

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CONSENT ORDER

ON THE APPLICATION SUBMITTED BY

VIKAS KUMAR UPADHYAY (PAN No. AASPU8306K)
RESHABH KUMAR UPADHYAY (PAN No. AALPU6198G)

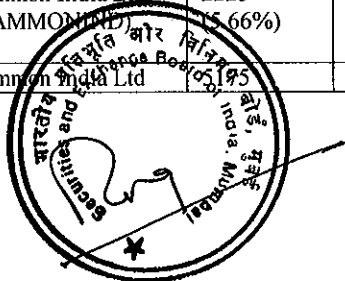
IN THE MATTER OF

CONSENT APPLICATION NO 2117/2010

1. SEBI had conducted an investigation relating to trading activity of Shri Vikas Kumar Upadhyay (hereinafter referred to as Vikas) in certain scrips during the period from April 01, 2008 to May 31, 2008. Investigation revealed that during the period of investigation, Vikas had traded in the market for 20 days out of which on 7 days, he had traded ahead of DBS Chola Mutual Fund (Now L&T Mutual Fund) (hereinafter referred to as DBS). The details of trading done by Vikas and DBS in specific scrips on these 7 days are detailed in the following tables:

Table 1 – Trading by Shri Vikas Kumar Upadhyay

Date	Scrip Name (Symbol)	Buy Qty (% of Market Volume)	Avg Buy Price	Buy Trade Time	Sale Qty (% of Market Volume)	Avg Sale Price	Sale Trade Time	Net Purchase (+) or Sale (-)	Square off positive Diff
17/04/2008	Unity Infraprojects Ltd (UNITY)	3176 (10.92%)	577.25	11:16:25 to 13:58:03	3176 (10.92%)	593.65	14:20:45	0	52086
23/04/2008	Elgi Tyre (ELGITYRE)	45660 (6.62%)	22.71	11:59:07 to 13:19:15	45660 (6.62%)	24.30	13:41:08	0	72599
28/04/2008	Elecon Engineering Co Ltd (ELECON)	10000 (6.01%)	173.13	13:36:40 to 13:43:17	10000 (6.01%)	177.61	14:17:47	0	54800
30/4/2008	Kalpataru Power Ltd (KALPATPOWR)	2200 (16.07%)	1083.08	13:24:17 to 15:14:45	1700 (12.41%)	1107.9 4	15:17:16	500	42262
05/05/2008	Gammon India Ltd (GAMMONIND)	2223 (5.66%)	438.93	13:38:41 to 14:25:11	2223 (5.66%)	449.52	14:23:22 to 14:23:50	0	23541
06/05/2008	Gammon India Ltd	5175	439.74	13:46:58	5175	449.62	14:27:37	0	51129



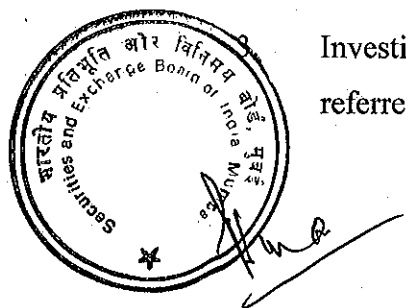
	(GAMMONIND)	(14.27%)		to 14:02:38	(14.27%)		to 14:28:00		
13/05/2008	Prajay Engineers Ltd (PRAENG)	7471 (16.97%)	249.99	11:06:13 to 11:59:42	7471 (16.97%)	259.51	12:23:51	0	71123
								TOTAL	367540

Table 2 – Trading by DBS Chola Mutual Fund (Now- L&T Mutual Fund)

Date	Scrip Name (Symbol)	Buy Qty (% of Market Volume)	Avg Buy Price	Buy Trade Time	Increase in price during the trading by DBS Chola MF	Qty of shares where Vikas Upadhyay is the counterparty sale client (% of Vikas's sale volume)
17/04/2008	Unity Infraprojects Ltd. (UNITY)	8000 (27.50%)	585.71	14:09:13 to 14:41:09	575 to 595 (3.47%)	2950 (92.88%)
23/04/2008	Elgi Tyre (ELEGITYRE)	100000 (14.51%)	23.95	13:26:41 to 13:48:44	22.30 to 24.60 (10.31%)	45660 (100%)
28/04/2008	Elecon Engineering Co Ltd (ELECON)	45000 (27.05%)	174.67	13:28:12 to 14:19:09	172.20 to 179 (3.94%)	10000 (100%)
30/04/2008	Kalpataru Power Ltd (KALPATPOWER)	8072 (58.97%)	1088.64	10:18:13 to 15:17:16	1077.95 to 1110 (2.97%)	1700 (100%)
05/05/2008	Gammon India Ltd (GAMMONIND)	5000 (12.73%)	447.11	14:23:22 to 14:28:47	442 to 451 (2.03%)	2199 (98.92%)
06/05/2008	Gammon India Ltd (GAMMONIND)	15000 (41.37%)	445.90	14:27:37 to 14:33:33	438 to 451 (2.96%)	5175 (100%)
13/05/2008	Prajay Engineers Ltd (PRAENG)	22500 (51.11%)	253.97	12:22:20 to 12:25:48	250 to 262 (4.8%)	7471 (100%)

2. It was noted that Vikas had purchased shares in the market contributing 5.66% to 16.97% of the market volume in these scrips on the specified trading days. On the very same day, a little later, DBS purchased shares in the same scrips and their contribution to the market volume ranged from 12.73% to 58.97% in the same scrips on the respective trading days. Out of 7 days, on 5 days, the contribution of DBS to the market volume was more than 25%. As the buy order put by DBS was substantial, the price of the scrips moved up in the range of 2.03% to 10.31%. Thereafter, Vikas offloaded the shares at a higher price and squared up his entire position on 6 days. In this way Vikas was found to have made an undue gain of around ₹ 3.67 lakh. It was further noted that on 5 days, the entire amount sold by Vikas was purchased by DBS and on the other 2 days, more than 90% sold by Vikas was purchased by DBS.

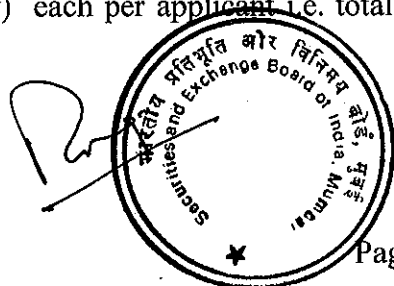
Investigation further revealed that Shri Reshabh Kumar Upadhyay (hereinafter referred to as Reshabh), the brother of Vikas, was in close touch with the fund



Reshabh

manager of DBS, Shri Bajrang Bafna, dealer Mayur Joshi and the other fund manager; Shri Anant Katore during the relevant period.

4. The modus operandi adopted by the applicants, in terms of the findings of investigation based on the trading details, call records, bank account details and on the statements, appears to be as follows:
 - i. Reshabh first provided funds to his brother; Vikas.
 - ii. Reshabh then used his contacts with the fund managers and dealer of DBS to get prior information about their trading strategy
 - iii. Reshabh passed this information to his brother; Vikas, who used such information to front-run DBS.
 - iv. In the process, Vikas made undue gains of around ₹ 3.67 lakh
5. In view of the above, Notices no.s IVD/ID-2/TAVU/BS/15444/2010 dated August 06, 2010 and IVD/ID-2/TAVU/BS/15447/2010 dated August 06, 2010 were issued to Reshabh and Vikas respectively, inter alia, alleging that they along with other entities had colluded in front running DBS and thereby indulged in manipulative, fraudulent and unfair trade practice in violation of Section 12 A (e) of the SEBI Act, 1992 read with Regulations 3 and 4 (1) of SEBI (PFUTP) Regulations, 2003. On that basis, applicants were asked to show cause as to why suitable directions under Sections 11 and 11B of SEBI Act, 1992 should not be passed against them.
6. While these proceedings were in progress, the applicants, in terms of SEBI Circular No. EFD/ED/Cir-1/2007 dated April 20, 2007, jointly filed a consent application dated August 31, 2010 and the revised terms of consent vide letter dated September 28, 2011 proposing to offer ₹ 10,00,000/- (Rupees ten lakhs only) each per applicant i.e. totaling to a sum of ₹ 20,00,000/- (Rupees twenty



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lakhs only), as settlement terms towards settlement of the above referred proceedings.

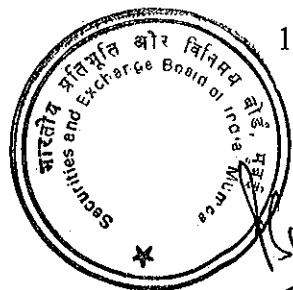
7. During the pendency of the afore-mentioned consent application, a writ petition i.e. Writ Petition no. 6949/2011 – Deepak Khosla vs SEBI, was filed in the Delhi High Court challenging the constitutionality of the aforementioned consent circular. The Hon'ble High Court on October 17, 2011, passed the following interim order:

"At this stage only order that can be passed is that depending upon the final outcome of the writ petition and in case the impugned scheme is quashed, appropriate orders can be passed in respect of those cases which have been dealt with by the respondent under the scheme."

In view of the said order, all consent orders are now subject to the final judgement of the High Court in the afore-mentioned writ petition.

8. Accordingly, an email dated December 8, 2011 seeking confirmation of the condition as laid down by Hon'ble Delhi High Court was sent to the applicants, who vide their letter dated December 09, 2011 conveyed their acceptance to the condition and also stated that they are agreeable to proceed further with their consent application.
9. On the basis of the above, the High Powered Advisory Committee constituted by SEBI considered the revised consent terms proposed by the applicants and recommended the settlement of the abovementioned pending proceedings through a consent order on payment of ₹ 10,00,000/- (Rupees ten lakhs only) each per applicant i.e. totaling a sum of ₹ 20,00,000/- (Rupees twenty lakhs only), towards settlement charges, as proposed by the applicants.

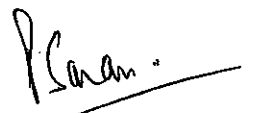
10. SEBI accepted the said recommendations and communicated the same to the applicants vide letter dated February 24, 2012. Accordingly, the applicants,

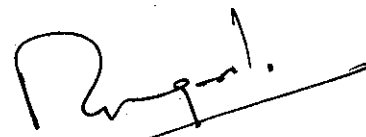


without admitting or denying the charges, have remitted a consolidated sum of ₹ 20,00,000/- (Rupees Twenty Lakh Only) towards settlement charges for settlement of the abovementioned pending proceedings vide a demand draft no. 530684 drawn on IndusInd Bank, Indore payable at Mumbai.

11. Under the above circumstances, it is hereby ordered that this consent order dispose the proceedings initiated against the applicants vide Notices no.s IVD/ID-2/TAVU/BS/15444/2010 dated August 06, 2010 and IVD/ID-2/TAVU/BS/15447/2010 dated August 06, 2010.
12. This order is without prejudice to the right of SEBI to initiate enforcement actions, including commencing or reopening of the proceedings pending against applicant, if:
- a) any representation made by the applicants in this consent proceeding is subsequently discovered to be untrue; or
 - b) the applicant breaches any of the consent terms or undertakings filed in this consent proceeding.
13. This consent order is passed on this day, the 13th of April, 2012 and shall come into force with immediate effect.




PRASHANT SARAN
WHOLE TIME MEMBER


RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER

