

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

CORAM: Dr. T. C. NAIR, WHOLE TIME MEMBER

**IN THE MATTER OF SREE GANESH ENTERPRISES (SEBI REGISTRATION
NO. INS011122327 AND PAN – AANFSO388N)**

IN THE SCRIP OF ALANG INDUSTRIAL GASES LIMITED

ORDER

**UNDER REGULATION 28 (2) OF THE SECURITIES AND EXCHANGE
BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008**

1. This order would dispose of the enquiry proceedings initiated against Shree Ganesh Enterprises (hereinafter referred to as 'SGE' or 'sub-broker') in the scrip of Alang Industrial Gases Ltd. (hereinafter referred to as 'Alang' or 'the company'). The Bombay Stock Exchange Ltd. (hereinafter referred to as 'BSE') vide letters dated 22-04-2002 and 05-09-2002 had reported that the trading in the scrip on 16-03-2001 did not appear to be genuine and might be in the nature of financing transactions. Investigations by the exchange revealed that during the period starting from 01.01.2001 to 16.03.2001, the shares of Alang, an illiquid scrip, were traded only on three days, on 19.01.2001, 22.01.2001 and 16.03.2001 and the quantity traded were 1900, 500 and 4,43,300 shares respectively. It was noted that for the trades on 16-03-2001, the shares delivered by the selling clients had come from the demat accounts of S/Shri Rajesh Shah and Falgun C. Shah who in turn had received the shares from the demat account of Shri Dilip Balkrisna Sheth, Director of Alang.

2. On receipt of the investigation report from the BSE, the Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted investigations into the dealings in the scrip for the period between 01-01-2001 and 31-03-2001. The investigations revealed that on 16.03.2001 when a total 4,43,300 shares were traded, Shyam Investments, Uttam Investments, Loko Securities, Rupani Enterprises and Jatin J. Shah were the sellers while Comet Investments Pvt. Ltd., Addvalue Financial Services Pvt. Ltd., Meeta A. Gala, Mitesh V. Shah, Dharmen J. Sheth, Rohit Gandhi, Caplon Securities & Investments Pvt. Ltd. were the buyers. It was revealed that prior to 16.03.2001, none of these selling clients were holding any shares of Alang. It was further revealed that few ultimate clients of the selling members had common address. The selling clients sold mostly through Bang Equity Broking Pvt. Ltd., Sovereign Securities Pvt. Ltd., Kaushik Shah Share and Securities Ltd. and Shri Kirtikumar Fulchand Vora, whereas most of the buy orders were placed through the broker, M/s. Century Consultants Ltd. (hereinafter referred to as "CCL").
3. It was revealed that CCL had purchased 4,43,200 shares out of 4,43,300 shares sold on 16-03-2001 which amounted to 99.98% of the trading volume done on that day. CCL made this purchase for its sub-broker, SGE. From the investigation report submitted by BSE it was noted that CCL was in financial crisis and that as on 15-03-2001, SGE had a credit balance of Rs.24, 22, 456/- with CCL. In this background, it was alleged that SGE had bought shares through CCL only to recover the credit balance lying with CCL. The investigations further found that SGE along with its clients M/s. Caplon Securities and Investments Pvt. Ltd., M/s. Addvalue Financial Services Pvt. Ltd., Shri Kantilal M. Shah, Shri Mitesh Shah, Shri Dharmen Seth, Meeta A. Gala and Shri Rohit Gandhi had dealt in the scrip in a manipulative and fraudulent manner. It was also alleged that the SGE had given misleading advice to clients with a view to induce

them to trade in the scrip. On the basis of the above findings in the Investigation Report, it was alleged that SGE had violated the provisions of Regulation 3 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as “PFUTP Regulations”) and Clauses D(4) and B(4)(b) of the Code of Conduct prescribed for sub-brokers mentioned under Schedule II read with regulation 15 of the SEBI(Stockbrokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as ‘broker regulations’).

4. An enquiry was thus ordered against SGE under the provisions of the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as “Enquiry Regulations”). An enquiry officer was appointed vide order dated 23-08-2004 by SEBI to enquire into the affairs of SGE in its dealing in the matter of Alang.
5. The Enquiry Officer submitted his Enquiry Report dated 25-10-2005 holding SGE guilty of violating clauses B(4)(b) and D(4) of the Code of Conduct prescribed for sub-brokers under the Broker regulations and recommended that a minor penalty of censure to be imposed on SGE.
6. As the SEBI was not in agreement with the findings as well as the recommendations of the EO, a show cause notice dated 02-02-2006 under regulation 13 (5) of Enquiry Regulations, was issued to SGE to show cause as to why penalty should not be enhanced. SGE vide its letter dated 20-02-2006 responded to the show cause notice interalia submitting as follows;

- a) With regard to transfer of 3, 00, 000 shares in the demat account of partners of SGE, SGE submitted that the objective of selling the same on BOLT was to enable the selling group to sell the shares in accordance with law and enable its clients who purchased these shares, to get it free from issues involved in the preceding ownership. Such large quantity of shares is best sold through transparent system of BOLT. As good faith for the sellers and buyers for effective and expeditious transfer of shares, these shares might have been transferred into the account of a partner of SGE.
- b) With regard to transactions in association with Shri Yatin Shah and Shri Rajesh Shah, SGE submitted that numerous transactions took place over a long time and the final purchase of shares of the Company was only the culminating and last leg of the transaction. This, obviously, had taken place over a long period and is not consistent with the allegation that it had taken advantage of preferential payment mechanism of BSE. The purchases were merely bonafide transactions to culminate and complete the transactions and have absolutely no connection with other allegations.
- c) With regard to the allegation that SGE had dishonestly recommended purchase of shares of Alang, SGE submitted that the promoters of the company were clearly in need of funds and were willing to accept a significant discount on fair value. That it was common in the market to look for an opportunity to buy shares in bulk where seller is in need of funds hence the selling price was fairly low. It stated that the allegation against SGE was that it has informed some parties about rumours relating to the company and

it was not alleged that SGE had given any false information to its clients. It submitted that a rumour when it is clearly stated as a rumour cannot deceive. SGE also submitted that not a single client had alleged that it had perpetrated any fraud on them as the decision was entirely their own.

- d) With regard to the statement of Shri M V S Anantharaman denying placing any orders, SGE submitted that it was in fact he who had placed orders orally which he is used to.
- e) With regard to the allegation that SGE had an ulterior motive to gain fraudulent preference, SGE submitted that the shares having been sold by the promoters of the Company had changed many hands before reaching SGE who after acquiring the same sold on the BOLT. While this was happening the question of financial crisis of CCL never arose hence, could not have anything to do with the financial crisis of CCL. The account with CCL would show payments and receipts taking place normally which would not have happened in case of financial crisis of CCL.
- f) It is contradictory to state that SGE had entered into only purchase transactions while there were sale transactions also being entered into by SGE in the normal course. It would be absurd to only purchase which would actually increase the dues of SGE.
- g) SGE contended that FUTP Regulations do not permit levy of any penalty once the Enquiry Officer has given a finding. SGE further submitted that Regulations provide for an enquiry by the Enquiry Officer, which includes written submissions and oral representation. Thereafter, there would be a finding of guilty or not. The question of

levying penalty arises only in case of Enquiry Officer finding the entity guilty. In case where the Enquiry Officer does not find guilt, there is no question of levying penalty either by Enquiry Officer or by the Whole Time Member. In case of attempt to levy penalty, that would be contradictory to the Regulations. Hence the proceedings before me are illegal and without jurisdiction and the proposal to levy penalty is contradictory to law.

