

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: SRP/DA/AO- 238/2011]

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

In respect of

Mrs. Ratna Harish

In the matter of M/s. Valecha Engineering Ltd.

(PAN – AAAPM2475N)

FACTS OF THE CASE IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) has conducted investigations into the alleged irregularities in the affairs, trading and dealings in the shares of M/s. Valecha Engineering Ltd. (hereinafter referred to as ‘**the Company/VEL**’) based on certain inputs received from the National Stock Exchange of India Ltd. (**NSE**) regarding spurt in price of the shares of the Company, dissemination of price sensitive information by the Company and trading/dealings of the Company’s promoter group and its related entities in the scrip, etc. During the period covered under the investigations i.e. January 01, 2009 to December 31, 2009 (hereinafter referred to as ‘**investigation period**’), the shares of the Company were listed on NSE and the Bombay Stock Exchange Ltd. (**BSE**).
2. The investigations, *prima facie*, revealed that there was a delay by the Company in disseminating price sensitive information to the stock exchanges and that the promoters and the Company related entities had benefited by purchasing shares of the Company prior to dissemination of price sensitive information to public. Further, despite being clearly stated in its code of conduct for prevention of insider trading that trading window shall be closed 4-days prior to its Board Meeting in connection with certain events, it has failed to close the trading window prior to its Board Meetings, which were held for the purpose of issuing of convertible warrants /ADR/GDR etc. It was also observed that some of the Company related entities had either traded in the scrip themselves while being in possession of unpublished price sensitive information and/or they communicated such

unpublished price sensitive information to their family members, who thereafter, traded in the scrip and made unlawful gains.

3. It was alleged that Mr. Anil Harish, who was the Chairman of the Company during the relevant period, and his mother, Mrs. Ratna Harish (hereinafter referred to as "**the Noticee**"), had traded in the shares of the Company just prior to the price sensitive corporate announcement made by VEL. Based on the findings of the investigations, it was alleged that Mr. Anil Harish was privy to the said price sensitive information and that the Noticee, who is mother of Anil Harish and is residing with him and falls under the definition of 'insider' under the regulation 2(e) r/w regulation 2(h) of the SEBI (Prohibition of Insider Trading Regulations), 1992 (hereinafter referred to as '**PIT Regulations**') , had traded in the scrip of the Company immediately before the price sensitive information was made public by the Company and has thereby violated the provisions of the PIT Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

4. 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 30, 2011 to inquire into and adjudge under section 15HB of the SEBI Act, the alleged violation of the provisions of the SEBI Act and the PIT Regulations, by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show Cause Notice No. EAD-1/SRP/DA/15929/2011 dated May 18, 2011 (hereinafter referred to as '**the SCN**') was issued to the Noticee to show cause as to why an inquiry be not initiated against her in terms of rule 4 of the Rules read with section 15 I of the SEBI Act for the alleged violation of the provisions of regulation 3 (i) and 3 (ii) of the PIT Regulations.
6. The Noticee submitted reply to the SCN vide her letter dated July 04, 2011. Considering the said reply of the Noticee, it was decided to conduct an inquiry in the matter and for the purpose an opportunity of hearing was granted to the Noticee on August 03, 2011 vide notice dated July 19, 2011. In reply to the said notice of hearing, the Noticee vide letter dated July 30, 2011 requested for an adjournment of the hearing to any date after August 20, 2011. Considering the said request, another opportunity of hearing was

granted to the Noticee on August 24, 2011, which was attended by the authorized representative of the Noticee, namely Mr. Vinay Chauhan, Advocate. At the time of the hearing the Noticee also submitted her additional written submissions dated August 24, 2011 alongwith the annual report of the Company for the year 2008-09. Oral submissions made by the Noticee were recorded. Pursuant to the hearing, the Noticee filed her further written submissions dated August 27, 2011 and furnished details of VEL shares purchased by her and Mr. Anil Harish during August 2009 to April 2010.

