

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PG/DT/AO-08/2012]

**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

Mr. V. S. N. Raju

[PAN: ACOPV1584A]

In the matter of

Satyam Computer Services Limited

Background of the case

1. Securities and Exchange Board of India (**SEBI**) conducted an investigation pertaining to issues relating to insider trading in the scrip of Satyam Computer Services Limited (**SCSL/ company**) during the financial year 2008-09 (**investigation period**). The investigation revealed that SCSL's announcement on December 16, 2008 to acquire Maytas Infra Ltd. (**MIL**), Maytas Properties Ltd. (**MPL**), the subsequent withdrawal of the said proposal on December 17, 2008 and the confessions made by Mr. Ramalinga Raju, the then Chairman of SCSL on January 07, 2009 was price sensitive information. It was observed that certain employees and clients had sold SCSL shares between November 25, 2008 and December 16, 2008 till before the announcement and some 80

Adjudication Order in respect of V.S.N. Raju in the matter of Satyam Computer Services Ltd.

clients sold before January 7, 2009. The trading window was closed from December 17, 2008 and stayed closed till beyond January 9, 2009. On December 17, 2008, the scrip fell to a low of ₹ 151, a 33.5% fall from previous close but after the cancellation of the decision, it recovered marginally to close at ₹ 157.10 on NSE.

2. The investigation further revealed that Mr. V. S. N. Raju, General Manager-Secretarial Department, (hereinafter referred to as the '**Noticee**') had allegedly violated the provisions of the 'Model Code of Conduct for Prevention of Insider Trading for Listed Companies' (hereinafter referred to as the '**Code**') prescribed under the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**'). It is alleged that the Noticee is one of the key personnel of SCSL. He had traded in stock futures of SCSL on December 18, 2008 through his broker Religare Securities Limited (Religare). On December 18, 2008, he had bought and sold futures for 3,000 SCSL shares. The bought and sold values were ₹ 5, 04,750 and ₹ 5, 18,220 respectively. He made a profit of ₹ 13,470 in this transaction. It was alleged that as an officer of SCSL, he was not permitted to take positions in derivative instruments in the shares of SCSL as per clause 4.2 of the Code as per Schedule I under Regulation 12 (1) of the PIT Regulations.
3. In view of the findings of the investigation as given above, SEBI has initiated adjudication proceedings against the Noticee for allegedly breaching the Code, thereby violating Clause 4.2 of Part A, Schedule I under Regulation 12 (1) of the PIT Regulations.

Appointment of Adjudicating Officer

4. SEBI vide Order dated September 12, 2011 had appointed the undersigned as Adjudicating Officer (AO) under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the '**SEBI Act**') read with Rule 3 of Securities and Exchange Board of India (Procedure for holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Adjudication Rules**') to inquire into and adjudge under Section 15HB of the SEBI Act, the alleged violation of the abovementioned provisions of the PIT Regulations by the Noticee.

Show Cause Notice, Reply & Personal hearing

5. Show Cause Notice dated September 27, 2011 (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 as an officer of SCSL was not permitted to take positions in derivative instruments in the shares of SCSL in violation of the Clause 4.2 of the Code of the PIT Regulations.
6. The Noticee vide his e-mail dated October 11, 2011, requested for extension of time till October 21, 2011 to submit his response. Vide e-mail dated October 19, 2011, the Noticee submitted his reply to the SCN. The Noticee had stated that Clause 4.2 of the Code is applicable to 'all directors/ officers/ designated employees', and that whereas he was only General Manager- Secretarial and thus not covered under the definition of either 'director' or 'officer' or 'designated employee' of SCSL given as per the PIT Regulations,

Companies Act, 1956 and the Insider Trading policy of SCSL. The Noticee had also stated that he has trading and demat account with Religare and as part of their marketing strategy, when the officials of Religare had approached the Noticee and presented various trading opportunities in securities, the Noticee had advised the dealer to carry out the trading in his account without putting him to any losses. The Noticee had instructed Religare not to do any kind of trading in the shares of SCSL either in cash/derivative segments. When the Noticee came to know of the said transaction done on December 18, 2008, he had immediately instructed to square off the same regardless of profit or loss and thus the transaction was squared off in an hour's time. The Noticee submitted that this was the only transaction executed by Religare unintentionally as they were unaware of the SEBI regulations/guidelines in this regard. Further, the merger of SCSL with MIL/MPL was no longer UPSI as on December 18, 2008, when the trade was done as the information was disseminated on December 16, 2008 and after the same got aborted, it was intimated to public on December 17, 2008.

7. On considering the facts of the case as available on record, it was decided to conduct an inquiry in the matter. Accordingly, the undersigned had granted an opportunity of personal hearing on November 18, 2011 vide notice of hearing/e-mail dated November 08/09, 2011. However, vide e-mail dated November 16, 2011, the Noticee had requested for extension of time till December 9, 2011. Another opportunity of personal hearing was granted by the undersigned on December 15, 2011 vide notice of hearing dated November 29, 2011. On the scheduled date, the Noticee had appeared before me and submitted a signed copy of his earlier reply dated October 19, 2011 and stated that he proposed to

submit a letter from SCSL on or before December 26, 2011 to substantiate his point that he didn't fall under the category 'designated employees' at that point of time and thus clause 4.2 of the Code doesn't apply to him.

8. Vide e-mail dated December 26, 2011, the Noticee had sent the letter of confirmation from SCSL which stated that the Noticee was not the 'designated associate' which includes 'all associates of SCSL at the level of Senior Vice President and above' and the Noticee is three levels below the Senior Vice President.
9. Subsequently, vide notice dated January 10, 2012, opinion/comments of the Investigation department of SEBI were sought under intimation to the Noticee on the issue in the matter and the Noticee's submission that he was only the General Manager-Secretarial and thus, not covered under the definition of 'director' or 'officer' or 'designated employee' of SCSL as per clause 4.2 of the Code.
10. The comments of the investigation department on the abovementioned issue were received vide letter dated January 30, 2012, wherein it was stated that as per the investigation report, the Noticee was General Manager-Secretarial and was among the list of key personnel of SCSL who were informed and involved in the work related to the proposal of acquisition of MIL and MPL. Further, it was stated that SCSL had informed that the Noticee was handling the functions of Stock Option and Secretarial Compliance in SCSL. A copy of comments of investigation department along with annexures, inter alia, including the letter/e-mail dated September

18, 2009 was also sent to the Noticee for his submissions on the same.

11. Vide e-mail dated February 10, 2012, the Noticee had submitted that though he was General Manager-Secretarial, he was not among the list of key personnel of SCSL and that he was informed and involved by virtue of position for the purposes of operations (i.e., nature of duties and to assist the company secretary in preparing the required documents for the Board meeting and not otherwise). The Noticee further submitted that he was handling the functions- Stock Option and Secretarial Compliance and was reporting to the company secretary of SCSL. Both the functions were being handled by him under the supervision of the company secretary and not as an independent charge. Further, he was handling operational processes pertaining to employees upto the level of Deputy General Manager. Thus, the Noticee had submitted that he was neither 'director' nor 'officer' nor 'designated employee' of SCSL and one transaction executed by Religare Securities Limited does not tantamount to violation of clause 4.2 of the Code.
12. Thus the inquiry is being proceeded with taking into account the facts of the case, oral/written submissions made by the Noticee and other material available on record.

Consideration of Issues, Evidence and Findings

13. I have carefully perused the documents available on record. The issues that arise for consideration in the present case are:

- (a) Whether the Noticee has violated Clause 4.2 of the Code of Part A, Schedule I under Regulation 12 (1) of the PIT Regulations?
- (b) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15HB of SEBI Act?
- (c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

14. The relevant provisions of the PIT Regulations are as follows:

Reg. 12 (1), PIT Regulations- Code of internal procedures and conduct for listed companies and other entities:

All listed companies and organizations associated with securities markets including:

- (a) *the intermediaries as mentioned in Section 12 of the SEBI Act, asset management company and trustees of mutual funds;*
- (b) *the self-regulatory organizations recognized or authorized by the Board;*
- (c)
- (d)
- (e)

shall frame a code of internal procedures and conduct as near thereto the Model Conduct specified in Schedule I of these Regulations.

SCHEDULE I, Part-A- Model Code of Conduct For Prevention of Insider Trading for Listed Companies.

Clause 4.0 Other Restrictions

Clause 4.1

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.

In the case of subscription in the primary market (initial public offers), the above mentioned entities shall hold their investments for a minimum period of 30 days.

The holding period would commence when the securities are actually allotted.”

15. As per Clause 4.2 of the Code prescribed under PIT Regulations, directors/ officers/ designated employees who trade in the securities of the company, cannot enter into an opposite transaction during the following six months of the transaction and they are not allowed to take positions in derivative transactions in the shares of the company at any time.
16. I find from SCSL's letter dated September 18, 2009 that the former Chairman of SCSL, Mr. B Ramalinga Raju, Mr. Rama Raju, former Managing Director & CEO and Mr. Srinivas Vadlamani, former Chief Financial Officer had the knowledge about the events relating to the acquisition of MIL & MPL and certain employees of SCSL including the Noticee were informed about the proposed acquisition by virtue of the position they held in the company. The Noticee was involved in the said proposal from December 13, 2008 well before it was discussed in the Board and made public on December 16, 2008. The Noticee was thus privy to the said acquisition deal, which points at the key managerial role of the Noticee in the company. I find that the above is sufficient to establish that the Noticee who is the General Manager-Secretarial handling the functions of stock-options and secretarial compliance of SCSL is an 'officer' of SCSL as defined under clause 4.2 of the Code stipulated under PIT Regulations. While as per designation he does not fall within the category of 'officer', the nature of duties assigned to him places him in such a position in the company. Therefore, as an officer of SCSL,

the Noticee was not permitted to take positions in derivative instruments in the scrip of SCSL according to clause 4.2 of the Code.

17. The Noticee's submission that the transaction on December 18, 2008 was the only transaction executed by his dealer at Religare unintentionally as they were unaware of the SEBI regulations/guidelines is not acceptable. Even if the trade was done / executed by an agent (dealer), the Noticee is responsible for the same. As an officer of SCSL, the Noticee is bound to understand his responsibilities and duties as per the law and is required to adhere to the restrictions imposed on the officials like him according to the Code stipulated under PIT Regulations.
18. However, I do not observe any specific attempt by the Noticee to benefit from the leverage available under the derivative trading mechanism. It appears that the Noticee has been negligent about following the restrictions applicable to him in the Code stipulated under the PIT Regulations while executing this trade.
19. From the foregoing, I conclude that the Noticee has breached clause 4.2 of the Code given under Schedule I under regulation 12 (1) of the PIT Regulations warranting imposition of monetary penalty under Section 15HB of the SEBI Act.
20. The Hon'ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund**¹ held that *"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the*

¹ (2006) 68SCL 216 (SC)

Adjudication Order in respect of V.S.N. Raju in the matter of Satyam Computer Services Ltd.

intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow.”

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

“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.”

22. While determining the quantum of penalty u/s. 15HB, it is important to consider the factors stipulated in S.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.”*

23. It is noted that the Noticee made a profit of ₹ 13, 470/- by trading in derivatives of SCSL shares. However, it is not possible to ascertain the loss to investors as a result of the said transaction of the Noticee. It is essential for every market player to fulfill the requirements mandated in the law, especially officers like the Noticee who are conferred upon with key responsibilities in a company. Hence, the violation by the Noticee needs to be viewed seriously. The records do not indicate that the violation by the noticee is repetitive.

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 ₹ 50,000/- (Rupees Fifty Thousand only) on the Noticee, Mr. V S N Raju in terms of Section 15HB of the SEBI Act for violation of clause 4.2 of the Code given under Schedule I under Regulation 12 (1) of the 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 Deputy General Manager, Investigation Department-6 (IVD-ID6), 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. The matter is disposed of accordingly.

DATE: February 28, 2012

PLACE: Mumbai

PIYOOSH GUPTA

ADJUDICATING OFFICER