

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

ORDER

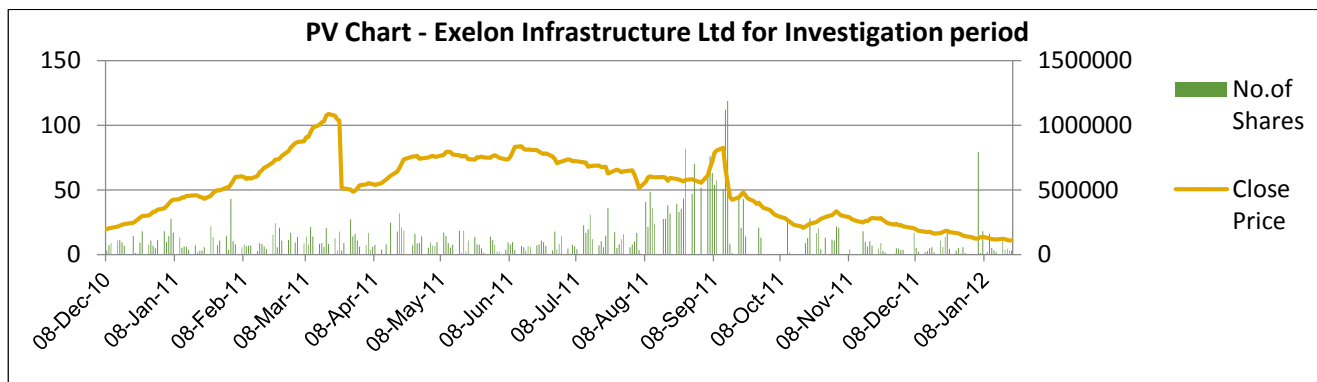
UNDER SECTIONS 11, 11B AND 11(4) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 11 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003, IN THE MATTER OF EXELON INFRASTRUCTURE LIMITED AND IN CONTINUATION OF ORDER DATED APRIL 24, 2017

NOTICEES –

- 1. DIMPLE P. DESAI [PAN- AUQPD3909F]**
- 2. KANTA A. DESAI [PAN - AAEPD6006F]**
- 3. SNEHA P. DESAI [PAN-AIBPD1454A]**

Background

- 1 Securities and Exchange Board of India (“SEBI”) conducted investigation into the trading in the scrip of Exelon Infrastructure Limited (hereinafter referred to as EIL or the scrip) listed on the Bombay Stock Exchange (“BSE”) for the period from December 08, 2010 to January 20, 2012 (hereinafter referred as the “Investigation period” / "I.P") for ascertaining any possible violations, inter alia, of –
 - i. The SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“PFUTP Regulations, 2003”);
 - ii. The SEBI (Prohibition of Insider Trading) Regulations, 1992 (“PIT Regulations, 1992”) read with the SEBI (Prohibition of Insider Trading) Regulations, 2015 (“PIT Regulations, 2015”);
 - iii. The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (“Takeover Regulations, 1997”), and
 - iv. The Listing Agreement.
- 2 The investigation in the matter, was triggered by abnormal price movement in the scrip, created by positive corporate announcements by the company not supported by the fundamentals of the company. The Price Volume Chart during the period under investigation is as under:



- 3 During the same period, BSE Sensex dipped from 19,696 as on December 8, 2010 to 16,739 as on January 20, 2012. The trading in the scrip was on trade-to-trade basis during the period 31.12.2010 to 22.02.2011 and from 18.3.2011 to 20.1.2012 with applicable circuit filters of 5%. The investigation brought out a manipulative scheme involving 52 entities including the three noticees named above namely, Kanta Anantrai Desai, Sneha Pankaj Desai and Dimple Pankaj Desai. A suitable Order against 49 noticees was passed in the matter on April 24, 2017. As the three noticees sought adjournment of hearing, the Order of April 24, 2017 left out the three noticees named above.
- 4 Based on the investigation, SEBI vide *ad interim ex parte* Order June 07, 2016, impounded the alleged unlawful gains of a sum of Rs. 12,54,84,118 (alleged gain of Rs. 7,86,21,436 + interest of Rs. 4,68,62,682 (from 14/06/2011 to 01/06/2016), jointly and severally from the 52 entities identified by the investigation. Subsequently, the *ad interim ex parte* Order of June 07, 2016 was confirmed after giving opportunity of hearing to the entities, vide SEBI Order dated September 21, 2016 with the following reliefs/ directions:-

“The directions against the aforementioned entities at paragraph 6.3.1 in respect of their bank accounts/ demat accounts/properties (as contained in the Impounding Order dated June 7, 2016), shall be restricted to their respective individual amounts. The Impounding Order dated June 7, 2016, shall stand vacated as against them if the aforesaid individual amounts are credited to the Escrow Account. On production of proof that their individual amounts is deposited in the Escrow Account, SEBI shall communicate to the Banks and Depositories to defreeze the accounts.”

- 5 Aggrieved by the aforesaid Order, 14 entities filed appeal before Hon’ble SAT and vide Order dated January 13, 2017, Hon’ble SAT disposed of the appeal recording the statement of SEBI counsel that SEBI would issue Show Cause Notice (SCN) to the appellants, give opportunity of hearing and pass appropriate final Orders within a period of three months. Accordingly, SCN dated January 19, 2017

was issued on 52 entities and a suitable Order against 49 noticees was passed in the matter on April 24, 2017. This Order deals with the remaining three entities. While the specific issues relating to these 3 entities are dealt with in detail in this Order, the common issues are addressed in a summary form since the details are available in the Order dated April 24, 2017.

Show Cause Notice, Reply & personal hearing.

- 6 The noticees (numbering 52) were categorized into 4 groups, as mentioned below, in the Order dated April 24, 2017 on the basis of the off-market transactions between the entities, apart from certain other factors. The same categorization has been adopted for the purpose of this Order too.

Group 1 – Company (EIL) and its Promoter (Cementex (India) P. Ltd.) and six Directors of EIL;

Group 2 - Entities that are directly connected with Group 1;

Group 3 - Entities that are directly connected with Group 2, indirectly connected to Group 1;

Group 4 - Entities that are directly connected with Group 3; and thereby indirectly connected to Group 1 & 2;

All the three noticees named above were in group 2 and the details of connections with other entities in the Group1 are tabulated below:-

S. No.	Name & PANs	Connection with other entities of Group
1	Dimple Pankaj Desai AUQPD3909F	Had off market connections with one I. K. Projects Pvt. Ltd. in which entities Srinivas Yadav Sher and Marupudi Sree Lakshmi were directors. Srinivas Yadav Sher is one of the directors of Exelon and thus classified as group 1 entity. Had off market connections with entity Srinivas Yadav Sher prior to Investigation period
2	Kanta Anantrai Desai AAEPD6006F	Had off market connections with one I. K. Projects Pvt. Ltd. in which entities Srinivas Yadav Sher and Marupudi Sree Lakshmi were directors. Srinivas Yadav Sher is one of the directors of Exelon and thus classified as group 1 entity. Had off market connections with entity Srinivas Yadav Sher prior to Investigation period
3	Sneha Pankaj Desai AIBPD1454A	Had off market connections with one I. K. Projects Pvt. Ltd. in which entities at Srinivas Yadav Sher and Marupudi Sree Lakshmi were directors. Srinivas Yadav Sher is one of the directors of Exelon and thus classified as group 1 entity

- 7 Based on the investigation, a common Show Cause Notice (SCN) dated January 19, 2017 was issued to 52 entities named above, under section 11B of SEBI Act, 1992, inter alia alleging that the company & its directors made misleading corporate announcements of positive nature without any intention

of implementing these announcements only with a view to trigger an upward price move in the scrip. It was also alleged that the connected entities (which includes the three noticees who are dealt with in this Order) played a part in price manipulation and later offloaded the shares in the market and made illegal gains and defrauded the genuine investors and thus violated Regulations Regulation 3(a) (b) (c) (d), 4(1), 4(2) (a) of SEBI (PFUTP) Regulations 2003.

8 The replies of the noticees are summarized under the respective names hereunder:-

- a) *The prima facie reading of the SCN reveals that the proceedings have been randomly and arbitrarily initiated. It appears from even a cursory review of the data provided that there may be numerous off market transfers of shares by the promoter/ directors and PACs. However, we have been arbitrarily selected for action;*
- b) *The SCN wrongly presumes and concludes that they are a party to certain alleged conspiracies and manipulations in the scrip of Exelon. They are regular trader in securities and their trading in the equity shares of Exelon was wholly in the ordinary course of business;*
- c) *They are neither aware of nor involved or connected with any of the alleged conspiracy or manipulations. They are not connected with any of the alleged conspiracy or manipulations. They are not connected with the company or its promoters or directors. Their purchase of equity shares in the ordinary course of business from one person who allegedly has some connection with the Company is the only transaction. Such a transaction does not amount to connection, and in any case cannot even remotely suggest any concern or involvement with the alleged manipulation;*
- d) *They have not carried out any of the allegedly manipulative transactions of establishing new LTP, NHP, etc,. The transaction in the equity shares were duly recorded in their books in the same manner as all other transactions in my dealings in securities. The transactions were duly and likewise disclosed and offered the taxation. There have been no question or dispute in my accounts, audit or tax assessment;*
- e) *The only alleged connection between them and the “group” is that they received shares in off market transfers from a certain person in the “group”. No other factor has been even alleged. There are no common directors, common phone numbers, common address or common introducer. One off transaction does not result into a “connection” and in any case cannot be the basis of holding that they are part of a group;*
- f) *It is seen that their alleged percentage of trading volume whether on buy side or sell side, is extremely miniscule;*
- g) *The allegations of manipulations in the form of establishing such manipulated prices in the market are serious allegations and require incontrovertible proof. They reiterate that other than alleging “connection” with the company/ its promoters solely on the basis of off market purchase carried out by them, nothing further has been alleged or placed on record;*

- b) Off market purchase are legal and nothing irregular can be alleged in this regards. Off market purchases are one of the normal methods of purchase and sale of shares. Parties who find buyers/ sellers for shares do engage in such off market transfers;*
- i) They have purchased share off market in the ordinary course of business. They have duly disclosed these for accounting and tax purposes. There is no basis for alleging any illegality or irregularity in such off market purchase;*
- j) Charge of price manipulation is not alleged against them.*

9 After considering the reply of the noticees, an opportunity of personal hearing was also granted to the three noticees on April 5, 2017. The three noticees sought adjournment of hearing. Subsequently, another opportunity of hearing was granted on May 17, 2017 to the three noticees. The noticees submitted similar replies dated May 9, 2017 that they have nothing further to add to their submissions and they waive off the right of personal hearing and requested to dispose off the proceedings against them on the basis of their written submissions.

10 As detailed in the Order dated April 24, 2017, the issues for consideration in this case are:-

Issues :

Issue 1: Whether the Group 1 entities (Company, promoter, and 6 directors) by making misleading corporate announcements indulged in securities market manipulation in the scrip of EIL as contemplated in the SEBI (PFUTP) Regulations, 2003 ?

Issue 2: Whether noticees Jayesh H. Mehta and Shivcharan S. Kashyap both belonging to Group 3 and Divyesh H. Surana belonging to Group 4, have indulged in price manipulation in the scrip of EIL, which attracts the provisions of Regulations 3(a) (b) (c) (d), 4(1), 4(2) (a) of SEBI (PFUTP) Regulations 2003 ?

Issue 3: Whether the three noticees are “connected” to the fraudulent scheme perpetrated in the scrip of EIL, in any manner whatsoever?

Issue 4: Whether the profits alleged to have been made by the noticees have actually accrued to them for the purpose of disgorgement or other directions under section 11B?

Consideration of Issues:

Issue 1: Whether the Group 1 entities (Company, promoter, and 6 directors) by making misleading corporate announcements indulged in securities market manipulation in the scrip of EIL as contemplated in the SEBI (PFUTP) Regulations, 2003?

- 11 After analyzing the facts and circumstances of the case, I had observed in the Order dated April 24, 2017 that the corporate announcements disclosed to the BSE were intended to push up the price of the scrip and to attract interest of investors and the said announcements were made by the entities in Group 1. Accordingly, the entities in Group I were held responsible for manipulating the scrip through a series of unfulfilled corporate announcements that spanned for 3 months from January 2011 to March 2011.

Issue 2: Whether noticees Jayesh H. Mehta and Shivcharan S. Kashyap both belonging to Group 3 and Divyesh H. Surana belonging to Group 4, have indulged in price manipulation in the scrip of EIL, which attracts the provisions of Regulations 3(a) (b) (c) (d), 4(1), 4(2) (a) of SEBI (PFUTP) Regulations 2003 ?

- 12 It was established in the Order dated April 24, 2017 that on the basis of the analysis of trading pattern, Last Traded Price (LTP) and New High Price (NHP), Shivcharan S. Kashyap, Jayesh Mehta & Divyesh H. Surana indulged in price manipulation by manipulating the NHP and LTP.

Issue 3: Whether the three noticees are “connected” to the fraudulent scheme perpetrated in the scrip of EIL, in any manner whatsoever?

- 13 During the investigation period, Kanta Desai purchased 6,819 shares and sold 32,568 shares, Sneha Desai purchased 11,000 shares and sold 56,000 shares and Dimple Desai purchased 5,000 shares and sold 6,683 shares. As per the SCN, the connection among the Group has been alleged on the basis of Annexure 1, attached to the SCN, which provides a table showing connection of each noticee with other noticees of the whole Group. After a careful analysis of the connection, the whole Group of

52 noticees has been subdivided into four sub Groups, including the three noticees namely Kanta Anantrai Desai, Sneha Pankaj Desai and Dimple Pankaj Desai, belonging to second sub group i.e. part of the group which had off market dealings / transactions with each other in the scrip of EIL during the investigation period. In an off-market transactions, it is normally presumed that the involved entities are related entities or known to each other. As stated at para 6, it is noted that all the three noticees had purchased in off market from I.K.Projects Pvt. Limited. As per the MCA portal, I K Projects Private Limited was a private company incorporated on July 28, 2005 having its address at 101, Jyothi Homes Srinagar Colony Hyderabad -73, which is exactly same address as that of Srinivasa Rao Marupudi (CEO of EIL). Two out of three directors of I.K. Projects Private Limited are directly connected to EIL namely Srinivas Yadav Sher and Sree Lakshmi Marupadi. Srinivas Yadav Sher is also one of the directors of EIL (group I Noticee) and Sree Lakshmi Marupadi (group II Noticee) is wife of the Srinivasa Rao Marupudi (CEO of EIL)

- 14 This off market transaction clearly links the three noticees directly to Group 1 i.e. EIL, promoters and directors. Therefore, I have no hesitation in holding that the three noticees are either directly or indirectly connected to the manipulation and fraudulent scheme brought out in the investigation and were the end beneficiaries of such price manipulation. Based on all these facts, I hold that the three noticees namely Kanta A. Desai, Dimple P. Desai and Sneha P. Desai violated Regulation 3(a) (b) (c) (d), 4(1), 4(2) (a) of SEBI (PFUTP) Regulations 2003.

Issue 4: Whether the profits alleged to have been made by the noticees have actually accrued to them for the purpose of disgorgement or other directions under section 11B?

- 15 During the hearing, many of the entities have raised the issue of calculation of profit and legality of impounding. Noticees have contended that on the basis of the highest notional value of the scrip, their profits were calculated and all their bank accounts were frozen, even though shares were not off loaded. Based on the submissions of the noticees contained in their replies and advanced during the personal hearing, it is understood that the profit calculation is based on notional profits of the noticees that may have accrued if they had sold the shares, which they held as on the date of end of patch II (i.e. closing price of Rs. 89). In the Order dated April 24, 2017, I had revisited the basis of profit calculation adopted by the Investigating Authority in the matter. I have also held in the said

Order that the Orders to the effect of disgorging or impounding gains, in my opinion, should be done where the gains have actually accrued to the manipulators. Extending this logic to the facts of the instant case would eventually result in the main manipulator escaping the net of disgorgement/impounding and the other entities who are connected to the manipulators, through varying degrees of connections, being implicated. In view of the same, I had dropped the directions of impounding contained in the Order dated September 21, 2016 against all the noticees other than the promoter Cementex. The same reasoning is extended in the cases of the three noticees here and hence the impounding direction contained in the Order dated June 7, 2016 and September 21, 2016 against these noticees too are dropped.

16 Considering the above, I, in Order to protect the interest of investors and the integrity of the securities market, in exercise of the powers conferred upon me under section 19 of the SEBI Act, 1992 read with section 11, 11(4) and 11B of the SEBI Act, and regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003, hereby issue the following directions:-

- i) Noticees in **Group 2** (shown in table below) be restrained from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 3 years;

S. No.	Name	PAN
1.	KANTA A. DESAI	AAEPD6006F
2.	DIMPLE P. DESAI	AUQPD3909F
3.	SNEHA P. DESAI	AIBPD1454A

- ii) The direction of impounding of assets including bank accounts / demat accounts / properties contained in the Order dated June 7, 2016 and modified subsequently vide Order dated September 21, 2016 shall stand revoked against all the above mentioned noticees.

17 The above directions shall come into force with immediate effect.

18 A copy of this Order shall be served upon the stock exchanges and the depositories for necessary action and compliance.

Place: Mumbai

Date: December 11, 2017

**G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**