

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/PM-AA/AO/37/2017-18]

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 V. Arvindkumar Iyengar
(PAN: AADPI3727M)

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 As per the Investigating Authority, the Unpublished Price Sensitive Information ("**UPSI**") in respect of the shares of FTIL was the implication of the DCA SCN dated April 27, 2012, issued to NSEL i.e.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 V. Arvindkumar Iyengar ("**Noticee**") was holding the position of Senior Vice President & Head –Technology (ZEUS) in FTIL during the period April 04, 2001 to August 22, 2013 and as per the Code of Conduct for Prevention of Insider Trading of FTIL, he was "Officer" of FTIL. 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. In that capacity, Noticee was reasonably expected of having access to the *UPSI* which emanated from NSEL and, thus, an insider under SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations, 1992**").
4. It was alleged ("**Allegation No. 1**") that the Noticee, being an insider, before the outbreak of NSEL irregularities avoided losses by selling 2,100 shares of FTIL in the period between November 05, 2012 to

November 09, 2012 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**”).

5. Investigation also revealed that Noticee and his wife, Mrs. Dhanashri Iyengar dealt in the shares of FTIL during the Investigation period resulting into change in their shareholding which exceeded ₹ 5 lakh in value on three occasions i.e. November 05, 2012, November 07, 2012 and November 09, 2012 and four occasions i.e. November 02, 2012, November 05, 2012, November 07, 2012 and November 08, 2012 respectively. However, no disclosures as stipulated under Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992 was made by the Noticee about change in his holdings and that of his dependents to the FTIL or to BSE and NSE where the shares of FTIL are listed. It was, therefore, alleged (“**Allegation No. 2**”) that Noticee failed to make requisite disclosures to the company and the stock exchange within 2 working days of change in his holdings and that of his dependent’s holdings in FTIL exceeding ₹ 5 lakh in value and thereby violated Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

6. 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 and 15A(b) of

the SEBI Act the alleged violations of provisions of Regulation 3(i) and Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992 of read with Regulation 12(2) of PIT Regulations, 2015 by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

7. A Show Cause Notice no. EAD/AO-PM/AA/OW/31665/1/2017 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 be not imposed under section 15G and 15A(b) of the SEBI Act, 1992 for the alleged violations of i) Regulation 3(i) of PIT Regulations, 1992 and ii) Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992.
8. Vide letter dated February 09, 2018, Finsec Law Advisors, filed preliminary reply to the SCN on behalf of the Noticee. It was stated that without going into the merits of the case, the Noticee intends to bring forth the following facts and submissions which will be helpful in deciding the adjudication proceedings pertaining to the SCN in a summary manner. The summary of submissions is as follows:
 - *SEBI issued an Ex-Parte Ad-Interim Order dated August 2, 2017 ("**Interim Order**") against, inter alias, the Noticee under Sections 11(1), 11(4) and 11B of the SEBI Act, in the matter of insider trading in the scrip of FTIL, wherein certain directions were issued against the Noticee. Noticee had filed a detailed reply dated August 23, 2017 denying all the allegations levelled against her in the Interim Order. The Noticee was thereafter provided a hearing by the Whole Time Member ("**WTM**") of SEBI.*
 - *The WTM had passed an order dated January 31, 2018 disposing the Interim Order in favour of the Noticee and revoking the directions issued against the Noticee ("**WTM Order**"). WTM has observed*

that a reader of the Economic Times article dated October 03, 2012 containing information relating to the issuance of the DCA SCN could have deduced the implications of its issuance. Therefore, the price sensitive information relating to the DCA SCN became public from the time the said article appeared in the Economic Times. Accordingly, the WTM determined that the period during which UPSI was in existence was from the date of the issuance of the DCA SCN to the date of publication of the said article, i.e. from April 27, 2012 to October 03, 2012.

- *Noticee sold 2,100 shares of FTIL in the period between November 05, 2012 to November 09, 2012, which is well after October 03, 2012 when the DCA SCN ceased to be UPSI, as decided by the WTM in the WTM Order. Therefore, at the time of sale of the FTIL shares by the Noticee, the UPSI was no longer in existence and the Noticee is not in violation of Regulation 3(i) of the PIT Regulations.*
- *The adjudication proceedings pertaining to the SCN are parallel proceedings initiated by the AO on a set of facts identical to that of the Interim Order and WTM Order. In light of the above-mentioned submissions, it is submitted that the UPSI was no longer in existence when the Noticee traded in the scrip of FTIL and thereby, there has been no violation of the provisions of the PIT Regulations.*
- *Upon giving due consideration to the nature of the Alleged Violation No.2, Noticee has decided to opt for the settlement proceedings under the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014.*
- *It is therefore prayed, in the interests of justice, that the AO be pleased to dispose the SCN against noticee with respect to Alleged Violation No.1 without imposition of any penalty.*

9. I note that in the SCN dated December 15, 2017 there are following two charges that have been alleged against the Noticee:

- i. Violation of Regulation 3(i) of PIT Regulations, 1992 punishable under section 15G of SEBI Act, and

- ii. Violation of Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992 punishable under section 15A(b) of SEBI Act.

10. Considering the facts and circumstances of the case, reply of Noticee and the Order dated January 31, 2018 by the WTM of SEBI under sections 11(1), 11(4) and 11B of SEBI Act in the scrip of FTIL, the undersigned is of the opinion that the allegation of violation of Regulation 3(i) of PIT Regulations, 1992 by the Noticee in the present matter can be decided on the basis of facts/materials available on record without personally hearing the Noticee. It is clarified that the allegation of violation of Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992 by the Noticee in the SCN dated December 14, 2017 shall be dealt with separately after hearing the Noticee as per the Adjudication Rules or in terms of Settlement Regulations, 2014 as the case may be.

CONSIDERATION OF ISSUES AND FINDINGS

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

- I. Whether Noticee avoided losses by selling 2,100 shares of FTIL in the period between November 05, 2012 to November 09, 2012 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?

12. 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”

13. I have perused the written 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.

14. I find that Noticee was associated with FTIL and was holding the position of Senior Vice President & Head –Technology (ZEUS) in FTIL during the period April 04, 2001 to August 22, 2013. In that capacity, he was reasonably expected of having access to the UPSI which emanated from NSEL. Further, the transaction in question i.e. sale of 2,100 shares of FTIL in the period between November 05, 2012 to November 09, 2012 as specified in the SCN is also a matter of record.

15. Noticee has brought to my attention the fact 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 whereby 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.”

16. 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 2,100 shares of FTIL in the period between November 05, 2012 to November 09, 2012 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

17. For the aforesaid reasons, the first allegation of violation of provision of Regulation 3(i) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015 by the Noticee i.e. V. Arvindkumar Iyengar

in the Show Cause Notice EAD/AO-PM/AA/OW/31665/1/2017 dated December 15, 2017 is disposed of without imposition of any penalty.

18. It is clarified that the second allegation of violation of Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992 by the Noticee in the SCN dated December 15, 2017 shall be dealt with separately after hearing the Noticee as per the Adjudication Rules or in terms of Settlement Regulations, 2014 as the case may be.
19. 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