

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11 AND 11B OF SECURITIES AND EXCHANGE BOARD OF INDIA, ACT, 1992 READ WITH REGULATION 11 AND 13 OF SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003: IN THE MATTER OF PUBLIC ISSUE OF GCCL INFRASTRUCTURE & PROJECTS LTD.

1.0 BACKGROUND

1.1 GCCL Infrastructure & Projects Ltd. (hereinafter referred to as GCCL) having its registered office 606, "SAKAAR", Nehru Bridge, Ashram Road, Ahmedabad was incorporated as a public limited company on October 25, 1994. It came out with the public issue during November 1995 for 20 lacs of equity shares of Rs 10 each. The scrip was listed on The Stock Exchange, Mumbai (BSE) on January 25, 1996 at a price of Rs 25/- and subsequently touched a high of Rs 92/- on June 07, 1996.

1.2 BSE in their routine surveillance and monitoring suspected that the price in the scrip had been rigged. Preliminary investigation by BSE revealed that inflated price in the scrip was not justified and there were reasons other than fundamentals behind the abnormal price spurt in the scrip. BSE thus, suspended the trading in the scrip in June 1996 indefinitely with prior approval of SEBI. The Stock Exchange Ahmedabad (ASE) also suspended the trading immediately thereafter for an indefinite period. In this background, Securities and Exchange Board of India (SEBI) conducted formal investigations and the report thereof was submitted on March 30, 2001. Later on, during the review of the investigation report, the then SEBI Chairman vide order dated June 20, 2003 directed the matter to be further investigated.

Accordingly, the matter was further investigated and it was inter alia found that GCCL and Shri Amam Shreyans Shah, promoter/director of GCCL, through their front entities, nine Ahmedabad based finance companies namely M/s. Ripple Securities & Services (P) Ltd., M/s. Honest Credit Capital Ltd., M/s. Promise Finance Pvt. Ltd. M/s. Patel Securities & Stock Holdings (P) Ltd., M/s. Image Caplease Ltd., M/s. Pushkaravat Finlease Pvt. Ltd., M/s. Upward Trend Equity Reserve Pvt. Ltd., M/s. Reliable Wind Energy Ltd. & M/s. Rishabh Securities Ltd. and one OCB namely M/s Willow Wood Corporation, cornered large quantity of shares of GCCL in violation of Regulation 3 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 [hereinafter referred to as "SEBI (FUTP) Regulations, 1995"].

2.0 SHOW CAUSE NOTICE

2.1 Show Cause Notices dated November 24, 2004 were issued to GCCL and Shri Amam Shreyans Shah asking them to show cause as to why directions under section 11B and section 11(4) of SEBI Act, 1992 prohibiting them from dealing in securities and accessing the capital market for a suitable period should not be issued against them.

2.2 As per the show cause notice, the main charge against the GCCL and Shri Shah was that they, acting in a fraudulent manner, cornered large quantity of shares of the company in the name of their following front entities and thus had violated Regulation 3 of the SEBI (FUTP) Regulations, 1995 :

A) Nine Ahmedabad based finance companies with their shareholding is given as under :

Sr.no.:	Name of the finance companies	Shares held
1.	M/s. Ripple Securities & Services (P) Ltd	126800
2.	M/s. Honest Credit Capital Ltd	202800
3.	M/s. Promise Finance Pvt. Ltd	64700
4.	M/s. Patel Securities & Stock Holdings (P) Ltd	50700
5.	M/s. Image Caplease Ltd	150800
6.	M/s. Pushkaravat Finlease Pvt. Ltd	199100
7.	M/s. Upward Trend Equity Reserve Pvt. Ltd	119700
8.	M/s. Reliable Wind Energy Ltd	179200
9.	M/s. Rishabh Securities Ltd	84700

and ;

B) An OCB, M/s Willow Wood Corporation, which was the only applicant for NRI/OCB quota shares in the public issue of GCCL and was allotted all 4,80,000 shares reserved for such category.

3.0 REPLY TO THE SHOW CAUSE NOTICE AND PERSONAL HEARING

3.1 GCCL and Shri Amam Shreyan Shah forwarded their replies vide letters dated February 21, 2005 inter alia submitting as under :

a) SEBI has already passed an order with regard to the market manipulation in the scrip of GCCL in the year 2001 suspending the certificate of registration of GCCL Securities Ltd. which has a common Director with GCCL.

b) The provisions of Limitation Act should also have to be taken into consideration in this case as the investigation has been completed long back.

c) The 9 companies referred to in the show cause notice are limited companies and therefore are separate legal entities. Moreover, besides these 9 companies being shareholders of GCCL, there is no linkage between them. None of the directors of GCCL are the directors of these 9 finance companies. In the absence of any irregularity in the allotment procedure GCCL cannot be, in any way, be held responsible for off market transaction carried out by these entities. Similarly, there is no evidence to prove that the OCB was their front entity.

d) The allegation of violation of Regulation 3 of SEBI (FUTP) Regulations, 1995 will not subsist in the present case because there is no allegation made by SEBI as to the intention of GCCL to deceive another party nor is there any evidence to indicate intention of deceit.