7. The written and oral submissions made by the Noticee are mainly to the following effect:

- *That the Noticee is a senior citizen and an Advocate. She occasionally invests in the shares of companies and generally hold those for long term. She do not follow the market movements.*
- *The Noticee had not traded but only purchased the shares of the Company and continue to hold the same for a long period of time and had lost money.*
- *The Noticee denied the allegation that she traded just prior to the price sensitive announcement made by the Company. Further, that for the facts and rebuttal of the allegation she rely on the reply by the Company and her son Mr. Anil Harish.*
- *The AGM of the Company was held on August 20, 2009 and the shareholders were informed that the Company had orders of about ₹ 1000 crore on hand. This information was given to the shareholders in the AGM and there was no secrecy as such.*
- *Because the Indian economy was doing well and particularly since infrastructure was being emphasized by the Government, the Noticee felt that the Company had a good long-term future and therefore, decided to invest in the shares of the Company. But all the investments were made after the date of AGM i.e. August 20, 2009.*
- *If the Noticee wished to take advantage of the unpublished information, she would have purchased the shares immediately after the Board meeting rather than to wait for three weeks until after the AGM.*
- *The trading data itself reveals that the purchases were made at the prevalent market price and did not disturb the markets. Even two years after the first purchases were made; the Noticee has not sold even a single share.*
- *The Noticee's average cost of purchase was ₹ 121.83 per share and the present market price is about ₹ 97.00 per share, which means that she has incurred loss to a great deal.*
- *The Noticee denied that she was privy to any price sensitive information. She purchased shares only after the AGM. The purchases were made only on the basis of general sentiment and there is no unlawful gain.*

- *The fact that the share price rose after AGM shows that the market was aware of the general order book position of the Company and that she was not in possession directly or indirectly of or privy to any unpublished price sensitive information.*
- *Prior to August 21, 2009 her holdings in the Company were 'nil'. She had only purchased shares and not sold any shares.*

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the details of the allegations made against the Noticee, material available on record and the oral and written submissions made by the Noticee and Mr. Anil Harish. The main issue that arises here is, as to whether the Noticee was in possession of any unpublished price sensitive information and before it was made public she purchased the shares of the Company and made unlawful gains. If yes, then whether such acts of the Noticee are in violation of the provisions of regulation 3 (i) of the PIT Regulations.
9. It is undisputed fact that Mr. Anil Harish (son of the Noticee) was the Chairman of the Company during the relevant period and had presided over the meeting of the Board of Directors of the Company that was held on July 31, 2009. It is evident from point No. 20 of the minutes of the said meeting that the matter regarding getting of projects from the Government of Arunachal Pradesh was discussed in the said meeting, wherein, Mr. Suresh Mansata, Commercial Manager of the Company was authorized to execute and sign the Contract Agreement and bank guarantees for the said projects. Further, I have noted from the documents on record that the letter towards their getting of project (subject to their compliance with certain conditions) was issued to the Company by the Government of Arunachal Pradesh on July 31, 2009. The Noticee has relied on the submissions of Mr. Anil Harish in this regard, who has claimed that the same was received by the Company only on August 03, 2009. Mr. Anil Harish has further stated that the final work order was received by the Company from the Government of Arunachal Pradesh on August 24, 2009 and hence, it cannot be alleged that he was aware about the Company bagging the order on July 31, 2009. Here, I would like to point out that since the said acceptance letter to the Company was issued on July 31, 2009, it means that the decision regarding acceptance of the Company's proposal/bid for the project was taken by the Government of Arunachal Pradesh either on July 31, 2009 or a date prior to July 31, 2009. Therefore, even if the contention of Mr. Anil Harish is accepted that the said letter dated July 31, 2009 was physically received at the Company's end only on August 03, 2009, the possibility cannot be ruled out that the Company would have been

informed about the said decision of the Government of Arunachal Pradesh over phone or fax or by some other mode of communication viz. e-mail etc. on or prior to July 31, 2009. In this regard, instead of relying on the assumptions, I would like to discuss the attending circumstances of the case, before arriving at the conclusion that whether the said information was available with the Company prior to its Board meeting on July 31, 2009. In the matter, I would like to reproduce the point No. 20 of the minutes of the said meeting which reads as under –

AUTHORITY TO MR. SURESH MANSATA TO SIGN AND EXECUTE CONTRACT AT ARUNACHAL PRADESH

*“RESOLVED THAT Mr. Suresh Mansata, Commercial Manager of the Company be and is hereby authorized to execute and sign the Contract Agreement and bank guarantees for the project of Arunachal Pradesh for **“Two laning of NH-153 from km 24/00 to 40/00 under SARDP-NE (Phase A) and Reconstruction/Widening to 2 Lane of NH-153 from km. 40/00 to 56/485 in the State of Arunachal Pradesh under SARDP-NE (Phase A)”** in the name and on behalf of the Company and to sign any related documents, as may be necessary to give effect to this resolution.”*

10. The mere fact that in the said meeting the Commercial Manager of the Company was authorized to execute and sign the Contract Agreement and bank guarantees for specific projects in the State of Arunachal Pradesh, indicate that the Company was aware of the acceptance of its proposal/bid by the Government of Arunachal Pradesh and that the said projects have been awarded to it (subject to fulfillment of certain conditions), otherwise the question of authorizing its official to execute Contract Agreement etc. for the said purpose would not have arisen. And, since Mr. Anil Harish was the Chairman of the Company and had presided over the said Board meeting, his above contention that the matter regarding the said project was not discussed at the board meeting and that he was not aware of the said acceptance, cannot sustain.
11. Now, the question arises that such letter of acceptance dated July 31, 2009 intimating the Company that they have been awarded the contract for the project was subject to compliance of certain conditions by the Company and it did not confirm that the Company has bagged the Order. Mr. Anil Harish has stated that on their complying with the conditions the final work order was issued by the Government of Arunachal Pradesh on August 22, 2009 which was received by the Company on August 24, 2009. I have perused the material on record and observed that copy of two such letters of Public Works Department of Government of Arunachal Pradesh are available which are respectively confirming about award of projects worth around ₹ 42 crore and ₹ 36

crore to the Company. Mr. Anil Harish has stated that these letters were issued on August 22, 2009 and received at the Company's end on August 24, 2009. I have observed that on both the said letters date is appearing at two places. At both the places the date is appearing as "Dated Jairampur, the th August 09, " which means that at both the places in the copy of said two letters made available to me, only the month and year is visible but not the day on which it was issued. In both the said letters date is mentioned by the person signing the letter as 22/08/09 below his signature, but in both the letters there is overwriting which suggests that some other number in the date was initially mentioned and has subsequently been changed as 22. Further, if I go by the printed part of date that is visible at two places in the letter i.e. **"Dated Jairampur, the th August 09"**, then the part **"th"** appearing therein, clearly suggests that the date of the letter can never be 22nd as claimed by Mr. Anil Harish, it could be any date prior to 22nd i.e. any date from 4th to 20th. Further, the said letters do not bear the inward stamp of the Company indicating that it was received (as claimed by Mr. Anil Harish) on August 24, 2009. Thus, going by the logic given at para 9 above, it can be inferred that the Company and thereby, Mr. Anil Harish (being its chairman) was aware about the said confirmation of the said Work Order by the Government of Arunachal Pradesh on or before August 21, 2009. Even if the plea of Mr. Anil Harish is accepted that the letter was received by the Company on August 24, 2009, it do not absolve the Noticee of the charges as most of the alleged purchases were made by the Noticee and Mr. Anil Harish on 25th and 28th August 2009 i.e. before the price sensitive corporate announcement was made by the Company on August 28, 2009.

12. Now, the point to be noted here is that corporate announcement regarding the aforesaid price sensitive information was made by the Company on August 28, 2009 at 6:48:45 p.m. Mr. Anil Harish, son of the Noticee, who was earlier not holding even a single share of the Company, allegedly made the following purchases before the said corporate announcement was made by the Company on August 28, 2009 -

Client	Date	Period	BSE		NSE	
			Bought	Sold	Bought	Sold
Anil Harish (Son of the Noticee)	August 21, 2009	Prior announcement to (August 28, 2009) of getting a project worth ₹ 172 cr.	9600	0	10400	0
	August 25, 2009		9960	0	10040	0

13. The Noticee, who was also not holding even a single share earlier, allegedly, made the following purchases before the said corporate announcement made by the Company on August 28, 2009 –

Client	Date	Period	BSE		NSE	
			Bought	Sold	Bought	Sold
Ratna Harish (the Noticee)	August 25, 2009	Prior to announcement (August 28, 2009) of getting a project worth ₹172 cr.	3701	0	5500	0

14. In regard to the said purchases the Noticee has stated that the Indian economy was doing well and particularly since infrastructure was being emphasized by the Government, she felt that the Company had a good long-term future and therefore, decided to invest in the shares of the Company. But all the investments were made after the date of AGM i.e. August 20, 2009 and further, that in the said AGM of the Company that was held on August 20, 2009, the shareholders were informed that the Company had orders of about ₹ 1000 crore on hand. Now coming to the said submissions of the Noticee, the fact that the Indian economy is doing well and infrastructure was being emphasized by the Government, was not a new development or incidence that occurred around August 21, 2009. The said fact regarding the Indian economy and the emphasis of the Government on infrastructure was known much prior to the period when the Noticee and her son started purchasing the shares of the Company. If that was the sole objective for the Chairman of the Company and also his mother i.e. the Noticee, to invest in the shares of the Company, then in my opinion, they should have started making such investments long time back and not exactly around the time when the aforesaid corporate development took place. The said purchases by the Noticee and her son just few days prior to the Company making corporate announcement regarding its getting of projects from the Government of Arunachal Pradesh, become more suspicious on the count that earlier they were not holding any shares of the Company and in last so many years they had not purchased even a single share of the Company.

15. The Noticee has further stated that before they started purchasing the shares on August 25/28, 2009, in the AGM of the Company that was held on August 20, 2009, the shareholders were informed that the Company had orders of about ₹ 1000 crore on hand. Here, I am of the opinion that the disclosure to the shareholders alone cannot be treated as a disclosure to the public. Further, I have perused the copy of corresponding speech of the Chairman made before the shareholders of the Company in the AGM on August

20, 2009 and observed that there is no mention of the Arunachal Pradesh Project. That means that the investors, shareholders and public at large came to know about the Company bagging the project only after the corporate announcement was made by VEL in this regard on August 28, 2009.

16. The Noticee has stated that if they (Mr. Anil Harish and the Noticee) wished to take advantage of the unpublished price sensitive information, then they would have purchased the shares immediately after the Board meeting on July 31, 2009 rather than to wait for three weeks until after the AGM. On this issue, I have noted from the submissions of Mr. Anil Harish dated August 27, 2011, which have been relied upon by the Notice, that the letter dated July 31, 2009 of the Government of Arunachal Pradesh was only a "Letter of Acceptance" and getting of final Work Order was subject to compliance of certain conditions. The Company complied with the required conditions and accordingly the final Work Order was issued by the Government of Arunachal Pradesh on or prior to August 20, 2009 (as per the Noticee the letter was received by the Company on August 24, 2009 but as has been discussed above, the said date do not appear to be correct). Thus, in the facts and circumstances of the case, it is obvious that any prudent person would like to invest only on confirmation of such orders and not at a stage when the getting of such orders is not final and therefore, the said contention of the Noticee is not acceptable to me.

17. The Noticee has also stated that the purchases made by them, as referred to in the SCN, are not the only purchases but there are other purchases also, which have not been alleged to be motivated by possession of some unpublished price sensitive information, just because the investigating authority of SEBI could not find any corporate announcement made by VEL in the proximity of date of such purchases. In this regard, I had advised the Noticee at the time of personal hearing to furnish all sale /purchases made by her and Mr. Anil Harish during the calendar year 2009 (i.e. January to December 2009). The Noticee has furnished, vide her letter dated August 27, 2011 such details of purchases made till April 2010, which are as under –

i) Anil Harish (the Chairman of the Company and son of the Noticee) :

Date of Purchase	No. of shares	Rate per share (in ₹)
21.08.2009	20,000	74.38
25.08.2009	19,378	88.05
28.08.2009	40,000	76.00

04.01.2010	144	109.70
27.04.2010	7,200	208.09
Total :	86,722	

It is evident from the above details that Mr. Harish, who was earlier not holding any shares of the Company all of a sudden started making purchases with effect from August 21, 2009 and major chunk of the purchases (i.e. purchase of 79,378 shares) were made by him just prior to the corporate announcement made by the Company regarding its bagging of said project worth ₹ 172 crore from the Government of Arunachal Pradesh on August 28, 2009 at 6:48:45 p.m. His entire purchase of 79,378 shares made in the year 2009, were just prior to the Corporate announcement made by the Company on the evening of August 28, 2009. Thereafter, for the next four months, he did not make any purchases. In January 2010 he purchased a few shares (144 shares) and then again after a gap of around four months he purchased some more shares towards end of April 2010.

ii) Ratna Harish (the Noticee) :

Date of Purchase	No. of shares	Rate per share (in ₹)
25.08.2009	9,201	87.27
28.08.2009	10,000	76.00
04.01.2010	789	109.95
15.04.2010	10,000	198.69
Total :	29,990	

It is evident from the above, that just like Mr. Anil Harish, the Noticee was also not holding any shares of the Company earlier, but all of a sudden she started making purchases with effect from August 25, 2009 and major purchases (i.e. purchase of 19,201 shares) were made by her prior to the public announcement made by the Company on August 28, 2009. Her entire purchase of 19,201 shares made in the year 2009, were just prior to the corporate announcement made by the Company on the evening of August 28, 2009.

It is also evident from the above details that except for the first purchase made by Mr. Anil Harish on August 21, 2009, the subsequent purchases made by him and his mother prior to the corporate announcement made by VEL, are on the same dates viz. August

- 25, 2009 and August 28, 2009 and in my opinion, it cannot be just a matter of coincidence that two related persons, who had earlier not purchased any shares of the Company, would all of a sudden start purchasing shares on the same dates independently and on their own without any prior understanding or meeting of minds.
18. The Noticee, has further submitted, that she has not made any unlawful gains as even after more than two years of the first purchase made by her, she has not sold the shares and those are still in her possession. She had purchased shares at an average cost of ₹ 121.83 per share and the present market price is about ₹ 97.00 per share, which means that she has actually incurred loss. Had her intention been to make gains out of unpublished price sensitive information, instead of keep on buying shares at higher prices she would have sold the shares. The purchases had been made by her with full disclosures in a legitimate way and were not made to make gain or any unfair advantage. In support of the said contention Mr. Anil Harish has in his reply dated August 27, 2011 cited the observations of the Hon'ble Securities Appellate Tribunal made in the matter of *Rakesh Agarwal vs. SEBI (2004 Comp LJ*, and stated that in the said matter the Hon'ble Tribunal has *inter alia* held that the insider trading regulations, if read with the objective of prohibiting insider trading, make clear that motive is built into the regulation and that insider trading without establishing a motive is not punishable. The Hon'ble Tribunal further held that what is sought to be prohibited is gaining unfair advantage by indulging in insider trading. Thus, if it is established that the person who had indulged in insider trading had no intention of gaining any unfair advantage, the charge of insider trading warranting penalty cannot be sustained against him.
19. Now the question which arises here is that whether the intention of the Noticee was to derive any benefit out of such purchases made by her while being in possession of such unpublished price sensitive information. Here, I would like to emphasize on two important points. First, the corporate announcement made by the Company regarding its bagging of projects worth ₹ 172 crore was a significant corporate development and therefore, it was indeed a price sensitive information in terms of regulation 2(ha)(iv) of the PIT Regulations, which was disseminated by the Company to the public on the evening of August 28, 2009. Secondly, even if it is presumed that as stated by the Noticee the said confirmation from the Government of Arunachal Pradesh was received by the Company on August 24, 2009, then in that case in terms of regulation 3 (i) of the PIT Regulations the Noticee being an insider as per regulation 2(e) r/w regulation 2(h) of the PIT Regulations, was not supposed to deal in the shares till the information was published (in the instant case till August 28, 2009). Despite that the Noticee and her son (the Chairman of the Company) purchased the shares before the information was disseminated to

public. I could not understand that what was the urgency for them, who were earlier not holding any shares of the Company and had not dealt in the shares of the Company, to make purchases during the period, when they were prohibited under law to deal in shares of the Company. This make me to believe that when all of a sudden Mr. Anil Harish and the Noticee, started purchasing shares of the Company in large quantities during August 21 to August 28, 2009, their intention was to derive undue advantage out of the unpublished price sensitive information. I have noted that after August 28, 2009, neither of them had purchased any VEL shares for the next four months. The said purchase of 79, 378 shares by Mr. Anil Harish and 19,201 shares by the Noticee made immediately prior to August 28, 2009, are the only purchases made by them during the entire 2009. This also negates the Noticee's contention that she made purchases considering that the Indian economy was doing well and the Government was putting emphasis on infrastructure development. It is not so that prior to August 2009 or after August 2009 there was significant variance in the general economic scenario or the policy of the Government on the infrastructure development, which prompted her not to buy any shares during those periods.

20. Now coming to the contention of the Noticee that she had only purchased the shares and not sold any shares and had her intention been to take undue advantage then she would have disposed of the shares immediately after the prices would have gone up. In this regard, I have observed that after making of public announcement there was no significant rise in the price of the shares of the Company. It had moved almost in tandem with the BSE Sensex as has been detailed below :

Date	Closing price (₹)	Sensex
27.08.2009	84.65	15,781.05
28.08.2009 (Friday)	93.10	15922.34
31.08.2009 (Monday)	91.10	15666.64
01.09.2009	86.45	15,551.19

The above details suggest that after the corporate announcement was made on August 28, 2009 there was subsequent fall in BSE Sensex and the price of the shares have also come down. Thus, it is evident that if prices are falling and are not at one's expected levels then it would be logical not to sell the shares at lower prices. The Noticee has further purchased some shares of the Company on 04.01.2010 and thereafter on 15.04.2010 respectively @ ₹ 109.95 and ₹ 198.69 per share. Here, I am of the view that any buyer makes purchases in anticipation that prices of the shares would go up. Therefore, I am of the view that when the Noticee has further purchased shares at higher

prices, then she would have anticipated that share prices would rise further. Therefore, the aforesaid facts suggest that under the circumstances it would not have been logical for the Noticee to sell the shares that she had purchased earlier.