- h) SGE contended that regulation 13 (6) of Enquiry Proceeding Regulations lays down five conditions under which major penalty may be imposed. However, in case of SGE none of the conditions are applicable and hence the question imposing major penalty does not arise. The onus is on SEBI to prove the allegations and not on SGE to disprove the same.
- i) SGE submitted that the Enquiry Officer had found SGE guilty of only one charge out of the three i.e. making false recommendation to clients to earn commission. However, from the show cause notice dated 02-02-2006, it appears that no penalty is proposed to be levied for this allegation at all implying thereby this allegation has been dropped. In view of even the third allegation being dropped as such no allegations remain and the matter is apparently closed. Therefore, there cannot be a question levying any penalty.
- j) SGE submitted that the total transactions in the scrip of the Company were worth Rs.1.75 crores and the commission on those trades was only Rs.25, 000/-. SGE further submitted that there were various reasons to charge such low commission. One of them being that some of those transactions were arranged transactions.

- k) In this regard, SGE relied on a decision of the Hon'ble Securities Appellate Tribunal in the matter of M. J. Patel wherein, the Hon'ble Tribunal held that suspension or cancellation of the Certificate granted to carry on broking business is not a matter which could be treated lightly and in the absence of sufficient justification supported with reasonable evidence, such a penal action cannot be sustained.
7. I note that SGE had waived the opportunity of personal hearing before me vide its letter dated nil and stated that whatever was required had been stated in its letter dated 20-02-2006 and that it did not need any further opportunity of personal hearing. As the noticee was not interested in a personal hearing, I proceed to consider the issues based on materials available on record, on merits.
8. I have perused the Enquiry Report, the show cause notices issued to SGE, replies of SGE and other material on record and proceed to consider the issues in the case. The main issues for determination in the present case would be to ascertain whether the noticee had violated the relevant provisions of the PFUTP Regulations and the Broker Regulations.
9. I note that the investigation was initiated on observing unusual trades in the scrip of AIGL entered on 16.03.2001. The investigations revealed that Alang was an illiquid scrip and during the period between 01.01.2001 to 16.03.2001, the scrip was traded only on three days i.e. 19.01.2001, 22.01.2001 and 16.03.2001. It was further revealed that on 16.03.2001 trading in AIGL was exceptionally high as compared to the other two days as is clear from the table shown in the earlier part of this order. It was also observed that the shares delivered by the selling clients had been delivered from the demat accounts of Rajesh Shah and Falgun C. Shah. Both these clients had received the shares from the demat account of Shri

- Dilip Balkrisna Sheth, Director of Alang. I note that SGE has not denied that 4,43,300 shares of Alang, which constituted 99.98% of the total shares bought on 16-03-2001, were bought by CCL for SGE which in turn purchased those shares for its clients.
10. I note that Shri Dilip Sheth, Director of Alang, in his statement recorded on 19.02.2004 submitted that he was in need of money and therefore he sold 300000 shares during the month of December, 2000 and subsequently another 145000 shares during February, 2001 to Shri Falgun Shah as per instructions from Shri Rajesh Shah. Shri Falgun Shah was an associate of Shri Rajesh Shah and was also one of the directors in M/s. Swaraj Capital Services Ltd., broker, NSE, a company promoted by Shri Rajesh Shah. It is noted that the membership of Swaraj was suspended by NSE for non - compliance with its bye-laws.
 11. I note that out of 1,45,000 shares sold by Shri Dilip Sheth to Shri Falgun Shah, 1,00,000 shares were credited to the demat account, No. 10633020 of Shri Falgun Shah. As regards, the remaining 45,000 shares which were in physical form, Shri Falgun Shah made a request for dematerialization on 21st March 2001, and accordingly those shares were dematerialised on 22-03-2001. As informed by Shri Dilip Sheth and Shri Falgun Shah, Shri Falgun Shah had opened the demat account and dealt in the above manner at the instance of Shri Rajesh Shah.
 12. I note from the records that during December 2000 Shri Dilip Sheth and Shri Rajesh Shah had orally agreed to buy and sell the shares in the aforesaid manner. As brought out during the investigation and admitted by Shri Rajesh Shah in his statement given to SEBI on 21-02-2001, Shri Dilip Sheth, sold and transferred 3,00,000 shares of Alang during December, 2000 to the demat account No. 10230150 of Shri Rajesh Shah. As per the

statement of Shri Rajesh Shah, these shares were transferred by Shri Dilip Sheth to him with a request to raise funds keeping those shares as security. As agreed with Shri Dilip Sheth, Shri Rajesh Shah approached few of his clients and friends to offer shares of the company as a security to raise funds.

13. I note that Shri Rajesh Shah in his statement to SEBI on 20-01-2004 stated that at the instance of Shri Dilip Sheth, he approached one Shri Yatin B Shah to dispose off the shares of Alang. Investigations revealed that Shri Yatin B Shah had the same address as that of the clients of SGE who bought these shares, viz., M/s. Comet Investments, M/s. Addvalue Financial Services Pvt. Ltd., and Kantilal Mohanlal Shah, which is, 6/8, Anant Wadi, 34, Nagar Niwas, Mumbai – 400002. Incidentally, SGE had traded on behalf of all these entities.
14. I note that the transactions as mentioned in Para 10 above did not reflect in the trade log. Only the transactions that took place on 19th & 22nd January 2001 and 16th March 2001 reflected in the trade log, indicating that the other transactions were off the floor transactions. SGE defended its act stating that there were lot of transactions that had taken place and the transactions that happened on the above said dates were the culmination of those transactions. This claim does not appear to be genuine and does not sound convincing as it was found that only certain transactions were routed through stock exchange .
15. I note that Shri Yatin Shah (who arranged the selling and buying clients), in his statement to SEBI on 13-02-2004 had stated that Shri Rajesh Shah had approached him with an offer to sell 4.5 - 5 lakhs shares of Alang. Shri Yatin Shah spoke to Shri Rakesh Shah (partner in SGE) and Shri Atul Shah who were residents of same building. On their agreement for the

deal, Shri Yatin Shah introduced Shri Rajesh Shah to Shri Rakesh Shah and Shri Atul Shah. All this had happened three to four days prior to 16-03-2001 when the bulk deal of 4,43,000 shares took place. Shri Yatin Shah further informed SEBI that pursuant to this arrangement he was to get some money as good will. Later on Shri Rakesh Shah called Shri Yatin Shah over phone to tell him that the deal was done and gave him a demat account number to which shares of the Company were to be transferred to.

16. Those were the 3 lakh shares that were transferred on 16-03-2001 from the demat account of Shri Rajesh Shah to the demat account No. 80016004 of Shri Anil K Shah and Shri Chetan P Shah, who were the partners of SGE. Shri Rakesh Shah in his statement to SEBI on 21-01-2004 stated that some clients were willing to purchase shares of Alang however, they wanted to route these transactions through BOLT. Hence, these shares were returned to Shri Yatin Shah. It is seen that Shri Yatin Shah arranged Shri Rajesh Jhaveri, M/s. Shyam Investments, M/s. Uttam Investments and M/s. Rupani Trading Co. to act as selling clients.
17. I note that during the investigations Shri Yatin Shah informed that Shri Rakesh Shah would call him up over phone and tell him to place sell orders on BOLT at the prevailing market price on that day and inform Shri Rakesh Shah so that buy orders after about 5 seconds could be placed for the same price. Shri Rajesh Shah who had a BOLT terminal would view the price of the scrip of the Company at his office and inform Shah Rakesh Shah so that the orders are placed accordingly. Interestingly, buying clients were either known to or connected to Shri Rakesh Shah. No acceptable justification was given as to why clients insisted on transactions to be routed through stock exchange. I note that in reply to show cause notice SGE had stated that there is nothing wrong with

transactions being routed through stock exchange. In the normal course of business it is not, but keeping in mind the background of this case, it does raise questions with regard to the genuineness of the transactions.

18. With respect to the clients of SGE, I find that Addvalue Financial Services Pvt. Ltd. (Addvalue) was registered with SGE since 20.09.1999 and directors of the company were Shri Dilip Chainani, Umesh Gupta & Sanjay Gupta. The company has its office on the first floor while SGE has its office on the second floor of Kothari House in Oak Lane in Fort, Mumbai. In his statement before SEBI, Shri Sanjay Gupta, Director of Addvalue, submitted that SGE recommended the scrip to him on 16.03.2001 informing that the scrip was going to go up because there were favorable market rumors. Shri Gupta also submitted that SGE was not specific about the market rumor and he was recommended a buy quantity of around 10,000-20,000 shares. Accordingly, Shri Sanjay Gupta spoke to the other directors and they agreed to buy 25,000 shares at the market rate. He also submitted that since the shares were not delivered to them, the deal had been mutually called off between the sub broker and Addvalue Financial Services Pvt. Ltd. Vide letter dated 28.03.2001 SGE informed Addvalue that *“as we are unable to deliver the shares of AIGL we have mutually agreed to cancel the deal and take it into our account if it comes in future”*.
19. I note that Shri Kantilal M. Shah, an 80 year old client of SGE had same address as the other partners of the firm i.e., 6/8 Anantwadi, 34 Nagar Niwas, Mumbai. From the client registration form of this client I note that this client was registered without any introduction. Further neither PAN nor income details of Shri Kantilal Shah were mentioned on the registration form. What is even more important about this particular client is that he holds two joint demat accounts with Shri Atul Shah with the depository

participant, SSKI Securities Ltd. with account No. 10141538 and No. 10369277. There was also a joint bank account, No. CD 11186 with the Bank of India (Stock Exchange Branch). Shri Kantilal Shah in his statement recorded at SEBI on 22nd April 2004 stated that he purchased 25 000 shares of the Company on the recommendation of SGE.

20. I note that Shri M V S Ananthakrishnan is another client who was registered with SGE without any introduction. As per the contract note dated 16th March 2001, Shri Annathakrishnan had purchased 2 lakh shares of the Company. However, during the statement recorded on 10th June 2004 he had denied having purchased any shares of the Company. He added that he does not even have any record reflecting placing an order or the actual purchase of 2 lakh shares of the Company. Examination of signature of Shri Ananthakrishnan on the said contract/confirmation note brought out the following discrepancies:

- a. Shri Ananthakrishnan's signature has dots in between initials, which was missing in his signature on the confirmation note.
- b. The way "M" is written by Shri Ananthakrishnan is very different from the one that appears on the confirmation note, so was "Krishnan".
- c. Shri Ananthakrishnan signs as "Anantha" while the signature on the confirmation note is "Ananth".

It is pertinent that when Shri Atul Shah (director of Comet Investments Pvt. Ltd. and younger brother of Anil Shah, partner in SGE) was confronted with the above during his statement recording on 16th June 2004, he agreed that the signature could have been forged.

21. Another client, Ms. Meeta A Gala was registered with SGE since 20.09.1999. She has been introduced by her husband Shri Anil Gala who was known to SGE. Shri Anil Gala appeared before SEBI on behalf of his wife as he claimed that *"all decisions on behalf of her are taken by him."* In his statement before SEBI, Shri Anil Gala submitted that Shri Rakesh Shah of SGE told him on 16.03.2001 that the scrip of AIGL looked good and he was going to get some benefit by purchasing the shares. He also submitted that he decided on the quantity (i.e. 15000 shares) and the deal was executed at the market price. He also submitted that the deal was called off at the end of the settlement because the sub broker did not deliver the shares.
22. With respect to Shri Mitesh V. Shah, I find that he was registered with the SGE since 29.01.2000 as a client without any introduction. He is related to the sub- broker as he got married to the sister of Shri Rakesh Shah who was one of the partners of SGE. He submitted in his deposition before SEBI on 28.04.2004 that he got a tip from the sub broker, SGE. He submitted that he had gone to the office of the sub broker and was told that *"it was a good share and since many people were buying at the office"*, he too placed buy orders. He submitted that he was planning to use the money from his family accounts to fund the purchase of 10000 shares of Alang. He also pointed out that *"the deal is still on (even after withholding of payout) as in that I will pay the amount if taking a buy position is beneficial to us and as per our fund position, else the deal is off"*. It was seen that he had regular dealings with SGE during 2000-01. A perusal of his account with SGE reveals that there was always a debit balance of about Rs. 2 lakhs which was squared off only on 31.03.2001. It can thus be inferred that SGE was using his own funds for purchases made on behalf of the client who happen to be closely related to the firm.

It is noted that Shri Mitesh Shah had mainly dealt in liquid scrips such as Whirlpool, Pentamedia, Infosys, S. Kumar's.com, Global Trust Bank etc. during 2000-01.

23. With respect to Shri Dharmen J. Sheth, I find that he was registered with SGE since 30.01.2000 as a client without any introduction because he was well known to Shri Mitesh Shah, a relative of the partners of SGE. He submitted in his deposition before SEBI that SGE suggested buying the scrip as they expected the price to go up over a period of time. He submitted that the sub broker decided on the quantity and price. He had placed buy orders for 10000 shares and submitted that he was planning to arrange for funds by switching over the earlier held shares in his accounts or through funds from his father's account. During investigations, he could not give any satisfactory explanation as to why he had dealt in an illiquid scrip in such large quantity. He stated that he bought on the "recommendation" of SGE and was "normally not aware of the liquidity status" of a particular scrip. A perusal of his IT return for A.Y. 2001-02 shows that his annual salary income was only Rs.80,000/-. With his meager salary and resources, it seems highly improbable that he would risk his money (about Rs.3.5 lakhs) in an illiquid scrip like AIGL. In his reply to the show cause notice, he stated that it was not his income but his position of finance that is relevant to be considered in deciding the capacity to execute such trades. He, however, did not produce any evidence to show that he was having sufficient capacity to enter into such bulk transactions. A perusal of his demat account reveals that he had mostly dealt (in small quantities) in media and IT scrips which were actively traded. It is seen that he had regular dealings with SGE. A perusal of his account with SGE revealed that he had a sort of running account which was squared off only in the end of March, 2001.

24. With respect to Shri Rohit B. Gandhi, I find that he was registered with SGE since 21.01.2000 as a client without any introduction and is admittedly well known to the sub broker. In his deposition before SEBI on 29.04.2004 he submitted that Shri Rakesh Shah suggested that he should purchase shares of Alang for reasons which he did not remember. He also submitted that *"everybody in the office of Comet Investments was purchasing the shares of AIGL"* and so he too followed it. The quantity and the rate were decided by him. He also submitted that he was planning to use his own funds to fund the purchase of 20000 shares of AIGL. From his demat account, it is seen that during 2000-01, his major dealings/ holdings were in highly liquid scrips like RIL, Reliance Capital, GE Shipping, Jindal Iron, Syndicate Bank, IndusInd bank etc.
25. From the above discussion with respect to the clients of SGE, it is seen that all of them have traded in the scrip of Alang only as per the advice and persuasion of SGE. SGE had incited them into trading in the scrip by informing that trading in the scrip of Alang was favourable. With regard to this allegation, SGE has contended that when the clients were so clearly told that the advice was based on rumours, it can not hold against SGE as misrepresentation. SGE can not escape liability by just saying that the clients were informed that they were rumours. If they were rumours, it was the duty of SGE not to spread them. An intermediary is duty bound not to spread rumours and in this case SGE knowing that they were rumours, passed on the information to its clients. It is noted that there was no significant corporate news or developments as far as Alang was concerned and by recommending the scrip to its clients, the sub-broker had spread rumours. I note that the code of conduct for sub-brokers prescribes that a sub-broker shall not furnish false or misleading quotations or give any other false or misleading advice or information to the clients with a view of inducing him to do business in particular

securities and enabling himself to earn brokerage or commission thereby. It also prescribes that a sub-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains. As found above, SGE had spread rumours about Alang to its clients and induced them to purchase the shares. Thus, I am in agreement with the finding of the enquiry officer with respect to this charge and find that SGE had violated clauses B (4) (b) and D (4) of the Code of Conduct for Sub-brokers as laid down in Schedule II under Regulation 15 of Brokers Regulations.

26. Further, as stated earlier, the transactions done on 16-03-2001 were pre-arranged, pre-decided and pre-meditated. This has been admitted by Shri Yatin Shah who is the link between the buying and selling clients. A perusal of the trade and order log together with the statements and conduct of the concerned parties and SGE reveals that the trades in question were fictitious trades which were carried out not for legitimate business or commercial reasons but for certain ulterior purposes. Here was a deal in which the sellers were not the real owners of the shares and did not have shares with them on the relevant date of the transaction, whereas SGE already had those shares in the demat account of its partners on the date of transaction (3 lakh shares had already come to the demat account of the partners of SGE on 16th March 2001). The buying clients appeared to have entered into the trades under some tacit understanding with SGE by virtue of their close connection with its partners. Such a transaction can by no means be said to be bona fide or genuine.
27. Shri Rajesh Shah, with the help of Shri Yatin Shah entered into off-market deals with SGE for sale of the shares. Both Shri Rajesh Shah and SGE

were the main players in the deal. It was Shri Yatin Shah who was approached by Shri Rajesh Shah for arranging the sellers. Shri Yatin Shah was the main link between the buyers and the sellers. Shri Yatin Shah along with Shri Falgun C. Shah who acted as conduit for transfer of shares aided and abetted the two main players in carrying out the deal. No cogent reason or convincing explanation has been offered as regards the buying of shares in the huge quantities by the clients of SGE in a dormant, illiquid and thinly traded scrip like Alang. In the said transactions, the sub – broker SGE with the connivance of the parties had made undue benefit.

28. In this regard I note that Arbitration proceedings were initiated by SGE against CCL and ex-parte arbitration award was passed in the matter in favour of SGE. I observe from the Arbitration Award that SGE claimed to have a debit balance with CCL on 16.03.2001. Information obtained from the BSE reveals that CCL was informed by BSE vide letter dated 16.03.2001 that its BOLT terminals would be de-activated w.e.f. 17.03.2001 on account of non-clearance of pay-in obligation pertaining to Rolling Settlement No. DR-241/200-01 (dated 09.03.2001) which was due on 16.03.2001. This was followed by further defaults on the part of Century Consultants Ltd. in payment of settlement dues and other obligations towards the exchange. In view of this, it appears that the dealings in question were carried out on the BOLT by SGE (quite late in the day on 16.03.2001 between 1.35 p.m. and 3.56 p.m.) with a view to recovering / adjusting the amount due from CCL.
29. It may be mentioned that under the Rules and Bye-Laws of the BSE, in the matter of application of all the money, rights, property and assets of the defaulter by the Defaulters' Committee, the settlement dues of the exchange or the clearing house enjoy the first priority whereas the payment of unpaid outstanding to members of the exchange is quite low

(i.e. the sixth) in the order of priority. In other words, the ulterior purpose or design behind this trading in Alang by SGE with the knowing participation of their clients (buyers) as stated above on the BOLT was to gain fraudulent preference through the settlement mechanism of the exchange to the detriment of the other creditors and thereby defeat the interests of other creditors of CCL. The decision to enter the trades on the BOLT was thus motivated by the desire to have a larger share than what would have otherwise come to them, in the assets / property of CCL on its default. The deal was thus conceived and was executed by a set of persons acting in league with each other for the purpose of causing wrongful gain or unfair advantage to SGE. Had the deal gone unnoticed by the exchange authorities, SGE would have taken protection under the Trade Guarantee Fund of the Exchange and at the same time gained a priority of claim on the CCL in the event of its eminent default. In this manner, SGE would have settled the deal with Shri Rajesh Shah as well as would have got preference in settlement of its claim on the defaulting Century Consultants Ltd.

30. This is further supported by the fact that most of the buying clients were closely related to SGE, Shri Mitesh V. Shah, Shri Kantilal M. Shah while other clients, Shri Rohit Gandhi and Shri Dharem J. Sheth were well known to partners of SGE. The striking common factors among these clients was that they mostly dealt in liquid scrips and none of them has been able to offer any satisfactory explanation as to why they chose to deal in such large quantity in an illiquid scrip like that of the Company. Further, two of the clients, Addvalue and Smt Meeta A. Gala had mutually called off the deal with SGE. Yet another client, Shri Ananthakrishnan who was shown to have purchased 2 lakh shares of the Company had denied purchasing any shares of Alang. In this case there were doubts raised about the confirmation note issued to him which only means that SGE had

used Shri Ananthakrishnan's name to purchase 2 lakh shares of Alang without his consent.. The above conduct of SGE clearly establishes that SGE has acted in such a manner with an ulterior motive for settling its account with its broker, CCL with whom it had a credit balance of Rs.24, 22, 456/-. This doubt further gets strengthened by the fact of ex-parte arbitration award. In the instant case, it is evident that when the partners of SGE recommended purchase of shares of Alang to its clients, there was no honest belief that there was any good reason to buy the shares of the company. All these facts and circumstances lead to the inevitable conclusion that the entire dealings in the scrip were carried out in a deceitful and fraudulent manner. Such manipulative conduct, amounts to violation of Regulation 3 of FUTP Regulations, which prohibits a person from buying, selling or otherwise dealing in securities in a fraudulent manner. I find that the sub-broker is presently registered as a sub-broker affiliated to M/s. BP Equities Pvt. Ltd. with SEBI Registration no. INS011122327.

31. Further, I note that SEBI vide order dated 10-12-2007 had restrained Shri Rajesh Shah, Falgun C Shah, Yatin B Shah , M/s Shyam Investments, M/s Uttam Investments, Rupani Enterprises, Loko Securities, Jatin J. Shah, M/s Comet Investments Pvt. Ltd., Addvalue Financial Services Pvt. Ltd., Rohit Gandhi, Meeta A. Gala, M/s Caplon Securities & Investments Pvt. Ltd., Mitesh V. Shah, Dharmen J. Sheth from accessing the securities market and prohibited them from buying, selling or dealing in securities in any manner whatsoever for a period of six months for their fraudulent dealings in the scrip of Alang. I further note that the above said order of SEBI was challenged by Shri Rajesh Shah in Appeal No. 14 of 2008 (Rajesh Ramanlal Shah vs. SEBI) before the Hon'ble Securities Appellate Tribunal ('SAT'). While the appeal was pending disposal, the appellant (Rajesh Shah) had approached the SEBI for a 'consent order' in

accordance with SEBI Circular dated April 20, 2007. As agreed by the SEBI, the pending appeal was disposed of by the Hon'ble SAT vide its order dated 13-10-2008.

32. In view of the contraventions committed by SGE, I, in exercise of powers conferred upon me by virtue of Section 19 of the Securities and Exchange Board of India Act, 1992 and Regulation 28 (2) of the SEBI (Intermediaries) Regulations, 2008, hereby impose a penalty of suspension of certificate of registration of M/s. Sree Ganesh Enterprise (PAN - AANFS0388N), for a period of one month. This order shall come into force after the expiry of 21 days from the date of this order.

DATE: 09-01-2009

PLACE: MUMBAI

T. C. NAIR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA