BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PB/AO- 24-31/2011]

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:

Name of Noticees	**Permanent Account No.**	**Order Number**
M/s Oval Investment Pvt. Ltd.	AAACO0373R	PB/AO-24/2011
M/s Gems Commercial Company Ltd.	AAACG4026H	PB/AO-25/2011
M/s Hindustan Commercial Company Ltd.	AAACH2851B	PB/AO-26/2011
M/s International Resources Ltd.	AABCI5633H	PB/AO-27/2011
M/s Excellent Commercial Enterprises Ltd.	AAACE2699A	PB/AO-28/2011
M/s Harvatex Engineering & Processing Company Ltd	AABCH7404F	PB/AO-29/2011
M/s Carefree Investment Co. Ltd.	AAACC4747R	PB/AO-30/2011
M/s Lhonak Enternational Pvt. Ltd.	AABCL2542G	PB/AO-31/2011

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as **“SEBI”**) examined into the alleged irregularity in the dealing in the shares of Gujarat Heavy Chemicals Ltd. (hereinafter referred to as GHCL).

2. It is alleged that the following eight promoter entities of GHCL (hereinafter referred to as Noticees) have violated regulations 3(d) and 4(2)(f) of

Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as **“PFUTP Regulations”**) and consequently, liable for monetary penalty under section 15HA of the SEBI Act, 1992 (hereinafter referred to as **“SEBI Act”**):

1. M/s Oval Investment Pvt. Ltd.
2. M/s Gems Commercial Company Ltd
3. M/s Excellent Commercial Enterprises Ltd
4. M/s Carefree Investment Co. Ltd.
5. M/s Hindustan Commercial Company Ltd.
6. M/s International Resources Ltd.
7. M/s Harvatex Engineering & Processing Company Ltd.
8. M/s Lhonak Enternational Pvt. Ltd**.**

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned has been appointed as Adjudicating Officer, vide order dated July 28, 2010 under section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as “**Rules”**) to inquire into and adjudge the alleged violations of regulations 3(d) and 4(2)(f) of PFUTP Regulations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notices dated November 30, 2010 (hereinafter referred to as “**SCNs**”) were issued to the Noticees under rule 4 of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15HA of the SEBI Act for the alleged violation as specified in the SCNs.

5. The Noticees filed their reply to the SCNs vide letters dated January 09, 2011 and January 10, 2011. In their reply the Noticees have denied the allegations.

6. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, Noticees were granted an opportunity of personal hearing on February 23, 2011 at SEBI, Head Office, Mumbai vide letter dated February 4, 2011 sent through SPAD. However, Noticees did not appear for the personal hearing and requested postponement of the hearing by three weeks. Acceding to the request of the Noticees another opportunity of hearing was given to the Noticees on March 15, 2011 at SEBI, Head Office, Mumbai. Ms. Preeti Salaskar, Advocate Corporate Law Chambers appeared as Authorised Representative (AR) on behalf of the Noticees on the abovementioned date, made oral submissions wherein she denied the allegations. The submissions of the Noticees are mainly to the following effect:

   i. Firstly, the arbitration order was passed on July 23, 2009, therefore the charges for the quarters ending March 31, 2009 and June 30, 2009 can not be sustained.

   ii. Secondly, there was no ‘dealing in securities’ done by the Noticees as per the provisions of regulation 3(d) and 4(2)(f) of PFUTP Regulations.

   iii. Thirdly, the claimant company as mentioned in the arbitration order was to inform and send the order to GHCL. The advocates of the claimant company vide letter dated July 24, 2009 had sent copy of the arbitration order to GHCL. Therefore, the listed company GHCL is already having knowledge about the arbitration order and there is no hiding of information on the part of the Noticees.

iv. Fourthly, GHCL vide letter dated October 19, 2009 informed stock exchange about the receipt of arbitration award dated July 23, 2009 from the advocates of the claimant company at the time of filing the shareholding pattern for the quarter ended September 30, 2009 by reference to a letter dated September 8, 2009 by which the advocates of the said claimant company had forwarded the arbitration order to the NSE, BSE & ROC.

v. Fifthly, there is no express or implied obligation on the Noticees to inform GHCL about the arbitration order and they can not be penalised for non compliance.

7. The Noticees requested seven days time to file additional written submissions in the matter which was acceded to. The Noticees filed written submission in the matter vide their letters dated March 17, 2011 wherein they have reiterated the submissions made during the hearing.

CONSIDERATION OF ISSUES AND FINDINGS

8. The issues that arise for consideration in the present case are :

i. Whether the Noticees had violated the provisions of regulations 3(d) and 4(2)(f) of PFUTP Regulations?

ii. Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act?

iii. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of the SEBI Act?

9. Before moving forward, it is pertinent to refer to the provisions of regulations 3(d) and 4(2)(f) of PFUTP Regulations, which reads as under:-

3. No person shall directly or indirectly—

(a) …………….
(b) …………….
(c) …………….
(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

4. Prohibition of manipulative, fraudulent and unfair trade practices-

(1) …………………
(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) ………………
(b) ……………....
(c) ………………...
(d) ……………….
(e) ………………
f) publishing or causing to publish or reporting or causing to report be a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

10. It is alleged that the Noticees have violated the above provisions of the PFUTP Regulations. GHCL, as per clause 35 of the listing agreement, was required to file certain details of its promoter and promoter group regarding shares encumbered, with the stock exchange on a quarterly basis, within 21 days from the end of each quarter in the format specified in the listing agreement.

11. It was alleged that GHCL failed to file the correct details of encumbered shares in respect of its promoters and promoter group entities for the quarters ending March 2009, June 2009, September 2009, December 2009, March 2010, and June 2010.

12. As per Arbitration Order dated July 23, 2009 the Noticees, were restrained from selling, transferring or creating third party interest in any manner in the following shares of GHCL:

Sr. No.	Name of the Entity	No. of shares of GHCL
1.	Oval Investment Private Limited	2500000
2.	Gems Commercial Company Limited	2500000
3.	Hindustan Commercial Company Ltd.	525000
4.	International Resources Ltd.	500000
5.	Excellent Commercial Enterprises Ltd.	345800
6.	Harvatex Engineering & Processing Company Ltd.	300000
7.	Carefree Investment Co. Ltd.	280000
8.	Lhonak Entertainment Pvt. Ltd.	1200000

13. It was alleged that as the abovementioned shares became encumbered as a result of the arbitration order, it became incumbent upon the Noticees to disclose the above information to GHCL, however, Noticees did not inform the same to GHCL which lead to violation of regulations 3(d) and 4(2)(f) of PFUTP Regulations on the part of the Noticees.

14. In their reply, Noticees have submitted, inter alia, that the arbitration order was passed on July 23, 2009. Therefore, violation for the quarters ending March 2009 and June 2009 is not tenable.

15. It was also submitted by the Noticees in their reply that GHCL was directly having knowledge about the encumbered shares. Learned Arbitrator in his award itself directed as follows: "*copies be sent to depositories (NSDL and*

CDSL) and depository participants of Demat Accounts as well as the companies GHCL and GTL". As the advocates of the claimant had sent the copy of the order to all the respondents (including GHCL and the Noticees) vide letter dated September 08, 2009, thus there was nothing to hide on the part of the Noticees as the information was already within the knowledge of GHCL. This is evident by

i. Sawhney & Sawheny advocates of claimant's letter dated September 8, 2009 enclosing a copy of the arbitration order to Noticees as well as GHCL.
ii. GHCL's letter dated October 19, 2009 to the stock exchange informing about the passing of arbitration order.

16. In view of the above, I find that there is merit in the submissions of the Noticees. Regulation 3(d) of PFUTP Regulations provides that no person shall directly or indirectly engage in any act which operates as a fraud. Fraud under regulation 2(c) of PFUTP Regulations has been defined as any act, expression, omission or concealment committed by a person or any other person with his connivance or by his agent while dealing in securities and shall also include an *active concealment of a fact by a person having knowledge or belief of the fact*. It is alleged that Noticees by the act of concealment of the information of encumbered shares mentioned in the arbitration order are said to have committed fraud and thereby violated the provisions of regulation 3(d) of PFUTP Regulations.

17. I find that Learned Arbitrator in the order dated July 23, 2009 directed the claimant to send the copy of the order to the respondents, depositories and the companies. As directed the advocates of claimant had sent the copy of the order to all the respondents (including GHCL and Noticees) vide letter dated September 08, 2009. Thus, GHCL was aware of the information of encumbered shares mentioned in the arbitration order. Consequently, there was no concealment of information. Therefore, based

on the above, the charge of violation of regulation 3(d) of PFUTP Regulations is not established.

18. Further, regulation 4(2)(f) of PFUTP Regulations provides that dealing in securities shall be deemed to be fraudulent if it involves fraud and includes publishing or causing to publish by a person dealing in securities any information which is not true or which he does not believe to be true. It is alleged that Noticees were required to provide the information of encumbered shares mentioned in the arbitration order to GHCL for publishing the same which was not complied with, due to which GHCL had given incorrect/incomplete information under clause 35 of the listing agreement and therefore caused to publish information which was not true. Thus, Noticees were alleged to have violated the provision of regulation 4(2)(f) of PFUTP Regulations.

19. I find that clause 35 of the Listing agreement obligates GHCL to file the quarterly disclosure with the stock exchange. GHCL vide letter dated October 19, 2009 submitted its shareholding pattern as on September 30, 2009 to the stock exchange and also informed about the receipt of letter dated September 8, 2009 along with a copy of the arbitration order dated July 23, 2009 from Sawhney & Sawhney advocates for claimant. Thus, GHCL was well aware of the passing of the arbitration award and also about the information pertaining to the encumbered shares of the Noticees mentioned in the arbitration order. It is the obligation of GHCL to inform the stock exchange and also publish the information. Noticees were under no obligation to publish the information and also the question of providing incorrect/incomplete information does not arise as GHCL itself was aware of the fact of the encumbered shares of the Noticees. Therefore, the charge of violation of regulation 4(2)(f) of PFUTP Regulations is not established based on the above findings.

20. In view of the above, I find that the allegations of violation of regulations 3(d) and 4(2) (f) of PFUTP Regulations against the Noticees do not stand established.

ORDER

21. Considering the facts and circumstances of the case, I do not find the instant matter fit for imposition of penalty in terms of Section 15HA of SEBI Act and dispose off the proceedings accordingly.

22. In terms of rule 6 of the Rules, copies of this order are sent to the Noticees and also to SEBI.

DATE: March 31, 2011 **PARAG BASU**
PLACE: MUMBAI **ADJUDICATING OFFICER**