21. The Noticee has stated that the highest price of the shares in August 2009 was ₹ 93.10 and there was no impact whatsoever on prices, which have remained at the same level for the last four months. I have noted that the price movement in the shares of the Company, as has been detailed in the table at para No. 20 above, do indicate that during the last week of August 2009, its price had moved almost in tandem with the BSE Sensex and the corporate disclosure made by the Company on August 28, 2009 regarding its getting orders worth ₹ 172 crore from the Government of Arunachal Pradesh, had no significant impact on the price of the scrip. But I am not inclined to take it as a mitigating factor, as the price movement in any scrip depends on various other factors as well. There is no dispute over the issue that the aforesaid announcement by the Company was indeed a price sensitive information and furthermore, in these type of circumstances, it is the intent of the person buying or dealing in shares that is more important rather than the impact of any price sensitive information on the price of the scrip. The Noticee, being an insider (as she was mother of the Chairman of the Company) and as has been discussed above, was in possession of some unpublished price sensitive information and she along with her son (who were earlier not holding any shares of the Company) made purchases during August 21, 2009 to August 28, 2009 in large numbers. The average price of the shares purchased by the Noticee up to August 28, 2009 comes out to approximately ₹ 81.29 per share [i.e. $9201 \times 87.27 + 10000 \times 76.00$ divided by 19,201 i.e. the number of shares purchased). During the said period, the Noticee being in possession of the price sensitive information was prohibited under law [regulation 3 (i) of the PIT Regulations] to deal in the shares of the Company. Therefore, I am of the view that if the Noticee would have purchased 19,201 shares after the price sensitive information was disseminated on August 28, 2009, she would have got shares @ ₹ 91.10 (approximately) which was the closing price of the shares on August 29, 2009. Average closing price of the shares for the week after August 28, 2009 was approximately ₹ 87.20. Thus, even if the average closing price of the shares for the next one week after the date of corporate announcement is considered, I am of the view that by not complying with the requirements prescribed under regulation 3 (i) of the PIT Regulations, the Noticee has benefitted to the extent of ₹ 5.91 (₹ 87.20 - ₹ 81.29) per share i.e. she has made unlawful gains of approximately ₹ 1.14 lakh [i.e. ₹ 5.91 * 19201].

22. In light of the facts and circumstances of the case as discussed above, I hold the Noticee guilty of violating regulation 3 (i) of the PIT Regulations, for which there is provision for imposition of penalty under section 15 G of the SEBI Act. The provisions of section 15 G of the SEBI Act are reproduced hereunder –

15G. Penalty for insider trading. –

If any insider who,-

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or

(ii) communicates any unpublished price- sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information, shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

23. While determining the quantum of penalty under Section 15 G of the SEBI Act, it is important to consider the factors stipulated in section 15 J of the SEBI Act, which are 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.*

24. In this regard, I have noted that the investigations have not revealed the unlawful gains made by the Noticee by indulging into such irregularities. However, from the above estimates roughly the figures for the undue gains made by the Noticee comes out to around ₹ 1.14 lakh. The information available with me do not indicate that the Noticee was repetitively indulged in such acts. Therefore, considering all the facts and circumstances of the case, I am of the opinion that a penalty of ₹ 3.40 lakh on the Noticee, which is around three times the undue gains made by her, shall be commensurate with the violations committed .

ORDER

25. In exercise of the powers conferred upon me under Section 15 I of the Act and rule 4 of the Rules, I impose penalty of ₹ 3,40,000/- (Rupees three lakh forty thousand only) on the Noticee in terms of the provisions of section 15 G of the SEBI Act for the violation of the aforesaid provisions of the PIT Regulations. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the violations committed by the Noticee.
26. 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 The Deputy General Manager, IVD – ID4, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai-400 051.
27. In terms of the provisions of rule 6 of the Rules copies of this order are sent to the Noticee and to the Securities and Exchange Board of India.

Date: October 31, 2011
Place: MUMBAI

SATYA RANJAN PRASAD
ADJUDICATING OFFICER