

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**ADJUDICATION ORDER NO. PG/AM/AO-36/2012**

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**UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD  
OF INDIA ACT, 1992 AND SECTION 23-I OF SECURITIES  
CONTRACTS (REGULATION) ACT, 1956**

**In respect of:**

**M/s. C&C Constructions Limited  
(PAN - AAACC4543R)**

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) conducted investigation in respect of dealings in the scrip of C&C Constructions Limited (hereinafter referred to as “**the Noticee/company**”) during the period from October 15, 2008 to November 15, 2008 (hereinafter referred to as the “**investigation period**”). It was observed that the Company was in the business of providing engineering, procurement and construction services for infrastructure projects in India and Afghanistan.

2. It was observed that the Noticee had made one corporate announcement during the investigation period which was on November 01, 2008, which had a positive impact on the price movement and the scrip closed 19% higher than the previous close price. Details of the said corporate announcement is presented below:

Date and Time	Announcement/News	Price Impact/Shares Traded				Remarks
November 1, 2008 @ 4:16:48 p.m	C & C Constructions Ltd has informed BSE that the Company has bagged four orders valued at ₹ 963 crores for Improvement/Upgradation of State Highway roads from the Bihar Government. Of these orders ₹ 578** crores are with its long standing joint venture partner M/s. BSCPL Infrastructure Ltd. The balance orders of Rs 385 crores are in its own name. These orders have to be executed over an average period of 33 months.	31/10/08				The scrip opened 4% higher than the previous day's close price and closed at 19% higher than the previous day's close price.
		O	H	L	C	
		88	88	80.15	85.6	
		No. of shares traded: 2,846				
		03/11/08				
		O	H	L	C	
		89	102.7	89	101.95	
		No. of shares traded: 3,720				

*\*\*It was observed that out of ₹ 578 crore orders, the Noticee had a share of 50%. Thus, effectively, the Noticee had received orders worth ₹ 674 crore.*

3. Since, execution of new projects is considered as price sensitive information (hereinafter referred to as the "PSI") and also on receiving the information of bagging four orders from Bihar Government for ₹ 963 crore, out of which the Noticee had a share of ₹ 674 crore, the price of the scrip closed 19% higher than the previous day's close price; therefore, the information about the Noticee bagging four orders from Bihar Government was PSI.

4. It was observed that the PSI came into existence when Office of the Chief Engineer, Project Management, Road Construction Department, Bihar Government vide its four letters dated October 22, 2008 informed the Noticee that its financial bids dated April 30, 2008 for the four projects had been accepted. The letters from Bihar Government dated October 22, 2008 inter alia stated that *"A copy of this letter is being sent to you through Fax and/or E-Mail"*. The Noticee in its response to SEBI vide its letter dated September 27, 2011 stated that *"Date of letter of award has been considered as the date of receipt of award as the letters are received through ordinary post for which no record is maintained by the Company/JV partner for its receipt date"*. Thus, October 22, 2008 was the date from which the PSI came into existence. This PSI was made public on November 01, 2008 (Saturday) at 4:15 p.m. through corporate announcement on Bombay Stock Exchange (**BSE**). Therefore, it is alleged that the period from October 22, 2008 to November 1, 2008, was the period of unpublished price sensitive information (hereinafter referred to as the **"UPSI"**).
5. The chronology of events relating to the receipt of orders from Bihar Government was as follows:

Date	Event	Nature of Communication
29-Apr-08	Appointment of <u>Mr. Pradeep Kumar</u> for submitting post qualification documents for the four projects relating to Bihar government	2 letters sent by the Company to the Chief Engineer of Bihar Government
24-Jun-08	Confirmation of issue of Bank guarantee dated 8/04/2008 for Rs. 2,57,50,000 for the four projects	Fax sent by the Company to the Chief Engineer of Bihar Government
28-Jul-08	The Company declared qualified for price bid based on acceptance of its Technical Bid	Letter sent by Chief Engineer of Bihar Government to the Company.
31-Jul-08	Appointment <u>Mr. Ashok Kumar, Chief Project Manager</u> , for submitting Financial Bid for the four projects of Bihar government	Letter sent by Mr. <u>A.P.S Chadha, Director of the Company</u> to the Chief Engineer of Bihar Government
4-Aug-08	Extension of validity of bank guarantee upto 25 October 2008	Letter sent by <u>Rajendra Mohan Aggarwal, Director (Technical)</u> to the Chief Engineer of Bihar Government
22-Oct-08	Awarding of four projects to the Company by Bihar Government	Letter sent from Chief Engineer to the Company

6. It was observed that four persons were directly involved into the project relating to Bihar Government and out of them, only Mr. Rajendra Mohan Aggarwal had traded during the Investigation period. However, Mr. Rajendra Mohan Aggarwal had not traded during the UPSI period.
  
7. It was observed that there was delay in reporting to BSE by the Noticee about bagging of four orders worth ₹ 963 crore from Bihar Government (orders were received by the Company on October 22, 2008 and were disclosed to BSE on November 01, 2008). Thus there was a delay in informing the exchange regarding the receipt of orders. Hence, it was alleged that the Company violated Clause 36(7) of Listing Agreement read with Section 21 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “SC(R)

**Act, 1956**") as also Clause 2.1 and Clause 7.0(ii) of Corporate Disclosure practices for Prevention of Insider Trading, Schedule II read with Regulation 12 (2) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations**").

8. It was observed that the trading window was kept closed by the Noticee for the period October 20, 2008 to October 29, 2008 in view of the Board Meeting which was to be held on October 27, 2008. However, with respect to the corporate announcement regarding receipt of orders by the Noticee which was made on November 01, 2008, the trading window ought to have been closed between October 22, 2008 and November 02, 2008. Instead, the trading window was kept open between October 30, 2008 and November 02, 2008. It was observed that the Noticee had not specified the trading window before the corporate announcement which was made on November 01, 2008 and had not closed the trading window during the UPSI period. Hence, it was also alleged that the Noticee violated Clause 3.2-1, 3.2-3(d) and 3.2-4 of Code of Conduct for Prevention of Insider Trading, Schedule I read with Regulation 12(1) and 12(3) of PIT Regulations.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

9. The undersigned was appointed as the Adjudicating Officer vide order dated February 14, 2012 and the said appointment was conveyed vide proceedings of the Whole Time Member dated

March 15, 2012 to inquire and adjudge under Section 23H of SC(R) Act, 1956 and Section 15HB of the SEBI Act, 1992, the alleged violations of provisions of Clause 36(7) of Listing Agreement read with Section 21 of SC(R) Act, 1956; Clause 2.1 and Clause 7.0(ii) of Corporate Disclosure practices for Prevention of Insider Trading, Schedule II read with Regulation 12(2) of PIT Regulations and Clause 3.2-1, 3.2-3(d) and 3.2-4 of Code of Conduct for Prevention of Insider Trading, Schedule I read with Regulation 12(1) and 12 (3) of PIT Regulations; committed by the Noticee.

#### **SHOW CAUSE NOTICE, HEARING & REPLY**

10. A Show Cause Notice (hereinafter referred to as “SCN”) in terms of the provisions of Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as “**SEBI Adjudication Rules**”) and Rule 4(1) of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as “**SCR Adjudication Rules**”) was issued to the Noticee on March 22, 2012, calling upon to show cause why an inquiry should not be held against the Noticee under Rule 4(3) of the SEBI Adjudication Rules and the SCR Adjudication Rules for the alleged violations. Vide letter dated April 09, 2012, the Noticee acknowledged the receipt of the SCN and requested for further time to submit its reply. Subsequently, vide letter dated April 16, 2012, the Noticee was granted time till April 27, 2012 to submit reply to the SCN.

11. The Noticee submitted its reply to the SCN vide letter dated April 25, 2012 and inter alia made the following submissions:

- *“The PSI came into existence on November 1, 2008 and not on October 22, 2008. The Company as mandated under the extant law and regulations and specifically in keeping with the PIT Regulations made public the PSI and accordingly there was no requirement to close the trading window for unpublished PSI (“UPSI”).*
- *We note that the Company vide its letter dated September 27, 2009 stated that “Date of letter has been considered as the date of receipt of award as the letters are received through ordinary post for which no record is maintained by the Company/IV partner for its receipt date”. While the Company bona fide adopted the date of the award of the Orders as date of receipt of award, the fact is that not before November 1, 2008 did the Company have knowledge of the Award Letters. As mentioned the letters are received through ordinary post for which no record of incoming mail is maintained. We also submit that no email or fax regarding the Order was received by us.*
- *In furtherance to the above, acknowledging its obligation to disseminate PSI on an immediate basis and ensure closure of the ‘trading window’ in the event such PSI is unpublished, the Company affirms that at no time between October 22, 2008 and November 1, 2008 was any unpublished PSI in possession of the Company.*
- *Notwithstanding and without prejudice to the facts stated above, if it is assumed that the PSI came into existence on October 22, 2008, it is pertinent to place the following additional facts before you:*
  - *The trading window of the Company was in fact closed between October 20, 2008 to October 29, 2008 in view of the Board Meeting held on October 27, 2008. As stated in Para 9 of the Notice the trading window should have additionally been closed*

*between October 30, 2008 and November 2, 2008. The Announcement was made on November 1<sup>st</sup> being a Saturday. The stock exchange was closed on October 30<sup>th</sup> on the occasion of Bhaiya Dooj. Accordingly, the trading window remained open only on October 31<sup>st</sup>.*

- The volume of shares traded on October 31, 2008 on the BSE were 2,846 and on the NSE was 51858 amounting to a trade of INR 4,620,433/- (assuming the closing price of the scrip)*
- The minutes of the meeting of the Board held on October 27, 2008 do not mention the award of the Orders since the Company was not aware of the same.*
- It is our case that the lapse, if any, was a genuine oversight with no intent, as evidenced by the facts and circumstances and as mentioned above, to violate the provisions of law or benefit in any manner from such violation.*
- Para 7 of the Notice observes inter alia that Mr. Rajendra Mohan Aggarwal (Director of the Company) has traded in the scrip of the Company during the period between October 15, 2008 to November 15, 2008. In that regard, we would like to draw attention to the purchases undertaken by Mr. Aggarwal during such period which are only for a total of 16,809 shares, as detailed in **Annexure 1** hereof. Mr. Aggarwal has been associated with the Company for over a decade and has, from time to time, in accordance with applicable laws, regularly traded in the scrip of the Company and no unusual pattern of acquisition or sale would be ascertainable from his trades in the period mentioned above. In fact, as stated in Para 7 of the Notice, Mr. Rajendra Mohan Aggarwal had not traded during the UPSI Period.*
- Para 8 of the Notice alleges a delay in reporting the PSI to the Bombay Stock Exchange between the date of the letters of award of the Orders,*



*October 22, 2008 and date of the corporate announcement, November 1, 2008. We reiterate that although the date of the Award Letter was considered by the Company, the same is in fact not correct, as no record is maintained for ordinary post received by the Company.*

- The Company further represents that it constantly endeavours to follow high standards of corporate governance and ensure strict compliance with all applicable laws, and accordingly any and all PSI received by the Company is disclosed immediately upon the Company gaining knowledge thereof. Consequently, the Company concludes that it would be implausible to assume that knowledge of the Orders was available with the Company on any day prior to November 1, 2008.*
- Para 9 provides that the trading window was kept closed by the Company for the period from October 20, 2008 to October 29, 2008 in view of the meeting of the Board of Directors of the Company on October 27, 2008. This is a matter of fact and was in accordance with regular practice followed by the Company in accordance with applicable regulations. The said Para also alleges that the Company ought to have closed the trading window up to November 2, 2008. In that regard, it may be noted that the Company did not seek further closure of the trading window on account of the fact that on October 29, 2008 no unpublished PSI was in the knowledge of the Company and requisite time had elapsed from the date of the meeting of the Board of Directors of the Company.*
- The Company would also like to place on record the minutes of the meeting of the Board of Directors of the Company held on October 27, 2008 (annexed herewith as **Annexure 2**) which evidences that the letters of award issued by the Government of Bihar were not discussed at the said meeting as the Company had, in fact, not received notice of award of the Orders on October 22, 2008, as alleged.*

- *In view of the contents of this reply, the Company hereby states and submits that it has not violated the provisions of the Securities Contracts (Regulation) Act, 1956, the SEBI Act 1992, the Listing Agreement, the PIT regulations and/or the Code of Conduct for prevention of Insider Trading.*
- *Accordingly, the Company requests you to:*
  - *Accept this letter as a proper and satisfactory response to the Notice and treat the inquiry closed.*
  - *Accept withdrawal of our letter dated September 27, 2011 in as much as the date of the Orders has been taken as date of the letter of the Orders for the purposes of PSI."*

12. Subsequently, Notice of Inquiry dated April 30, 2012 was issued to the Noticee under Rule 4(3) of the SEBI Adjudication Rules and the SCR Adjudication Rules vide which an opportunity of personal hearing was given to the Noticee which was scheduled on May 11, 2012. However, vide letter dated May 10, 2012, the Noticee while expressing its inability to appear for personal hearing and requesting a future date, reiterated the following:

- *"The company was not aware of the award letters dated October 22, 2008 from the Office of the Chief Engineer, Project Management, Road Construction Department, Bihar Government ("Award Letters") till November 1<sup>st</sup> 2008. It is emphasised that the minutes of the meeting of the Board held on October 27, 2008 do not mention the award of the Orders since the Company was not aware of the same.*
- *The trading window of the Company was in fact closed from October 20, 2008 to October 29, 2008 in view of the Board Meeting held on October 27, 2008. The trading window should have additionally been closed*

*between October 30, 2008 and November 2, 2008, had the Company become aware of the Award Letters on October 22, 2008. The Announcement of the Award Letters was made on November 1<sup>st</sup> being a Saturday, the date on which the Company became aware of the Award Letters. The stock exchange was closed on October 30th on the occasion of Bhaiya Dooj. Accordingly, the trading window remained open only on October 31st.*

- *Mr. Rajendra Mohan Aggarwal (Director of the Company) purchased 16,809 shares of the Company during the period between October 15, 2008 to November 15, 2008. In this regard, while the share price of the Company touched Rs. 286 in September, 2010 against the average purchase price of the above quantity during the said period of approx. Rs. 110/- per share by Mr. Rajendra Mohan Aggarwal, did not and has not sold any shares of the Company to date."*

13. Thereafter, vide Notice of Inquiry dated May 14, 2012 another opportunity of personal hearing was granted to the Noticee on May 21, 2012. Mr. Deepak Nathani, Company Secretary and Authorised Representative of the Noticee alongwith Ms. Kirtida Chandarana, Advocate (Tatva Legal) appeared for hearing on the scheduled date and reiterated the submissions made vide the reply dated April 25, 2012.

### **ISSUES FOR CONSIDERATION**

14. After perusal of the material available on record, I have the following issues for consideration, viz.,

- A. Whether the Noticee has violated provisions of Clause 36(7) of Listing Agreement read with Section 21 of the SC(R) Act, 1956 as also Clause 2.1 and Clause 7.0(ii) of Corporate Disclosure practices for Prevention of Insider Trading, Schedule II read with Regulation 12 (2) of PIT Regulations arising out of delay in informing the exchange regarding the receipt of four orders from Bihar Government?
- B. Whether the Noticee has violated Clause 3.2-1, 3.2-3(d) and 3.2-4 of Model Code of Conduct for Prevention of Insider Trading, Schedule I read with Regulation 12(1) and 12(3) of PIT Regulations arising out of not closing the trading window during the UPSI period?
- C. Whether the Noticee is liable for monetary penalty under Section 15HB of the SEBI Act, 1992 and Section 23H of the SC(R) Act, 1956?
- D. What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992 and Section 23J of the SC(R) Act, 1956?

## **FINDINGS**

- 15. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

*ISSUE 1: Whether the Noticee has violated provisions of Clause 36(7) of Listing Agreement read with Section 21 of the SC(R) Act, 1956 as also Clause 2.1 and Clause 7.0(ii) of Corporate Disclosure practices for Prevention of Insider Trading, Schedule II read with Regulation 12 (2) of PIT Regulations arising out of delay in informing the exchange regarding the receipt of four orders from Bihar Government?*

16. The provisions of Clause 36(7) of Listing Agreement, Section 21 of the SC(R) Act, 1956; Clause 2.1 and Clause 7.0(ii) of Corporate Disclosure practices for Prevention of Insider Trading, Schedule II and Regulation 12 (2) of PIT Regulations read as under:

**Listing Agreement**

36. *Apart from complying with all specific requirements as above, the Company will keep the Exchange informed of events such as strikes, lock-outs, closure on account of power cuts, etc. both at the time of occurrence of the event and subsequently after the cessation of the event in order to enable the shareholders and the public to appraise the position of the Company and to avoid the establishment of a false market in its securities. In addition, the Company will furnish to the Exchange on request such information concerning the Company as the Exchange may reasonably require. The Company will also immediately inform the Exchange of all the events, which will have bearing on the performance/operations of the company as well as price sensitive information. The material events may be events such as:*

*(7) Any other information having bearing on the operation/performance of the company as well as price sensitive information, which includes but not restricted to;*

- i) Issue of any class of securities.*
- ii) Acquisition, merger, de-merger, amalgamation, restructuring, scheme of arrangement, spin off or setting divisions of the company, etc.*
- iii) Change in market lot of the company's shares, sub-division of equity shares of company.*
- iv) Voluntary delisting by the company from the stock exchange(s).*
- v) Forfeiture of shares.*
- vi) Any action, which will result alteration in the terms regarding redemption/cancellation/retirement in whole or in part of any securities issued by the company.*
- vii) Information regarding opening, closing of status of ADR, GDR, or any other class of securities to be issued abroad.*
- viii) Cancellation of dividend/rights/bonus, etc.*

*The above information should be made public immediately.*

#### **Securities Contracts (Regulation) Act, 1956**

*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.*

#### **Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992.**

**12. Code of internal procedures and conduct for listed companies and other entities.**

(1) All listed companies and organisations associated with securities markets including:

(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;

(b) the self-regulatory organisations recognised or authorised by the Board;

(c) the recognised stock exchanges and clearing house or corporations;

(d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and

(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies,

shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations.

(2) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.

(3) All entities mentioned in sub-regulation (1), shall adopt appropriate mechanisms and procedures to enforce the codes specified under sub-regulations (1) and (2).

**SCHEDULE II**

Code of Corporate Disclosure Practices for Prevention of Insider Trading

*“2.0 Prompt disclosure of price sensitive information*

*2.1 Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.”*

*"7.0 Medium of disclosure/dissemination*

*(i) ....*

*(ii) Corporates shall ensure that disclosure to stock exchanges is made promptly."*

17. I note that Clause 36(7) of Listing Agreement, *inter alia*, requires a listed company to make any PSI public immediately. Similarly, Clause 2.1 and Clause 7.0(ii) of Corporate Disclosure practices for Prevention of Insider Trading as mentioned in Schedule II of PIT Regulations also requires a listed company to disclose PSI promptly and on a continuous and immediate basis.
18. I note that the allegation against the Noticee, *inter alia*, is that there was delay in reporting to BSE by the Noticee about the PSI of awarding of four orders from Bihar Government. It has been alleged that even though the orders were received by the Noticee on October 22, 2008; the same were disclosed to BSE by the Noticee only on November 01, 2008.
19. Regulation 2(ha) of PIT Regulations defines 'price sensitive information' (PSI) as any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of a company. Therefore, the award of four orders from Bihar Government valued at ₹ 963 crores is a PSI. Also, on receiving the information of bagging four orders from Bihar Government for ₹ 963 crore, out of which, the Noticee



had a share of ₹ 674 crore, the price of the scrip of the Noticee closed 19% higher than the previous day's close price. Hence, the information about the Noticee bagging four orders from Bihar Government was PSI.

20. It is observed that the PSI came into existence when Office of the Chief Engineer, Project Management, Road Construction Department, Bihar Government vide its four letters dated October 22, 2008 informed the Company that its financial bids dated April 30, 2008 for the four projects had been accepted. The letters from Bihar Government dated October 22, 2008 also stated that *"A copy of this letter is being sent to you through Fax and/or E-Mail"*. It is also observed that the Noticee's response to SEBI vide letter dated September 27, 2011 stated that *"Date of letter of award has been considered as the date of receipt of award as the letters are received through ordinary post for which no record is maintained by the Company/JV partner for its receipt date"*. Thus, October 22, 2008 was the date from which the PSI came into existence which was made public on November 01, 2008 (Saturday) at 4:15 p.m. through corporate announcement on BSE. Therefore, in this case, there was a delay of 9 clear days and the period from October 22, 2008 to November 01, 2008, was the period of UPSI.
21. In this regard, the Noticee has submitted that while it bona fide adopted the date of the award of the orders as date of receipt of award, it did not have knowledge of the award letters before

November 01, 2008. The Noticee also submitted that the letters were received through ordinary post for which no record of incoming mail was maintained and no email or fax regarding the order was received by it. The Noticee requested to accept withdrawal of its letter dated September 27, 2011 in as much as the date of letters regarding award of the orders was taken as date of receipt thereof for the purposes of PSI. The Noticee further submitted that the minutes of its Board meeting held on October 27, 2008 did not mention the award of the orders since the Noticee was not aware of the same. The Noticee stated that the lapse, if any, was a genuine oversight with no intent to violate the provisions of law or benefit in any manner from such violation.

22. The noticee had earlier stated that the date of the letters of orders i.e. October 22, 2008 may be taken as the date of receipt and now wants to withdraw its earlier statement to state that the letters were actually received on November 01, 2008. However, it has not produced any evidence to support its revised statement. It appears that when the noticee found that it was being charged for non-disclosure of PSI based on its earlier statement, it wants to change its statement. In view of above, I am of the opinion that there is no reasonable basis to accept the change in date of receipt. Therefore, I do not find merit in submission of the Noticee that it came to know about the award of orders only on November 01, 2008 and hold October 22, 2008 as the date on which the PSI came into existence.

23. In view of the aforesaid, I find that the Noticee has failed to disclose the PSI of receipt of four orders from Bihar Government to BSE promptly and immediately. Hence, the Noticee has violated Clause 36(7) of Listing Agreement read with Section 21 of SC(R) Act, 1956; Clause 2.1 and Clause 7.0(ii) of Corporate Disclosure practices for Prevention of Insider Trading, Schedule II read with Regulation 12 (2) of PIT Regulations.

*ISSUE 2: Whether the Noticee has violated Clause 3.2-1, 3.2-3(d) and 3.2-4 of Model Code of Conduct for Prevention of Insider Trading, Schedule I read with Regulation 12(1) and 12(3) of PIT Regulations arising out of not closing the trading window during the UPSI period?*

24. The provisions of Clause 3.2-1, 3.2-3(d) and 3.2-4 of Code of Conduct for Prevention of Insider Trading, Schedule I of PIT Regulations read as under [provisions of and Regulation 12(1) and 12(3) given earlier]:

***SCHEDULE I***

***Model Code of Conduct for Prevention of Insider Trading for Listed Companies***

***“3.2 Trading window***

***3.2.1*** *The company shall specify a trading period, to be called “trading window”, for trading in the company’s securities. The trading window shall be closed during the time the information referred to in para 3.2.3 is unpublished.*

**3.2.2** *When the trading window is closed, the employees/directors shall not trade in the company's securities in such period.*

**3.2.3** *The trading window shall be, inter alia, closed at the time :—*

*(a) Declaration of financial results (quarterly, half-yearly and annually).*

*(b) Declaration of dividends (interim and final).*

*(c) Issue of securities by way of public/rights/bonus etc.*

*(d) Any major expansion plans or execution of new projects.*

*(e) Amalgamation, mergers, takeovers and buy-back.*

*(f) Disposal of whole or substantially whole of the undertaking.*

*(g) Any changes in policies, plans or operations of the company.*

**3.2-4** *The trading window shall be opened 24 hours after the information referred to in para 3.2.3 is made public.”*

25. From the material available on record, it is observed that the trading window was kept closed by the Noticee during the period October 20, 2008 to October 29, 2008 in view of the Noticee's Board Meeting which was to be held on October 27, 2008. I note that the allegation against the Noticee, *inter alia*, is that with respect to the corporate announcement regarding receipt of orders by the Noticee which was made on November 01, 2008, the trading window ought to have been closed between October 22, 2008 and November 02, 2008. Instead, the trading window was kept open between October 30, 2008 and November 02, 2008. Hence, it has been alleged that the Noticee had not specified the trading window before the corporate announcement which was made on November 01, 2008 and had not closed the trading window during the UPSI period.

26. In the previous paragraphs, it has been established that the information about the Noticee bagging four orders from the Road Construction Department, Government of Bihar was PSI and the period from October 22, 2008 to November 01, 2008, was the period of UPSI. To decide the allegation of failure of the Noticee to close the trading window during the UPSI period, the foremost requisite is to find whether the Noticee was required to close the trading window in the given circumstances, as alleged in the SCN. Clause 3.2.3 of Code of Conduct for Prevention of Insider Trading, Schedule I of PIT Regulations mentions some of the situations when the company should close its trading window on account of price sensitive information. On analysis of the Clause, it is observed that these situations arise out of proposals originating from the company. Declaration of financial results, dividend etc. arise out of data / information that is with the company and being announced by the company. For proposals originating from the company which are price sensitive in nature, it is appropriate that persons/employees who are aware of such proposals are not allowed to trade in securities of the company during that time and thus, the trading window is closed. Similarly, clause 3.2.3(d) covering any major expansion or execution of new projects would relate to execution of new projects in respect of the company only. In my opinion, execution of new projects for clients would not warrant trading window closure. Therefore, execution of new projects for Bihar Government as stated above, may not fall under the category warranting trading window closure. A similar view

was taken by Hon'ble SAT in its order dated October 19, 2011 in the matter of *Hindustan Dorr Oliver Limited v/s. SEBI (Appeal No. 107/2011)*.

27. In view of the above factual and legal position, I note that even though the information of bagging four orders from Bihar Government for ₹ 963 crore, out of which, the Noticee had a share of ₹ 674 crore, was PSI, the Noticee was not under obligation to keep the trading window closed in the UPSI period. Therefore, I hold that the Noticee has not violated the provisions of Clause 3.2-1, 3.2-3(d) and 3.2-4 of Model Code of Conduct for Prevention of Insider Trading, Schedule I read with Regulation 12(1) and 12(3) of PIT Regulations.

***ISSUE 3: Whether the Noticee is liable for monetary penalty under Section 15HB of the SEBI Act, 1992 and Section 23H of the SC(R) Act, 1956?***

28. The provisions of Section 15HB of SEBI Act, 1992 and Section 23H of SC(R) Act, 1956, read as under:

**"Penalty for contravention where no separate penalty has been provided.**

**15HB:** *Whoever fails to comply with any provision of this Act, the rules or the regulations 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."*

**“Penalty for contravention where no separate penalty has been provided.**

**23H:** *Whoever fails to comply with any provision of this Act, the rules or articles or byelaws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.”*

29. As already observed, the Noticee has failed to disclose the PSI of receipt of four orders from Bihar Government to BSE promptly and immediately thereby violating Clause 2.1 and Clause 7.0(ii) of Corporate Disclosure practices for Prevention of Insider Trading, Schedule II read with Regulation 12 (2) of PIT Regulations. Therefore, the Noticee is liable for monetary penalty under Section 15HB of the SEBI Act, 1992.
30. I also note that the Noticee has violated Clause 36(7) of Listing Agreement read with Section 21 of the SC(R) Act, 1956. However, as per the SC(R) Act, 1956, the appropriate penal provision for failure to comply with provisions of listing agreement is Section 23E of the SC(R) Act, 1956. Since, a separate and specific penal provision for violation of Section 21 of the SC(R) Act, 1956 is mentioned in the SC(R) Act, 1956; it would not be appropriate to impose penalty under Section 23H of the SC(R) Act, 1956 on the Noticee. However, I note that the Proceedings of the Whole Time Member appointing Adjudicating Officer dated March 15, 2012

mention Section 23H and not Section 23E of the SC(R) Act, 1956. Hence, I am unable to impose penalty on the Noticee under the provisions of SC(R) Act, 1956.

***ISSUE 4: What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992 and Section 23J of the SC(R) Act, 1956?***

31. While imposing monetary penalty under Section 15HB of the SEBI Act, 1992, it is important to consider the following factors stipulated in Section 15J of the SEBI Act, 1992, which reads as under:

*“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.”*

32. In the absence of material on record, the amount of disproportionate gain or unfair advantage made as a result of the default and the amount of loss caused to the investors due to the said default cannot be quantified. However, by virtue of the failure on part of the Noticee to make the necessary PSI public on time, the



fact remains that the investors were deprived of the important information at the relevant point of time. In other words, by not complying with the regulatory obligation of making the disclosure to the stock exchange promptly and immediately, the Noticee had concealed the vital information which is detrimental to the interest of investors in securities market. As no other instances of non-disclosure of PSI have been reported, the default cannot be considered as repetitive. At this juncture, I also refer to the observations made by SAT in Appeal No. 208 of 2011 (MAN Industries (India) Ltd. vs. SEBI, decided on 30-03-2012) - *"It is incumbent upon a listed company to make the disclosure on a continuous and immediate basis so that price sensitive information is in public domain and is available to the shareholders for taking informed decisions"*. Hence, the violation by the Noticee needs to be viewed seriously.

33. In the forgoing paragraphs it is now established that the Noticee failed to disclose the PSI of receipt of four orders from Bihar Government to BSE promptly and immediately thereby violating Clause 2.1 and Clause 7.0(ii) of Corporate Disclosure practices for Prevention of Insider Trading, Schedule II read with Regulation 12 (2) of PIT Regulations. Considering the facts and circumstances of the case and the violation committed by the Noticee, I find that imposing a penalty of ₹ 2,00,000/- (Rupees Two Lakhs only) on the Noticee would be commensurate with the violations committed by the Noticee.

## ORDER

34. Considering the facts and circumstances of the case, in exercise of the powers conferred under Section 15 I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, I hereby impose a penalty of ₹ 2,00,000/- (Rupees Two Lakhs only) under Section 15HB of the SEBI Act, 1992 on C&C Constructions Limited for violation of Clause 2.1 and Clause 7.0(ii) of Corporate Disclosure practices for Prevention of Insider Trading, Schedule II read with Regulation 12 (2) of PIT Regulations.
35. The penalty shall be paid by way of demand draft drawn 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 shall be forwarded to the Division Chief, IVD – ID9, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.

In terms of the provisions of Rule 6 of the SEBI Adjudication Rules and Rule 6 of the SCR Adjudication Rules, copies of this Order are being sent to the Noticee and also to Securities and Exchange Board of India.

**Date: May 24, 2012**  
**Place: Mumbai**

**Piyoosh Gupta**  
**Adjudicating Officer**