

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. PG/AO/31/2013]**

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

**In respect of**

**Mr. Bhargav Marepally**

**[PAN: AJSPM0914A]**

**In the matter of**

**M/s GSS America Infotech Limited.**

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**Background of the case**

1. On analysis of the trading pattern of the promoters of GSS America Infotech Limited ("**the company**") for the period between 01.01.2009 and 30.04.2012, it was observed that the trading activity of certain promoters had resulted in opposite transactions i.e, sell or buy shares of the company during the next six months following the prior transaction. It was revealed that Shri Bhargav Marepally ("**the Noticee**") who was the Managing Director (MD) of

the company, had allegedly entered into such opposite transactions.

2. In view of the findings of the investigation as given above, SEBI, vide order dated August 28, 2012, appointed the undersigned as Adjudicating Officer ("**AO**") under Section 15-I of the SEBI Act, 1992 ("**SEBI Act**") read with Rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 ("**Adjudication Rules**") to inquire into and adjudge under Section 15HB of the SEBI Act, the alleged violation of the provisions of Clause 4.2 of Schedule I of Model Code of Conduct for prevention of insider trading for listed companies under Regulation 12 (1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 ("**PIT Regulations**") by the Noticee.

### **Show Cause Notice, Reply & Personal hearing**

3. Show Cause Notice dated October 08, 2012 (SCN) was issued to the Noticee in terms of the provision of Rule 4 (1) of the Adjudication Rules to show cause as to why an inquiry should not be held against him in respect of the violations alleged to have been committed by him. The SCN alleged that the Noticee, being the MD of the company had allegedly entered into opposite transactions. The details of trades were furnished to the noticee along with the SCN.
4. In response to the SCN, the Noticee, vide e-mail dated October 16, 2012 sought extension of time for filing the reply. The request of the Noticee was partially acceded to and vide e- mail dated November

16, 2012 the Noticee was advised to submit reply and to appear for personal hearing on November 20, 2012. In response, the Noticee, vide letter dated November 14, 2012 and e-mail dated November 19, 2012 sought further extension of time for filing reply the reasons stated in the said letter and e-mail. Thereafter, vide letter dated November 30, 2012, the Noticee submitted his reply to the SCN. Subsequently, vide letter dated December 04, 2012, the Noticee was advised to appear for hearing on December 11, 2012. Vide e-mail dated December 05, 2012 the Noticee intimated that he has filed consent application for settling the matter. Vide office note dated April 02, 2013, SEBI intimated that the Noticee has withdrawn the consent application. Vide letter dated April 04, 2013 the Noticee was advised to appear for personal hearing on April 12, 2013. On April 12, 2013 Shri Ravichandra Hegde, Senior Associate of M/s J Sagar Associates, Advocates appeared on behalf of the Noticee and made submissions. The Noticee, vide letter dated April 20, 2013 forwarded further documents and additional submissions.

5. The important submissions made by the Noticee vide letter dated November 30, 2012 and letter dated April 20, 2013 are as under:-
  - i) That the impugned sell trades were as a result of lender entities (to whom the Noticee had pledged the shares of the company) invoking the said pledge. The said transactions were outside the control and power of the Noticee.
  - ii) that the purchase of 2,76,996 shares was done in order to maintain minimum promoter holding in the company as per the terms of arrangements made with the lender entities.
  - iii) The alleged trades were not done on the basis of any price sensitive information received by the Noticee and the Noticee had not made any profits out of the alleged transactions.

## Consideration of Issues, Evidence and Findings

6. I have carefully perused the documents available on record, written and oral submissions made by the Noticee.
7. The issues that arise for consideration in the present case are:
  - a. Whether the Noticee has violated the provisions of Clause 4.2 of Schedule I under Regulation 12 (1) of PIT Regulations?
  - b. Does the violation, if any, on the part of the Noticee attract penalty under section 15HB of SEBI Act?
  - c. If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act?
8. The relevant provisions of the PIT Regulations are as follows:

***PIT Regulations, 1992.***

***Regulation 12 - Code of internal procedures and conduct for listed companies and other entities***

***Schedule I - Part A, Clause 4.2-*** *All directors/officers/designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction, i.e., sell or buy any number of shares during the next six months following the prior transaction. All directors/officers/designated employees shall also not take positions in derivative transactions in the shares of the company at any time.*
9. Moving on to the merits of the matter, I note that the noticee was the Managing Director of the company during the relevant time. I also note that the Noticee was trading in the shares of the company

and the following buy and sell trades entered by the Noticee resulted in opposite transactions i.e. buy or sell of shares of the company during the next six months following the prior transaction.

Clnt PAN	Date	Gr Buy Vol	Gr Sell Vol	Net Trd Vol	Gr Trd Vol
AJSPM0914A	27-10-2009	13110	0	13110	13110
AJSPM0914A	30-03-2010	250000	250000	0	500000
AJSPM0914A	17-08-2010	50000	0	50000	50000
AJSPM0914A	20-08-2010	50000	0	50000	50000
AJSPM0914A	25-08-2010	75000	0	75000	75000
AJSPM0914A	13-09-2010	75000	0	75000	75000
AJSPM0914A	12-10-2010	0	10701	-10701	10701
AJSPM0914A	21-10-2010	0	30000	-30000	30000
AJSPM0914A	29-10-2010	0	25374	-25374	25374
AJSPM0914A	02-11-2010	0	51875	-51875	51875
AJSPM0914A	03-11-2010	0	25000	-25000	25000
AJSPM0914A	12-11-2010	0	1809	-1809	1809
AJSPM0914A	22-11-2010	0	30578	-30578	30578
AJSPM0914A	23-11-2010	0	2352	-2352	2352
AJSPM0914A	02-12-2010	0	16000	-16000	16000
AJSPM0914A	06-12-2010	0	100551	-100551	100551
AJSPM0914A	07-12-2010	150000	50000	100000	200000
AJSPM0914A	20-12-2010	20500	95000	-74500	115500
AJSPM0914A	23-12-2010	20000	0	20000	20000
AJSPM0914A	29-12-2010	20000	0	20000	20000
AJSPM0914A	11-01-2011	10000	0	10000	10000
AJSPM0914A	12-01-2011	0	700	-700	700
AJSPM0914A	03-02-2011	6319	0	6319	6319
AJSPM0914A	04-02-2011	806	0	806	806
AJSPM0914A	08-02-2011	2875	0	2875	2875
AJSPM0914A	21-02-2011	0	25000	-25000	25000
AJSPM0914A	22-02-2011	0	25000	-25000	25000
AJSPM0914A	23-02-2011	0	30000	-30000	30000
AJSPM0914A	28-02-2011	0	25000	-25000	25000
AJSPM0914A	01-03-2011	0	30000	-30000	30000
AJSPM0914A	03-03-2011	0	35000	-35000	35000
AJSPM0914A	04-03-2011	0	30000	-30000	30000
AJSPM0914A	29-03-2011	20000	0	20000	20000
AJSPM0914A	05-04-2011	0	20000	-20000	20000
AJSPM0914A	02-05-2011	220000	0	220000	220000
AJSPM0914A	07-07-2011	0	2000	-2000	2000
AJSPM0914A	08-07-2011	0	299	-299	299
AJSPM0914A	22-07-2011	5175	0	5175	5175

AJSPM0914A	25-07-2011	4550	0	4550	4550
AJSPM0914A	26-07-2011	5045	0	5045	5045
AJSPM0914A	27-07-2011	5539	0	5539	5539
AJSPM0914A	28-07-2011	11183	0	11183	11183
AJSPM0914A	29-07-2011	14796	0	14796	14796
AJSPM0914A	01-08-2011	4300	0	4300	4300
AJSPM0914A	02-08-2011	5000	0	5000	5000
AJSPM0914A	03-08-2011	3700	0	3700	3700
AJSPM0914A	05-08-2011	8000	0	8000	8000
AJSPM0914A	09-08-2011	1000	0	1000	1000
AJSPM0914A	18-08-2011	0	16500	-16500	16500
AJSPM0914A	19-08-2011	12560	0	12560	12560
AJSPM0914A	22-08-2011	4247	0	4247	4247
AJSPM0914A	23-08-2011	756	0	756	756
AJSPM0914A	24-08-2011	8428	0	8428	8428
AJSPM0914A	25-08-2011	2655	0	2655	2655
AJSPM0914A	26-08-2011	2008	15384	-13376	17392
AJSPM0914A	29-08-2011	2226	0	2226	2226
AJSPM0914A	30-08-2011	1914	0	1914	1914
AJSPM0914A	02-09-2011	1267	0	1267	1267
AJSPM0914A	05-09-2011	1688	0	1688	1688
AJSPM0914A	06-09-2011	248	25005	-24757	25253
AJSPM0914A	07-09-2011	85	10000	-9915	10085
AJSPM0914A	08-09-2011	0	10000	-10000	10000
AJSPM0914A	09-09-2011	1185	0	1185	1185
AJSPM0914A	12-09-2011	1013	0	1013	1013
AJSPM0914A	13-09-2011	1175	10000	-8825	11175
AJSPM0914A	14-09-2011	941	13500	-12559	14441
AJSPM0914A	15-09-2011	338	0	338	338
AJSPM0914A	16-09-2011	725	0	725	725
AJSPM0914A	19-09-2011	139	0	139	139
AJSPM0914A	28-11-2011	0	200	-200	200
AJSPM0914A	29-11-2011	698	0	698	698
AJSPM0914A	30-11-2011	235	0	235	235
AJSPM0914A	03-01-2012	0	500000	-500000	500000
AJSPM0914A	24-01-2012	0	30000	-30000	30000
AJSPM0914A	06-02-2012	0	510000	-510000	510000
AJSPM0914A	18-04-2012	0	60000	-60000	60000

Note: AJSPM0914A - PAN of Bhargav Marepally

The above table shows that the Noticee had entered into numerous buy and sell transactions in the shares of the company during the period from 27.10.2009 to 18.04.2012. He purchased 13110 shares on 27.10.2009. On 30.03.2010 he purchased 2,50,000 shares and

sold 2,50,000 shares. During the period from 20.08.2010 to 13.09.2010 he again purchased 2,50,000 shares. During the period 12.10.2010 to 06.12.2010 he sold 2,94,240 shares. On 07.12.2010 he purchased 1,50,000 shares and sold 50,000 shares and on 20.12.2010 he purchased 20,500 shares and sold 95,000 shares. During the period from 23.12.2010 to 11.01.2011 he purchased 50,000 shares. On 12.01.2011 he sold 700 shares. During the period from 3.02.2011 to 08.02.2011 he purchased 10,000 shares. During the period 21.02.2011 to 04.03.2011 he sold 2,00,000 shares. On 29.03.2011 he purchased 20,000 shares and on 5.04.2011 he sold 20,000 shares. On 02.05.2011 he purchased 2,20,000 shares. Similarly, there are numerous other buy and sell transactions as mentioned in the table given above.

10. I have considered the contentions of the Noticee made vide letter dated November 30, 2012, during the personal hearing before me and also the documents/additional submissions forwarded by him vide letter dated April 20, 2013. The main argument of the Noticee regarding the sale of shares is that the said sale was not done by him but was done by various lender entities from which he had availed margin funding and loan by pledging shares of the company. He has contended that the sale was a result of invocation of pledge by the said lending entities and was outside his control and therefore should not be considered as sale made by him. With regard to the purchases, he has contended that he had to maintain a minimum promoter holding in the company as per the loan agreements he had entered into with those lender entities while availing the said loans. In view of the above, he states that he is not in violation of Clause 4.2 of Schedule I of Model Code of Conduct

for prevention of insider trading for listed companies under regulation 12(1) of PIT Regulations.

11. I have also perused the affidavit executed by the compliance officer of the company in support of the above contentions of the Noticee and also the copies of the disclosures made to the stock exchanges regarding the creation/invocation of pledge.
12. I find that the Noticee was very actively purchasing and selling the shares of the company in large quantities and on many occasions. He was very active on both buy and sell sides during the period. During the period from 27.10.2009 to 18.04.2012, the Noticee has altogether purchased a total of 10,96,429 shares and sold 21,12,828 shares of the company. On some days, the Noticee has both purchased and sold the shares.
13. Regarding the contention of the Noticee that the alleged sell transactions were not done by him but were a result of invocation of pledge by the lending entities and thus were outside his control, I am of the opinion that the said contention has to be seen in the light of the purchases made by him. The Noticee's contention that the purchases made by him were towards keeping minimum shareholding in the company in terms of the agreements entered with the lending entities does not appear logical. The purchases also imply that he had the funds to purchase the company's shares. It does not appear rational that on one hand the Noticee was purchasing shares and on other hand his shareholding was decreasing on account of invocation of pledge on his shares. Hence, I am of the opinion that the Noticee is using the device of sales by lending entities to circumvent the regulatory requirement of 6 months interval between buy and sell transactions.



14. I further note that the documents submitted by the Noticee in support of the invocation of pledge do not substantiate the sale transactions appearing in his account. The only documents produced are the copies of disclosures made to stock exchanges regarding creation/invocation of pledge. On perusal of the said copies, it is seen the disclosure regarding invocation of pledge do not match with the sale transactions done by the Noticee.
15. Further, it is observed that the Noticee has sold 2,50,000 shares of the company on March 30, 2010. The Noticee has submitted that this transaction was done for the purpose of a tax planning exercise. Considering the fact that he has been purchasing shares during the relevant period from November 2009 onwards, it is clear that the Noticee has deliberately violated the stipulation of not entering into opposite transactions within the period of six months. It is also observed that Noticee has also purchased 2,50,000 shares on March 30, 2010. Thus, on March 30, 2010, the Noticee has done both purchase and sale transactions for 2,50,000 shares each. I am of the view that being a designated employee of the company, the Noticee should have been aware of the Code of Conduct applicable to designated employees. The contentions made by the Noticee do not appear to be reasonable for justifying the number of opposite transactions made by him.
16. I also find that the compliance officer in his affidavit dated April 22, 2013 has supported the contentions of the Noticee. The compliance officer has *inter alia* stated that in terms of the clarification to PIT Regulations issued by SEBI, he has exercised his discretion and waived the six month prohibition on entering into opposite

transactions. As already mentioned in foregoing paragraphs, the issue of sales out of personal exigency does not hold water in the light of the fact that the Noticee was regularly purchasing the shares of the company on the other hand.

17. It is clear that the Noticee has violated the restrictions deliberately and on numerous occasions. In view of the foregoing discussions, I find that the Noticee has violated the provisions of Clause 4.2 of Part A, Schedule I under Regulation 12 (1) of PIT regulations.
18. I note that the Noticee has quoted certain cases while defending his case. I have perused the said judgments and am of the view that they are not directly relevant to the instant case. The Noticee has contended that the SEBI Adjudicating Officer in his order dated 11.12.2012 in respect of P.N Deshpande in the matter of Orchid Chemicals and Pharmaceuticals Limited had not imposed penalty for similar violations. On perusal of the said order, I note that the comparison is not relevant as in the said case there was a solitary instance of opposite transaction of only 50 shares and further Orchid Chemicals and Pharmaceuticals Limited had initiated action against Mr. Deshpande. In the instant case the number of transactions is numerous and the volume is also considerable.
19. The Hon'ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund** 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."*

20. Thus, the aforesaid violations by the Noticee make him liable for penalty u/s. 15HB of the SEBI Act which reads thus:

*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"*

21. While determining the quantum of 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.***

*While adjudging quantum of penalty under S.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."*

22. It is difficult, in cases of such nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the Investors. It is observed that the Noticee has repeatedly done opposite transactions i.e. buy or sell of shares during the next six months following the prior transaction in shares of the company. Hence, the violation committed by the Noticee has to be viewed seriously.

23. I am of the considered opinion that directors/ officers/ designated employees are senior functionaries who are reasonably expected to be aware of major developments in a company. By virtue of their position, they would be aware of the day-to-day working of the company. It is of utmost importance that such persons should not be doing buy & sell transactions in the shares of that company at short intervals but should have a long term view. This is also necessary to ensure a sense of fair play and instill confidence amongst ordinary investors. I note that there are numerous instances of violation of Clause 4.2 of Schedule I of Model Code of Conduct for prevention of insider trading for listed companies under regulation 12 (1) of PIT Regulations wherein large quantity of shares of the company have been transacted. I further note that the Noticee is the Managing Director of the company.

## **ORDER**

24. After taking into consideration all the facts and circumstances of the case, I come to conclusion that this is a fit case for imposing the monetary penalty on the aforesaid Noticee. I, in exercise of the powers conferred upon me under section 15- I (2) of the SEBI Act, impose a penalty of ₹ 5,00,000/- (Rupees Five Lakhs only) on the Noticee, Bhargav Marepally in terms of Section 15HB of the SEBI Act for violation of Clause 4.2 of Part A, Schedule I under Regulation 12 (1) of PIT Regulations. I am of the view that the said penalty is commensurate with the violation committed by the Noticee.

25. The penalty shall be paid by way of a duly crossed 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 the Chief General Manager, Integrated Surveillance Department Securities and Exchange Board of India, Plot no.C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai- 400 051.
26. In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

**DATE: April 29, 2013**  
**PLACE: Mumbai**

**PIYOOSH GUPTA**  
**ADJUDICATING OFFICER**