supreme Court of India in Civil Appeal No. 9523-24 of 2003 in case of The Chairman of SEBI vs. Shriram Mutual Fund & Another. In the said case the Hon'ble Supreme Court held that "In *our opinion,* mens rea *is not an essential ingredient for contravention of the provisions of a civil act. In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. In other words, the breach of a civil obligation which attracts penalty under the provisions of an Act would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not…… We also further held that unless the language of the statute indicates the need to establish the presence of* mens rea*, it is wholly unnecessary to ascertain whether such a violation was intentional or not*

14. In light of the abovementioned facts and circumstances of the case, I am of the view that the Noticee at serial No. 1 (i.e. the Company) has violated the provisions of regulation 12 (1) and 12 (3) of the PIT Regulations and the Noticees at serial Nos. 2 to 4 (i.e. the directors of the Company namely, Ashok Rupani, Naresh Rupani and Uttam Gada) have violated the provisions of clauses 1.2 of the code of conduct specified under Part A of the Schedule I read with regulations 12 (1) and 12 (3) of the PIT Regulations and are therefore, liable for imposition of penalty under section 15HB of the SEBI Act, which states as under:

15HB. Penalty for contravention where no separate penalty has been provided

"Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees".

15. While determining the quantum of penalty under section 15HB of the SEBI Act, it is important to consider the factors stipulated in section 15J of the SEBI Act, which reads as under:-

15J - Factors to be taken into account by the adjudicating officer

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.

16. In this regard, it is not possible from the information/details available with me to arrive at the figures of unlawful gains, if any, made by the Noticees or the loss suffered by the investors due to said non-compliance. Also, the available records do not suggest that the Noticees had repetitively indulged in such violations/non-compliances. Moreover, on my specific query made at the time of hearing, the Noticees have confirmed that now they have the appropriate code of conduct in place and they also forwarded a copy of the same for reference vide their letter dated July 28, 2011. Apart from the above, I have also taken into consideration other mitigating factors, viz. fair admission and apologies for the said non- compliance, preventive measures taken by informing BSE about unusual price movement etc., while deciding the quantum of penalty to be imposed on the Noticees.

ORDER

17. In exercise of the powers conferred upon me under section 15 I of the SEBI Act and rule 5 of the Rules, I impose a penalty of ₹ 75,000/- (Rupees seventy five thousand only) on M/s. Oregon Commercial Limited. I also impose a penalty of ₹ 1,00,000/- (Rupees One lakh only) on Ashok Rupani, Naresh Rupani and Uttam Gada under the provisions of section 15 HB of the SEBI Act, who shall pay the amount jointly and severally. The penalties shall be paid 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 the Chief General Manager, IVD – ID 5, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai–400 051.

18. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

Date: August 30, 2011 **Satya Ranjan Prasad**

Place: Mumbai **ADJUDICATING OFFICER**