

**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 Goldcrest Capital Markets Ltd.

**(SEBI Registration Nos. INB 010654631
and INB 230654633)**

Date of hearing: November 18, 2009

Appearances

For Noticee: Mr. Tushar T. Tanna, Director
Mr. Rajendra Sheth, Compliance Officer

For SEBI: Mr. Kirti Kumar Jhadav, Presenting Officer
Mr. A.S. Mithwani, Deputy General Manager
Mr. Jerome K.A., Assistant General Manager
Mr. Pradeep Kumar, Legal Officer

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. Goldcrest Capital Markets Ltd. (hereinafter referred to as 'noticee'), registered with SEBI as stock broker, bearing SEBI registration nos. INB 010654631 at BSE and INB 230654633 at NSE, had executed 190 synchronized deals for 23,45,000 shares

at BSE and NSE, while trading for its 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 28, 2005 in terms of Regulation 13 (1) of the Enquiry Regulations recommending a minor penalty of warning to the noticee for violating Clause A (2) of Code of Conduct specified under Schedule II of the Broker Regulations.
4. Subsequently, a Show Cause Notice dated April 12, 2005 (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. The noticee replied to the SCN vide its letter dated April 28, 2005. An opportunity of personal hearing was also granted to the noticee before me on October 01, 2009. However, noticee vide its letter dated September 24, 2009, requested for an adjournment. Accordingly, another opportunity of personal hearing was granted to the noticee before me on November 18, 2009. On the date fixed, Mr. Tushar T. Tanna, Director of noticee and Mr. Rajendra Sheth, Compliance Officer appeared

before me and reiterated the submissions made vide letter dated April 28, 2005, along with other submissions. The submissions of noticee in its reply, in brief, are:

- a. The actual trades carried out by noticee were less than the stated quantity of 190 trades, as disclosed quantity was less and the system shows large number of trades.
- b. Brokers are not supposed to inquire or find out from the clients the purpose for carrying out the trades.
- c. Transactions carried out by it resulted in actual sale and delivery.
- d. Except one trade all were for sale transactions.
- e. Had ensured delivery of scrips in one demat account before placing orders for sale.
- f. Had obtained duly filled KYC form and complied with all formalities.
- g. Had promptly furnished full particulars of the transactions to BSE and NSE.

6. I have carefully considered the Enquiry Report, the SCN issued to the noticee and their reply. I note that the Enquiry Officer has dropped the charge of violation of PFUTP Regulations as against the noticee. 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 its clients in the scrip of Sunearth. However, the Enquiry Officer has concluded that had the noticee been more diligent, it would have been possible for it to suspect the manipulative role played by its clients (viz. Onlooker Investments Pvt. Ltd., Mayfair Realtor Pvt. Ltd., Habiscus Investment Pvt. Ltd., Ami Impex, M'belle International Pvt. Ltd., Alkan Projects Pvt. Ltd. and Jaydeep investments Pvt. Ltd.) while placing a series of orders for sale in the subject scrip. The noticee has argued that it had taken all reasonable due care and diligence while executing the transactions of its clients in the scrip of Sunearth.

7. I note that the noticee had executed 190 deals for 23,45,000 shares during the relevant period in the scrip of Sunearth, these trades constitute a substantial portion to total volume traded in the scrip. I have seen the trades entered and the pattern followed by the noticee while trading in the scrip of Sunearth for its clients. I note that on some occasions the net percentage of the noticee to the market net was

99.61%. Taking the number of structured trades and shares involved in the present proceedings executed by noticee for his client into consideration, I note that the noticee should have raised some suspicion on the trading pattern of its client for keeping such high position in the scrip. 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.

8. 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.
9. Having regard to the above discussion, I find no reason to differ with the recommendations of the Enquiry Officer. Accordingly, 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, Goldcrest Capital Markets Ltd., (SEBI Registration Nos. INB 010654631 and INB 230654633) (PAN: AAACE 1340E) member, Bombay Stock Exchange and National 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