WTM/PS/73/IVD/ID-04/JAN/2011

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

IN THE MATTER OF SUNEARTH CERAMICS LIMITED

In respect of Mr. Deven Mehta and M/s Ami impex

Date of hearing: October 04, 2010

Appearances

For Noticees: Mr. Deven Mehta, proprietor, M/s Ami Impex
Mr. Vinay Chauhan, Advocate
Mr. M.A. Kapadia

For SEBI: Mr. Parag Kumar Sinha, Presenting Officer
Mr. A.S. Mithwani, Deputy General Manager
Mr. Pradeep Kumar, Legal Officer
Mr. Avinash Balkrishnan Dhumal, Manager

ORDER

Under Section 11, and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 11 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995

1. Securities and Exchange Board of India (hereinafter referred to as the 'SEBI') conducted investigation into the buying, selling or dealings in the scrip of Sunearth Ceramics Ltd. (hereinafter referred to as 'Sunearth') for the period October 16, 2000 to May 18, 2001 (hereinafter referred to as 'investigation period'). During the period of investigation, the scrip of Sunearth was listed on the Bombay Stock Exchange (hereinafter referred to as 'BSE'), the National Stock Exchange (hereinafter referred to as 'NSE') and the OTC Exchange of India.

2. The trading details of the persons who had traded in the scrip at BSE and NSE were collected and analyzed along with the data of the volumes contributed. During the period of investigation, the price of the scrip at BSE opened at ₹190 on October 16, 2000, touched a high of ₹215 on November

27, 2000 and closed at ₹180 on February 02, 2001. Thereafter, the company went for stock split of its shares from the face value of ₹100 per share to ₹10 per share from February 05, 2001.

3. Investigation revealed that Sunearth was in need of funds for the expansion of its business and therefore, its directors wanted to pledge the shares of the company with financial institutions. In order to raise finance by pledging of shares, it was necessary for Sunearth to have liquidity in the scrip. SEBI found that most of the entities who had traded in the scrip during the investigation period were inter-related and connected to Mr. Suresh Motwani, Managing Director of Sunearth. Onlooker Investments Pvt. Ltd. (hereinafter referred to as 'Onlooker'), Habiscus Investments Pvt. Ltd. (hereinafter referred to as 'Habiscus'), Alkan Projects Pvt. Ltd. (hereinafter referred to as 'Alkan'), Mayfair Realtors Pvt. Ltd. (hereinafter referred to as 'Mayfair'), M'Belle International Pvt. Ltd. (hereinafter referred to as 'M'Belle'), Jaydeep Investments Pvt. Ltd. (hereinafter referred to as 'Jaydeep') and New Bharat Builders Pvt. Ltd. (hereinafter referred to as 'New Bharat') were the different entities who entered into structured trades through separate brokers in order to reflect artificial liquidity in the scrip.

4. On completion of the investigation, SEBI *inter alia* issued a common show cause notice dated May 19, 2004 (hereinafter referred to as 'SCN') *inter alia* to Mr. Deven Mehta and M/s Ami Impex through its proprietor Deven Mehta (hereinafter collectively referred to as the 'noticees') under Section 11 and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with Regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as 'PFUTP Regulations'). The SCN alleged that Deven Mehta, one among the noticees had introduced entities namely Jaydeep, Habiscus, Onlooker, Mayfair, Alkan to the brokers, placed orders on behalf of entities namely Mayfair, Habiscus, Ami Impex and also instructed the directors of the respective entities to issue delivery instruction slip from the account of the respective entities in consultation with Mr. Suresh

Motwani. Further, it was alleged that the shares of Sunearth were received by Deven Mehta, who in turn arranged the money in lieu of such shares and used the shares for trading purposes. Another noticee, Ami Impex was found executing various structured deals in the scrip of Sunearth. The SCN, therefore, alleged that the acts of noticees were in violation of Regulations 4 (b), (c) and (d) of the PFUTP Regulations. Accordingly, the SCN called upon the noticees to show cause as to why appropriate action under Sections 11 and 11B of the SEBI Act read with Regulation 11 of the PFUTP Regulations, including an order of debarment from the securities market for a specific period should not be issued against them.

