

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. MC/AO- 02/2010]

**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
Vikas Gourihar Narnavar (PAN: ACRPN6457D)
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 the investigation period, it was observed that four brokers namely, Adolf Pinto, Vijaya Bhagwandas & Co, DPS Shares and Securities and Pawan J. Chaudhary indulged in circular trading among themselves.
6. The aforesaid brokers dealing on own account and for respective clients purchased 20,83,551 shares and sold 22,45,146 shares which constitutes 12.72% and 13.71% of the gross volume traded respectively during the relevant period. These brokers and some of their clients entered into circular trading for among themselves for 19,46,396 shares, which accounted for 93% of their total purchase and 86.69% of their total sale.
7. Vikas Gaurihar Narnavar (hereinafter referred to as Vikas Narnavar) has traded through M/S Adolf Pinto and Pilot Credit Capital Ltd. Vikas Narnavar purchased 35,000 shares and sold 90,000 shares in the market through Pilot Credit Capital Ltd., purchased 2,89,350 shares and sold 41,43,45 shares in the market through Adolf Pinto, and received 60,000 shares in off market transactions.
8. Vikas Narnavar entered into synchronized transactions by placing buy and sell orders of the same quantity at the same price simultaneously within a maximum the time difference of 39 seconds. Out of 47 days, Vikas Narnavar has indulged in circular trading through for 26 days using synchronized trades. Vikas Narnavar traded 6,85,497 shares on gross basis (2.09% of gross volume traded), purchased through circular trading 2,79,900 shares constituting 1.71% of the total volume traded and sold through circular trading 2,88,850 shares constituting 1.76% to total volume traded during the investigation period.
9. The aforesaid findings led to the allegation that through collusion with the brokers and other clients, Vikas Narnavar 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, Vikas Narnavar is alleged to have violated regulations 4(1) and 4(2) (a) and 4(2) (g) of PFUTP Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

11. 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 Vikas Narnavar 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.

SHOW CAUSE NOTICE, REPLY AND HEARING

12. A show cause notice dated November 5, 2009 was issued to Vikas Narnavar in the matter wherein he was asked to show cause as to why an inquiry should not be held against him 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.
13. The noticee appeared for hearing before me on November 19, 2009 and then filed a reply dated December 14, 2009. The noticee submitted during the hearing that one Ramnik Lal Patel had got him to sign on some forms for which he was paid around Rs.10000 to 15000. He submitted that he neither visited any broker nor got any statements from any broker. The noticee submitted in the reply dated December 14, 2009 that he presently earns Rs.7000 per month and given his level of income he is hardly able to sustain his family rest aside investing it in the market. Further he was unaware of the number of bank accounts and demat accounts opened in his name with various brokers by Ramnik Lal Patel.
14. Opportunity for personal hearing in the matter was again provided on January 8, 2010, during which Vikas Narnavar presented an Affidavit which was verified with the original on February 3, 2010.
15. In the Affidavit which is signed by Ramnik Lal Patel, it is submitted that Ramnik Lal Patel had approached Vikas Narnavar for opening trading account, demat account and bank account for the purpose of trading in shares of various companies. Ramnik Lal Patel had offered Vikas Narnavar some share in profit made through share transactions in his account by him. Ramnik Lal Patel had told Vikas Narnavar that he will make profit without doing anything. Ramnik Lal Patel took signatures of Vikas Narnavar on Account opening forms of some brokers such as Pilot Credit Capital Ltd., Adolf Pinto, Ajmera Associates Pvt. Ltd; demat account opening forms with Sahara Financial Services and Sodhani Securities Ltd.; account opening form of Bank Account with Bank of India, Stock Exchange Branch, Mumbai. Ramnik Lal Patel also took signature of Vikas Narnavar on blank cheque leafs and blank delivery instruction slip for demat account. Ramnik Lal Patel also used to place buy and sale orders for dealing in shares on behalf of Vikas Narnavar. Ramnik Lal Patel used to collect contract notes and bills from the office of the

brokers for transaction done by him in the name of Vikas Narnavar. For the above favors Ramnik Lal Patel paid some amount to Vikas Narnavar. All the trades in various scrips were done by Ramnik Patel in the name of Vikas Narnavar.

CONSIDERATION OF ISSUES

16. 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) and 4(2) (g) of PFUTP Regulations.
- (2) Whether the noticee is liable for monetary penalty under sections 15 HA of the SEBI Act.
- (3) What quantum of monetary penalty should be imposed on the noticee, taking into consideration the factors mentioned in section 15J of SEBI Act.

FINDINGS

17. 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) 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;*
 - (g) *Entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;*

18. 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.

19. The investigation has brought out that a significant part of this volume was artificially generated by the orders entered by Vikas Narnavar. Of the 6,85,497 shares traded by Vikas Narnavar on gross basis (2.09% of gross volume traded), 5,68,750 were through circular constituting 1.74% to total volume traded during the investigation period.
20. The same numbers of share was rotated in a circular manner among the members in the group on daily basis so that the same numbers of share goes back to the original seller at the end of the day and net position of each member remains nil, without resulting in any change in beneficial ownership of the shares traded. Thus there was no intent to buy or sell shares and the only intention was to create artificial volumes so as to give an impression of buying interest in the scrip.
21. The trading by Vikas Narnavar thus contributed to creation of artificial volumes to create an impression of active trading interest in the scrip and to thus attract unsuspecting investors to invest in the scrip.
22. However, based on the submissions made by Vikas Narnavar regarding his occupation and income, I find it difficult to believe that the trades were actually undertaken by Vikas Narnavar. Taking into consideration the affidavit submitted by Ramnik Lal Patel, I find that Vikas Narnavar was merely instrumental in lending his identity to Ramnik Lal Patel. It was in effect Ramnik Lal Patel who indulged in circular and synchronized trades to give misleading appearance of trading in the scrip of GCL. I note that the investigation report brought out that Ramnik Lal Patel received 14,50,000 shares from two other clients, namely Dhirubhai Sukkarbhai Nakia and Ramesh Sukkarbhai Talaviya in off-market transactions and off-loaded them in the market.
23. Regulation 4(1) of PFUTP Regulations prohibits persons from indulging in a fraudulent or an unfair trade practice in securities. Regulation 4(2)(a) of PFUTP Regulations, 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) (g) of PFUTP Regulations 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.
24. While I am convinced that the trades executed in the name of Vikas Narnavar were not actually executed by him, I find that he did aid the process of manipulation by lending his identity to the actual perpetrator. I thus find that Vikas Narnavar contributed indirectly to the 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) of PFUTP Regulations stand established.

Issue 2: Whether the noticee is liable for monetary penalty under sections 15 HA of the Act?

25. As the allegations against the noticee stand established, he is liable for monetary penalty under Section 15 HA 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.”

ISSUE 3: What quantum of monetary penalty should be imposed on the noticee, taking into consideration the factors mentioned in section 15J of SEBI Act?

26. 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.*

27. 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. While imposing monetary penalty, I have taken into account the fact that the noticee has violated the provisions of Regulations 4(1) of PFUTP Regulations by lending his identity in return for minor pecuniary gain. I have also taken into account the submissions made by the noticee regarding his sources of income.

28. 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. 15,000/- (Rs. Fifteen thousand) under Section 15 HA of the SEBI Act will be commensurate with the violations committed by the noticee.

ORDER

29. After taking into consideration all the facts and circumstances of the case, I hereby impose a penalty of Rs. 15,000/- (Rs. Fifteen Thousand only) under Section 15 HA SEBI Act on the noticee, **Vikas Gourihar Narnavar** for violation of Regulations 4(1) of PFUTP Regulations .
30. 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.
31. 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