BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-2/DSR/KM/PU/73/2014]

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
Shelter Infra Projects Ltd.

[PAN: AABCC2340F]

Background

1. The Securities and Exchange Board of India (hereinafter referred to as "SEBI") carried out an investigation into the alleged irregularity in the scrip of M/s Shelter Infra Projects Limited (previously known as Central Concrete and Allied Products Private Limited)(hereinafter referred to as '**SIPL**' or '**the company**') for the period from April 01, 2009 to September 22, 2009 (hereinafter referred to as the '**investigation period**') during which the price of the scrip increased from ` 9.0 to a high of ` 62.05, i.e. a rise of 589%.

2. The Investigation, *inter-alia,* had revealed that SIPL had entered into a Share Purchase Agreement, to be executed between SIPL and the proposed acquirers, M/s Ramayana Promoters Pvt. Ltd. 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. It was observed that the Noticee failed to close the trading window from the day a proposal of change/takeover of management of SIPL for the execution of the Shares Purchase Agreement was placed before the board on July 30, 2009. Further, post the signing of the Shares Purchase Agreement, the Noticee failed to disclose the

holdings of Acquirer, Ramayana promoters Pvt. Ltd. (Ramayana) in the 'promoters' category and instead wrongly included it under the 'public' category for the period from January 2010 to July 2010. The Noticee even continued to report the holdings of one Shri Chirantan Mukherji and others under the category of "Promoter and Promoter Group" till July 08, 2010, despite Shri Chirantan Mukherji, Shri Asamanja Mitra and Shri Mahiruha Mukherji had resigned from SIPL with effect from December 01, 2009. Thus the Noticee failed to provide the correct shareholding. The Noticee was required to appraise the shareholders of the acceptance of Shares Purchase Agreement by the Board to avoid the establishment of false market. However, the Noticee failed to do the same.

3. SEBI has, therefore, initiated adjudication proceedings under the Act against the Noticee to inquire into and adjudge the alleged violations of Clause 35& 22 of the Listing Agreement, Regulation 12 (2) read with Clause 2.1 in Schedule II, Part A of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (PIT Regulations) and Regulation 12 (1) further read with Clause 3.2-1 and 3.2-3A of Schedule I, Part A of the PIT Regulations.

Appointment of Adjudicating Officer

4. I have been appointed as the Adjudicating Officer (AO), in place of previous Adjudicating Officer, vide order dated August 29, 2013 under section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '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 'Adjudication Rules') read with SCRA (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as 'SCRA Adjudication Rules') to inquire into and adjudge under Section 15 HB of the SEBI Act and Section 23 A (a) of the Securities Contracts (Regulation) Act, 1956 (herein after referred to as 'the SCRA'), the alleged violation of the provisions of law by the Noticee.

Show Cause Notice, Reply and Personal Hearing

5. A show cause notice dated August 28, 2012 (hereinafter referred to as "SCN") was issued to the Noticee under Rule 4(1) of the said Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on it under Section 15 HB of the SEBI Act and Section 23A (a) of SCRA for the alleged violation of Clause 35&22 of the Listing Agreement, Regulation 12 (2) read with Clause 2.1 in Schedule II, Part A and Regulation 12 (1) further read with Clause 3.2-1 and 3.2-3A of Schedule I, Part A of the PIT Regulations. The Noticee submitted its reply vide letters dated October 13, 2012, October 16, 2012 and December 16, 2013.

6. After considering the reply submitted by SIPL, an opportunity of personal hearing was granted on October 18, 2012 vide letter dated October 03, 2012. The Authorized representative attended the hearing and reiterated the submissions made earlier and further made additional submissions vide letter dated October 16, 2012. The Noticee, inter alia, submitted that the demat shares continued to be in the name of the sellers (Shri Chirantan Mukherji and group) since the same could not be transferred in favour of the buyers (Ramayana). They moved the High Court of Calcutta when their effort to transfer the shares in their name failed. The Noticee has produced a copy of the High Court order dated September 21, 2010.

Issues, Evidence and Findings

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

   a. Whether the Noticee has failed to comply with provisions of Clause 22 (d) and 35 of the Equity Listing Agreement, Regulation 12 (1) read with clause 3.2-1 and 3.2-3A of Schedule I, in Part A and Regulation 12 (2) further read with Clause 2.1 of Schedule II, Part A of the PIT Regulations ?

b. Do the violations, if any, on the part of the Noticee attract any penalty under Section 23 A (a) of SCRA and Section 15 HB of the SEBI Act?

c. If yes, what should be the quantum of monetary penalty?

8. The provisions of Clause 22 (d) and 35 of the Listing Agreement, Regulation 12(1) read with clause 3.2-1 and 3.2-3A of Schedule I, in Part A and Regulation 12 (2) further read with Clause 2.1 of Schedule II, Part A of the PIT Regulations read as under:

Listing Agreement

22. *The Company will immediately on the date of the meeting of its Board of Directors held to consider or decide the same, intimate to the Exchange within 15 minutes of the closure of the Board Meetings by Letter/fax (or, if the meeting to be held outside the City of Mumbai, by fax/telegram) –*

…

(d) any other information necessary to enable the holders of the listed securities of the company to appraise its position and to avoid the establishment of a false market in such listed securities.

35. *"The issuer company agrees to file with the exchange the following details separately for each class of equity shares/security in the formats as specified in the clause, in compliance with the following timelines, namely:-*

(a) One day prior to the listing of its securities on the stock exchanges.

(b) On a quarterly basis, within 21 days from the end of each quarter.

(c) Within 10 days of capital restructuring of the company resulting in a change exceeding +/-2% of the total paid up share capital".

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.
(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.

Schedule I – Part A - 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.*
…..
3.2.3A *The time for commencement of closing of trading window shall be decided by the company.*

Schedule II - CODE OF CORPORATE DISCLOSURE PRACTICES FOR
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.*

9. It is alleged in the SCN 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. The Shares Purchase Agreement was signed on July 31, 2009 and the same is mentioned in the open offer. The period of UPSI was considered to be from May 21, 2009 to August 06, 2009. On August 07, 2009 the managers to the offer issued a public announcement to the equity shareholders of SIPL, on behalf of the acquirer. The Noticee had failed to close the trading window from the day a proposal of change/takeover of management of SIPL for the execution of the Shares Purchase Agreement was placed before the board on July 30, 2009. Further, post the signing of the Shares Purchase Agreement, the Noticee failed to disclose the holdings of Acquirer, Ramayana in the 'promoters' category and instead wrongly included it under the 'public' category for the period from January 2010 to July 2010. The Noticee also continued to report the holding of one Shri

Chirantan Mukherji, Shri Asamanja Mitra and Shri Mahiruha Mukherji under the category of "Promoter and Promoter Group" till July 08, 2010, despite them having resigned from SIPL with effect from December 01, 2009, thereby failing to provide the correct shareholding. Furthermore, the Noticee failed to appraise the shareholders of the acceptance of Shares Purchase Agreement by the Board to avoid the establishment of false market.

10. Under the provisions of Clause 35 of the Listing Agreement, companies listed on BSE are required to file with BSE on a quarterly basis, within 21 days from the end of each quarter, their Shareholding Pattern in the specified format. I observe from the Noticee's submission that Ramayana entered into the Shares Purchase Agreement with Shri. Chirantan Mukherji and others, as mentioned above to acquire 35% shares and paid more than ` 10 crores. The negotiation persisted for considerable period prior to entering into the Shares Purchase Agreement on July 31, 2009. The purchase price was `80/- per equity share of `10/- when prevailing market price was `41.90. Certain share certificates and demat share transfer instruments were exchanged against Pay orders for `10,13,92,800/-. Public announcement for open offer appeared on August 06, 2009 for purchase of 20% of shareholdings from 'public category'. Ramayana deposited the entire amount (100%) of the consideration of ` 5,71,22,640/- into the designated escrow account of HDFC Bank despite the option of purchaser to deposit only 25% of the amount payable. 51,989 physical shares were transferred in normal course, however, the demat shares could not be transferred due to defects in the transfer documents. The sellers persistently refused to rectify the defective demat instruments despite the receipt of full consideration beforehand. When they learnt that there were defects in the Shares transfer documents, its name could not be entered into the list of members/shareholder of the company and it was pledged with its banker (SBI) as well. Ramayana approached the Hon'ble Calcutta High Court (ordinary original Civil Jurisdiction) vide petition T No. 3 of 2010 for appropriate order/directions, inter alia, for affecting transfer of the shares purchased under SPA dated July 31, 2009 for which payment was made

on July 31, 2009. Subsequently, the matter was referred to arbitration under Section 9 of the Arbitration and Conciliation Act, 1996 before the Hon'ble Chittatosh Mookherjee, former Chief Justice of Calcutta High Court, Arbitrator, which came in favour of Ramayana at the end vide Arbitral award dated April 12, 2012. The name of the buyer, Ramayana was entered into the list of members/shareholder of the company only after a successful transfer in favour of it through delivery instruction slip by seller (Mr. Chirantan Mukerjee and others) to Axis Bank dated July 30, 2012, after a waiting period of 3 years from the date of payment. Meanwhile, Ramayana requested SBI (the pledgee of the shares in question) to release the pledge on shares in question on the basis of Settlement Agreement between the buyer and seller. Further SBI, vide its letter no. IFB/ADV/RM-11/19/286 dated October 18, 2011 and letter no. IFB/ADV/RM19/305 dated December 22, 2012 agreed to re-pledge the shares in question in the name of the buyer. They paid another 35 lakhs in course of settlement by way of arbitration in order to end the litigation and revive the company. They had compliance issues such as the buyer paying ` 10 crore to the erstwhile promoters for acquiring 35.5% stake in the Company and paid ` 6 crore to public shareholders to buy 20% shareholding from them, as statutorily required. Despite all their efforts they did not get their dues and therefore had to move the judiciary. They allowed the existing Whole time Director, Shri Mahiruha Mukherji to complete his contractual terms as he was authorised and delegated by the Board of Directors to ensure statutory compliance. It was the responsibility of Shri Mahiruha Mukherji and the compliance officer to take care of the compliance issues. Late Shri K. L. Surana, erstwhile Company Secretary and Compliance officer of the company was handling the compliance matters and however, expired on May 17, 2012. The Noticee further submitted that it is the duty of the pledgor to release the shares from the pledgee and then transfer. But in this case, the pledgor neither released the pledged shares nor instructed the pledgee to create a new charge in the name of the buyer as a result of the transfer of shares in question. From the above, it is clear that shares in question were not registered in the name of the buyer in the register of members of the

company for the purpose of being called a shareholder/promoter and that might be the reason that Shri K. L. Surana erstwhile Compliance officer, did not report it in the share holding pattern or would be under influence of previous management to show the seller side as controller of company in form of promoter on record to put them in a better position to bargain. Also unfortunately most of the omissions happened during his tenure and he is not available to respond to the queries. The buyer or its promoters have not done anything to violate any law. None of them made any unethical or illegal gain from the alleged violations.

11. I find merit in the submissions of the noticee that the shares in question were not registered in the name of the buyer in the register of members of the company until three years after having entered into the Shares Purchase Agreement on July 31, 2009. Therefore, since the shares in question were not registered in the name of the buyers, I find that the compliance officer did not report it. Consequently, I conclude that the violation of provisions of clause 35 of the listing agreement does not stand established.

12. Under the provision of Clause 22(d) of the Listing Agreement, the company will immediately on the date of the meeting of its Board of Directors held to consider or decide on e.g. interest on debentures and bonds and redemption amount of redeemable shares or of debentures and bonds will be payable etc., intimate the exchange within 15 minutes of the closure of the Board Meeting by Letter/fax (or if the meeting is held outside the city of Mumbai, by fax/telegram) and any other information necessary to enable the holders of the listed securities of the company to appraise its position and to avoid establishment of a false market in such listed securities. I observe from the Noticee's submission that the date of the Shares Purchase Agreement was signed on July 31, 2009 which happened to be a Friday, meaning that technically the date of public announcement ought to have been August 06, 2009 i.e. Thursday, the 4th working day from the date of SPA but public announcement

was made on August 07, 2009. It is an admitted fact that the mistake lies on the part of Sumedha Fiscal Services Ltd. (Manager to the offer) who was working in consultation with the Compliance officer, in calculation of working days for public announcement. Further, I note from the Noticee's submission that the compliance matters are the compliance officer's concern and he/she is responsible for adherence to the rules and regulations affecting company directly or indirectly. However, they are not in a position to say whether, whatever mistakes or non-compliances were made by Late Shri K.L. Surana was done out of his non-competence, lack of knowledge or if he had done the same in collusion with the previous management or he was under the influence of previous management who were primarily appearing to be the beneficiary. Further, as per Regulation 12(2) read with Clause 2.1 of Schedule II of the PIT Regulations prompt disclosure of price sensitive information should have been disseminated by listed companies to stock exchanges on a continuous and immediate basis. I find that the acceptance of SPA by the Board should have been appraised to the shareholders to avoid the establishment of false market as required under clause 22 (d) of the listing agreement. In view of the above, I conclude that the violation of provisions of clause 22 (d) of the listing agreement and Regulation 12(2) read with Clause 2.1 of Schedule II of the PIT Regulations by the company stands established.

13. As regards the violation of Regulation 12(1) further read with clause 3.2-1 and 3.2-3A of Schedule I, Part A of the PIT Regulations, I find that the trading window was not introduced at the time of declaration of price sensitive information as per the code of conduct of the company. As per said Regulations, 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 employee' 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. 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 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. However, the Noticee also submitted that it is clearly the responsibility of the compliance officer to comply with the said regulation.

14. I note that the Hon'ble SAT, in Alka Securities Ltd Vs SEBI (Order dated December 22, 2011) observed as follows: "*In regard to company's appeal, it was stated by the learned counsel for the appellant that the company has no mind of its own and it acts only through its directors. According to him, by punishing the company the current shareholders are being punished. We are unable to accept this argument either. Section 27 of the Act, inter alia, provides that when an offence under the Act has been committed by a company, every person who at the time the offence was committed was in-charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against. This provision also applies to the violation of the regulations framed under the Act. Therefore, we are unable to accept the argument that since the company acts through its directors, the company cannot be punished for the violations in question*".

15. In view of the above observations of the Hon'ble SAT, I find that the Noticee is responsible for the actions of its employee, and therefore responsible for the conduct and actions of the compliance officer appointed by the board. The Noticee must be held responsible for the conduct and actions of the compliance officer as stated in the regulations that the compliance officer must perform his duties under the overall supervision of the Board. Consequently, the violation of provisions of Regulation 12 (1) further read with Clause 3.2-1 and 3.2-3A of Schedule I, Part A of the PIT Regulations, against the Noticee stands established.

16. Thus, from the abovementioned paras, I find that the Noticee has violated the provisions of clause 22 (d) of the listing agreement and Regulation 12(2) read with Clause 2.1 of Schedule II of the PIT Regulations warranting imposition of monetary penalty under Section 23A (a) of the SCRA, which reads as under

Penalty for failure to furnish information, return, etc.

23A. *Any person, who is required under this Act or any rules made there under, –*

(a) to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefore in the listing agreement or conditions or bye-laws of the recognised stock exchange, shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for each such failure

17. Further, I find that the Noticee has violated the provisions of Regulation 12 (1) read with Clause 3.2-1 and 3.2-3A of Schedule I, Part A of the PIT Regulations, clause 22 (d) of the listing agreement read with Regulation 12(2) further read with Clause 2.1 of Schedule II of the PIT Regulations warranting imposition of monetary penalty under Section 15HB of SEBI Act, which reads as follows:

15HB. ***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.*

18. While imposing monetary penalty, it is obligatory to consider the factors stipulated in Section 15J of the SEBI Act and Section 23J of the SCRA which reads as under:

15J - Factors to be taken into account by the adjudicating officer

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.

Factors to be taken into account by adjudicating officer.

23J. *While adjudging the quantum of penalty under section 23-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.

19. The Noticee itself has admitted that the trading window was not closed during the requisite time and I find that it is during this period that certain entities had traded on the basis of the UPSI in violation of PIT Regulations. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the defaults and the defaults are not repetitive in nature.

ORDER

20. 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 and Section 23-I (2) of the SCRA read with Rule 5 of the SCRA Adjudication Rules, I hereby impose a penalty of ₹ 50,00,000(Rupees fifty lakh Only) under Section 15HB of the SEBI Act and a penalty of ₹ 50,00,000(Rupees fifty lakh Only) under Section 23A (a) of the SCRA on the Noticee viz., Shelter Infra Projects Ltd. In my view, the penalty is commensurate with the defaults committed by the Noticee.

21. The penalty amount as mentioned above shall be paid by the Noticee through a duly crossed demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to the Division Chief, Investigation Department (IVD-6), Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

22. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Date: March 07, 2014 **D. SURA REDDY**

Place: Mumbai **ADJUDICATING OFFICER**