BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. MC/AO- 09/2010]

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

Sachin Suresh Patil
(PAN: Not available)
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. For the two months (July 01, 2004 to August 31, 2004) just prior to the investigation period, the total volume traded was 37,91,271 shares, the daily average being around 88,169 shares for 43 days. For the two months (November 08, 2004 to January 04, 2005) after the investigation period, total volume traded was 1,45,88,129 shares, the average daily volume traded was 3,64,703 shares.

4. 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.

5. During the investigation period, it was observed that four brokers namely, Adolf Pinto, Vijaya Bhagwandas & Co, DPS Shares and Securities and Pawan J. Chaudhary indulged in circular trading among themselves.

6. The aforesaid brokers dealing on own account and for respective clients purchased 20,83,551 shares and sold 22,45,146 shares which constituted 12.72% and 13.71% of the gross volume traded respectively during the relevant period. These brokers and some of their clients entered into circular trading among themselves for 19,46,396 shares, which accounted for 93% of their total purchase and 86.69% of their total sale.

7. The broker DPS Shares and Securities Private Limited (hereinafter referred to as **'DPS'**), with SEBI Reg No. INB – 010986539, has traded for his client Sachin Suresh Patil (hereinafter referred to as "**Sachin**" or "noticee").

8. Sachin, through DPS Shares, traded 10,02,500 shares constituting 3.06 % of the total quantity transacted in the scrip GCL out of which 9,89,297 shares were traded through circular trading constituting 98.68% of total trades done by DPS in the said scrip. Total purchases were of 4,94,272 shares constituting 3.02% of the total trades during the investigation period and sales through circular trading were of 4,95,025 shares constituting 3.02% of total volume traded during the investigation period.

9. Sachin indulged in circular trading through DPS for 47 days. The telephone no appearing in Sachin's client registration form was the same as that appearing on the letterhead of DPS. Sachin entered into synchronized transactions by placing buy and sell orders of the same quantity at the same price simultaneously within a maximum the time difference of 39 seconds.

10. The aforesaid findings led to the allegation that Sachin through collusion with the brokers and other clients indulged in circular / synchronized trading which created artificial volume in the shares of GCL, with the intention to manipulate trading in the scrip of GCL during the investigation period, thereby distorting the market equilibrium of shares.

11. Thus, Sachin was alleged to have violated regulations 4(1), 4(2) (a), and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

12. 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 the alleged violations of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 by Sachin Suresh Patil 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

13. A show cause notice dated November 5, 2009 was issued to Sachin Suresh Patil in the matter wherein the noticee was asked to show cause as to why an inquiry should not be held against it 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.

    The same was duly delivered on November 12, 2009 (proof of delivery/ acknowledgement is present on record). A notice of inquiry was sent on December 22, 2009 and opportunity for personal hearing in the matter was also provided. However, the noticee failed to avail of the opportunity.

CONSIDERATION OF ISSUES

14. 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 4(1), 4(2) (a) and (g) of PFUTP Regulations.
(2) Whether the noticee is liable for monetary penalty under sections 15 HA 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

15. 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 4(1), 4(2) (a) and (g) of PFUTP Regulations.

PFUTP Regulations
"4. <u>Prohibition of manipulative, fraudulent and unfair trade practices"</u>

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

(a) Indulging in an act which creates false or misleading appearance of trading in the securities market;

(g) Entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

16. It is seen that the price of GCL ranged between Rs.1.16 and Rs.2.91 during the investigation period. However, the volume of trading was significantly higher in the investigation period at an average of 3.48 lac shares per day, which was 295% higher than the average daily volume of around 88,488 shares in the preceding two months.

17. The investigation has brought out that a large part of this volume i.e. 11.88% of the total volume of trading was accounted for by the circular trades and synchronized between a group of four brokers, namely Adolf Pinto, Vijaya Bhagwandas & Co, DPS Shares and Pawan J. Chaudhary.

18. The same numbers of share was rotated in a circular manner among the members in the group on daily basis so that the same numbers of share goes back to the original seller at the end of the day and net position of each member remains nil, without resulting in any change in beneficial ownership of the shares traded. Thus there was no intent to buy or sell shares and the only intention was to create artificial volumes so as to give an impression of buying interest in the scrip.

19. Sachin, through DPS Shares, traded 10,02,500 shares constituting 3.06 % of the total quantity transacted in the scrip GCL out of which 9,89,297 shares were traded through circular trading constituting 98.68% of total trades done by DPS in the said scrip. Sachin entered into synchronized transactions by placing buy and sell orders of the same quantity at the same price simultaneously within a maximum the time difference of 39 seconds over a period of 47 days. Sachin accounted for 3.02% of the total volume of trading in GCL during the investigation period but had a net sale of only 753 shares. The trading volumes were thus artificially inflated through circular trades and by using synchronized transactions in collusion with other entities to create an impression of

active trading interest in the scrip and to thus attract unsuspecting investors to invest in the scrip.

20. Regulation 4(2)(a) of FUTP, inter alia, prohibits a person from indulging in an act which creates false or misleading appearance of trading in the securities market. Regulation 4(2) (g) of FUTP prohibits a person from entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security.

21. The trades executed by Sachin as explained hereinabove in detail establish that the same created a misleading appearance of trading in the shares of GCL.

22. In view of the foregoing, I hold that the allegation of violation of provisions of regulations 4 (1), 4 (2) (a) and (g) of PFUTP Regulations stand established.

ISSUE 2: Whether the noticee is liable for monetary penalty under sections 15 HA of the SEBI Act

23. As the allegations against the noticee stand established, he is liable for monetary penalty under Section 15 HA of the SEBI Act, 1992, which read as follows:

    "Penalty for fraudulent and unfair trade practices.
    15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."

24. After carefully considering the facts and circumstances of the case and violation committed by the Noticee, I am of the opinion that the Noticee is liable for monetary penalty under Sections 15HA of the SEBI Act, 1992.

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?***

25. 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.

26. 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 broker. I note that trading by the noticee contributed to 3.02% of gross volume traded during the investigation period through circular trades and synchronized trading.

27. Considering the facts and circumstances of the case and the material available on record and the violation committed by the noticee, I find that penalty of Rs.1,00,000/-(Rs. One Lakh Only) under Section 15 HA will be commensurate with the violations committed by the noticee.

ORDER

28. After taking into consideration all the facts and circumstances of the case, I hereby impose a penalty of Rs. 1,00,000/-(Rs. One Lakh Only) under Section 15 HA of the SEBI Act on the noticee, Sachin Suresh Patil, for violation of Regulations 4 (1), 4 (2) (a) and (g) of PFUTP Regulations.

29. 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.

30. 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: July 28, 2010 | **Maninder Cheema**
Place: Mumbai | **Adjudicating Officer**