

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD/PM-AA/AO/34/2017-18]

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
Shri Bharat Kanaiyalal Sheth
(PAN: AAQPS2482L)

In the matter of
Financial Technologies (India) Ltd.
(Now known as 63 Moons Technologies Ltd.)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (**SEBI**) conducted investigation in the scrip of Financial Technologies (India) Ltd. (hereinafter referred to as "**Company/FTIL**") for the period of April 27, 2012 to July 31, 2013. It was observed in investigation that National Spot Exchange Limited ("**NSEL**") is a wholly owned subsidiary of FTIL which also holds 26% of the shareholding in Multi Commodity Exchange of India Limited ("**MCX**"). Further, all three companies, i.e. NSEL, FTIL and MCX, are under a common management with common directors and employees.
2. A Show Cause Notice dated April 27, 2012 was issued by the Department of Consumer Affairs ("**DCA SCN**") to NSEL. As per the Investigating Authority, the Unpublished Price Sensitive Information ("**UPSI**") in respect of the shares of FTIL was the implication of the DCA SCN dated April 27, 2012, issued to NSEL i.e. suspension of short

selling by its Members, pairing of contracts and settlement of contracts beyond 11 days, impending payment defaults by the members of NSEL and loss of reputation of Promoters and Management of FTIL. It was observed that any news impacting business of NSEL will automatically impact share price of its holding company (i.e. FTIL) and any news impacting credentials of Promoters and Management of FTIL, NSEL and MCX will also impact the share price of FTIL, therefore, suspension of trading by NSEL was a negative news. As per the Investigating Authority, the *UPSI* came into existence on April 27, 2012, upon the issuance of the SCN to NSEL, by the DCA and it ceased to exist when NSEL suspended trading in all contracts (except e-series contracts) and deferred settlement of all pending contracts on July 31, 2013.

3. It was observed that Shri Bharat Kanaiyalal Sheth ("**Noticee**") is an insider under SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations, 1992**") being the brother of Shri Ravi K Seth, who was a Director of FTIL from September 15, 1994 to February 21, 2014. FTIL being the holding company of NSEL, Directors and Officers of FTIL were reasonably expected of having access to the *UPSI* which emanated from its wholly owned subsidiary company i.e. NSEL.
4. It was alleged that the Noticee, being an insider, before the outbreak of NSEL irregularities avoided losses by selling 6,000 shares of FTIL in the period between November 09, 2012 to February 06, 2013 when in possession of *UPSI* and thereby violated provisions of Regulation 3(i) of PIT Regulations, 1992 read with Regulation 12(2) of SEBI

(Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as “**PIT Regulations, 2015**”).

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as Adjudicating Officer under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) read with rule 3 of SEBI (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 15G of the SEBI Act the alleged violations of provisions of Regulation 3(i) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015 by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A Show Cause Notice no. EAD/AO-PM/AA/OW/31687/2017 dated December 15, 2017 (hereinafter referred to as “**SCN**”) was issued to the Noticee under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15G of the SEBI Act, 1992 for the alleged violations specified in the SCN.
7. Vide letter dated December 26, 2017, Khaitan & Co., Advocates, responded to the SCN on behalf of the Noticee and inter alia submitted as under:
 - *The issues and allegations levelled in the SCN are same as in Ex-Parte Order bearing reference number SEBI/WTM/SR/IVD-ID-6/44/08/2017 dated August 02, 2017 (“Ex-Parte Order”) under Sections 11 and 11B of SEBI Act, 1992 read with regulation 12 of*

PIT Regulations, 2015 alleging insider trading in shares of 63 Moons Technologies Ltd.

- *The Learned WTM has completed the personal hearing and has reserved orders. Since the facts relating to both proceedings are same, we request you to keep on hold the proceedings pursuant to the SCN to avoid needless multiplicity of proceedings.*

8. I note that as regards the Ex-Parte Order referred to by the Noticee in his submission in reply to the SCN, an Order dated January 31, 2018 has been passed by the WTM of SEBI under sections 11(1), 11(4) and 11B of SEBI Act in the scrip of FTIL and the said order is arisen from the same set of facts as in the instant adjudication proceeding. Considering the facts and circumstances of the case, reply of Noticee and the WTM Order dated January 31, 2018, the undersigned is of the opinion that the present matter can be decided on the basis of facts/materials available on record without personally hearing the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

9. The issues that arise for consideration in the present case are :
- I. Whether Noticee avoided losses by selling 6,000 shares of FTIL in the period between November 09, 2012 to February 06, 2013 when in possession of UPSI and thereby violated provisions of Regulation 3(i) of PIT Regulations, 1992? and
 - II. Does the violation, if any, attract monetary penalty under section 15G of SEBI Act?
10. Before moving forward, it is pertinent to refer to the relevant provisions of PIT Regulations, 1992 which reads as under:-

“Prohibition on dealing, communicating or counselling on matters relating to insider trading.

3. No insider shall—

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or”

11. I have perused the submissions of the Noticee, documents available on record and the WTM order dated January 31, 2018 in the same matter in different proceedings. Having considered the same, I record my findings hereunder.

12. I find that it is not in dispute that Noticee is the brother of Shri Ravi K Seth, who was a Director of FTIL during the UPSI period. In that capacity, he is deemed to be a connected person in terms of Regulation 2(h)(viii) of PIT Regulations, 1992 and thus an insider as he is immediate relative covered under the definition of "relative" as per section 6(c) of Companies Act, 1956 read with section 2(77) of Companies Act, 2013. Further, the transaction in question i.e. sale of 6,000 shares of FTIL in the period between November 09, 2012 to February 06, 2013 as specified in the SCN is also a matter of record.

13. I note that WTM of SEBI vide Order dated January 31, 2018 (**WTM order**) in a separate proceedings against the noticee under sections 11(1), 11(4) and 11B of SEBI Act, on the same set of facts and allegations, had exonerated him of the charges leveled against him. I note that in the said WTM order, there was a specific finding with regard to the periodicity of the UPSI which is as under:

“26. Having answered the first issue in the affirmative, the next issue for consideration is whether the “price sensitive information” was unpublished during the period of investigation. In this regard, it is noted that on October 3, 2012 an article appeared in the Economic Times, a widely distributed financial newspaper, which contained information

relating to the issuance of SCN dated April 27, 2012 to NSEL, majority of the contents of the SCN, allegations against NSEL with regard to violation of conditions of DCA notification dated June 5, 2007 and the gist of NSEL's reply to the SCN. The article also covered the possible action that could be taken by DCA against NSEL i.e. withdrawal of exemption granted to NSEL vide the notification dated June 5, 2007.

26. On a careful perusal of the newspaper article dated October 3, 2012, I find that the publication of the said article made the following information public:

- DCA had issued a show cause notice dated April 27, 2012 to NSEL hereby it had found fault with certain types of contracts which were being traded on NSEL.*
- There were allegations against NSEL that it was permitting short selling on its platform. It was also alleged that NSEL did not have a stock check facility for validating a member's position.*
- SCN also alleged that all contracts traded on NSEL with a settlement period exceeding 11 days were in violation of the provisions of FCRA.*
- The conduct of NSEL was allegedly in violation of the conditions stipulated in the DCA notification dated June 5, 2007.*
- NSEL had filed its reply to the SCN issued by DCA.*
- In the event of NSEL failing to file a satisfactory explanation, DCA would withdraw the exemption granted vide notification dated June 5, 2007 without any further communication.*

27. In my view, a reader of the newspaper article dated October 3, 2012 (containing the information noted above) could have deduced the implications of the SCN dated April 27, 2012 to a lesser or greater extent depending on his/her exposure to the subject matter covered in the newspaper article. In my view, the newspaper article was not speculative in nature as it published precise facts relating to the issuance of SCN and also brought out specific contents of the SCN summarizing the allegations levelled against NSEL and the possible consequences thereof. The article categorically mentioned that failure on part of NSEL to provide a satisfactory explanation to the allegations

levelled in the SCN would result in withdrawal of exemption granted to NSEL vide notification dated June 5, 2007. The said withdrawal of exemption in turn would have had a cascading effect on the contracts being traded on NSEL, payment defaults in relation thereto and the eventual loss to the reputation of the promoters / management of NSEL. Considering the above, I find that the price sensitive information, relating to the implication of the SCN dated April 27, 2012 became public from the time when the article relating to the SCN dated April 27, 2012 appeared in Economic Times on October 3, 2012, and as such ceased to be UPSI from that date. Accordingly, the period during which the period the UPSI existed was from the issuance of the SCN to its publication i.e. from April 27, 2012 to October 3, 2012.”

14. I note that in the said order, WTM, inter alia, held that since Noticee did not trade in the shares of FTIL when in possession of UPSI, the violation of regulation 3(i) of the PIT Regulations, 1992 cannot be established against him. I have also gone through the charges leveled against the Noticee in the SCN which have arisen out of the same set of facts identical to that of in the WTM Order and I do not find any reason to disagree with the view taken by the WTM about the periodicity of UPSI i.e. from April 27, 2012 to October 3, 2012. Since there was no UPSI in existence at the time of sale of 6,000 shares of FTIL in the period between November 09, 2012 to February 06, 2013 by the Noticee, therefore, I am inclined to conclude that violation of Regulation 3(i) of the PIT Regulations, 1992 by the Noticee as alleged in the SCN dated December 15, 2017 do not stand established. Since the alleged violation is not established against the Noticee, Issue No. 2 requires no consideration.

ORDER

15. For the aforesaid reasons, Show Cause Notice EAD/AO-PM/AA/OW/31687/2017 dated December 15, 2017 alleging violations

of provisions of Regulation 3(i) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015 by the Noticee i.e. Shri Bharat Kanaiyalal Sheth, is disposed of without imposition of any penalty.

16. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to Noticee and also to the Securities and Exchange Board of India.

Date: February 23, 2018
Place: Mumbai

Prasanta Mahapatra
Adjudicating Officer