3.2 As requested, GCCL and Shri Shah were granted opportunity of personal hearing before me on September 20, 2005 wherein Shri Shah appeared and made oral submissions on behalf of the company as well as on his own behalf. During the said oral submissions Shri Shah reiterated the submissions made in their replies.

4.0 CONSIDERATION OF ISSUES AND FINDINGS

4.1 I have carefully considered the investigation report, the show cause notice, the reply submitted by GCCL and Shri Amam Shreyans Shah and the submissions made by Shri Shah during the personal hearings on September 20, 2005.

4.2 I note that the aforesaid 9 Ahmedabad based finance companies were found to have bought large quantity of shares of GCCL in off-market deals from major original allottees of the public issue of the company. I further note that summons were issued to the aforesaid entities on the addresses provided by the company. However, in respect of seven companies mentioned above at sr. no.1-7 in para 2.2-A, the summons returned back undelivered

from the postal authorities with remarks viz "left" or "not known". With respect to the summons issued to the companies mentioned at sr. nos.8 and 9 in para 2.2-A, the summons though received by somebody at their address, were not replied to. All the aforesaid entities were shown to be existing shareholders of the company holding substantial number of shares as per the above table. The summons issued to M/s. Willow Wood Corporation, the only OCB which was allotted all NRI/OCB quota shares in the public issue of GCCL, at their address provided by the company, also met with the same fate and returned undelivered.

4.3. I also note that Shri Amam Shreyan Shah, the promoter/director of GCCL, in his statement recorded by SEBI during the investigation proceedings on January 23, 2004, when asked to explain the aforesaid situation, could not offer any explanation and merely submitted that address has been given as per the company's record. When confronted how is it that the company did not know the present address of OCB being the largest share holder of the company since last eight years, Shri Shah replied that he did not have any answer to this. It is also observed that three of the above finance companies namely M/s. Honest Credit Capital Ltd, M/s. Image Caplease Ltd and M/s. Reliable Wind Energy Ltd were clients of M/s. GCCL Securities Limited, a group company of GCCL of which Shri Amam Shreyan Shah was one of the directors. In these circumstances, coupled with the investigation getting into a logjam with the 10 entities including the OCB not traceable at the addresses furnished by the company, the investigating officer was led to

conclude that these were, in fact, front entities of GCCL and its promoter / director Shri Shah and were used by them to corner the large quantity of shares of GCCL.

4.4 From the reply to the show cause notice submitted by GCCL and Shri Amam Shreyan Shah, its promoter / director, I note that it was submitted by them that these 9 companies are separate legal entities and only because of the fact that the director of GCCL could not furnish the present addresses of these companies, it can not be concluded that these were their front companies. They further submitted that, besides being shareholders of GCCL, there is no linkage between GCCL and 9 finance companies. None of the directors of GCCL are the directors of 9 finance companies. It was further argued that it is not the obligation of the company to keep track or to produce the shareholders before an authority if the summons come back undelivered. Similar submissions were made with respect to OCB M/s. Willow Wood Corporation.

4.5 In this regard it would be pertinent to refer to the judgment of the Full Bench of the Hon'ble Delhi High Court in **Commissioner of Income Tax Vs. Sophia finance Ltd. [1994] 204 ITR 98** wherein inter alia the question for consideration was as to whether the assessee-company can claim the money credited in the accounts books as receipt of share application money from the non-existent shareholders. While observing that in large number of similar cases either the shareholders did not exist at the addresses given or they were mere name-lenders, the Hon'ble Court held that in case the shareholders are found to be non-existent, then, in effect, it would mean that there is no valid issuance of shares because the shares can not be issued in the name of non-existing persons. The court further held that if the company fails to offer any explanation or the explanation offered by them is not satisfactory, then

the said sum may be charged to income tax as the income of the company. The above decision in the context of income tax is being cited to establish, for a limited purpose, that the company GCCL and its promoters/directors Shri Shah could not discharge the onus cast upon them to dispel the presumption that these 9 finance companies and 1 OCB were fictitious, non-genuine and their front entities.

4.6 In the present case also neither the 9 Ahmedabad based finance companies who had bought large quantity of shares mostly before the listing of the shares on the exchange, from the original allottees in the off market deals, nor the OCB M/s Willow Wood Corporation which was allotted all the NRI/OCB quota shares in the public issue in 1995 could be traced at the addresses furnished by the company GCCL. The company also could not furnish any information regarding the present whereabouts of the aforesaid large shareholders despite several opportunities. In the past also, some of the original allottees in the scrip were found to be non genuine and were debarred from dealing in and accessing the securities market for a period of one year in exercise of powers under Section 11B of the SEBI Act read with Regulation 11 of SEBI (FUTP) Regulations vide SEBI's order dated October 14, 2002.

4.7 It is also worth mentioning that on the basis of the findings of the investigations conducted by SEBI, the certificate of registration of M/s. GCCL Securities Ltd., a member of Ahmedabad Stock Exchange and a group company of GCCL of which Shri Amam Shreyan Shah also was one of the directors, was suspended for a period of 3 months by SEBI vide its order dated February 20, 2002 as it was found to have transacted in the scrip of GCCL during the relevant period with a view to create an artificial market in the scrip and manipulate its price. It is also noted from

the investigation report that 3 out of above mentioned 9 Ahmedabad based finance companies were the clients M/s. GCCL Securities Ltd.

4.8 In this background, following the ratio of the aforesaid case (supra), it may be inferred that the aforesaid entities were the front entities used by GCCL and its promoter/director Shri Amam Shreyan Shah in keeping with the overall design, as evident from the material circumstances of the case, to corner large quantity of shares of GCCL to jack-up the price and offload the shares in future at higher prices. They however could not succeed in their design and could not offload the said shares in the market consequent to the suspension of the trading by BSE and ASE in June 1996 which continues even today.

4.9 Having said so, I take note that the transactions in question took place way back in 1995-96 and the scrip continues to remain suspended in BSE and ASE since June 1996 till date, frustrating the plans of the promoter/director of the company. Much time has lapsed since then and eventually pursuant to the indefinite suspension of trading by the exchanges, the acts of omission and commission of GCCL and its promoter/director Shri Amam Shreyan Shah, as alleged, did not result in any wrongful loss to any investor or wrongful gain to themselves. However, in order to ensure that no loss is caused to any investor even in future, appropriate preventive directions need to be passed restraining these non-traceable, fictitious and non-genuine entities from disposing off the shares cornered by them in the off market transactions as referred to above. Further, I feel that the interest of the investors and securities market would be better served by passing appropriate preventive directions restraining these entities from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in the securities so that neither these entities nor any person

acting on their behalf may resort to any manipulation resulting in distortion of market equilibrium. As all the summons and communications sent to these entities at their available addresses returned undelivered, I am of the view that no useful purpose would be served by sending any show cause notice to these entities.

4.10 I note that SEBI (FUTP) Regulations, 1995 were amended in the year 2003 and in terms of Regulation 13 (1) of SEBI (FUTP) Regulations 2003, any violation of regulations 3,4,5 and 6 of SEBI (FUTP) Regulations 1995, shall be investigated and proceeded against in accordance with the procedure laid down in SEBI (FUTP) Regulations 2003. Accordingly, this order is being passed under amended Regulations.

5.0 ORDER

5.1 Thus, on a conspectus of the facts of the case and the material attendant circumstances, I, in exercise of the powers conferred upon me under Section 19 read with Sections 11(4) (b) and 11B of the Securities and Exchange Board of India Act, 1992, further read with Regulations 11 and 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, hereby direct as under:

a) None of the shares of GCCL held by these nine finance companies and OCB, namely M/s. Ripple Securities & Services (P) Ltd., M/s. Honest Credit Capital Ltd., M/s. Promise Finance Pvt. Ltd. M/s. Patel Securities & Stock Holdings (P) Ltd., M/s. Image Caplease Ltd., M/s. Pushkaravat Finance Pvt. Ltd., M/s. Upward Trend Equity Reserve Pvt. Ltd., M/s. Reliable Wind Energy Ltd. & M/s. Rishabh Securities Ltd. and M/s Willow Wood Corporation respectively, shall be traded or transferred in any manner whatsoever.

b) All these nine finance companies and one OCB, as aforesaid, are hereby restrained from accessing the securities market and are prohibited from being associated with securities market to buy, sell or otherwise deal in securities in any manner whatsoever.

This order shall come into force with immediate effect.

Date: 21/ 12/ 2005

Place: Mumbai

G. ANANTHARAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA