

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

IN THE MATTER OF M/S. GENUS COMMUTRADE LTD.

In respect of Mr. Rajesh Kumar Vittalbhai Patel

Date of hearing: October 01, 2009

Appearances

For Noticee: Mr. Mayukh Pandya, authorized representative of Rajesh Kumar Vittalbhai Patel

For SEBI: Mr. Jai Prakash, Presenting Officer
Ms. Barnali Mukherjee, General Manager
Mr. Naveen Sharma, Assistant General Manager
Mr. Pradeep Kumar, Legal Officer

ORDER

**UNDER SECTION 11 AND 11B OF THE SECURITIES AND EXCHANGE BOARD
OF INDIA ACT, 1992**

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation for ascertaining the veracity of advertisements published by Genus Commutrade Ltd. (hereinafter referred to as 'Genus') during July 08, 2002 to July 10, 2002, regarding the proposal of buy-back upto 18,23,310 shares i.e. 18% of the equity of the company at a price of Rs. 11/- per share and allotment of upto 36% of equity shares to Foreign Financial Institutions (hereinafter referred to as 'FII'). Investigation was conducted for the period, May 01, 2002 to September 30, 2002, *inter-alia*, to ascertain whether there was any violation of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as 'PFUTP Regulations').
2. The issuance of the advertisements, marked increase in trading in the shares of Genus at the Bombay Stock Exchange (hereinafter referred to as 'BSE'). The shares of the company were also listed at the Ahmedabad Stock Exchange (hereinafter referred to as 'ASE').

3. Investigations conducted by SEBI revealed that no shares were allotted to entities as advertised by Genus. Investigations further revealed increase in trading volume in the shares of Genus prior to issue of advertisement and subsequent to the issuance of the advertisement. During this time, it was noticed that the price of the scrip was falling. It was also revealed that entities/ individuals related to Genus including Mr. Rajesh Kumar Vittalbhai Patel (hereinafter referred to as 'noticee'), etc. had transferred shares of the company in off-market to various persons, as detailed below. The directors of Genus were found responsible for issuing misleading advertisements. These advertisements were published without any enabling provisions for buy back in Articles of Associations of Genus.
4. Investigations also found that the noticee was directed by SEBI vide order dated February 19, 2002, in the matter of Adeshwar Cotton Industries Ltd., not to deal in securities in any particular manner for a period of one year w.e.f. March 01, 2002. However, he was observed to be transferring shares to Genus related entities in off-market which were subsequently off-loaded in the market and that too in violation of aforesaid SEBI order.
5. On completion of the investigations, SEBI issued show cause notice dated October 14, 2005 to Genus, its directors namely Mr. Hitesh R. Bhatt, Mr. Pritesh B. Shah, Mr. Kalpesh R. Sheth and Ms. Rinku J. Shah and other entities including the noticee, alleging contravention of provisions of the PFUTP Regulations in the scrip of Genus. A supplementary show cause notice dated October 17, 2005 (hereinafter referred to as 'SCN') was also issued to the noticee for dealing in securities market despite SEBI restraint order dated February 19, 2002, in the matter of Adeshwar Cotton Industries Ltd.
6. The proceedings initiated vide show cause notice dated October 14, 2005 were concluded by passing of the SEBI order dated February 19, 2008, holding Genus, its directors as above named guilty of violating the provisions

of Regulation 5 (1) (a) and (b) and Regulation 6 (a) of the PFUTP Regulations. Further, Mr. Pritesh B Shah and the other entities were held to have violated the provisions of Regulations 3, 4 (a), (b), (c) and (d) and 6(a) of PFUTP Regulations. Further, the said order restrained the company and various other entities/ person viz. Mr. Pritesh B Shah, Zenet Software Limited, Mr. Urvish Ramesh Vora, Mr. Rakesh Ramniklal Sheth, Mr. Tushar Jhaveri, Mr. Hitesh R. Bhatt, Mr. Kalpesh R. Sheth, Mr. Rinku J. Shah, Galaxy Home Appliances, Mr. Mahendra K. Sutaria and Mr. Piyush Jhaveri from accessing the securities market and also prohibited them from buying, selling or otherwise dealing or associating with the securities market in any manner whatsoever for a period of two years.

7. I note that proceedings initiated vide show cause notice dated October 14, 2005 as against the noticee and four others, were completed vide consent order dated December 31, 2008, wherein *inter alia*, the noticee was ordered to pay Rs.30,000 and further he has agreed to not to buy, sell or deal in securities in any manner whatsoever, directly or indirectly, for a period of two years. I note that, this consent order for the noticee has taken into consideration the proceedings initiated vide show cause notice dated October 14, 2005. However, no reference of supplementary SCN dated October 17, 2005 has been made in the consent order dated December 31, 2008. Accordingly, the present proceedings would only determine the culpability of the noticee for the supplementary SCN dated October 17, 2005 in the scrip of Genus.
8. I note that the noticee vide its letter dated February 15, 2006 acknowledged the receipt of SEBI reminder letter dated January 25, 2006 and sought time to file the reply to the said two show cause notices. Pursuant to this, an opportunity of personal hearing was granted to the noticee on October 01, 2009, regarding the supplementary SCN, before me. On the date fixed Mr. Mayukh Pandya, authorized representative of noticee appeared before me and made submissions. During the hearing the noticee also filed written submissions dated September 25, 2009 and the same were taken on record.

- 9.** I have considered the SCN, reply of the noticee and material available on record. The submissions of the noticee in brief are:
- a.** Not done any transaction during the period of restraint.
 - b.** No documentary evidence has been provided to him.
 - c.** In main show cause notice, consent order has been passed by relevant authority.
 - d.** Any action taken in supplementary SCN will amount to double jeopardy and it is against the principal of natural justice.
- 10.** I note that the supplementary SCN, has described the transactions entered by the noticee clearly, all the relied upon documents have also been provided to the noticee. However the noticee has argued that any action taken in supplementary SCN will amount to double jeopardy. To this, I have seen the earlier SCN and the consent order dated December 31, 2008 passed in this respect and note that the same only finds mention of show cause notice dated October 14, 2005. The order does not make any mention of supplementary SCN. Hence, I note that the present proceedings will not amount to double jeopardy as the consent order has been passed for show cause notice dated October 14, 2005 dealing with the violations of PFUTP Regulations and the supplementary SCN dated October 17, 2005 in the present proceedings for trading as debarred entity. These are two separate violations and the charges and cause of action for these have been clearly mentioned in the show cause notices issued to the noticee.
- 11.** After having examined the above details, the sole issue arises for my consideration is: whether the noticee has violated the SEBI order dated February 19, 2002 passed in the matter of Adeshwar Cotton Industries Ltd.
- a.** I note that SEBI vide its order dated February 19, 2002 in the matter of Adeshwar Cotton Industries Ltd., directed the noticee not to deal in securities in any particular manner for a period of one year w.e.f.

March 01, 2002. The said order was sent to the noticee vide letter dated February 21, 2002. Despite the said order, it is observed from the details submitted by the broker Parklight Investment Pvt. Ltd. (hereinafter referred to as 'PIPL') that the noticee had dealt in securities during the period March 01, 2002 to March 31, 2002.

- b. I note from the investigations, that the noticee had transferred the shares in off-market to Mr. Rakesh Ramniklal Sheth as under:

Date	Transferor Name	Shares
05/06/02	Patel Rajesh Kumar -10000047	5,00,000
21/06/02	Patel Rajesh Kumar -10000047	5,00,000
25/06/02	Patel Rajesh Kumar(khand-10001997)	10,27,250
05/07/02	Patel Rajesh Kumar -10000047	7,17,650
Total		27,44,900

- c. Rakesh Ramniklal Sheth in turn transferred these shares to different entities, which offloaded the shares in the market. I note that these transfers took place in June, 2002, i.e. prior to the issuing of advertisements. The shares transferred among the entities were off-loaded in the market mainly by Mr. Piyush Jhaveri and Mr. Santosh Gayakwad.
- d. I note that vide SEBI order dated February 19, 2008, in the matter of Genus, Rakesh Ramniklal Sheth and Piyush Jhaveri have already been debarred from accessing the securities market for a period of two years. Further, it is seen that the proceedings for Santosh Gayakwad have been settled by passing of the consent order dated December 22, 2008, wherein he has paid Rs.25,000/- and also undertaken that he shall not buy, sell or deal in securities in any manner whatsoever, directly or indirectly, for a period of three years.
- e. Further, the noticee transferred 10 lakh shares to Mr. Urvish Ramesh Vora in off-market on June 17, 2002 i.e. Rajesh Patel (2,20,000 shares), Kirtiben Patel (3,00,000 shares), Paresh Patel (3,53,000

shares) and Hema Patel (1,27,000 shares) and subsequently, Urvish Vora sold these 10 lakh shares in the market during June 17, 2002 - July 13, 2002. I note that, Urvish Vora has been debarred in the matter of Genus for these acts from accessing the securities market for two years vide SEBI order dated March 31, 2009.

- f. Regarding the submissions made by the noticee vide letter dated September 25, 2009, I note that the details as provided by PIPL, off market transactions with Rakesh Ramniklal Sheth and Urvish Ramesh Vora during June, 2002 – July, 2002, negate the plea of the noticee that he had not done any transactions during the period mentioned in the order of Adeshwar Cotton Industries Ltd. Further, as per shareholding pattern for quarter ended March, 2002 and June, 2002, the noticee is shown as ‘person acting in concert’ under “Promoters” category and thus, cannot also deny the connection with the company/ promoters.
- g. In view of the above facts, I find that that noticee has dealt in securities market during the period of debarment as specified by SEBI in its order dated February 19, 2002, in the matter of Adeshwar Cotton Industries Ltd. i.e. March 01, 2002 to February 28, 2003. I note that the noticee had not only dealt in the market through the broker PIPL but also transferred shares to the tune of 27,44,900 & 10,00,000 respectively to Rakesh Ramniklal Sheth and Urvish Ramesh Vora respectively which were later-on off-loaded in the market either directly or through entities as stated above and therefore the noticee is guilty of violating the provisions of Section 11 and 11B of SEBI Act, 1992.

- 12.** Therefore, taking into consideration the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 19 of the SEBI Act read with Sections 11, 11B and 11(4) of SEBI Act, 1992, do hereby restrain Mr. Rajesh Kumar Vittalbhai Patel (PAN No. ABCPP 2582R) from buying, selling or dealing in securities market whatsoever or accessing the

securities market, directly or indirectly, for a period of three years from the date of this order.

- 13.** I note that the noticee is already under going voluntary debarment for a period of two years vide consent order dated December 31, 2008. In view of this, it is clarified that this order shall not run concurrently with the aforesaid order and shall be effective after the expiry of the term stated in the said consent order.
- 14.** This order shall be served on all recognized stock exchanges and depositories to ensure that the noticees are not allowed to undertake transactions as prohibited in Para 12 above.

DATE : 2ND DECEMBER, 2009
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA