

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: RAJEEV KUMAR AGARWAL, WHOLE TIME MEMBER**

ORDER

Under Sections 11(1), 11(4) and 11B of the Securities And Exchange Board of India Act, 1992 read with Regulation 11 of the Securities and Exchange Board of India Prohibition of Fraudulent and Unfair Trade Practices relating to Securities market) Regulations, 2003.

In the matter of Pipavav Defence and Offshore Eng. Limited, Parsvnath Developers Limited, Tulip Telecom Limited and Glodyne Technoserve Limited

In respect of M/s Neelanchal Mercantile Private Limited (PAN: AAACN8842N)

Appearances:

For Noticee:

1. Mr. Vinay Chauhan, Advocate
2. Mr. Balbeer Chaudhary, Consultant

For SEBI:

1. Mr. Santosh Kumar Shukla, Joint Legal Adviser
2. Mr. Manoj Kumar, General Manager
3. Mr. Amitesh Kumar, Assistant Legal Adviser
4. Mr. Rajudeen Khan, Manager
5. Mr. Manish Kumar Gupta, Assistant Manager

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1. Securities and Exchange Board of India ('SEBI'), being alerted by its surveillance systems, on July 26, 2012, noticed a downward movement in the prices of four scrips namely Pipavav Defence and Offshore Eng. Limited (Pipavav), Parsvnath Developers Limited (Parsvnath), Tulip Telecom Limited and Glodyne Technoserve Limited as compared to their closing prices on July 25, 2012 at the National Stock Exchange of India ('NSE') and Bombay Stock Exchange Limited ('BSE'). It was also observed that the prices of the said four scrips had seen a sharp downward movement within the time from 09:15 to 09:49 on July 26, 2012. During 15 days prior to July 26, 2012, no corporate announcements/price sensitive information was disclosed to the stock exchanges by the aforesaid companies which could have impacted prices of their shares negatively.
 2. In the above background, SEBI, vide an *ad interim ex-parte* order dated August 03, 2012 (*interim* order), amongst others restrained M/s Neelanchal Mercantile Private Limited ('noticee') from accessing the securities market and further prohibited it from buying, selling or dealing in securities in any manner whatsoever, till further directions.

3. Pursuant to the aforesaid *interim* order, the noticee made submissions/ objections vide its letters dated August 06, 2012 and August 30, 2012. Opportunity of personal hearing was granted to the noticee on November 01, 2012 and November 07, 2012 when Mr. Vinay Chauhan, Advocate, appeared and made submissions on behalf of the noticee. Subsequent to the hearing, the noticees vide its letter dated November 12, 2012 made further submissions. Pursuant to the hearing SEBI, vide letter dated November 12 2012, had sought certain information from the noticee and the noticee responded to the said letter vide its letter dated November 29, 2012. The submissions made by noticee are *inter alia* as under:

- (a) It has denied all the charges and allegation in the *interim* order.
- (b) It is an NBFC, engaged in the business of securities trading and deals in scrips after its own appraisal, analysis and research on the basis of fundamentals of the company.
- (c) It has been trading through various brokers and also has availed margin funding from various NBFC's and margin is provided in the form of both funds as well as securities. It had in ordinary course of business obtained margin funding from Narayan Sriram Investments Private Limited ('lender'), while trading through broker namely IFCI Financial Services Limited ('IFCI').
- (d) It had executed a power of attorney in favour of lender authorising the lender to sell the shares kept with it as margin security, at its discretion and in case of failure of noticee to replenish the same.
- (e) On July 25, 2012, the lender intimated the noticee about a shortfall in the margin of around ₹31,49,031/-. Before the noticee could replenish the shortfall in margin, IFCI at the instruction of the lender sold 40,000 shares of Parsvnath lying with lender as a margin. This sale of shares by the broker IFCI was without the knowledge or specific consent of the noticee. Thus, it was a forced sale of these 40,000 shares of Parsavnath by the broker without knowledge or involvement of the noticee. This can be substantiated by the fact that the amount recovered from the sale of these shares on July 26, 2012 by the broker was almost equal to margin shortfall for which demand notice was sent by the lender to the noticee on July 25, 2012. In support of this claim, the noticee has submitted a copy of the letter dated July 25, 2012 sent by lender advising it to replenish the shortfall in the margin and the contract notes with regard to sale of shares of Parsavnath.
- (f) With respect to the alleged buying of 40,00,000 shares of Pipavay, the noticee has submitted that it executed trade through another broker J M Financial

Services Pvt. Ltd. and these trades were in the nature of value buying, as the stock was available at the lowest price of the day and near to its 52 week low price. Further, it was already holding shares of Pipavav prior to this purchase and said purchase of 40, 00, 000 shares was based on the various analysis and research reports available in public domain.

- (g) The time slot of price fall for the scrip of Pipavav was between 9:15 - 9:35 in the morning. The noticee bought shares of this scrip at around 2 p.m. At the relevant time, since there was freeze in the shares, there were a lot of sellers in the queue for exiting the stock (in light of the drastic price fall). Therefore, when the noticee bought the said shares there were so many counter parties to its trade as noticee was buying a substantial number of shares. The noticee was not aware of the counter-parties.
- (h) With regard to its relation with other entities as mentioned in Para 17 & 18 of *interim* order, the noticee has submitted that:
 - (a) Milestone Shares and Stock Broking Pvt. Ltd. (Milestone) and the noticee are related as holding and subsidiary companies.
 - (b) The phone no 9832052577 on the basis of which relationship of the noticee with Mr. Manish Agarwal and Mr. Ajit Kumar Jain has been alleged in the *interim* order does not belong to the noticee or Milestone. The noticee did not have any broking account with Motilal Oswal Securities Ltd (MOSL). Its holding company i.e. Milestone had opened a broking and demat account with MOSL. That phone number was wrongly recorded by MOSL in KYC. As soon as the same came to notice of Milestone after opening the account on July 12, 2011, when KYC form was sent to Milestone by MOSL for confirmation / record, Milestone, vide its letter dated August 12, 2011, made request to MOSL for rectification which was done by MOSL on or around August 12, 2011. When Milestone approached MOSL for a written confirmation in this regard, it has expressed difficulty in giving the same, but has orally confirmed that the record was modified on August 12, 2011.
 - (c) Milestone had also opened a demat account with MOSL during the relevant time and the same error had happened in the KYC form. Milestone again pointed out the mistake to MOSL and the same was rectified by them. In support of this submission, the noticee has submitted copies of Milestone's demat statements dated July 31, 2011

and November 30, 2011 from MOSL which bears the correct phone no. i.e. 8820113433.

- (d) The email ID ashok@steptwo.in as mentioned in the *interim* order belongs to Mr. Ashok Kumar Sharma, Chartered Accountant of the noticee. The Annual Return of the noticee for the year ended March 31, 2011 was filed with MCA by Mr. Ashok Kumar Sharma in his professional capacity and thus drawing any relationship on that basis is not appropriate.
- (e) It has furnished a confirmation letter dated November 08, 2011 from Mr Ashok Kumar Sharma that he is involved with the noticee in professional capacity and he does not have any business relationship with it.
- (f) As per the MCA portal the registered office address of Step Two Corporation Ltd is 21, Hemanta Basu Sarani, 5th floor, room No. 507, PS Hare Street, Kolkotta, West Bengal, 700 013 and not C/o. Ms. Finflow Investment Pvt. Ltd., A-206 Pheonix house, 2nd Floor, Senapati Bapatmarg, Lower Parel, Mumbai - 13 as alleged in the *interim* order. Thus, the observation that Umang Nemani and Step Two Corporation Ltd. are connected and therefore noticee is related to the Umang Nemani is erroneous.
- (g) Therefore, entire basis of clubbing the noticee with other entities mentioned in the *interim* order is fallacious.

- (i) With regard to its financial details mentioned in Para 19 of the *interim* order, the noticee has submitted that its net worth was Rs. 6.5 Crore for the year 2009-10, Rs. 6.36 Crore was for year 2010-11 and Rs. 6.43 Crore was for year 2011-12.
- (j) Various lenders/NBFCs from whom it had availed margin funding had already sold its various shares, at low prices causing it immense losses, to recover their margin.
- (k) Stocks worth ₹ 58.52 crores are lying frozen in its demat account and the stock lying therein has been bought by it by obtaining margin financing. The value of that stock is zero from the perspective of lenders/NBFC and as a result its interest burden on the outstanding amount is mounting on daily basis which is causing grave loss to it.

4. I have considered the written and oral submissions of the noticee and the relevant material available on record. The limited issue to be considered in this order is to decide whether, based on the available material on record and after considering the submissions made by the noticee, the directions issued by vide *ad interim* ex-parte order

need to be continued, revoked or modified in any manner, in so far as it relates to the noticee.

5. I note that as per the *interim* order the allegation against the noticee is that it had sold 20,000 shares, at NSE and BSE each, of Parsvnath on July 26, 2012 during the price fall period i.e. 9:35:47 to 9:42:47 at NSE and 9:36:06 to 09:41:20 at BSE. Further, the noticee had bought substantial amount of shares of Pipavav on July 26, 2012 as described in para 13 of the *interim* order. The main thrust of the argument of the noticee is that 20,000 shares at NSE and BSE each of Parsvnath got sold at the instruction of the lender on account of margin short fall and the noticee did not have knowledge or any role in the said sale. Further, it had bought 40,00,000 shares of Pipavav after 2 pm on July 26, 2012 much after the price fall and its purchases were not responsible for the price fall.
6. As far as the sale of shares of Parsvnath is concerned, from the copy of the letter dated July 25, 2012 from the lender, I note that the lender had issued a notice for margin shortfall to the noticee and had informed that as on July 25, 2012 the margin shortfall was Rs. 31, 49,031/and advised it to deposit additional approved securities or prepay the loan within one working day from the date of the notice to avoid any action as per terms of loan agreement. The noticee has submitted that the IFCI sold 40,000 shares (20,000 shares at BSE and NSE each) of Parsvnath on July 26, 2012 on instruction of the lender. I note from the contract notes issued by IFCI with regard to the sale of those shares that the sale proceeds of those 40,000 shares of Parsvnath amounted to Rs. 30,27,343/-. This amount is very close to the amount of margin shortfall intimated by the lender to the noticee and I *prima facie* find that such sale could be necessitated due to margin call of the lender and thus balance of convenience in this regard at this stage is in favour of the noticee.
7. In respect of purchases of shares of Pipavav I find that, since the *interim* order is mainly in relation to sale of shares in four identified scrips in a fraudulent manner consequent to which there was fall in price of respective scrips, the purchase of 40,00,000 shares of Pipavav by the noticee cannot be linked to the price fall in the scrip of Pipavav. I *prima facie* find merit in the submission of the notice that since shares in the scrip were available at near the 52 week low price, it appeared to him value buying and further, due to freeze on the sale side there were a lot of sellers in the queue for exiting from the stock. However, for the majority of shares purchased by the noticee the counter parties were the entities other than those alleged to be connected/related with the noticee. I also find *prima facie* merit in the submissions of

the noticee denying the connection with Mr. Ajit Kumar Jain and Mr. Manish Agarwal. In view of the same, I find that the noticee is able to make out a *prima facie* case in its favour at this stage.

8. It is observed that the directions issued vide *ad interim ex-parte* order against noticee were *interim* in nature and were issued on the basis of *prima facie* findings. I note that the investigation in the matter is ongoing. It is noted that the noticee has already undergone restraint for more than four months pursuant to the *interim* order. A final view with regard to the role of the noticee, if any in the matter, can be taken on the completion of the investigation. In my view, in the facts and circumstances of the case, the balance of convenience is in favour of the noticee.
9. The facts and circumstances of the case relating to the noticee do not suggest any emergent or urgent reasons to continue with the directions issued against the noticee vide the *ad interim* order at this stage. I am therefore, of the considered view that the directions issued against the noticee vide the *ad interim* order need not continue during the continuance of the pending investigation in the matter.
10. In view of the foregoing, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11(1), 11(4) and 11B thereof, hereby revoke the directions issued against M/s Neelanchal Mercantile Private Limited (PAN: AAACN8842N) vide *ad-interim ex-parte* order dated August 03, 2012. It is, however, made clear that this order is without prejudice to any enforcement action that SEBI may deem necessary against the aforesaid noticee in the matter, on completion of the investigation.
11. A copy of this Order shall be served on all the recognized stock exchanges and depositories for necessary action.
12. This Order shall come into force with immediate effect.

DATE: December 19th, 2012
PLACE: MUMBAI

RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA