

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. A&E/MK/AO-25/2011]

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
M/s Gupta Dyeing & Printing Mills Pvt. Ltd.
(PAN.: Not Available)
In the matter of Nova Petrochemicals Limited

FACTS OF THE CASE IN BRIEF

1. A rise in the price of the scrip of M/s Nova Petrochemicals Limited (for brevity's sake hereinafter referred to as '**NPL**') was witnessed as the price of the scrip went up from ₹ 82 to ₹ 116.20, an increase of 41.7% in 13 trading days i.e. from November 28, 2005 to December 14, 2005.
2. Based on the snap investigation carried out by Bombay Stock Exchange Ltd. (hereinafter referred to as '**BSE**') in the scrip of NPL, investigations were conducted by Securities and Exchange Board of India (hereinafter referred to as '**SEBI**' or '**the Board**') in the scrip of NPL. As BSE stated in its report that immediately after the period of examination, the clients and some company related entities substantially sold their stake, the period of investigation was extended from November 28, 2005 to March 31, 2006 (hereinafter referred as '**investigation period**'). The main focus of investigation was to ascertain any violation of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as the '**PFUTP Regulations**') during the above period.

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3. It was observed that promoters' holding slightly increased by 6,000 shares as on March 2006 as compared to previous quarter December 2005. However, holdings of person acting in concert (PACs), who were 25 in number, significantly reduced from 47,67,506 shares (35.31%) to 38,82,163 shares (28.76%) and public holding increased from 10,05,484 shares (7.45%) to 22,13,167 shares (16.39%) during the quarter December 2005 to March 2006.
4. During the period under investigation following major announcement were made by NPL:

Date & Time	News text (gist)	Status	Impact on price/volume
January 23, 2006 (8:53:48 AM)	Company informed that BOD meet will be held on January 28, 2006 to consider quarterly result for quarter ended December 2005 and proposal for bonus issue.	Implemented	Scrip opened at ₹ 96.95 (Previous closing price was ₹92.35) and no change was observed on price. However volume was 55,114 shares as compared to 1960 shares recorded on previous day.
January 28, 2006 (5:37:25 PM)	Company Informed that BOD recommended to issue of Bonus shares in proportion of 1:1.	Implemented	On January 30, scrip was opened at ₹ 98.30 (last closing price was ₹ 93.50 on January 27). However, no major variation was observed on volume.
February 20, 2006	Company informed that BOD meeting	Only bonus shares were	On February 21, scrip was opened at

Date & Time	News text (gist)	Status	Impact on price/volume
(8:15:42 PM)	will be held on March 4, 2006 to consider expansion plan of Poly Condensation & Power Unit and also to fix the record date for bonus issue.	issued.	104.95 (last closing price was ₹ 102.45) touched its intra-day high of ₹ 107.55 and closed at ₹ 106.70. Total traded volume was 111977 shares (last traded quantity was 390296 shares).
February 21, 2006 (3:27:09 PM)	Company informed that an EGM will be held on March 4, 2006 to consider the bonus issue and increased in authorized capital.		On February 22, scrip opened at ₹ 105.05 touched its intra-day high of ₹ 111.80 and closed at ₹ 107.75. Volume recorded was only 11389 shares.
March 6, 2006 (4:21:25 PM)	Company informed that EGM was held on March 4, 2006 and discussed the expansion plan and constituted a committee of directors to finalize the details.	Copy of EGM minutes, taken from BSE, does not state about discussion on the expansion plan. NPL also failed to provide any	On March 7, scrip opened ₹ 137.50 (last closing price was ₹ 135.60), touched its intra-day high of ₹ 142.35 and closed at ₹ 139.90. Total volume recorded was 1,17,541 shares (previous day volume was 1,82,181

Date & Time	News text (gist)	Status	Impact on price/volume
		information on this expansion plan.	shares)
March 8, 2006 (12:40:58 PM)	Company informed that March 20, 2006 has been fixed as Record Date for the purpose of Bonus Issue.	Implemented	On March 9, scrip opened at ₹ 143.50 touch its intra-day high of ₹ 149.35 and closed at ₹ 148.35 and total volume was 1,87,405 shares more than double of previous day i.e. 78,869 shares.

5. Investigation revealed that NPL made misleading announcement on February 20, 2006 pertaining to expansion plan after which the price of the scrip went up from ₹ 102.50 on February 20, 2006 to ₹ 146.85 on March 8, 2006 and the volume also increased substantially. Further, the NPL also did not give any explanation to the exchanges regarding the substantial difference between the unaudited and audited results of the company.
6. It is observed from the Investigation Report (herein after referred to as IR) that when the company was making misleading announcements and non-genuine results, 25 PACs of the company who were the family members and group companies of the Chairman and The MD, sold together 10,15,443 shares through Religare and SP Jain Securities which accounted for 12.80% of the traded volume (both BSE and NSE) during January 23, 2006 to March 31, 2006 before the outcome of the negative results.
7. Investigation revealed that NPL showed profit in three quarters of 2005-2006 while the yearly results of 2006 showed loss for which the company could not

give any reasonable explanation. The Chairman, Ved Prakash Chiripal and MD, Shyam Gupta were aware of the negative results and the PACs, who were the family members and group companies of the Chairman and the MD, sold shares before the outcome of the negative results.

8. In view of the above, it was alleged that **M/s Gupta Dyeing & Printing Mills Pvt. Ltd** (hereinafter referred to as “**Noticee**”), as one of the PACs, had violated the provisions of regulation 3 (a),(d),4(1),4(2)(a) of PFUTP Regulations read with Section 12A(c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**the Act**”) and regulation 3(i) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (herein after referred to as the “**PIT Regulations**”) read with Section 12A(d),(e) of the Act and consequently liable for monetary penalty under Section 15 HA and 15G (i) of the Act.

APPOINTMENT OF ADJUDICATION OFFICER

9. The undersigned was appointed Adjudicating Officer to inquire into and adjudge under Section 15I of the Act 1992; read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (herein after referred to as the “**the Rules**”) for the alleged irregularity in the trading in the shares of NPL resulting in the possible violation of the provisions of the Act, FUTP Regulations and the PIT Regulations.

SHOW CAUSE NOTICE, HEARING AND REPLY

10. Show Cause Notice dated September 14, 2009 and November 05, 2009 (hereinafter referred to as “**SCN**”) was issued to Noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be held against the Noticee and penalty be imposed under Section 15HA and 15G(i) of the Act for the alleged violations specified in the said SCN.

11. In order to conduct an inquiry as per rule 4 (3) of the Rules, the Noticee was granted an opportunity of personal hearing on January 07, 2010 vide hearing notice dated December 24, 2009. The Noticee, instead of appearing for the hearing, vide fax dated January 20, 2010 requested for extension of hearing till end of January 2010. Accordingly, the hearing was fixed for February 10, 2010 and their Authorized Representative (hereinafter referred to as "AR") appeared on behalf of the Noticee on the said date and reiterated the submissions made vide letter dated February 05, 2010 as follows:

- i. *Noticee does not accept or admit anything stated in the Notice except where the same is expressly admitted by it.*
- ii. *The allegations of violation of the provisions of FUTP Regulations and PIT Regulations are only based on the assumption that noticee being Persons Acting in Concert, as it is related to one of the promoters of NPL, Mr Shyam Gupta, were aware of the financial results of NPL prior to it being made public and thus, fraudulently sold shares together with other PACs during investigation period.*
- iii. *Noticee held 77210 shares of NPL on 31.03.2005 and because it is related to Mr. Shyam Gupta it fall within the ambit of PACs.*
- iv. *Simply because it is related to and is known to one of the promoters, it does not establish that we were aware of the financial results or other price sensitive information of NPL.*
- v. *It is denied that the sale of shares of NPL by us had any correlation with the alleged misleading and non-genuine results made by NPL.*
- vi. *We had sold shares even before the investigation Period and also post the investigation period. During the investigation period it had sold 77000 shares out of which 48000 shares were sold on February 15, 2006 and 29000 were sold on February 17, 2006 and continue to hold 210 shares.*
- vii. *It is denied that we had any prior intimation/knowledge of negative yearly financial results of NPL that prompted us to sell our shares as alleged against us. Simply because it knew the Managing Director, Mr. Shyam Gupta does not indicate that it was aware of any unpublished price sensitive financial results.*

- viii. *We were not a part of the Board of the NPL, neither were we instrumental in the management activities of NPL.*
- ix. *We have not made any disproportionate gain or gained unfair advantage.*
- x. *It is denied that I/ We have violated the provisions of the of the regulations 3 (a & d), regulation 4(1), 4(2)(a) of FUTP Regulations, read with section 12A(c) of the Act and regulation 3(i) of PIT Regulations read with section 12A(d & e) of the Act.*
- xi. *Subsequent to the hearing, vide letter dated February 16, 2010 noticee submitted analysis of the share price movement vis-à-vis sensx along with clarification that the increase in price of the share was due to announcement of bonus shares in the ratio of 1:1 as also fixing of record date as March 20, 2006. The noticee also submitted that the announcement of expansion of poly condensation and power plant was not sensitive as the expansion schemes were for captive consumption.*

CONSIDERATION OF ISSUES

12. The issues that arise for consideration in the present case are :
- a) Whether the Noticee had violated regulation 3 (a),(d),4(1), 4(2)(a) of PFUTP Regulations read with section 12A (c) of SEBI Act?
 - b) Whether the Noticee had violated regulation 3(i) of PIT Regulations read with section 12 A (d),(e) of the SEBI Act?
 - c) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15 HA and 15G (i) of SEBI Act?
 - d) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

FINDINGS

13. The allegations against the noticee are that when the company was making misleading announcements and non-genuine results, it, including PACs, being the family members and group companies of the Chairman and the MD, sold together 10,15,443 shares through Religare and SP Jain Securities which accounted for 12.80% of the traded volume (both BSE and NSE) during

January 23, 2006 to March 31, 2006 before the outcome of the negative results and thereby alleged to have violated Regulation 3 (a), (d), 4(1), 4(2)(a) of FUTP Regulations read with Section 12A(c) of SEBI Act, 1992 and regulation 3(i) of PIT Regulations read with Section 12A(d & e) of SEBI Act, 1992.

14. I note that the provisions of law alleged to have been violated by the noticee read as follows:

FUTP REGULATIONS, 2003

Regulation 3. Prohibition of Certain Dealings in Securities

No person shall directly or indirectly-

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (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:-*

- (a) indulging in an act which creates false or misleading appearance of trading in the securities market;*

INSIDER TRADING REGULATIONS, 1992

Regulation 3. Prohibition on dealing, communicating or counselling on matters relating to insider trading

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;*

SEBI ACT, 1992

Section 12A : Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

No person shall directly or indirectly –

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

(d) engage in insider trading

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;

15. I have taken into consideration the facts and circumstances of the case, the submissions made by the noticee and the material available on the record.
16. I find that the NPL made major corporate announcements on 6 days during the period January 23, 2006 to March 08, 2006. These announcements were related to quarterly financial results, Bonus issue and expansion plan. I note from the SCN that except for announcement on an expansion plan all other announcements were implemented by NPL.
17. I note from the SCN that the announcement made by NPL on February 20, 2006, regarding expansion plan was non-genuine and misleading in nature as the Annual Report of FY 2005-06 and 2006-07 did not reflect any information about the expansion plan being undertaken or executed by the company. I also note that the price of the scrip after the above announcement went up from ₹ 102.50 on February 20, 2006 to ₹ 146.85 on March 8, 2006.
18. It is noted from the SCN that the NPL incurred a loss of ₹ 5.23 crore as on 31st March 2006 whereas the sum total of the unaudited figures for the quarter ending June to March 2006 showed a profit of ₹ 1.38 crore. Since there was a substantial difference in the unaudited and audited results, NPL was asked to clarify the same and the explanation of NPL was not accepted as it

failed to substantiate the same. The NPL thus gave misleading results to the public.

19. From the trade and order log it is observed that the 25 PACs, including the Noticee, offloaded 10,15,433 shares constituting 12.80% of the traded volume on the exchanges (NSE and BSE) (and 7.52% of total capital), in the market after the positive announcements that too after the expansion plan were made by the company. The PACs who sold the shares were the family members and group companies of the Chairman Mr. Vedprakash Chiripal and Managing Director Mr. Shyam Gupta.
20. I note from the SCN as well as from the noticee's submission that it had sold 77000 shares during the investigation period against its holding of 77210 shares as on March 31, 2005. I note that the PACs held 35.31% of the total capital of NPL as on March 31, 2005 and the noticee held 1.62% of the PACs' holding. I also note that the noticee's sale of 77000 shares constitutes 7.58% of the total shares sold by the PACs during the investigation period.
21. I note from the material available on record that there is no allegation about the noticee's involvement in any of these misleading announcements or resultant price rise in the scrip of NPL. I note from the investigation report that the noticee alleged to have dealt in the scrip after the public announcement made by NPL. I note that Regulations 3(a) and 3(d) of FUTP prohibits a person to deal in securities in a fraudulent manner 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. Further Regulation 4(1) and 4(2) prohibit persons from indulging in fraudulent or unfair trade practices while dealing in securities. What is being alleged against the noticee is that it has played a fraud and committed an unfair practice within the meaning of the regulations while trading in the scrip of NPL. It is a serious allegation warranting precise particulars to establish the manner in which the noticee has played a fraud or committed the unfair trade practice. In the Instant matter, it is observed that the Noticee had sold its majority share holding in NPL prior to the date of public

announcement i.e. February 20, 2006. There is no material available on record to establish the fraudulent activities of the Noticee either with respect to its dealing in scrip of NPL or its role in the process of public announcement made by NPL. Therefore, in absence of any corroborative evidence on record, allegation against the noticee of violating the provisions of Regulation 3(a),3(d), 4(1) and 4(2)(a) of PFUTP Regulations and Section 12A(c) of the Act, doesn't stand established.

22. Before dealing with the issue as to whether the noticee violated the provisions of regulation 3(i) of PIT Regulations and section 12(d),(e) of the Act, I note the definition of insider and price sensitive information under PIT Regulations as follows:

Regulation 2(e) *"insider" means any person who, is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of company, or has received or has had access to such unpublished price sensitive information.*

Regulation 2(c) *"connected person" means any person who-*
(i) *"is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act"*

Regulation 2(h) *"person is deemed to be a connected person", if such person –*
(i) *is a company under the same management or group, or any subsidiary company thereof within the meaning of sub-section (1B) of section 370, or sub-section (11) of section 372, of the Companies Act, 1956 (1 of 1956) or sub-clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) as the case may be;*
(viii) *relatives of the connected person*

Regulation 2(ha) *“price sensitive information” means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.*

Explanation. – The following shall be deemed to be price sensitive information: –

- (i) periodical financial results of the company;*
- (ii) intended declaration of dividends (both interim and final);*
- (iii) issue of securities or buy-back of securities;*
- (iv) any major expansion plans or execution of new projects.*
- (v) amalgamation, mergers or takeovers;*
- (vi) disposal of the whole or substantial part of the undertaking;*
- (vii) and significant changes in policies, plans or operations of the company;*

Regulation 2 (k) *“unpublished” means information which is not published by the company or its agents and is not specific in nature.*

23. I note from the noticee’s submission that because it is related to Mr. Shyam Gupta, the Managing Director of NPL, it falls within the ambit of PAC. Thus, there is no dispute about the noticee being an insider as defined under Regulation 2 of PIT Regulations. Further, I do not find any merit in the submission of noticee that the announcement of expansion of poly condensation and power plant was not sensitive as the expansion schemes were for captive consumption. I note that the information related to financial results and expansion plan falls within the definition of price sensitive information as defined in the Regulation 2 of PIT Regulations. The Hon’ble SAT in the case of Rajiv B Gandhi, Sandhya R Gandhi, Amis B Gandhi Vs Securities and Exchange Board of India (Appeal No 50 of 2007) has also observed that:

“Unpublished price sensitive information has been defined in the regulations to mean any information which relates to any of the matters referred to in sub clause (i) to (viii) of regulation 2(k) and is not generally known or published

by the company for general information but which, if published or known is likely to materially affect the price of the securities of the company in the market. In other words, any information which is not known but, if known, could either way affect the price of the scrip of the company would be unpublished price sensitive information. This includes, among others, financial results of the company, intended declaration of dividend – both interim and final, amalgamations, mergers and takeovers.”

24. The contention of the noticee that simply because it is related to and are known to one of the promoters, does not establish that it was aware of the financial results or other price sensitive information of NPL, may also not hold good, as being an insider related to Mr Shyam Gupta, the Managing Director of NPL, it is reasonably expected to have access to unpublished price sensitive information of NPL. As discussed above, the price of the scrip went up from ₹102.50 on February 20, 2006 to ₹ 146.85 on March 8, 2006 i.e. after the misleading announcements made by the NPL. However, I note that the noticee sold 48,000 shares on February 15, 2006 and 29000 shares on February 17, 2006 (total of 77000 shares of NPL) prior to February 20, 2006 the date on which the NPL made misleading announcement and subsequent to which the price of NPL increased significantly and continues to hold only 210 shares after the date of public announcement i.e. February 20, 2006. Based on material available on record and also considering the pattern wherein the noticee sold almost its entire holding prior to the date of misleading public announcement i.e. February 20, 2006 it is difficult to conclude that the sale transactions by the noticee on the dates prior to February 20, 2006 may lead to the violations of regulation 3(i) PIT Regulations and Sections 12(d), (e) of the Act as alleged in the SCN. In view of the above, I am inclined to give the benefit of doubt to the Noticee.
25. Therefore, the violations against the Noticee as alleged in the SCN do not stand established.

ORDER

26. After taking into consideration all the facts and circumstances of the matter, I find that the alleged violation of the respective provisions of PFUTP Regulations, PIT Regulations and the SEBI Act, by the Noticee, as specified in the SCN does not stand established and the matter is, accordingly, disposed off.
27. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to M/s Gupta Dyeing & Printing Mills Pvt. Ltd and also to the Securities and Exchange Board of India.

Date : February 11, 2011

Place: Mumbai

MANOJ KUMAR

ADJUDICATING OFFICER