

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. MC/AO- 12/2010]

**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

**Ramesh Chandra Keshrimal Jain
(PAN:ADIPJ1942R)**

**In The Matter of
Genus Commu Trade Limited**

BRIEF BACKGROUND

1. The shares of Genus Commu Trade Limited (hereinafter referred to as 'GCL') are listed on the Bombay Stock Exchange and Ahmedabad Stock Exchange. SEBI conducted an investigation in respect of buying, selling and dealing in the shares of GCL during the time period from September 01, 2004 to November 05, 2004 (hereinafter referred to as investigation period).
2. During the investigation period, the scrip opened at Rs. 2.00 on September 01, 2004 and touched a period high (intra day) of Rs. 2.91 on October 04, 2004. The price reached the period low (intra day) of Rs. 1.16 on October 26 & 27, 2004 and finally closed at Rs. 1.53 on November 05, 2004. During the said period the total traded quantity was 1,63,78,953 shares, the daily average being around 3,48,488 shares for 47 days.
3. The daily average volume traded during the period under investigation increased significantly i.e. by around 295% from the daily average volume traded for the preceding two months of the investigation period. This average daily volume remained so for two months following the investigation period as well.
4. From the demat statement of Shri Rameshchandra Kesharimal Jain, it was observed that he received 5,00,000 shares on May 07, 2004, which caused his shareholding in GCL to increase from 95,301 (0.94%) to 5,95,301 (5.87%).

5. As Shri Rameshchandra Kesharimal Jain had acquired more than 5% shares/voting rights in GCL, he was under obligation to make disclosure under regulation 7(1) of (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and Regulation 13 (1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 to the Company and to the Stock Exchange. However, it was observed that no such disclosure was made. Therefore, it is alleged that he had violated regulation 7(1) read with regulation 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and Regulation 13 (1) of SEBI (Prohibition of Insider Trading) Regulations, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

1. I was appointed as Adjudicating Officer, vide order dated May 07, 2009, under section 15 I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act, 1992") to enquire into and adjudge alleged violations of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "**SAST Regulations**") and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter to as "**PIT Regulations**") by Rameshchandra Kesharimal Jain (hereinafter referred to as 'Noticee') as observed during the investigations conducted into the trading in the scrip of M/s Genus Commu Trade Limited for the period from September 01, 2004 to November 05, 2004.

SHOW CAUSE NOTICE, REPLY AND HEARING

6. A show cause notice dated November 5, 2009 was issued to the noticee in the matter wherein the noticee was asked to show cause as to why an inquiry should not be held against him in terms of Rule 4 of the SEBI (Procedure for Holding Enquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 read with Section 15 I of the SEBI Act, 1992.
7. A notice of inquiry was sent on July 30, 2010 and opportunity for personal hearing in the matter was provided. Hearing was conducted on August 10, 2010.
8. During the hearing, the noticee submitted that he had undertaken the trades in GCL for two Ahmadabad based persons, Rajubhai B Shah and Atul Shah, who transferred these shares off-market to his demat account. He sold the shares and received a commission of between Rs.15,000 to Rs.20,000 for carrying out the trades. He further submitted that he is no longer working in the share market since the last four years.

CONSIDERATION OF ISSUES

9. On perusal of the Show Cause Notice, and other material available on record, I have the following issues for consideration, viz,
- (1) Whether the noticee has violated 7(1) read with regulation 7(2) of SAST Regulations and Regulation 13 (1) of PIT Regulations.
 - (2) Whether the noticee is liable for monetary penalty under sections 15 A(b) of the SEBI Act.
 - (3) What quantum of monetary penalty should be imposed on the noticee, taking into consideration the factors mentioned in section 15J of SEBI Act

FINDINGS

10. On Perusal of the materials 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 regulation 7(1) read with regulation 7(2) of SAST Regulations and regulation 13 (1) of PIT Regulations.

SAST Regulations

7. Acquisition of 5 per cent or more shares or voting rights of a company

(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five percent or ten percent or fourteen percent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where the shares of the target company are listed.

(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of,—

- (a) the receipt of intimation of allotment of shares; or*
- (b) the acquisition of shares or voting rights, as the case may be.*

PIT Regulations

13. Disclosure of interest or holding by directors and officers and substantial shareholders in a listed company – Initial Disclosure

(1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company [in Form A], the number of shares or voting rights held by such person, on becoming such holder, within 4 working days of :—

- a. the receipt of intimation of allotment of shares; or*
- b. the acquisition of shares or voting rights, as the case may be.*

11. The investigation brought out that Shri Rameshchandra Kesharimal Jain, acquired 5,00,000 shares on May 07, 2004, which caused his shareholding in GCL to increase from 95,301 (0.94%) to 5,95,301 (5.87%). This was not denied by the noticee.
12. Upon purchase of 5% or more shares in GCL, the noticee was under obligation to make disclosure under regulation 7(1) of (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and Regulation 13 (1) of (Prohibition of Insider Trading) Regulations, 1992 to the Company and to the Stock Exchange. However, even though the noticee acquired 5,00,000 shares, which took his shareholding to 5.87%, he did not make any disclosures regarding the purchase. He, therefore violated regulation 7(1) read with regulation 7(2) of (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and Regulation 13 (1) of (Prohibition of Insider Trading) Regulations, 1992.

ISSUE 2: Whether the noticee is liable for monetary penalty under sections 15 A(b) of the SEBI Act

13. As the allegations against the noticee stand established, he is liable for monetary penalty under Section 15 A(b) of the SEBI Act, 1992, which reads as follows:

“15A. Penalty for failure to furnish, information, return etc.

If any person, who is required under this Act or any rules or regulations made thereunder, -

(a)...

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he 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.”

ISSUE 3: What quantum of monetary penalty should be imposed on the noticee, taking into consideration the factors mentioned in section 15J of SEBI Act?

14. While deciding the quantum of penalty, the factors laid down under Section 15J of SEBI Act have to be given due regard, which are as follows –

- (i) *the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of default,*
- (ii) *the amount of loss caused to an investor or group of investors as a result of the default and*
- (iii) *the repetitive nature of default.*

15. In such cases, it is difficult to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. I have noted that the investigation report also does not dwell on the extent of specific gains made by the noticee. While the amount of loss caused to investors by failure of the noticee to disclose information regarding his shareholding cannot be quantified, the investors were deprived of information considered to be vital to the process of price formation.

16. Considering the facts and circumstances of the case, the material available on record and the violation committed by the noticee, I find that penalty of Rs.40,000/-(Rs. Forty Thousand Only) under Section 15 A(b) of SEBI Act will be commensurate with the violations committed by the noticee.

ORDER

17. After taking into consideration all the facts and circumstances of the case, I hereby impose a penalty of Rs.40,000/-(Rs. Forty Thousand Only) under Section 15 A(b) of the SEBI Act on the noticee, Shri Rameshchandra Kesharimal Jain, for violation of Regulation 7(1) read with Regulation 7(2) of (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and Regulation 13 (1) of (Prohibition of Insider Trading) Regulations, 1992..

18. The noticee shall pay the said amount of penalty by way of demand draft 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 should be forwarded to Mr. G Ramar, General Manager, SEBI, SEBI Bhavan, C4-A, 'G'Block, Bandra Kurla Complex, Bandra (East). Mumbai- 400 051.

19. In terms of rule 6 of the Rules, copies of this order are sent to the noticee and also to the Securities and Exchange Board of India.

Date: August 16, 2010

Place: Mumbai

**Maninder Cheema
Adjudicating Officer**