

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-2/AO/25-32/2013-14]

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

- 1. Shri K.L. Surana [PAN : AJXPS5962M]**
- 2. Shri Sisir Kumar Saha [PAN : AELPS0255G]**
- 3. Shri Chinmoy Mazumdar [PAN : AEBPM9161K]**
- 4. Shri Koushik Roy [PAN : ADJPR7478M]**
- 5. Shri Dibakar Chatterjee [PAN : ACNPC5039N]**
- 6. Shri Asmanja Mitra [PAN : AEKPM9220N]**
- 7. Shri Mahiruha Mukherji [PAN : AJSPM3146Q]**
- 8. Shri Chirantan Mukherjee [PAN : AFAPM5112L]**

In the matter of

Shelter Infra Projects Ltd.

Background

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') has conducted investigation into the alleged irregularity in the shares of Shelter Infra Projects Ltd., formerly known as CCAP Ltd. (hereinafter referred to as 'SIPL') and into the possible violations of the SEBI Act, 1992 (hereinafter referred to as the Act) and the various Regulations made there under for the period from April 01, 2009 to September 22, 2009.
2. The Investigation, inter alia, revealed that the Board of Directors of SIPL approved a Shares Purchase Agreement at its meeting held on July 30, 2009 to be executed between the SIPL and the proposed acquirers on July 31, 2009 for the sale of the issued and subscribed equity share capital of the company held by the erstwhile promoters, as also change in management of the company. On

August 07, 2009 the managers to the offer on behalf of the acquirer issued a public announcement to the equity shareholders of SIPL.

3. According to the Code of Conduct framed and approved by SIPL in terms of Schedule II of the PIT Regulations, the trading window of the company will remain closed during the period of announcement (ten days before and two after the public announcement) of periodical financial results and such other sensitive information like the one cited above. However, SIPL has not introduced any trading window during the above public announcement. Shri K. L. Surana, (Noticee No. 1) was the Compliance Officer and the entities mentioned above at serial No. 2 to 8 were the directors of SIPL (herein after referred to as Noticee Nos.1 to 8 respectively and collectively the Noticees) and were present at the Board Meeting held on July 30, 2009. Allegedly the trading window remained open during the relevant period and Noticee No. 1 had not made any formal communication to the persons/ entities who are subjected to the window closure. The Noticees Nos. 2 to 8 being directors of the board failed to monitor or supervise the implementation of the code of conduct and to ensure the necessary compliances in this regard.
4. SEBI has therefore initiated adjudication proceedings under the Act against the Noticees to inquire into and adjudge the alleged violations of Regulation 12 (1) read with Clause 1.2 of Schedule I, Part A of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as PIT Regulations).

Appointment of Adjudicating Officer

5. SEBI vide order dated June 18, 2012 appointed me as Adjudicating Officer under Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') to inquire into and adjudge under section 15 HB of the Act, the alleged violation of the Noticees.

Show Cause Notice, Reply and Personal Hearing

6. I issued a common notice dated August 27, 2012 ('SCN') under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be held against the Noticees and penalty be not imposed under Section 15 HB of the SEBI Act for their alleged violation of Regulation 12 (1) read with Clause 1.2 of Schedule I Part A of the PIT Regulations.
7. SIPL vide letter dated October 13, 2012 submitted a copy of the Death Certificate of Noticee No. 1 issued by the Department of Health and Welfare, Government of West Bengal dated May 22, 2012. Therefore, the proceedings against him stand abated.
8. The Noticee Nos. 2 to 8 submitted their respective replies to the SCN during the first half of September. The Noticees inter alia submitted as below:
 - i. The Noticee No. 2 submitted that his role in SIPL was mainly that of job execution and bagging new jobs for the company. He being an engineer was not conversant with the SEBI Regulations and acted upon the advice of the Compliance Officer of the company, who did not inform him of the requirement of closing the Trading window before the Public Announcement, resulting in the lapse. He served the company for a year after it was acquired by new promoters and was still not informed about the lapse.
 - ii. Noticees Nos. 3, 4 and 5 submitted that they joined SIPL on May 02, 2001, April 24, 2009 and September 29, 2007 respectively as independent directors. They were not involved in the day to day activities of the company and therefore are neither associated with the matter directly or indirectly. They are civil engineers and advice the company only on engineering matters.
 - iii. Noticee No.6 submitted that he has no knowledge of SEBI rules and technicalities. He was a part-time director when the company was acquired, he never had any active participation in the negotiations and his expertise is in engineering. He was requested by the

company secretary to attend the Board meeting on July 30, 2009, in order to approve the Share Purchase Agreement, despite his ill health. He had no knowledge of the trading window remaining open when public announcement was made, and this amounting to a gross violation of SEBI Regulations, neither did the company secretary (also the compliance officer) inform him of the same. Had he known about the trading window, he would have definitely monitored to ensure the compliance of the same.

- iv. Noticee No 7 submitted that he is a civil engineer and therefore not conversant with SEBI Regulations. He acted on the advice of the compliance officer who did not inform him of the requirement to keep the trading window closed during public announcement. If he was informed of the same, he would have monitored implementation of the same without fail. He has been made a victim to the circumstances.
- v. Noticee No.8 submitted that he completely respects laws and rules of SEBI and had no intension to violate PIT Regulations. It is an established practice that director of a company acts on the advice of the compliance officer. As he was a civil engineer, he depended entirely on the advice given by the compliance officer in the case of the Share Purchase Agreement and purchasing of shares from the market in order to strengthen the shareholding of the promoters in terms of creeping acquisition. He would have monitored the implementation of the code of conduct had he been informed about the same. He has been diagnosed with cancer since June 2012 and is undergoing chemotherapy. He enclosed a copy of the certificate by the attending physician along with the reply.

- 9. After considering the reply submitted by the Noticees, I decided to conduct an inquiry in the matter and accordingly granted an opportunity of personal hearing to the Noticees on October 18 & 19, 2012 vide letter dated October 03, 2012. Noticee No. 2 vide letter dated October 10, 2012 sought for an

adjournment. The hearing notice issued to Noticee No. 4 returned undelivered. The remaining Noticees attended the hearing personally except for Noticee No. 8 and Noticee No.6 who were represented by their authorised representatives, and they reiterated the written submissions. The authorised representative additionally submitted that Noticee No. 6 was an independent director and his role was limited to providing professional advices, attending board meetings and not day to day management. They have ensured broad policies and procedures with respect to regulatory and statutory compliances.

10. I granted another opportunity of personal hearing to Noticee No. 2 and Noticee No. 4 on November 19, 2012 vide letters dated November 01, 2012. Noticee No. 2 attended the hearing and reiterated the written submissions made by him earlier. I granted another opportunity of personal hearing to Noticee No. 4 on November 30, 2012 vide letter dated November 20, 2012. Noticee No. 4 appeared on November 30, 2012 and reiterated his written submissions.

11. In view of the above, I am proceeding with the inquiry taking into account the submissions made by the Noticees, documents and material as available on record.

Issues, Evidence and Findings

12. I have carefully perused the charges leveled against the Noticees mentioned in the SCN, the written and oral submissions of the Noticees and all the materials as available on record. The issues that arise for consideration in the present case are:

- a) Whether the Noticees have failed to comply with Regulation 12 (1) of the PIT Regulations read with Clause 1.2 of Schedule I Part A of the PIT Regulations?**
- b) Do the violations, if any, on the part of the Noticees attract any penalty under Section 15 HB of the SEBI Act?**
- c) If yes, what should be the quantum of monetary penalty?**

13. Before proceeding, I would like to refer to the relevant provisions of the PIT Regulations which read as under:

Insider Trading Regulations

Regulation 12 (1) – Insider Trading Regulations

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

12. (1) All listed companies and organizations 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 organizations recognized or authorised by the Board;
- (c) the recognized 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 without diluting it in any manner and ensure compliance of the same.

Schedule I – Part A

Model Code of Conduct for prevention of Insider Trading for Listed Companies

1.2 The compliance officer shall be responsible for setting forth the policies, procedures, monitoring adherence to the rules for the preservation of 'Price Sensitive Information', pre-clearing; of designated employees' and their dependent trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the board of the listed company.

Explanation: For the purpose of this schedule, the term 'designated employee' shall include:-

- (i) Officers comprising of the top three tiers of the company management
- (ii) The employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objective of this code of conduct.

14. I find that the Noticee No 1 was the compliance officer, and Noticee Nos. 2 to 8 were the Board of Director of SIPL and were present in the Board Meeting held on July 30, 2009 when a Shares Purchase Agreement for the sale of 35.50 % of the issued and subscribed equity share capital of SIPL held by the erstwhile

promoters to M/s. Ramayana Promoters Pvt. Ltd. (Acquirer) as also change in control of the management of the company was approved.

15. The information that M/s. Ramayana Promoters Pvt. Ltd. was taking over the Company became public only on August 7, 2009. I note that SIPL confirmed that no trading window was introduced during the above public announcement vide its letter dated April 04, 2010. Further, no separate letter was issued to the Board members instructing them of the commencement for the closing of the trading window and SIPL had left its trading window open during period of public announcement (ten days before and two days after the public announcement) in contravention to the Code of Conduct for prevention of insider trading followed by SIPL. It is an admitted fact that mere circulation of code of conduct to all the Board members during March end does not tantamount to a communication that the trading window had to be closed before the public announcement. A formal communication indicating the trading window to be closed ought to have been made before the public announcement by the Compliance Officer.
16. However, the Noticee No. 1 against whom the proceeding was initiated expired on May 17, 2010 and is no more alive to face the penalty. In light of the above, I am of the opinion that the proceeding against Noticee No.1 is liable to be abated without going into the merit of the case.
17. Now let me examine the role of the board of directors. As per Clause 1.2 of Schedule I Part A of the PIT Regulations, *'The compliance officer shall be responsible for setting forth the policies, procedures, monitoring adherence to the rules for the preservation of 'Price Sensitive Information', pre-clearing; of designated employees' and their dependent trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct' and this should be done 'under the overall supervision of the board of the listed company'.*

18. As per Regulation 12 (1) of the PIT Regulations all companies shall frame a code of internal procedures and conduct as near there to the Model Code specified in Schedule I of the said Regulations without diluting it in any manner and ensure compliance of the same. The company being an artificial person acts through its board of directors and officers.
19. I find that SIPL has framed and adopted a code of conduct for prevention of Insider Trading as per Regulation 12 (1) of the PIT Regulations and there is no allegation of any short coming with respect to the same. The company/board of directors has also appointed a compliance officer responsible for the implementation of the same. It is therefore the duty of the compliance officer to implement the code of conduct and in case of any difficulty in implementation he/she should bring it to the attention of the board of directors and the board of director in turn shall remedy / remove the difficulties. In my view, the above provision of law does not envisage the board of directors to monitor and supervise the day to day functioning of the compliance department of the company. The substantive corroborative evidences as available on record are insufficient to establish beyond doubt that Noticee Nos. 2 to 8 had done or not done anything with regard to trading window closure in connection with the public announcement which is in contravention of any provisions of the law.
20. From the foregoing findings and observations I conclude that the alleged violations against the Noticee Nos. 2 to 8 does not stand established and is not a fit case to impose any monetary penalty.

Order

21. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby abate the proceeding against the Noticee No. 1 and exonerate Noticee Nos. 2 to 8 from the charges leveled against them. Accordingly, the matter is disposed of.

22. In terms of the provisions of Rule 6 of the Adjudicating Rules the copies of this order are sent to the Noticees and also to Securities and Exchange Board of India.

Date: June 28, 2013

Place: Mumbai

**P. K. KURIACHEN
ADJUDICATING OFFICER**