5. The noticees vide their common letter dated June 10, 2004, replied to the SCN. The noticees filed written submissions dated August 06, 2004 and sought an opportunity of personal hearing. Accordingly, an opportunity of personal hearing was granted to the noticees on July 22, 2004 before my predecessor. However, the noticees sought adjournment for this date of hearing. Pursuant to the change in the appropriate authority, another opportunity of personal hearing was granted to the noticees on November 18, 2009. On the day scheduled for hearing, the authorized representative of the noticees appeared and requested for an opportunity to settle the proceedings initiated against it through consent mechanism in accordance with the SEBI Circular dated April 20, 2007. The request of the noticees was acceded to and the matter was adjourned. The application filed by the noticees was dealt with in accordance with the SEBI Circular dated April 20, 2007. Subsequently, the proceedings initiated under SCN were revived as application for consent was rejected by SEBI. Accordingly, an opportunity of personal hearing was granted to the noticee on October 04, 2010. On the date fixed for hearing Mr. Deven Mehta, the proprietor, M/s Ami Impex**,** Mr. Vinay Chauhan, Advocate and Mr. M.A. Kapadia appeared and made oral submissions. The noticees had sought ten days' time to file written submissions, which was granted to them. The noticees filed separate written submissions vide their letters dated October 15, 2010, which have been taken on record.

6. I have carefully considered the SCN, reply of the noticees, written submissions and the material available on record. The submissions of the noticees, in brief, are:

- Deven Mehta was not the top-shareholder in Sunearth as he was not in continuous possession of the shares. He had invested in shares for earning profit. If there has been a structured/ cross deal, it is the broker who carried out such a deal.
- Deven Mehta had introduced the entities named in SCN, but mere introduction can not be said that the persons were acting in concert. Further, creating and forming business relationships cannot be considered as unethical.
- He was not acting in concert with other brokers/ clients in the market. He had carried out only 6 trades and not 16, and purchased the shares with the intention of investment. Trades were carried out at the prevailing market price, through the exchange mechanism and all obligations arising therefrom had been duly met. There was a transfer of the beneficial ownership and regular pay-ins and pay-outs were done for each and every transaction.
- The shares were pledged and he had no authority to give instruction for their disposal as the right to deal with the shares is vested with the pledgee or pledger.
- Deven Mehta had not placed orders in consultation with Suresh Motwani. Ami Impex was trading independently in the ordinary course of business.
- The alleged structured deals are too miniscule and insignificant to effect either price or volume of the scrip. These trades were limited to 9 days out of total investigation period spreading over 210 days. The trading was not consistent and there was intervening time gap of days between the trades. No material particular in support of the charge of cross deals.
- Deven Mehta sought cross-examination of persons whose statement has been relied upon.

7. I have noted the submissions of the noticees that they have not been supplied with various documents. However, it is seen that all the documents

that have been relied upon are provided to the noticees. However, I note that no document, which has not been provided to the noticees, is being relied upon in the present proceedings. Further, noticees vide their reply has sought cross examination of various persons. In this regard, I note that the findings of the investigation are supported by independent documents and not merely based on the statement of persons. Hence, the request of noticees for cross-examination finds no merit for consideration. Having considered this, the issues that arise for my consideration are:

a. Whether Deven Mehta created artificial volume in the scrip of Sunearth by using the shares received from entities like Mayfair, Habiscus etc. for trading among these entities through different brokers?

b. Whether Ami Impex executed structured deals in the scrip of Sunearth?

8. Whether Deven Mehta created artificial volume in the scrip of Sunearth by using the shares received from entities like Mayfair, Habiscus etc. for trading among these entities through different brokers?

a. I note that the noticee namely Deven Mehta was also the director in the two broking firms Amgis Holdings Pvt. Limited and Pal Overseas Pvt. Limited which had also traded in the scrip of Sunearth. Deven Mehta has not denied introducing entities namely Jaydeep, Habiscus, Mayfair, Ami Impex to the broker, Goldcrest Capital Market Limited. It is noted that Deven Mehta also introduced Habiscus, Onlooker, Mayfair, Alkan to the broker, Novel Securities Pvt. Limited. He also introduced Mayfair to Amigis Holdings Pvt. Limited. Taking note of all this, I am of the view that Deven Mehta was having close relationship with these entities and the said brokers.

b. I note that Deven Mehta had not appeared before the Investigating Authority for recording of statement despite several opportunities afforded to him. Deven Mehta has argued that the adjournments were sought due to genuine and unavoidable reasons and the same were communicated to the Investigating Authority. From the SCN, I note that Deven Mehta was given

various opportunities for providing statements before the Investigating Authority. However, on all the scheduled dates he requested for adjournments. I am not convinced with the stand of the noticee that had he been contacted, he would have definitely appeared before the Investigating Authority. It is seen from the SCN that after the last adjournment request of Deven Mehta vide letter dated September 09, 2003, he was advised to come on any working day for recording of the statement. Despite this, Deven Mehta remained unavailable and did not turn up before the Investigating Authority.

c. As regards the charge leveled against Deven Mehta that he used to place orders on behalf of Habiscus, Mayfair etc. and made the director of the associate companies of Sunearth to handover the shares to various brokers for delivery, it is seen that the only evidence available on record to support this allegation are the statements recorded by SEBI during the investigation.

d. Further, as regards the pledge of the shares by Suresh Motwani, I note that this allegation is also based on the statement recorded by SEBI during the investigation. It is seen that no details of the pledge of the shares are available on record. Therefore, it is unclear as to how the shares handed over to Deven Mehta for finance were used for trading purposes.

e. From the above discussion, I am of the view that the charge of creation of artificial volume by Deven Mehta in the scrip of Sunearth is not established. In the absence of any material evidence/ details to show that Deven Mehta was trading on behalf of other entities, I am of the considered view that Deven Mehta is entitled for a benefit of doubt in respect of the alleged violations of PFUTP Regulations.

9. Whether Ami Impex executed structured deals in the scrip of Sunearth?

a. I note that Ami Impex has traded through various brokers in Sunearth during the investigation period and it contributed to considerable volume amounting to 3,20,000 shares in the scrip of Sunearth, consisting of about 6.8% of the

total volume traded in the market. From the details annexed with the SCN, it is seen that most of the trades of Ami Impex were matched with the counterparty broker, Amgis Holdings Pvt. Ltd. of which Deven Mehta is the director. A few instances of such perfect matching have been brought out below for reference:

Trade Details			Buy					Sell				
Date	**Price**	**Qty.**	**Broker**	**Client**	**Order Time**	**Qty.**	**Price**	**Broker**	**Client**	**Order Time**	**Qty.**	**Price**
21/11/00	216	23,919	Amgis	Onlooker	9:56:38	26,000	216	Goldcrest	Ami	9:56:27	25,000	216
21/11/00	216	1,081	Amgis	Onlooker	9:57:03	25,000	216	Goldcrest	Ami	9:56:27	25,000	216
21/11/00	216	23,719	Amgis	Onlooker	9:57:03	25,000	216	Goldcrest	Ami	9:57:11	25,000	216
21/11/00	216	1,281	Amgis	Onlooker	9:57:26	25,000	216	Goldcrest	Ami	9:57:11	25,000	216
21/11/00	216	23,619	Amgis	Onlooker	9:57:26	25,000	216	Goldcrest	Ami	9:57:25	25,000	216
21/11/00	214	1,381	Amgis	Onlooker	9:57:56	1,400	215	Goldcrest	Ami	9:57:25	1,381	214
14/11/00	205	34,961	Amgis	Onlooker	9:58:55	35,000	205	PJ Patel	Ami	9:58:48	35,000	205
14/11/00	205	39	Amgis	Habiscus	9:59:24	35,000	205	PJ Patel	Ami	9:58:48	35,000	205
14/11/00	205	34,961	Amgis	Onlooker	9:59:24	35,000	205	PJ Patel	Ami	9:59:21	35,000	205
14/11/00	205	39	Amgis	Habiscus	9:59:38	50	206	PJ Patel	Ami	9:59:21	35,000	205
14/11/00	208.50	10,000	Amgis	Onlooker	10:01:13	10,000	208.50	PJ Patel	Ami	10:01:14	10,000	208.50
14/11/00	218	48,650	Amgis	Onlooker	10:04:00	52,000	218	PJ Patel	Ami	10:03:54	50,000	218
14/11/00	217	1,350	Amgis	Onlooker	10:04:28	1,350	217	PJ Patel	Ami	10:03:54	1,350	217
14/11/00	216	13,450	Amgis	Habiscus	9:55:43	13,500	216	PJ Patel	Ami	15:29:48	13,500	216

b. From the above, I observe that the counterparty clients to the trades of Ami Impex were mainly Habiscus, Onlooker or Mayfair. As already discussed at para 8a, all these entities were having relationship with the proprietor of Ami Impex, i.e. Deven Mehta. The details available on record shows that the noticee namely Ami Impex had traded through different brokers while trading in the scrip of Sunearth during the investigation period, even when its proprietor Deven Mehta was director in two broking entities namely Amgis Holdings Pvt. Limited and Pal Overseas Pvt. Limited. I note that no explanation has been given by Ami Impex regarding the rationale for trading through different brokers. The reply given by Ami Impex is that the orders were placed in the normal course of business.

c. I note that there was almost exact matching in the quantity, rate and also proximity in the time of entering buy and sell orders. These facts show that the orders were synchronized and were entered with prior understanding to match with other orders. I note that placing of orders in this manner cannot be

termed as regular and normal, because on the one hand a person is taking the sell position and at the same time the related entity is taking the buy position.

d. I observe that no genuine investor would indulge in this kind of trading in the normal course of business. It can also be inferred from the trading pattern that the same was done with the ulterior motive of creating artificial liquidity in the market. I note that the orders were placed simultaneously within the close proximity of each other for the same price and quantity. It cannot be termed as mere coincidence that every time, the client managed to sell/ buy from the same counterparty client and/ or related/ associated client/ broker. Based on the discussion above, I am of the view that Ami Impex was aware about the orders of its counterparty broker Amgis Holdings Pvt. Limited, which was also related to it through its proprietor.

e. Therefore, it is concluded that the trades of Ami Impex which resulted in the structured deals were not genuine sale-purchase transaction and had the effect of creating artificial volume in the shares of Sunearth. I note that such artificial trades generate interest of genuine investors, who trade in the scrip seeing the increased activity in the scrip. I note that this is a serious conduct that causes irregularity in the market and also disturbs the market equilibrium. Ami Impex is therefore, guilty of violating the provisions of Regulation 4(b), (c) and (d) of the PFUTP Regulations.

10. Therefore, taking into consideration, the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 19 read with Section 11 of Securities and Exchange Board of India Act, 1992 read with Regulations 11 and 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, do hereby restrain Ami Impex (proprietor, Deven Mehta) [PAN: AAPPM 2122C] from buying, selling or dealing in securities market whatsoever or accessing the securities market, directly or indirectly, for a period of six months from the date of this order.

11. The stock exchanges are hereby directed to permit the respective members to square off its existing open positions, if any, at the earliest in Futures and Options segment.

12. This order shall be served on all recognized stock exchanges and depositories to ensure that the noticee is not allowed to undertake transactions as prohibited in Para 10 above.

13. This order shall come into force with immediate effect.

DATE : 20/JAN/2011
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA