

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. SP/AO - 5/2010]

**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

NIKETA B. DAVE

(431-432, Devkripa Bungalows, Opposite Primary School,
Gota Gam, Ahmedabad-382 481)

DEENKAR B. SHRIMALI

(431-432, Devkripa Bungalows, Opposite Primary School,
Gota Gam, Ahmedabad-382 481)

PRATIK R. SHAH

(12, Naresh Park, Shantinagar,
Usmanpura, Ahmedabad-380 013)

DHRUMAL K. VAIDYA

(U/84, Satellite Complex, Opposite Mansi Tower,
Satellite, Ahmedabad-380 015)

LALIT K. RATHOD

(246/9, Baimani Ni Chali, Intwada,
Saraspur, Ahmedabad-380 018)

SARANG CHEMICALS LIMITED

(403, Sanjay Apartment, Opp. C N Vidyalaya,
Polytechnic Road, Ahmedabad-380 015)

FACTS OF THE CASE IN BRIEF

1. An investigation was initiated by Bombay Stock Exchange Limited (hereinafter referred to as 'BSE') in the trading of the scrip of Sarang Chemicals Limited (hereinafter referred to as 'SCL') during the period from August 1, 2005 to October 4, 2005 wherein it was observed that the price of the scrip increased from Rs.5.31 on August 01, 2005 to Rs.17.49 on September 13, 2005. Subsequently, the price decreased from Rs.15.75 on September 14, 2005 to Rs.8.53 on September 26, 2006. BSE also observed that the company also made various favorable announcements during this period and that certain company related entities were dealing in the scrip of SCL and purchased 1.34% and sold 23.33% of the entire market

volume during the above period. In view of the above, BSE vide letter dated March 8, 2006 referred the matter to SEBI for consideration.

2. SEBI conducted investigation into the trading in the scrip of SCL during the period from August 1, 2005 to October 4, 2005 (hereinafter referred to as 'investigation period'). It was observed that during the investigation period, SCL made five corporate announcements which were alleged false / misleading as a result of which a price rise was observed during the patch period from August 01, 2005 to September 13, 2005 wherein the price increased from Rs.5.31 to Rs.17.49. It was also observed that the company disclosed false/misleading financial results to the Stock Exchanges and in the Annual Reports.
3. As per the investigation, it was observed that the company filed wrong/inconsistent shareholding with the stock exchanges. In the Annual Report (2004-05) the promoters of the company were shown to be holding 20,64,900 shares representing 29.52% of the total shareholding of the company whereas investigation brought out that as per BSE website, the promoter group of SCL was shown as having nil for the year ending March 31, 2005. Again, in the Annual Report, the total shareholding of the company was shown as 69,94,800 shares whereas as per BSE website under financial results, the non promoters shareholding was shown as 6,96,48,000 shares for the year ending March 31, 2005. It was further brought out that SCL also submitted the quarterly results for September 2005 and December 2005 to the Exchange on March 21, 2006 after a delay of 2-5 months.
4. Further, investigation revealed that in the Annual report for the FY 2004-05, SCL had mentioned that the share transfer work of the company was handled by its Registrar & Transfer Agent (RTA), M/s. Sharex India Pvt. Ltd. However it was observed that the company itself was handling the physical shares (in house) whereas it's RTA, Sharex Dynamic (India) Pvt. Ltd. was handling the work of electronic connectivity. Hence, it seems that SCL had not complied with the requirement to appoint a common agency as required under the SEBI (Depositories and Participants) Regulations.
5. It was also observed during the course of investigation from the shareholding pattern of the top 50 shareholders of the company (as on June 30, 2005) that a number of entities, viz. Lakshya Securities and Credit Holdings Ltd, Anand Trivedi, Ashok Hiralal Shah, Shah Pravin Kantilal, Hiralal Popatlal Shah and Robinson Worldwide Trade Limited were holding more than 5% of the total shareholding of SCL and the change in their holding exceeded 2% of the total shareholding during the investigation period. It has been alleged that they were, therefore, required to disclose to SCL under Regulation 13(3) of the PIT Regulations and SCL was required to disclose the same to the stock exchanges under Regulation 13(6) of the said Regulations. In addition to the above, it was alleged that the shareholding of Robinson Worldwide Trade Ltd increased to more than 5 % of the paid up capital of the company on August 3, 2005 & September 6, 2005 and to more than 10 % on August 23, 2005 and hence, Robinson Worldwide Trade Ltd was required to disclose to SCL and to the stock exchanges under Regulation 7(1) of the SAST Regulations and SCL in turn to the stock exchanges under Regulation 7 (3) of the said Regulations. It was brought out that BSE in its report stated that no disclosures were made by SCL under the PIT and SAST Regulations during the investigation period.
6. It was, therefore, alleged that Niketa B. Dave, Deenkar B. Shrimali, Pratik R. Shah, Dhruval K. Vaidya, Lalit K. Rathod and SCL (hereinafter collectively referred to as "Noticees") have violated Regulations 3(c), (d) and 4(1), 4(2)(e), 4(2)(r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, Section 21 of the

Securities Contracts (Regulation) Act, 1956 read with Clause 35 and Clause 41 of the Listing Agreement, Regulation 53A of SEBI (Depositories and Participants) Regulations, 1996 and SEBI Circular no. D&CC/FTTTC/CIR-15/2002 dated December 27, 2002, Regulation 7(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and Regulation 13(6) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 and consequently, liable for monetary penalty under Section 15 HA and Section 15A (b) of the SEBI Act, 1992, Section 23A(a) of SCRA, 1956 and Section 19G of Depositories Act, 1996.

APPOINTMENT OF ADJUDICATING OFFICER

7. I was appointed as Adjudicating Officer vide order dated July 27, 2009 under section 15I of the 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 'Rules') to inquire into and adjudge under Section 15HA and Section 15A(b) of the SEBI Act, 1992, Section 23A(a) of SCRA, 1956 and Section 19G of Depositories Act, 1996.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

Niketa B. Dave

8. In terms of the provisions of Rule 4 of the Rules, a Show Cause Notice No. AO-4/SP/SCL/190882/2010 dated January 13, 2010 ("SCN") was issued to the Niketa B. Dave to show cause as to why an inquiry should not be held against Niketa B. Dave and penalty be not imposed under Section 15HA and Section 15A(b) of the SEBI Act, 1992, Section 23A(a) of SCRA, 1956 and Section 19G of Depositories Act, 1996 for the alleged violations specified in the said SCN. The SCN was sent through Western Regional Office (WRO), SEBI. The SCN could not be served by hand delivery and hence, the same was duly served by way of affixture at the last known address of Niketa B. Dave in terms of the provisions of Rule 4(1) read with Rule 7 of the Rules. The report with regard to service of the SCN signed by two witnesses is on record. However, no reply was received from Niketa B. Dave.
9. Considering the facts of the case, it was decided to conduct an inquiry in the matter and the Niketa B. Dave was granted an opportunity of personal hearing and was accordingly advised to attend the hearing on March 04, 2010. However, Niketa B. Dave did not attend the hearing. Niketa B. Dave vide letter dated February 24, 2010 communicated her decision to avail the consent proceedings. However, thereafter no intimation of having filed the consent application with SEBI was received by me. Niketa B. Dave was therefore given another opportunity of hearing on March 22, 2010 vide letter dated March 09, 2010 sent through Western Regional Office (WRO), SEBI. The said Hearing Notice could not be served by hand delivery and hence, the same was duly served by way of affixture at the last known address of Niketa B. Dave in terms of the provisions of Rule 4(3) read with Rule 7 of the Rules. The report with regard to service of the Hearing Notice signed by two witnesses is on record. Niketa B. Dave did not appear for the hearing and even failed to submit any kind of reply to the show cause notice and the hearing notices issued by me.

Deenkar B. Shrimali

10. In terms of the provisions of Rule 4 of the Rules, a Show Cause Notice No. AO-4/SP/SCL/190882/2010 dated January 13, 2010 ("SCN") was issued to the Deenkar B. Shrimali to show cause as to why an inquiry should not be held against the him and penalty be not imposed under Section 15HA and Section 15A(b) of the SEBI Act, 1992, Section

23A(a) of SCRA, 1956 and Section 19G of Depositories Act, 1996 for the alleged violations specified in the said SCN. The SCN was sent through Western Regional Office (WRO), SEBI. The SCN could not be served by hand delivery and hence, the same was duly served by way of affixture at the last known address of Deenkar B. Shrimali in terms of the provisions of Rule 4(1) read with Rule 7 of the Rules. The report with regard to service of the SCN signed by two witnesses is on record. However, no reply was received from him.

11. Considering the facts of the case, it was decided to conduct an inquiry in the matter and Deenkar B. Shrimali was granted an opportunity of personal hearing and was accordingly advised to attend the hearing on March 04, 2010. However, he did not attend the hearing. He was therefore given another opportunity of hearing on March 22, 2010 vide letter dated March 09, 2010 sent through Western Regional Office (WRO), SEBI. The said Hearing Notice could not be served by hand delivery and hence, the same was duly served by way of affixture at the last known address of Deenkar B. Shrimali in terms of the provisions of Rule 4(3) read with Rule 7 of the Rules. The report with regard to service of the Hearing Notice signed by two witnesses is on record. Deenkar B. Shrimali did not appear for the hearing and even failed to submit any kind of reply to the show cause notice and the hearing notices issued by me.

Pratik R. Shah

12. In terms of the provisions of Rule 4 of the Rules, a Show Cause Notice No. AO-4/SP/SCL/184669/2009 dated November 30, 2009 ("SCN") was issued to Pratik R. Shah to show cause as to why an inquiry should not be held against him and penalty be not imposed under Section 15HA and Section 15A(b) of the SEBI Act, 1992, Section 23A(a) of SCRA, 1956 and Section 19G of Depositories Act, 1996 for the alleged violations specified in the said SCN. The SCN was received and acknowledged as per the acknowledgement received from Pratik R. Shah. However, no reply was received from him.
13. Considering the facts of the case, it was decided to conduct an inquiry in the matter and Pratik R. Shah was granted an opportunity of personal hearing and was accordingly advised to attend the hearing on January 19, 2010. However, he did not attend the hearing. He was therefore given another hearing opportunity on February 25, 2010 vide letter dated February 03, 2010. Pratik R. Shah vide letter dated February 24, 2010 communicated his decision to avail the consent proceedings. However, thereafter no intimation of having filed the consent application with SEBI was received by me. Pratik R. Shah was therefore given another opportunity of hearing on March 12, 2010 vide letter dated February 26, 2010. Pratik R. Shah did not appear for the hearing and even failed to submit any kind of reply to the show cause notice and the hearing notices issued by me.

Dhruval K. Vaidya

14. In terms of the provisions of Rule 4 of the Rules, a Show Cause Notice No. AO-4/SP/SCL/184669/2009 dated November 30, 2009 ("SCN") was issued to Dhruval K. Vaidya to show cause as to why an inquiry should not be held against him and penalty be not imposed under Section 15HA and Section 15A(b) of the SEBI Act, 1992, Section 23A(a) of SCRA, 1956 and Section 19G of Depositories Act, 1996 for the alleged violations specified in the said SCN. The SCN was received and acknowledged as per the acknowledgement received from Dhruval K. Vaidya. However, no reply was received from him.

15. Considering the facts of the case, it was decided to conduct an inquiry in the matter and Dhrumal K. Vaidya was granted an opportunity of personal hearing and was accordingly advised to attend the hearing on January 19, 2010. However, the hearing notice came back undelivered. He was therefore given another opportunity of hearing on February 08, 2010 vide letter dated January 25, 2010 sent through Western Regional Office (WRO), SEBI. The said Hearing Notice could not be served by hand delivery and hence, the same was duly served by way of affixture at the last known address of Dhrumal K. Vaidya in terms of the provisions of Rule 4(3) read with Rule 7 of the Rules. The report with regard to service of the Hearing Notice signed by two witnesses is on record. Dhrumal K. Vaidya did not appear for the hearing and even failed to submit any kind of reply to the show cause notice and the hearing notices issued by me.

Lalit K. Rathod

16. In terms of the provisions of Rule 4 of the Rules, a Show Cause Notice No. AO-4/SP/SCL/184669/2009 dated November 30, 2009 ("SCN") was issued to Lalit K. Rathod to show cause as to why an inquiry should not be held against him and penalty be not imposed under Section 15HA and Section 15A(b) of the SEBI Act, 1992, Section 23A(a) of SCRA, 1956 and Section 19G of Depositories Act, 1996 for the alleged violations specified in the said SCN. The SCN was received and acknowledged as per the acknowledgement received from Lalit K. Rathod. However, no reply was received from him.
17. Considering the facts of the case, it was decided to conduct an inquiry in the matter and Lalit K. Rathod was granted an opportunity of personal hearing and was accordingly advised to attend the hearing on January 19, 2010. However, he did not attend the hearing. Lalit K. Rathod was given another hearing opportunity on February 25, 2010 vide letter dated February 03, 2010. Lalit K. Rathod vide letter dated February 24, 2010 communicated his decision to avail the consent proceedings. However, thereafter no intimation of having filed the consent application with SEBI was received by me. Lalit K. Rathod was therefore given another opportunity of hearing on March 12, 2010 vide letter dated February 26, 2010. Lalit K. Rathod did not appear for the hearing and even failed to submit any kind of reply to the show cause notice and the hearing notices issued by me.

SCL

18. In terms of the provisions of Rule 4 of the Rules, a Show Cause Notice No. AO-4/SP/SCL/190653/2010 dated January 12, 2010 ("SCN") was issued to SCL to show cause as to why an inquiry should not be held against SCL and penalty be not imposed under Section 15HA and Section 15A(b) of the SEBI Act, 1992, Section 23A(a) of SCRA, 1956 and Section 19G of Depositories Act, 1996 for the alleged violations specified in the said SCN. The said notice was sent through the Ahmedabad Stock Exchange (ASE). The SCN was received and acknowledged by SCL on February 02, 2010 as per the acknowledgement received from ASE. However, no reply was received from SCL.
19. Considering the facts of the case, it was decided to conduct an inquiry in the matter and SCL was granted an opportunity of personal hearing and was accordingly advised to attend the hearing on March 04, 2010. However, SCL did not attend the hearing. SCL was given another opportunity of hearing on March 22, 2010 vide letter dated March 09, 2010 sent through Western Regional Office (WRO), SEBI. The said Hearing Notice could not be served by hand delivery and hence, the same was duly served by way of affixture at the last known address of SCL in terms of the provisions of Rule 4(3) read with Rule 7 of the Rules.

The report with regard to service of the Hearing Notice signed by two witnesses is on record. SCL did not appear for the hearing and even failed to submit any kind of reply to the show cause notice and the hearing notices issued by me.

20. I am convinced that ample opportunities have been given to the Noticees to explain their case. As per rule 4(7) of the Rules, if any person fails neglects or refuses to appear as required by sub-rule (3) before the Adjudicating Officer, he may proceed with the inquiry in the absence of such person after recording the reasons therefor. Since the Noticees did not submit any reply to the show cause notices or attend the personal hearings despite having been given ample opportunities, I am, therefore, compelled to proceed with the matter ex-parte based on the facts and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

21. The issues that arise for consideration in the present case are :

- a) Whether the Noticees had violated Regulations 3(c), (d) and 4(1), 4(2)(e), 4(2)(r) of PFUTP, Section 21 of the SCRA, 1956, Regulation 53A of SEBI (Depositories and Participants) Regulations, 1996, Regulation 7(3) of the SAST Regulations and Regulation 13(6) of the PIT Regulations?
- b) Does the violation, if any, on the part of the Noticees attract monetary penalty under Section 15HA and Section 15A(b) of the SEBI Act, 1992, Section 23A(a) of SCRA, 1956 and Section 19G of Depositories Act, 1996?
- 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?

22. Before moving forward, it will be appropriate to refer to the relevant provisions of Regulations 3(c), (d) and 4(1), 4(2)(e), 4(2)(r) of the PFUTP, Section 21 of the SCRA, 1956, Regulation 53A of SEBI (Depositories and Participants) Regulations, 1996, Regulation 7(3) of the SAST Regulations and Regulation 13(6) of the PIT Regulations, which read as under:

PFUTP Regulations

Regulation 3: Prohibition of certain dealings in securities

No person shall directly or indirectly-

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

Regulation 4(1): no person shall indulge in a fraudulent or an unfair trade practice in securities.

Regulation 4(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:

(e) any act or omission amounting to manipulation of the price of a security;

(f) planting false or misleading news which may induce sale or purchase of securities.

SCRA

Conditions for listing

21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.

SEBI (Depositories and Participants) Regulations

Manner of handling share registry work

53A. All matters relating to transfer of security, maintenance of records, holders of security, handling of physical security and establishing connectivity with the depositories shall be handled and maintained at a single point i.e., either in-house by the issuer or a share transfer agent registered with the Board

The above requirement is also reiterated by SEBI, vide circular D&CC/FITTC/CIR – 17/2002 dated December 27, 2002.

SAST Regulations

7(3). Every company, whose shares are acquired in a manner referred to in sub-regulations (1) and (1A), shall disclose to all the stock exchanges on which the shares of the said company are listed the aggregate number of shares held by each of such persons referred above within seven days of receipt of information under sub-regulations (1) and (1A).

PIT Regulations

13(6). Every Listed company, within five days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (3) and (4) in the respective formats specified in Schedule III.

23. On perusal of the SCN, charges made against the Noticees and the material available on record, I notice the following.

a) **Misleading Corporate News/Announcements and False/Misleading Financial Results**

- i) The company in question – SCL made five corporate announcements during the investigation period. The details of the corporate announcements made by the Company to BSE and analysis of the price impact on the days of corporate announcements is given below:

Date / Time	Particulars	Price Impact
Wednesday August 03, 2005	The company informed BSE Ltd. that it is making efforts to continue their relationship with Marubeni Corporation. The company is now concentrated on getting new order from	On August 03, 2005, the scrip opened at Rs.6.85/- (19.76 % higher than the last day's closing price, Rs.5.72/-) and closed at

2:32:13 PM	Marubeni Corporation of Japan and also trading in textile dyes and chemicals. Company is in the process of opening offices in Gulf countries. The company is rightly poised to take advantage of booming textiles market of India and has focused its attention to tap the organized textile market of Surat and Rajasthan.	Rs.5.93/-. The volume was 202,203 shares during the day.
Wednesday August 17, 2005 11:11:24 AM	<i>Sarang Chemicals plans to open offices in Middle East & Far East Countries:</i> The company informed BSE Ltd. that it plans to open offices in Middle East & Far East Countries. The company has successfully completed work for Marubeni Corporation of Japan and viewing their continuous relationship with Marubeni Corporation, the company plans to open offices in these countries. Companies existent in these countries will sustain by relationship with such large organizations. The company is targeting to export its product dyes & textile chemicals through such offices.	On August 17, 2005, the scrip opened at Rs.9.55/- (1.60 % higher than the last day's closing price, Rs.9.40/-) went to a high of Rs.9.76/- and closed at Rs.9.37/-. The volume was 365853 shares during the day.
Thursday September 01, 2005 10:28:37 AM	<i>Sarang Chemicals secures order worth Rs.42 million from Bio-Deal Laboratory, Kenya:</i> The company informed BSE Ltd. that it has bagged order worth Rs.42 million from M/s. Bio-Deal Laboratory of Kenya. The above orders would be completed within 3 months. Company would be exporting its product dyes & textile chemicals to the above entity. The said order is in view of booming Textiles Chemicals which is in huge demand in this country.	On September 01, 2005, the scrip opened at Rs.10.80/- (2.37 % higher than the last day's closing price, Rs.10.55/-) went to a high of Rs.11.60/- and closed at Rs.11.55/-). The volume was 2362338 shares during the day.
Monday September 05, 2005 11:37:46 AM	<i>Sarang Chemicals Board to consider stock split:</i> The company informed BSE Ltd. that a meeting of the Board of Directors of the company will be held on September 16, 2005 for the subdivision of equity shares of the company from Rs.10/- paid up each to Re.1/- paid up each.	On September 05, 2005, the scrip opened at Rs.11.74/- went to a high of Rs.13.20/- and closed at Rs.12.87/-). The volume was 1830091 shares during the day.
Friday September 16, 2005 5:44:35 PM)	<i>Sarang Chemicals approves stock split:</i> The company informed BSE Ltd. that the Board of Directors of the company at its meeting has approved the subdivision of Equity Shares of the company from Rs.10/- paid up each to Re. 1/- paid up each.	On September 19, 2005, the scrip opened at Rs.14.40/- (2.78 % higher than the last day's closing price, Rs.14.01/-) went to a high of Rs.14.50/- and closed at Rs.13.78/-). The volume was 394312 shares during the day.

- ii) It was observed from the Annual Report (2004-05) that the company sold the entire fixed assets worth Rs.2.50 crore (approx.) during 2004-05 and diversified into trading of government securities, whereas the company was making the corporate announcements in August / September 2005 mentioning that it was targeting to export the product dyes and textile chemicals.
- iii) When comments were sought from the company during the investigation, the company initially stated that there was an error on the part of the Compliance officer. Thereafter, the Company mentioned that the company has made three

announcements viz. August 3, 2005 (getting orders from Marubeni Corporation-Japan), August 17, 2005 (Plans to open offices in Middle East and Far East countries) and September 1, 2005 (Securing order worth 42 million from Bio-Deal laboratory - Kenya) which were successfully executed by the company. The company furnished a copy of the certificate of foreign inward remittance from Wako Bussan Co. Limited, copy of the MOU with Alchemi International and MOU with Bio-Deal laboratories, Kenya as documentary evidence that the company was implementing the corporate announcements.

- iv) The company also stated that it has successfully received orders from Marubeni Corporation for which the payment was duly received in their bank account but it was observed that the company had submitted a copy of certificate of foreign remittance from Marubeni for the period Jan-May 2005 on account of commission. It was also observed that the MOU with Alchemi International and M/s. Bio Deal Laboratory Ltd. were executed on plain paper and further, the MOU regarding office at Dubai stipulated 'nil' rent and the address of the office was a Post Box No. Furthermore, with regard to the MOU with M/s Bio Deal Laboratory Ltd, the company replied that since it has not received 10% as deposit/advance from Bio-Deal Laboratory, Kenya, it could not execute the order.
- v) With regard to the announcement of stock split, it was observed from the shareholding pattern of the company for the subsequent quarters after the investigation period that the total number of shares (floating stock) remained unchanged. A copy of the minutes of the board meeting held on September 16, 2005 was sought from the company but the company did not give any clarification regarding the corporate announcement of stock split and did not furnish copy of the minutes to SEBI.
- vi) The financial performance of the Company as per BSE website is given below:

Period	Net Sales (Rs. Lakhs)	Other Income(Rs. Lakhs)	Total Income(Rs. Lakhs)	Total Expen. (Rs. Lakhs)	PAT (Rs. Lakhs)	Equity Capital (Rs. Lakhs)	Date of taking on record (Rs. Lakhs)
Year ending Mar 31, 2004	Not given by the company						
Year ending Mar 31, 2005	85.50	0.70	86.20	84.20	(0.50)	504.70	30/04/05
Jun 05-06 (Q1)	440.30	1.40	441.60	386.30	55.40	696.50	30/07/05
Sep 05-06 (Q2)	210.60	----	210.60	249.20	(38.60)	699.50	10/10/05
Dec 05-06 (Q3)	232.00	----	232.00	263.20	(31.20)	699.50	27/01/06
Mar 05-06 (Q4)	-----	----	----	0.10	(0.10)	699.50	30/04/06
Year ending Mar 31, 2006	882.90	1.40	884.30	898.70	(14.40)	699.50	30/04/2006
Year ending Mar 31, 2007	Not given by the company						
Year ending Mar 31, 2008	112.50	26.00	138.50	97.60	2.00	699.50	24/04/2008
June 07-08 (Q1)	----	-----	-----	1.10	(2.70)	1750.0*	30/07/2007
Sep 07-08 (Q2)	----	-----	-----	0.60	(3.10)	1750.0	24/10/2008
Dec 07-08 (Q3)	----	-----	-----	0.80	(0.80)	1750.0	15/01/2009

vii) It was observed as per the BSE website that the Company had shown net sale and net loss of Rs.85.50 lakh and Rs.0.50 lakh respectively for the year ending March 31, 2005 (Audited) while as per the Annual Report, the Company had shown net sale of Rs.1.63 crore and a loss of Rs.21,45,230/- for the same period. It was observed from the schedules forming part of Annual Report (2004-05) that the Company sold the entire fixed assets worth Rs.2.50 crore approx. during 2004-05 and diversified into trading of government securities. Further, the Director's report to Annual Report 2004-05 mentions "*as the machineries have been sold now there is no manufacturing activity*". However, from the notes to the quarterly results for June 2005 on BSE website, it was observed that raw materials worth Rs.3.64 crores were consumed by the Company. Also, it was observed that the Company has shown significant profit of Rs.55.40 lakh for the quarter ending June 2005. Clarifications were sought from the Company with regard to the above discrepancy but the Company did not furnish any reply.

b) **Wrong/Inconsistent Shareholding Pattern:**

- i) It was observed from the Annual Report (2004-05) that the promoters of the Company were holding 20,64,900 shares (29.52%), including 9,44,000 shares (13.50%) by the Indian promoters and 11,20,900 shares by the Persons Acting in Concert for the year ending March 31, 2005, whereas as per the BSE website, the promoter group of the Company was shown as having nil shareholding for the year ending March 31, 2005.
- ii) It was observed that as per BSE website the equity capital of the Company was Rs. 504.70 lakhs and the non promoters shareholding was 6,96,48,000 shares (70%) for the year ending March 31, 2005, whereas as per the Annual Report, the total share capital was shown as 69,94,800 shares (promoter and non promoter shareholding).
- iii) The Company also had submitted the quarterly results for September 2005 and December 2005 to the Exchange on March 21, 2006 after a delay of 2-5 months. An e-mail from BSE was received confirming the same.
- iv) The Company was asked to clarify the above discrepancy but it did not furnish any reply.

c) **Share Registry Work**

- i) In the Annual report 2004-05, the Company mentioned that the share transfer work of the company was handled by its Registrar & Transfer Agent (RTA), M/s. Sharex India Pvt. Ltd. Sharex Dynamic (India) Pvt. Limited was asked to state whether it was the common entity for handling both physical shares and dematerialized shares. The RTA replied and informed that the Company had not complied with the requirement to appoint a common agency and as such they were unable to provide any details pertaining to the physical segment.
- ii) It was observed that the company itself was handling the physical shares (in house) whereas the RTA, Sharex Dynamic (India) Pvt. Ltd. was handling the work of electronic connectivity. Hence, the company did not have a single point arrangement as required by the SEBI (Depositories and Participants) Regulations.

d) **Failure to make disclosures to Stock Exchanges**

- i) An analysis of the shareholding pattern of top 50 shareholders as on June 30, 2005 and the demat account statements of Lakshya Securities and Credit Holdings Ltd, Anand Trivedi, Ashok Hiralal Shah, Shah Pravin Kantilal, Hiralal Popatlal Shah and Robinson Worldwide during the investigation period, revealed the following:
- (i) **Lakshya Securities and Credit Holdings Ltd.** - It was holding 7,57,812 shares (10.834%) as on quarter ending June 30, 2005 and transferred 7,57,812 shares (10.834%) to Robinson Worldwide Trade Ltd. on August 23, 2005 and was having nil shareholding as on quarter ending September 30, 2005.
 - (ii) **Anand Trivedi** - It was observed that he was holding 6,50,136 shares (9.295%) as on quarter ending June 30, 2005, reduced his shareholding by 6,50,136 shares (9.295%) and was holding nil shares as on September 30, 2005.
 - (iii) **Ashok Hiralal Shah** - It was observed that he was holding 5,01,800 shares (7.174%) as on quarter ending June 30, 2005 which reduced by 5,01,800 shares (7.174%) and was holding nil shares as on September 30, 2005.
 - (iv) **Hiralal Popatlal Shah** - It was observed that he was holding 4,00,200 shares (5.721%) as on quarter ending June 30, 2005. Further, he received 3,65,000 shares in off-market on July 18, 2005 and his holding increased to 8,10,200 shares (11.580%) which reduced by 8,10,200 shares (11.580%) and was holding nil shares as on September 30, 2005.
 - (v) **Shah Pravin Kantilal** - It was observed that he was holding 3,65,600 shares (5.227%) as on quarter ending June 30, 2005 which reduced to nil shares as on quarter ending September 30, 2005.
 - (vi) **Robinson Worldwide Trade Ltd.** - It was observed from its demat account statements that its shareholding increased to more than 5 % on August 3, 2005, and September 6, 2005 and to more than 10 % on August 23, 2005. Further its shareholding had changed more than 2 % of the total shareholding on several occasions.
- ii) Since all the above mentioned entities were holding more than 5% of the shareholding of the Company and since the change in their holding exceeded 2% of the total shareholding, they were required to disclose to the Company under Regulation 13(3) of the PIT Regulations and the Company was in turn required to disclose to the stock exchanges under Regulation 13(6) of the said Regulations. In addition to the above, Robinson Worldwide Trade Ltd was required to disclose to the Company and to the stock exchanges under Regulation 7(1) of the SAST Regulations and the Company in turn was required to disclose to the stock exchanges under Regulation 7 (3) of the said Regulations.
- iii) The Company was asked to confirm whether the company had made the required disclosures to the exchanges under Regulation 13(6) of the PIT Regulations and Regulation 7(3) of SAST Regulations. The Company replied that it had received the necessary disclosures from the individuals/entities during the period June 2005 to September 2005 and wherever applicable, the Company had submitted copies of the same to the stock exchanges. Further, the Company submitted copies of the documents it had submitted to the exchanges (ASE & BSE).

- iv) However, the copies of the documents submitted by the Company were not acknowledged by the exchanges. BSE in its report stated that no disclosures were made by the Company under the PIT and SAST Regulations during the investigation period. Hence, a confirmation was sought from BSE in this regard. BSE replied confirming that it had not received any disclosures from the Company for the abovementioned clients, for disclosures under the PIT and SAST Regulations. BSE also confirmed that no disclosures were filed by Robinson Worldwide Trade Limited under the SAST Regulations during the investigation period.
24. I find that the Noticees failed to reply to the show cause notice issued by me in terms of Rule 4 of the Rules read with section 15I of the SEBI Act and also failed to appear for personal hearing before me despite having received the show cause notice as well as the notices of hearing. The Noticees have not taken any effort to reply to the show cause notice sent to them by me and had not appeared before me to explain or defend themselves for the acts done by them inspite of having been granted opportunity of hearing on more than one occasion. This, in effect, indicates lack of concern or seriousness in the instant quasi-judicial proceedings. In this regard, I rely upon the judgment of the Honorable SAT in the matter of *Classis Credit Limited v. SEBI*, wherein the Honorable SAT dwelled upon the subject of the significance of filing a reply to the show cause notice sent by SEBI and stated as follows, *'the appellant did not file any reply to the show cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them.'* Accordingly, in the instant case, it is construed that the Noticees have admitted the alleged charges. The said actions of the Noticees are clearly indicative of the Noticees' non co-operative stance and also the fact that the Noticees deliberately want to avoid any inquiry in the said matter. I have taken a serious note of the said stance of the Noticees.
25. Regulations 3(c) and 3(d) and 4(1) of PFUTP Regulations prohibits a person to use manipulative or deceptive device or contrivance, employ any device, scheme or artifice to defraud and engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, respectively, with regard to 'issue', 'purchase' or 'sale' of any security listed or proposed to be listed at a recognized stock exchange. Regulation 4(2)(e) and (f) of PFUTP Regulations prohibits a person from indulging in an act or omission amounting to manipulation of the price of a security and planting false or misleading news which may induce sale or purchase of securities.
26. I note that the company made several investor appealing announcements. Such announcements had significant price impact. The 5 announcements were frequently made within a short span of time from August 3, 2005 to September 16, 2005 and separated by only a short time span of around 2 weeks each. I further note that each announcement contributed to price rise substantially and the total price rise from the first to the last such advertisement was from Rs.5.72 to Rs.14.40. It is further pertinent to note that the share price moved up on very high volumes indicating investor interest in the scrip on the back of such announcements. I also note that 3 advertisements were in the nature of indicating and signaling a potential increase in business activity and regarding orders /plans with overseas entities. I also note that the announcements were in the nature of targeting export business while as per the investigation, the entire fixed assets were, in fact, sold by the company. I further note that upon being queried, the company initially stated that there was an error on part of the compliance officers regarding such announcement. However, even thereafter, the company could not substantiate such announcements either to the stock exchange or during investigations.

27. I further note that SCL did not give a correct picture its financial performance in its filing to the stock exchanges. It under-reported losses and overstated its sales as compared to the disclosures made in its Annual reports. It also portrayed an incorrect picture of nature and scope of its operations and its business activities. It also showed significant profits in its quarterly filings for June 2005 as against a loss in the previous quarter. When called upon to explain, SCL did not provide any reply. I also note that SCL provide an inconsistent shareholding pattern to the stock exchanges vis a vis disclosures made in its Annual Report. Such inconsistency was noticed in its promoter shareholding as well as the total equity capital of the company. Also the filings were done after a delay of 2-5 months. Again, when queried by BSE, the company refrained from providing any reply or clarification.
28. From the foregoing paragraphs it is clear that the intent of the company was to convey a very rosy picture of its state of affairs and to conceal material information which would have revealed the true state of affairs to the general investing public at large. If the facts of the case as narrated in the earlier paragraphs of this order are tested with the touchstone of the aforesaid provisions of PFUTP Regulations, it would follow that (i) certain corporate announcements were made by the Company which were false and misleading and (ii) misleading / false financial results were disseminated by the Company to the investors with a intent to allure the investors to trade in the scrip of the Company.
29. Section 21 of the SCRA requires a listed company to comply with the Listing Agreement of the stock exchanges. The Company submitted the quarterly results for September 2005 and December 2005 after a delay of 2-5 months, in violation of Clause 41 of the Listing Agreement. The Company filed wrong/inconsistent shareholding with BSE and also did not show promoter's holding separately in violation of Clause 35 of the Listing Agreement.
30. The financial results and the shareholding pattern of a company that is disclosed through the website of the stock exchanges act as a window of the company to the outside world, i.e. to the investors, based on which the investors take an informed decision with regard to their investment in the securities of that company. The disclosure of the financial results gives information regarding financial performance of the company to the investors and the disclosures of the shareholding pattern so made gives information regarding the ownership and management control of/over the company. If such information is ambiguous or inadequate or erroneous or not intimated promptly to the stock exchanges, the same would adversely affect the smooth function of the securities market in general, and the price discovery of the share of that company, in particular.
31. Section 53A of the SEBI (Depositories and Participants Regulations) requires that all matters relating to transfer of security, maintenance of records, holders of security, handling of physical security and establishing connectivity with the depositories of a company should shall be handled and maintained at a single point i.e., either in-house by the issuer or a share transfer agent registered with SEBI. Further, SEBI vide its Circular dated D&CC/FITTC/CIR-15/2002 dated December 27, 2002 has directed that all work relating to share registry of Issuers, in terms of both physical and electronic should be maintained at a single point i.e. either in-house by the company or by a SEBI registered R & T Agent. This was done in order to address the issues regarding delay in dematerialisation and the possibility of non-reconciliation of share holding due to lack of proper co-ordination among the concerned agencies or departments of Issuers/ Registrars & Transfer (R & T) Agents. I notice that the Company itself was handling the physical shares (in house) whereas the RTA, Sharex Dynamic (India) Pvt. Ltd. was handling the work of electronic connectivity. This

defeats the very purpose of said regulations and the circular. Consolidation of documents at one single point is vital so that dematerialization/rematerialisation requests are rejected on flimsy grounds but only on valid and proper grounds and supported by relevant documents.

32. Also, as per the material available on records, I notice that the Company had not made the necessary disclosures under the PIT and SAST Regulations. The basic purpose of disclosure requirement inherent in the abovementioned regulations is to bring about transparency in the securities market and to keep the market informed about substantial acquisition or sale of shareholding by anybody in a listed company. The Hon'ble SAT in the matter of Milan Mahendra Securities Pvt. Ltd. Vs SEBI (Appeal No. 66 of 2003 and Order dated November 15, 2006), regarding the importance of disclosures, has observed that *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor transactions in the market."* Thus, any violation of the said disclosure requirements has to be viewed seriously.
33. A director is one of the controllers of a company's affairs. The Board of Directors is the brain and the company is the body. The company can and does act only through the Board. When the brain, i.e., the Board, functions, the company, i.e. the body, is said to function. Thus, the functioning of the company is totally controlled and directed by the Board. I have observed that Niketa B. Dave, Deenkar B. Shrimali, Pratik R. Shah, Dhrumal K. Vaidya and Lalit K. Rathod were directors of SCL during the investigation period, when the company made false and misleading announcements, and did not comply with the provisions and requirements of the above mentioned regulations. Hence, as directors of SCL during the investigation period, they were responsible for the violations committed by the company.
34. In view of the foregoing, I hold that the allegation of violation of provisions of the Regulations 3(c), (d) and 4(1), 4(2)(e), 4(2)(r) of PFUTP Regulations, Section 21 of the SCRA, Regulation 53A of SEBI (Depositories and Participants) Regulations, 1996 and SEBI Circular no. D&CC/FITTC/CIR-15/2002 dated December 27, 2002, Regulation 7(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and Regulation 13(6) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 stand established.
35. The next issue for consideration is as to what would be monetary penalty that can be imposed on the Noticees for violation of Regulations 3(c), (d) and 4(1), 4(2)(e), 4(2)(r) of PFUTP, Section 21 of the SCRA, 1956, Regulation 53A of SEBI (Depositories and Participants) Regulations, 1996, Regulation 7(3) of the SAST Regulations and Regulation 13(6) of the PIT Regulations.

LEVY OF PENALTY

26. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) 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"*.
27. Thus, the aforesaid violations by the Noticees make them liable for penalty under Section 15HA and Section 15A(b) of the SEBI Act, 1992, Section 23A(a) of SCRA, 1956 and Section 19G of Depositories Act, 1996 which read as follows:

Section 15 HA and Section 15A(b) of the SEBI Act, 1992

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.

Penalty for failure to furnish information, return, etc

15A. If any person, who is required under this Act or any rules or regulations made there under,-

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

Section 23A(a) of SCRA

Penalty for failure to furnish information, return, etc

23A. Any person, who is required under this Act or any rules made there under;—

(a) to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefore in the listing agreement or conditions or bye-laws of the recognised stock exchange, shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for each such failure.

Section 19G of Depositories Act, 1996

Penalty for contravention where no separate penalty has been provided

19G. Whoever fails to comply with any provision of this Act, the rules or the regulations or bye-laws 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

28. While determining the quantum of penalty, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads 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.

29. From the material available on record, it is not possible to ascertain the disproportionate gain or unfair advantage to the Noticees which may have accrued due to the aforesaid violations. Due to the role played by the Noticees by indulging in fraudulent and unfair trade practices, genuine investors were attracted to trade in the shares of the Company. SCL issued

unsubstantiated announcements to lure investors into trading in its shares. It did not give correct information to the investors regarding its future business, financial position, or promoters' shareholding, disclosures regarding major shareholders or capital structure. The acts committed by it increased the liquidity/volumes in its stock and also raised its demand. Greater the liquidity, higher is the investors' attraction towards investing in that scrip. Hence, anyone could have been carried away by the unusual fluctuations in the volume/price and induced into investing in the said scrip. Besides, this kind of activity seriously affects the normal price discovery mechanism of the securities market. Further, it also did not have a single point arrangement for its depository work. This endangered the investors at large due to possibility of compromising record keeping and ensuring timely reconciliation of shareholding of a company. More importantly, regulatory circulars were not complied with. The directives contained in the SEBI circulars are the measures for regulating the working of the market to ensure investor protection at large. If the regulatory requirements are violated by companies, without attracting any action, the measures taken by SEBI for regulation would be rendered nugatory and the regulatory function would be jeopardized. Even though the exact monetary losses cannot be computed, any such fraudulent activity coupled with non compliance erodes investor confidence in the market and the interest of investors has been jeopardized on account of the grievous acts of the Noticees. Further, the offenses were repetitive in nature. The entities that indulge in manipulative, fraudulent and deceptive transactions and/or abet carrying out such transactions and show scant respect for the law of the land should be suitably penalized for the said acts of omissions and commissions.

ORDER

30. After taking into consideration all the attendant facts and circumstances of the case, I hereby impose a penalty of Rs 5,00,000(Rupees Five Lakhs) under section under Section 15HA of the SEBI Act, a penalty of Rs.1,00,000(Rupees One Lakh) under Section 15A(b) of the SEBI Act, 1992, a penalty of Rs.1,00,000(Rupees One Lakh) under Section 23A(a) of SCRA, 1956 and a penalty of Rs.1,00,000(Rupees One Lakh) under Section 19G of Depositories Act, 1996, amounting to a total penalty of Rs.8,00,000 (Rupees Eight Lakhs) on the Noticees which will be commensurate with the violations committed by them. The Noticees shall be jointly and severally liable to pay the said monetary penalty.
31. The Noticees 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 Shri. Biswajit Choudhury, Deputy General Manager, Investigation Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
32. In terms of rule 6 of the Rules, copies of this order are sent to the Noticees and also to SEBI.

Date: **March 23, 2010**

Place: **Mumbai**

SANJAY PURAO
ADJUDICATING OFFICER