

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

IN THE MATTER OF SUNEARTH CERAMICS LTD.

In respect of Bharat J. Patel

(SEBI Registration No. INB 010613015)

ORDER

**Under Regulation 28(2) read with Regulations 38 (2) of Securities and Exchange
Board of India (Intermediaries) Regulations, 2008**

1. Securities and Exchange Board of India (hereinafter referred as 'SEBI') had conducted investigation into the buying, selling and dealings in the shares of Sunearth Ceramics Ltd. (hereinafter referred as 'Sunearth'). The investigation was conducted for the period of October 16, 2000 to May 18, 2001. During this period, the price of the scrip increased from Rs.157 to Rs.220. The investigation revealed that majority of the investors who had traded in the scrip of Sunearth during the relevant period were inter-related and also connected to Mr. Suresh Motwani, the Managing Director of Sunearth. It was also revealed that these persons while trading through various brokers at Bombay Stock Exchange (hereinafter referred to as 'BSE') and National Stock Exchange (hereinafter referred to as 'NSE'), were involved in execution of various structured trades.
2. During the course of investigations, it was *inter alia* revealed that the broker viz. Bharat J. Patel (hereinafter referred to as 'noticee'), registered with SEBI as stock broker, bearing SEBI registration no. INB 010613015, had executed 20 structured deals for 5,00,000 shares on BSE while trading for his clients, which created artificial volume and price rise in the shares of Sunearth.
3. Based on the findings of the said investigations, SEBI initiated enquiry proceedings as against the noticee in terms of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'Enquiry Regulations'), by appointing an Enquiry Officer under Regulation 5(1) of Enquiry Regulations vide order dated November 24, 2003, read with subsequent order dated

November 08, 2004. SEBI appointed the Enquiry Officer, to enquire into the alleged violation of the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (hereinafter referred to as 'PFUTP Regulations') and SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as 'Broker Regulations'). The Enquiry Officer submitted his Report dated March 31, 2006 in terms of Regulation 13 (1) of the Enquiry Regulations recommending a minor penalty of warning to the notice for violating Clause A (2) of Code of Conduct specified under Schedule II of the Broker Regulations.

4. Subsequently, a Show Cause Notice dated May 04, 2006 (hereinafter referred to as 'SCN'), under Regulation 13(2) of the Enquiry Regulations was issued by SEBI to the noticee, asking it to show cause as to why the appropriate penalty including penalty recommended by the Enquiry Officer, should not be imposed. The noticee was advised to reply to the SCN, together with the documents that it may choose to rely upon in support of his reply within fifteen days of the receipt thereof. It was also informed that in case of failure, it would be presumed that it had no explanation to offer and SEBI shall be free to take such action in the manner as it deemed fit. A copy of the Enquiry Report was also forwarded to the noticee along with the said SCN.
5. Noticee vide his letter dated June 29, 2006 requested for extension of time till July 31 2006 for replying to the SCN. However, no reply was received from the noticee despite service of the SCN and reminder dated August 24, 2006. An opportunity of personal hearing was also granted to the noticee before me on October 01, 2009. However, noticee vide his letter dated September 24, 2009, requested for an adjournment. Accordingly, in compliance of natural justice, another opportunity of personal hearing was granted to the noticee before me on November 18, 2009. On the date fixed the noticee did not turned despite service of hearing letter. In the mean time noticee vide his letter dated November 23, 2009 replied to the SCN, wherein it, accepted the recommendation made by the Enquiry Officer with the assurance that it will exercise due care and diligence while executing transactions for his clients.

6. Given the facts and circumstances of the case, I note that noticee has not challenged/ disputed the recommendations made by the Enquiry Officer. As sufficient opportunities of personal hearing has already been given to the noticee, which were not availed by the noticee, I find it appropriate to proceed further in the matter.
7. I have considered the Enquiry Report, the SCN issued to the noticee, the reply of the noticee and material available on record. I note that the Enquiry Officer has dropped the charge of violation of PFUTP Regulations. However, the Enquiry Officer has found the noticee guilty of violation of Clause A (2) of Code of Conduct specified under Schedule II of the Broker Regulations, as it has failed to exercise due skill, care and diligence in the conduct of business. I note that, the Enquiry Officer has not found any instance of manipulative intent on behalf of the noticee, while executing the trades on behalf of his clients in the scrip of Sunearth. The Enquiry Officer has concluded that had the noticee been more diligent, it would have possible for it to suspect the manipulative role played by his clients (viz. Ami Impex, Hinduja Fin. Corp. and Pat. Fin. Cons. Services), as the orders for these clients were placed by Mr. Deven Mehta, who was also the introducer of these clients to the noticee.
8. I have seen the trades entered and the pattern followed by the noticee while trading in the scrip of Sunearth while trading for his clients. Taking the number of structured trades executed by noticee for his client into consideration where the orders were only placed by Deven Mehta the introducer, of these clients, it can be concluded that the noticee has failed to exercise due skill, care and diligence in the conduct of his business. The noticee while acting in the capacity of broker should have raised some suspicion when Deven Mehta was acting on behalf of several clients. Thus, I find that the noticee has failed to perform his duties as specified in the code of conduct for stock brokers in the Broker Regulations.
9. I note that pursuant to the notification of the SEBI (Intermediaries) Regulations, 2008, the Enquiry Regulations have been repealed and in terms of Regulation 38(2) of the SEBI (Intermediaries) Regulations, 2008, notwithstanding such repeal, any enquiry commenced under the Enquiry Regulations, shall be deemed to have been commenced under the corresponding provisions of SEBI (Intermediaries) Regulations, 2008.

- 10.** Taking into the facts and circumstances of the case, I, in exercise of the powers conferred upon me in terms of Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28 (2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby warn the noticee Bharat J. Patel, (SEBI Registration No. INB 010613015) member, Bombay Stock Exchange to be careful and cautious in the conduct of his business and to adhere to and comply with all the statutory provisions while carrying out his activities in the securities market.

DATE : 01/02/2010
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA