**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. PG/AO/AB/45/2012]**

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**UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING (OFFICER) RULES, 1995**

**In respect of**

**Mr. G Jayaraman**

**[PAN: ACWPG4618A]**

**In the matter of**

**Satyam Computer Services Ltd.**

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## Background of the case

1. The Securities and Exchange Board of India (SEBI) had conducted investigation pertaining to issues relating to insider trading in the scrip of Satyam Computer Services Limited (hereinafter referred to as **"SCSL"**) during the financial year 2008-09 (hereinafter referred to as the '**investigation period**'). The investigation revealed that on December 06, 2008, Shri B Ramalinga Raju, then Chairman of SCSL, had proposed acquisition of Maytas Infra Ltd. (**MIL**) and Maytas Properties Ltd. (**MPL**) by SCSL. It is observed that SCSL's announcement

on December 16, 2008 to acquire MIL and MPL, the subsequent cancellation of the said proposal on December 17, 2008 and the confession made by Mr. B. Ramalinga Raju, the then Chairman of SCSL, on January 07, 2009 were price sensitive information. The trading window for shares of SCSL was closed from December 17, 2008 and stayed closed till beyond January 9, 2009. SCSL's announcement on December 16, 2008 (evening) to acquire Maytas Infra Ltd. (MIL) and Maytas Properties Ltd. (MPL) resulted in a substantial fall in share price of SCSL on December 17, 2008 when the scrip fell to a low of ₹ 151, a 33.5% fall from previous close, but after the cancellation of the decision, recovered marginally to close at ₹ 157.10 on NSE.

2. The investigation alleged that Shri G. Jayaraman ( "**Noticee"**) who is the Compliance Officer of SCSL, violated the provisions of the 'Model Code of Conduct for Prevention of Insider Trading for Listed Companies' (hereinafter referred to as the **'Code'**) prescribed in Part A, Schedule I under Regulation 12 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **'PIT Regulations'**) during the investigation period by not closing the trading window when unpublished price sensitive information about the acquisition of MIL and MPL by SCSL came into existence.

In view of the findings of the investigation as given above, SEBI, vide Order dated September 12, 2011, had appointed the undersigned as adjudicating officer (AO) under Section 15-I of the SEBI Act, 1992 (hereinafter referred to as the **'SEBI Act'**) read with Rule 3 of Securities and Exchange Board of India **(**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 15HB of the SEBI Act, the alleged violation of the clauses 1.2 and 3.2-3 of the Code prescribed under Part A, Schedule I under regulation 12 (1) of the PIT Regulations by the Noticee.

Show Cause Notice dated September 27, 2011 (SCN) was issued to the Noticee in terms of the provision of Rule 4 (1) of the Adjudication Rules to show cause as to why an inquiry should not be held against him in respect of the violations alleged to have been committed by him. The SCN alleged that the Noticee failed to follow the duties of a Compliance Officer prescribed under the Code under PIT Regulations by not closing the trading window when there was unpublished price sensitive information about SCSL. The Noticee replied to the SCN vide letters dated October 14, 2011 & November 09, 2011 and also appeared for hearing through his representative. Considering the submissions of the Noticee and the material available on record, an adjudication order dated November 29, 2011 was passed whereby a penalty of ₹ 5 Lakh was imposed on the Noticee.

3. The above mentioned adjudication order no. PG/AO-115/2011 dated November 29, 2011 was challenged in Appeal no.04 of 2012, before the Hon'ble Securities Appellate Tribunal, Mumbai (SAT). The Hon'ble SAT vide its order dated March 26, 2012, set aside the adjudication order and remanded the matter to the Adjudicating Officer (**AO**) for recording findings afresh, with regard to the date on which the trading window was required to be closed and pass order within two months from the date of receipt of above mentioned SAT order. The Hon'ble SAT further stated that the matter is not being decided on merits. The Hon'ble SAT vide order dated May 28, 2012 extended the time for passing the order upto July 30, 2012.

**Show Cause Notice, Reply & Personal hearing**

4. A notice was issued on May 8, 2012 to the Noticee reiterating and clarifying the allegation that the Unpublished Price Sensitive Information (**'UPSI'**) came into existence on December 6, 2008 when the acquisition proposal was made and that the trading window should have been closed immediately after the same. Reliance was, inter alia, placed on the letter dated January 5, 2010 sent by the Noticee to SEBI which chronologically listed out the events from December 6, 2008 to December 16, 2008. The Noticee was also given an opportunity of hearing on May 15, 2012 through the same notice. This notice was sent through Speed Post and e-mail to the Noticee. The Noticee vide his letter dated May 14, 2012 sought an extension till May 23, 2012 to file reply and appear for hearing. Another notice was issued to the Noticee on May 18, 2012 providing him opportunity to appear on May 23, 2012. The Noticee vide letter dated May 21, 2012 sought time till second week of June to file his reply and adjournment till third week of June for personal hearing. The authorized representative of the Noticee came for hearing on the said date and asked for further time. Accordingly, another opportunity of hearing was granted to Noticee on June 22, 2012 vide notice dated May 31, 2012. The Noticee filed his reply vide letter dated June 12, 2012 and appeared for hearing on June 22, 2012.

5. The salient submissions of the Noticee, made vide his letters dated 14-10-2011, 09-11-2011 (in response to the SCN dated September 27, 2011) & 12-06-2012 and during the course of hearings are given below:

   - He is the company secretary of SCSL since March 2000 and that in terms of SCSL's Statement of Policies and Procedures for Preventing Insider Trading (**Policy**), he has been designated as the compliance officer of SCSL

and is working under the overall superintendence and guidance of the Board of Directors of SCSL (**Board**)

- As per Clause 3.2-3A of the Code, a company is required to determine the time for commencement of closing the trading window and company's decisions are taken by the Board of Directors. Since there was no direction from the Board of Directors of SCSL to close the trading window, the same was not closed by the Noticee.
- The board meeting on December 16, 2008 was convened on December 13, 2008 without circulating any agenda and the Noticee was not made aware of the matters which were sought to be discussed or transacted at the board meeting by the then chairman until December 15, 2008. On being made aware of the same on December 15, 2008, he prepared the agenda paper but had no reason to believe that the board meeting warranted closure of trading window as the matter was merely in the nature of proposal which was subject to discussion and approval by the board of directors.
- A compliance officer is obliged to discharge the responsibilities under overall supervision of board of directors. Taking a decision unilaterally on such important matter could amount to undermining the authority of board.
- Closure of trading window without direction or in-principle approval would have led to speculative trading by innocent investors.
- He was not involved in the deliberations and decisions by Shri B.Ramalinga Raju, the then chairman and therefore he could not have speculated on when to close the trading window.
- Closing trading window without any sufficient reasons merely on the basis of proposals and presentations about

the subject acquisitions without there being any decision taken in that regard could have defeated the purpose of the code of conduct.

- He was not aware of material details of the said acquisition proposal on December 6, 2008 and the said information was speculative till December 15, 2008.
- Mr. TAN Murti, who had sold shares of SCSL on December 15, 2008, was not a designated employee of SCSL and thus was not covered under the code of conduct under PIT Regulations.
- Pre-clearance was needed by designated employees regardless of trading window being not closed

**Consideration of Issues, Evidence and Findings**

6. I have carefully perused the documents available on record, written and oral submissions made by the Noticee. The issues that arise for consideration in the present case are:

a. Whether the Noticee has violated Clauses 1.2 and 3.2-3 of the Code specified in Part A, Schedule I under Regulation 12 (1) of the PIT Regulations?

b. Does the violation, if any, on the part of the Noticee attract penalty under section 15HB of SEBI Act?

c. If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act?

7. The relevant provisions of the PIT Regulations are as follows:

*"**2.** In these regulations, unless the context otherwise requires:—*

*(a) …..*

*(b) …..*
*(c) …..*

*(d) …..*

*(e) …..*

*(f) …..*

*(g) …..*

*(h) …..*

*(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;"*

***Reg. 12 (1), PIT Regulations-"Code of internal procedures and conduct for listed companies and other entities:*** *All listed companies and organizations associated with securities markets including:*

*a. the intermediaries as mentioned in Section 12 of the SEBI Act, asset management company and trustees of mutual funds;*

*b. the self-regulatory organizations recognized or authorized by the Board;*

*c. ……*

*d. ……*

*e. ……*

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

***"SCHEDULE I, Part-A- Model Code of Conduct For Prevention of Insider Trading for Listed Companies.***

***Clause 1.0- Compliance Officer***

*1.1* ***…….***

*1.2 The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of 'Price Sensitive Information', pre-clearing; of designated employees' and their dependents' 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 the top three tiers of the company management;*

*(j) the employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct".*

***"Clause 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.*

*3.2-3A The time for commencement of closing of trading window shall be decided by the company."*

8. Clause 3.2-1 of the Code prescribed under PIT Regulations provides that the Company shall specify a trading period to be called 'trading window', for trading in the company's securities and the trading window shall be closed during the time the information referred to in clause 3.2-3 of the Code is unpublished. Further, clause 3.2-3A of the Code provides that the time for commencement of closing of trading window shall be decided by the company. Regulation 12 (1) of the PIT Regulations requires that all listed companies shall frame a Code of Internal Procedures and Conduct as near thereto to the Code and as per clause 1.2 thereof, the Compliance Officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of 'price sensitive information' and the implementation of the code of conduct under the overall supervision of the Board of the listed company. It is noted that as per the code framed by SCSL under Regulation 12 of the PIT Regulations, the trading window is required to be closed from the date of existence of UPSI.

9. I find from SCSL's letter dated September 18, 2009 containing the names and designations of various officials who were aware

of the acquisition proposal that the Noticee and other top officials of the SCSL were involved in the discussions pertaining to the said proposal from December 6, 2008 itself . The above letter which was sent by the Noticee to SEBI, on behalf of SCSL, states that the former Chairman of SCSL, Mr. B Ramalinga Raju, Mr. Rama Raju, former Managing Director & CEO and Mr. Srinivas Vadlamani, former Chief Financial Officer along with few other officials had the advance knowledge of the events relating to the acquisition of MIL & MPL. The letter gives details of the employees, mentioned below, who were informed about the acquisition, by virtue of their positions held in SCSL. I find that these officers/ employees were holding important positions in the SCSL.

| Name of the employee | Involvement date | Department |
|---|---|---|
| G Ramakrishna, Vice President- Finance | December 6, 2008 | Finance |
| Srinivasu Satti, Head- Mergers & Acquisitions | December 6, 2008 | Finance |
| Jayaraman G, Company Secretary | December 6, 2008 | Secretarial |
| V S N Raju, General Manager- Secretarial | December 13, 2008 | Secretarial |
| TAN Murti, Head- Investor Relations | December 15, 2008* | Finance |

*(Note : * - As per SCSL letter dated January 05, 2010, T A N Murti became aware of the acquisition proposal on December 14, 2008.)*

10. It is observed from SCSL's letter dated January 5, 2010, forwarded by the Noticee to SEBI on behalf of the SCSL, providing the 'sequence of activities between December 6, 2008 to December 16, 2008', that the proposal for acquisition of MIL and MPL was initiated by Mr. B. Ramalinga Raju, the then Chairman of SCSL on December 06, 2008. The said letter interalia stated as follows:

| Dates | Event |
|---|---|
| December 6, 2008 | *Meetings/Discussions:*<br>• In the morning, Mr. B. Ramalinga Raju (former Chairman) called to his residence the Company Secretary of the Company and told him he was contemplating the Acquisitions. He further explained |

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| | that the proposal is to avoid possible takeover threat by companies like IBM and Microsoft. He further added that he planned to apprise the Board of Directors of the company of the proposed Acquisitions.<br><br>• Later in the day, Mr. B. Ramalinga Raju called to his residence, senior company finance team members (Mr. Srinivas Vadlamani (former Chief Financial Officer and Mr. G. Ramakrishna (Vice President – Finance") who were responsible for statutory compliance and account and treasury activities in connection with the Acquisitions and told them about the Acquisitions.<br><br>• Mr. B. Ramalinga Raju met at his residence, the head of Mergers & Acquisitions of the company (Mr. Srinivasu Satti) who was responsible for conducting independent research on synergies and business models in other such similar acquisitions and also on company's synergies specific to the Acquisitions to apprise him of the Acquisitions.<br><br>• Mr. B. Ramalinga Raju in the presence of Mr. B. Rama Raju and Mr. Srinivas Vadlamani informed Mr. Srinivasu Satti that company intended to acquire Maytas Properties Limited and-Maytas Infra Limited. During the discussions, Mr. B. Ramalinga Raju asked Mr. Srinivasu Satti to prepare a presentation on the Acquisitions (the "Presentation") for the Board of Directors' meeting on December 16, 2008 ("December 16 Board Meeting").<br><br>• After the initial briefing by B. Ramalinga Raju, Mr. Srinivas Vadlamani gave Mr. Srinivasu Satti further details of the Acquisitions.<br><br>• Mr. B. Ramalinga Raju requested all those who met him at his residence to maintain utmost confidentiality about the Acquisitions until the December 16 Board Meeting. |
| December 6-11, 2008 | *Discussions/Research:*<br><br>• Further data and information was sent to Mr. Satti by B. Ramalinga Raju in respect of the Acquisitions.<br><br>• Mr. Srinivas Satti then did independent research on synergies and business models in other such similar acquisitions and also on synergies to company in relation to this specific transaction. |

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| December 7, 2008 | *Discussions/Engagement Letter:*<br><br>• An engagement letter was signed between company (by Mr. Srinivas Vadlamani on behalf of company) and Mr. Raghunandan Rao, a lawyer retained by the company via an engagement letter dated December 7, 2008, pursuant to which Mr. Raghunandan Rao was required to engage E&Y in connection with the Acquisiitions, liaise with Maytas Properties Limited to procure information as required by E&Y and submit a summary and detailed equity valuation report on Maytas Properties Limited's shares prepared by E&Y to company. A copy of company's |

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| | engagement letter with Mr. Raghunandan Rao is attached as Annex A hereto.<br><br>• A copy of the engagement letter was given to Mr. Srinivas Satti by Mr. Srinivas Vadlamani on December 7, 2008. |
| December 11, 2008 | *Discussions:*<br><br>• Mr. Srinivasu Satti had a discussion with Mr. B. Ramalinga Raju regarding his independent research on the synergies and fit. In the course of the discussion, Mr. Srinivasu Satti and Mr. B. Ramalinga Raju identified themes that Mr. Srinivasu Satti used in the Presentation.<br>• Mr. Srinivasu Satti had a discussion with Mr. Srinivas Vadlamani (who he reported to) regarding the issue of the Acquisitions being related party transactions. Mr. Srinivas Vadlamani asked Mr. Srinivasu Satti to think about the pros and cons of the Acquisitions keeping aside the related party issued.<br><br>*Discussions/Engagement Letter:*<br><br>• An engagement letter was signed between Mr. Raghunandan Rao and E&Y, pursuant to which E&Y was appointed to provide an equity valuation report on Maytas Properties Limited's shares. A copy of Mr.Raghunandan Rao's engagement letter with E&Y is attached as Annex B hereto. |
| December 11-15, 2008 | *Presentation/Discussions:*<br>•Mr. Srinivasu Satti prepared the Presentation and received input from Mr. B. Ramalinga Raju on the Acquisition targets. |
| December 6-13, 2008 | *Discussion:*<br>• Mr. B. Ramalinga Raju went to the United States around 7, 2008 (and returned around December 13, 2008) to meet directors of the company Mr. Krishna G. Palepu, Dr. Mangalam Srinivasan and Mr. Vinod K. Dham to brief them on the Acquisitions. |
| December 13-15, 2008 | *Discussions/Correspondence:*<br><br>E&Y submitted its valuation report dated December 13, 2008 to Mr. Raghunandan Rao. Mr. Raghunandan Rao then forwarded the E&Y valuation report to the company on December 14,2008.<br>• The valuation report dated December 13, 2008 was given to Mr. Srinivasu Satti on December 14, 2008.<br>• On December 13, 2008, a third party opinion was taken on the investment limits u/s 372A of the Companies Act, 1956.<br>• On December 13, 2008 notice was sent Board of Directors of the company about the Board of Meeting scheduled for December 16, 2008<br>• Mr. Srinivas Satti and Mr. B. Ramalinga Raju discussed and considered the E&Y valuation report and title reports on the Acquisitions targets.<br>• On December 15, 2008, Mr. B. Ramalinga Raju informed Mr. Srinivas Satti of the final purchase price and told him that the Acquisitions would be financed 70% through cash and 30% through debt. |
| December 13, 2008 | *Meeting:*<br>• Mr. Ramalinga Raju and Mr. B. Rama Raju met with company's President – Healthcare and Commercial Businesses and Whole-time Director (Mr. Ram Mynampati) at company's City Centre office in Hyderbad at which meeting Mr. Myanampati was briefed, |

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| | initially by Mr. B. Rama Raju and then by Mr. B. Ramalinga Raju, about the Acquisitions. |
| December 14, 2008 | *Meeting:*<br>• Mr. B. Rama Raju, Mr. Srinivas V, and Mr. Srinavas Satti took Mr. Ram Mynampati through the details of the Acquisitions, with the brief that this was diversification initiative and the best form of defense in the current volatile environment. A discussion took place on the rationale, risks, stakeholder reaction, and need to have a comprehensive communication strategy in respect of the Acquisitions.<br>• Mr. T.A.N. Murti joined the discussion later to share updates on investor sentiment on the IT sector and competitive information.<br>• Mr. B. Ramalinga Raju and Mr. B. Rama Raju told Mr. Ram Mynampati that the other members of company's Board of Directors had been already briefed and were supportive of the Acquisitions. |
| December 15, 2008 | • The Presentation, agenda for the December 16 Board Meeting and board resolution materials were uploaded on company's Boardroom portal. Maytas Properties Limited and Maytas Infra Limited were mentioned as B1 and B2 in these documents. |
| December 15, 2008 | • There were discussions between Mr. Ram Mynamapati, Mr. B. Ramalinga Raju, Mr. B. Rama Raju, Mr. Srinivas V., and Mr. TAN Murti to discuss the anticipated investor sentiment and to prepare for communications with investors. Such discussions also took place on December 16, 2008 to finalise the investor communication. |

11. The Noticee has contested the fact that the said proposal for acquisition of MIL and MPL on December 06, 2008 amounted to UPSI which warranted closure of trading window. He has primarily rested his case on the contention that the information about acquisition was merely a proposal which was subject to discussion and approval by the Board and did not constitute UPSI warranting closure of trading window. He has contended that only a proposal approved by the Board could be considered as UPSI. I find that the questions as to whether the said acquisition proposal amounted to UPSI warranting closure of trading window and, if yes, then when the UPSI came into existence are at the heart of the matter which need to be addressed in order to decide the issues at hand. The entire case against the Noticee hinges on the answer to these questions and thus the same have to be resolved to arrive at any definite conclusion regarding Noticee's liability.

12. In order to decide whether the said acquisition proposal amounted to 'price sensitive information', it is imperative to look into the relevant legal provisions concerning the same. As per Regulation 2 (ha) of the PIT Regulations, '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*. The explanation given therein provides a list of 7 types of information deemed to be price sensitive information ('**PSI**'). I find that the various types of information mentioned in the said list are very wide in nature & scope and are not limited to only concrete decisions/step taken in that regard. They are broad enough to cover within their ambit any information, related to these 7 types of information in the list, which if published is likely to materially affect the price of securities of a company, which could even be in the nature of a proposal. Hence, the Noticee's contention that until a proposal attains finality through a decision it does not amount to price sensitive information is incorrect and cannot be accepted. Having noted as above, it is now to be seen whether the said acquisition proposal falls within the ambit of definition of PSI under Regulation 2 (ha).

13. The events of December 06, 2008 pertaining to the said acquisition proposal can be summarized as:

Shri B.Ramalinga Raju, then Chairman, SCSL called the following senior officials to his residence for meeting:

- Mr. Srinivas Vadlamani (former Chief Financial Officer)
- Mr. G. Ramakrishna (Vice President- Finance) Both were responsible for statutory compliance and accounts and treasury activities

- Mr G Jayaraman, Co Secy and compliance officer (Noticee)
- Mr. Srinivas Satti, Head of Mergers and Acquisitions

During the meeting he said that he was contemplating acquisition of Maytas Infrastructure Ltd (MIL) & Maytas Projects Ltd (MPL) by SCSL. Shri B.Ramalinga Raju further added that he planned to apprise the Board of Directors of SCSL of the proposed acquisitions. An analysis of the events on December 06, 2008 mentioned above reveals that the said acquisition proposal was not one which could be viewed as premature or improbable. It was well known that all the three companies involved in the said acquisition proposal viz. SCSL, MIL and MPL were controlled by the same family i.e. family of Shri B. Ramalinga Raju. The proposal regarding the acquisition was made by none other than Shri B. Ramalinga Raju himself who was the chairman of SCSL at that time. All these facts coupled with the facts that the proposal was discussed with top ranking officials of SCSL, that Mr. B. Ramalinga Raju intended to apprise the Board of directors of SCSL regarding the acquisitions and that Shri B. Ramalinga Raju instructed all those who met him at his residence to keep the matter confidential till the board meeting on December 16, 2008 leave no doubt whatsoever that it was a significant proposal and considering the size of MIL & MPL the same had vast financial and other implications for SCSL. The publication of such proposal would definitely have materially impacted the price of the scrip. In fact, SCSL's announcement on December 16, 2008 (evening) to acquire Maytas Infra Ltd. (MIL) and Maytas Properties Ltd. (MPL) resulted in a substantial fall in share price of SCSL on December 17, 2008 when the scrip fell to a low of ₹ 151, a 33.5% fall from previous close, but after the cancellation of the decision, recovered marginally to close at ₹ 157.10 on NSE.

Thus, it is clear that the acquisition proposal was price sensitive information having huge implications. I find that the events of December 06, 2008 and other factors as mentioned above not only establish that the acquisition proposal was 'price sensitive information, they also prove that the said proposal was price sensitive information right on the day it was initiated i.e. December 06, 2008.

14. While the events of December 06, 2008 and other factors discussed above clearly establish that the acquisition proposal deserved to be treated as price sensitive information, the subsequent events over the next few days confirm the same and show that the proposal was being pursued in all earnest. It is also observed from the chronology of events that SCSL completed all exercises such as valuation and legal opinion in a very short span of time between December 6, 2008 and December 15, 2008. It is also observed that even before the Board meeting, Sh B.Ramalinga Raju had discussions with the various board members and secured their support for the proposal. The manner in which the proposal was initiated and accepted indicates the level of preparation done by SCSL and shows that that the proposal was final in all aspects and obtaining the approval from the Board was merely a formality which was fulfilled on December 16, 2008. Thus, it would be incorrect to treat the proposal to acquire MIL and MPL as an ordinary proposal and hence not a PSI.

15. Having arrived at the conclusion as above that the acquisition proposal was price sensitive information, the next important thing to be decided is whether the same warranted closure of trading window under clause 3.2-3 of the Code. In this regard I would like to refer to the observations made by the Hon'ble SAT in the case of *Hindustan Dorr Oliver Ltd vs. SEBI (Appeal no. 107 of 2011, decided on 19.10.2011)* wherein it was held that

for closure of trading window the information should be covered in the seven categories mentioned in clause 3.2-3 and must relate to the company. In the case of Hind Dorr Oliver (Supra) SAT has interalia stated - "*The definition of 'price sensitive information' as given in regulation 2(ha) of the Regulations is much wider. However, for the purpose of closing the trading window, the model code of conduct, prescribed in the regulations, has listed only seven specific contingencies relating to "the company" only. It does not require closing of the trading window in respect of other price sensitive information. The company, while framing its code of conduct has listed all the seven contingencies and these contingencies relate to the company.*"

16. It is observed that the types of information requiring a trading window closure mentioned in clause 3.2-3 of the Code closely resemble the list of information deemed as PSI under Regulation 2 (ha) of PIT Regulations. Serial no. (v) of explanation to regulation 2 (ha) of PIT Regulations mentions *amalgamation, mergers or takeovers* in the list of information deemed to be 'price sensitive information'. Similarly, Clause 3.2-3 of the Code also includes, at serial no. (e) *Amalgamation, mergers, takeovers and buy-back* in the list of information at the time of which the trading window has to be closed. I find that the ambit of both the lists is wide enough in scope to cover any proposal related to matters therein, the publication of which is likely to materially affect the price of the securities of a company. Further, the provisions of Regulation 2(ha) of PIT Regulations and clause 3.2-3 of the Code do not distinguish between a proposal and a confirmed decision. Therefore, the said acquisition proposal, which has already been concluded to be price sensitive information, is definitely covered by the abovementioned entries at serial no. (v) under Explanation to Regulation 2 (ha) of the PIT Regulations and at serial no. (e) of clause 3.2-3 of the Code. This proposal originated from within

SCSL and no outside entities were involved in its origin. However, the directors / concerned officials of SCSL were definitely aware of the same since the date of discussion with them. Since it was directly related to SCSL, there is no scope for any doubt that the said proposal triggered the requirement of closure of trading window under clause 3.2-3 of the Code.

17. The Noticee has contended that he was unaware of the developments that took place after the meeting with Shri B. Ramalinga Raju on December 6, 2008 and it was only on December 15, 2008 that he came to know about the agenda and the fact that the acquisition proposal was being included in the agenda. Thus, he was unaware about the developments within SCSL and was unaware of any UPSI. This contention is fallacious in two aspects. Firstly, as discussed earlier, the proposal to acquire MIL and MPL was clearly a price sensitive information from the outset and it is immaterial that it was formally put on agenda only on December 15, 2008. The test for deciding if any information is price sensitive information under Regulation 2 (ha) is to see whether its publication/dissemination is likely to materially impact the price of the scrip and not whether it is put on the agenda of the Board. Thus, the inclusion of the acquisition proposal on the agenda was inconsequential for determination of the fact that proposal was UPSI and warranted a trading window closure. The proposal became a UPSI when it was discussed in the meeting of December 6, 2008 and the Noticee should have closed the window once he came to know about the proposal. Secondly, the proposal and the subsequent events leading to the Board meeting were very significant and it is highly improbable that the Noticee, who held a senior position in SCSL, was completely unaware of the happenings in SCSL. This defense, if accepted, would make the role of compliance officer redundant in the code because the compliance officer in

that case would be aware of any PSI only when specifically communicated. This was not the purpose when the code was drafted as it has cast various responsibilities on the compliance officer. If the compliance officer is supposed to wait for official communication of a UPSI, then he would not be able to stop any insider trading and thus would not be able to effectively discharge his duty as envisaged in the code.

18. The Noticee has further contended that closing trading window without any sufficient reasons merely on the basis of proposals and presentations about the subject acquisitions without there being any decision taken in that regard could have defeated the purpose of the code of conduct. In this connection, it is pertinent to mention that matters like consideration of accounts, declaration of dividend, bonus, acquisition of entities, mergers, amalgamations, etc which are on the agenda for the board meeting are actually only proposals before the Board. From the proposal stage itself, such information becomes price sensitive and remains so till decision thereon is disseminated to the public. If the Noticee's contention to distinguish between a proposal and a final decision by the board of directors were to be accepted then the trading window closure would be only for 15 minutes because as per Listing Agreement, a company has to disclose the decisions of the Board meeting within 15 minutes to the stock exchanges. Thus, effectively the decision would remain unpublished for a maximum span of 15 minutes. However, the PIT regulations and the Code thereunder aim to stop any trading based on UPSI. Thus, the ambit of PIT regulations cannot be restricted only to decisions. Therefore, a proposal having implications on the price of the scrip of SCSL would be a price sensitive information warranting immediate action by SCSL.

19. Having decided as above, the next issue to be looked into is the alleged failure of the Noticee to comply with the provisions of the PIT regulations mentioned in the SCN. Clause 1.2 of the Code provides that

> *"The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of 'Price Sensitive Information', pre-clearing; of designated employees' and their dependents' 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."*

20. The abovementioned provision clearly provides that the compliance officer is responsible to take all steps to ensure that any insider trading based on UPSI be prohibited. Accordingly, the Noticee being the Compliance Officer of SCSL had major role to play in the company, of monitoring adherence to the rules for preservation of price sensitive information and implementation of the Code. Even though the clause specifies that the compliance officer is to execute his responsibilities under the overall supervision of the Board, yet the provision confers key responsibilities on the compliance officer, which cannot be overlooked. The Noticee as the compliance officer of SCSL thus carried the responsibility of ensuring the closure of trading window under the circumstances given in clause 3.2-3 of the Code. The Noticee has contended that since there was no direction from the Board of Directors of SCSL to close the trading window, the same was not closed by the Noticee. However, the Noticee has not made any submissions regarding when and what steps he took for taking approval from SCSL Board for closing the trading window. If the Noticee were to always wait for instructions from the Board to close the trading window as contended by him, then the purpose of the provision

contained in Clause 1.2 of the Code gets defeated as the provision clearly emphasizes upon the role of the compliance officer who shall, inter alia, be responsible for implementing the Code under the overall supervision of the Board. As compliance officer, he cannot raise the defence that internal approvals were not available. As stated earlier such contention, if accepted, would render the stipulation of appointment of compliance officer meaningless and goes against the spirit of the PIT Regulations. Thus, the Noticee's submission that unless it is communicated to him and approved by the Board of Directors, he will have no knowledge of the price sensitive information warranting closure of the trading window is not correct. The Noticee was aware that the acquisition of MPL and MIL is very price sensitive information and being the compliance officer he should have used his judgment and taken steps for closure of the trading window without waiting for any communication/approval.

21. The Noticee has further contended that such premature closure of trading window could lead to speculative activity. At the outset it would be pertinent to mention that the closure of trading window is not connected with disclosure of an UPSI to the general investors. The purpose of PIT regulations is to prohibit insiders from benefiting from the UPSI. The closure of trading window is only aimed at to prevent trading by the designated employees of the company. Trading window closure is an internal procedure and affects only the designated employees of the company and thus, any consideration towards its impact on trading in the market by outsiders is unwarranted.

22. The Noticee has also contended that the non closure of trading window was inconsequential as trades by designated employees would require pre-clearance even when trading window is not closed. However, the issue here is not whether

the pre clearance requirement would have prevented the designated employees from trading but whether the Noticee failed in discharging his obligation to close the trading window when UPSI was there. Thus, I find no merit in the above contention of the Noticee.

23. Thus, as the Compliance officer of SCSL, the Noticee ought to have closed the trading window when the UPSI came into existence on December 6, 2008 as prescribed under Clauses 1.2 and 3.2-3 of the Code specified in Part A, Schedule I under Regulation 12 (1) of the PIT Regulations.

24. As regards the employees who traded in the scrip while the internal discussions on the said acquisition deal were going on in SCSL, I note that Shri TAN Murti who was the Head- Investor Relations in SCSL and one of the key personnel got to know about the acquisition deal in advance by December 14, 2008. As the trading window was not closed at the appropriate time, he traded on December 15, 2008, i.e., before the announcement of the proposed acquisition came on December 16, 2008 and sold 14, 500 SCSL shares at an average price of ₹ 226 per share on December 15, 2008 from around 11:30 AM, after which his holding reduced to 3000 shares. It is to be noted that there are separate adjudication proceedings pending against Shri. TAN Murti for insider trading in SCSL shares.

25. From the foregoing, I conclude that by not closing the trading window the Noticee has not fulfilled his duties and responsibilities as the Compliance officer of SCSL, thereby breaching Clauses 1.2 and 3.2-3 of the Code read with Regulation 12 (1) of the PIT Regulations warranting imposition of penalty under Section 15HB of the SEBI Act.

26. The Hon'ble Supreme Court of India in the matter of ***SEBI vs. Shri Ram Mutual Fund***[1] held that *"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow."*

27. Thus, the aforesaid violations by the Noticee make him liable for penalty u/s. 15HB of the SEBI Act which reads thus:

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

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

***"Factors to be taken into account by the adjudicating officer.***

*While adjudging quantum of penalty under S.15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

*(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*

*(b) the amount of loss caused to an investor or group of investors as a result of the default;*

(c) *the repetitive nature of the default."*

29. The basic purpose of the trading window closure requirement in the PIT Regulations is to prohibit trading by insiders by virtue of their access to price sensitive information and thereby gain at the cost of investors. This is to bring about fairness in the securities market. Thus, any violation of the PIT Regulations and the Code prescribed therein has to be viewed seriously. It is difficult to assess the disproportionate gain or unfair

[1] (2006) 68SCL 216 (SC)

advantage made by the Noticee and it is also not possible to ascertain the quantum of loss to investors as a result of the said failure to close the trading window when there was unpublished price sensitive information. This was very significant information which led to a fall of 33.5 % of share price which is quite substantial. It has been established that the Noticee failed to comply with the requirements under the Code prescribed in PIT Regulations. It is observed that some of the employees even traded in SCSL shares allegedly based on the UPSI. For orderly and fair functioning of the securities market, it is essential for every market player to fulfill the requirements mandated in the law. The duty weighs even more on a person like Compliance Officer, who is conferred upon with key responsibilities in a company. Hence, the violation by the Noticee needs to be viewed seriously.

**ORDER**

30. After taking into consideration all the facts and circumstances of the case, I come to conclusion that this is a fit case for imposing the monetary penalty on the aforesaid Noticee. I, in exercise of the powers conferred upon me under section 15- I (2) of the SEBI Act, impose a penalty of ₹ 5,00,000/- (Rupees Five lakhs only) on the Noticee in terms of Section 15HB of the SEBI Act for violation of Clauses 1.2 and 3.2-3 of the Code of Part A, Schedule I under Regulation 12 (1) of the PIT Regulations. I am of the view that the said penalty is commensurate with the violation committed by the Noticee.

31. The penalty shall be paid by way of a duly crossed 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 Deputy General Manager, Investigation Department-6 (IVD-ID6), Securities and Exchange Board of India, Plot no.C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai- 400 051.

32. In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India. The matter is disposed of accordingly.

**DATE: July 27, 2012** **PIYOOSH GUPTA**
**PLACE: Mumbai** **ADJUDICATING OFFICER**