

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

IN THE MATTER OF SUNEARTH CERAMICS LIMITED

In respect of Pals Overseas Pvt. Limited

(SEBI Registration No. INB 011143436)

Date of hearing: October 04, 2010

Appearances

For Noticees: Mr. Deven Mehta, Director
Mr. M.A. Kapadia, Compliance Officer
Mr. Vinay Chauhan, Advocate

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 Regulation 28 (2) of the Securities and Exchange Board of India
(Intermediaries) Regulations, 2008**

1. The Securities and Exchange Board of India (hereinafter referred to as the 'SEBI') conducted investigation into the dealings in the scrip of Sunearth Ceramics Limited (hereinafter referred to as 'Sunearth') for the period October 16, 2000 to May 18, 2001 (hereinafter referred to as the 'period of investigation'). During the period of investigation, the scrip of Sunearth was listed on the Bombay Stock Exchange (hereinafter referred to as the 'BSE'), the National Stock Exchange (hereinafter referred to as the '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 to expand 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. During the course of investigation, it was *inter alia* found that the broker, Pal Overseas Pvt. Limited (hereinafter referred to as 'noticee'), registered with SEBI as stock broker, bearing registration no. INB 011143436, while trading in the scrip of Sunearth had executed 119 structured deals for 26,05,000 shares for its clients at BSE.
5. Based on the findings of investigation, SEBI initiated enquiry proceedings 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 provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as 'PFUTP Regulations') and the Code of Conduct specified under Schedule II of SEBI (Stock Brokers

and Sub-Broker) Regulations, 1992 (hereinafter referred to as 'Broker Regulations'). The Enquiry Officer submitted his Report dated March 30, 2005, in terms of Regulation 13(1) of the Enquiry Regulations recommending thereby a penalty of suspension for a period of twelve months to the noticee for violating the provisions of Regulation 4 of PFUTP Regulations and Clauses A(2) of the Code of Conduct prescribed for Stock Brokers in Schedule II under Regulation 7 of Broker Regulations.

6. Subsequently, a show cause notice dated April 12, 2005 (hereinafter referred 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 action as may be considered appropriate should not be imposed. The noticee was advised to reply to the SCN, within fifteen days from the date of 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 SCN.
7. The noticee replied to the SCN vide its letter dated April 27, 2005 and requested for an opportunity of personal hearing. Accordingly, an opportunity of personal hearing was granted to the noticee before me on October 06, 2009. On the day scheduled for the hearing, the authorized representative of the noticees appeared and requested for an adjournment to settle the proceedings through the consent mechanism in accordance with the SEBI Circular dated April 20, 2007. The request of the noticee was acceded to and the matter was adjourned. The application filed by the noticees was dealt in accordance with the SEBI Circular dated April 20, 2007. Subsequently, the proceedings initiated under the SCN were revived as the 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 personal hearing Mr. Deven Mehta, Director of noticee, Mr. M.A. Kapadia, Compliance Officer of noticee and Vinay Chauhan, Advocate appeared and made oral submissions. The noticee had sought ten days' time to file the

written submissions which was granted to it. The noticee filed its written submissions vide its letter dated October 15, 2010, which have been taken on record.

- 8.** I have carefully considered the Enquiry Report, reply of the noticee, written submissions and the material available on record. The submissions of the noticees, in brief, are:
- a.** None of the entities named in the Enquiry Report are related to it except as clients. Noticee was not aware of the inter-relationship between the said clients.
 - b.** The noticee is a separate legal entity and the allegations are against Suresh Motwani and Deven Mehta, not against it. Introduction of the clients with others by Deven Mehta does not in any case bind noticee for the activities carried out by him.
 - c.** It was not involved in structured deals and had carried out the transactions in accordance with the instruction of the clients in a purely legal and permissible way. Was not aware about the counterparty and had not done any proprietary trading in the scrip. All the trades were carried out on screen based matching mechanism and were delivery based. Have not been benefited in any way from the said transactions except earning legitimate brokerage.
 - d.** Trades were not structured as there was huge time gap between the placing of orders and even the quantities were not matching in many cases.
 - e.** Refusing to permit it an opportunity of being adequately and legally represented, they have been denied of effective opportunity before the Enquiry Officer.
 - f.** Had maintained high standards of integrity, promptitude and fairness. Had always acted with due care, skill and diligence in the conduct of business.
 - g.** It has sought cross-examination of the Senior Manager of Sunearth.
 - h.** Trading data is totally incomprehensible and lacks various material particulars. Details of counterparty broker are not given, in the absence of the same the charge of synchronization cannot survive.

- i. The trades are limited to 7 days, out of the total investigation period spreading over 210 days.
- 9. I have noted the submission of the noticee regarding cross-examination of persons, whose statement have been relied upon in the present proceedings. In this regard, I note that the findings of the investigation are supported by independent documents and not merely based on the statements of persons. Hence, the request of the noticee for cross examination finds no merit for consideration. I note that the Enquiry Officer has found the noticee guilty of violation of the provisions of Regulations 4 of the PFUTP Regulations and Clause A(2) of the Code of Conduct specified under Schedule II of the Broker Regulations. Having considered this, the issues that arise for my consideration are:
 - a. Whether the noticee had aided and abetted its client in the creation of artificial liquidity/ false market in the scrip of Sunearth?
 - b. Whether the noticee had failed to exercise due care and diligence?
- 10. **Whether the noticee had aided and abetted its client in the creation of artificial liquidity/ false market in the scrip of Sunearth?**
 - a. I have seen the trading details of the noticee and note that during the period of investigation, it had traded in the scrip of Sunearth *inter alia* for its clients namely M'Belle, Alkan, Onlooker, Habiscus, Mayfair. I note that M'Belle, Alkan, Onlooker, Habiscus and Mayfair are interrelated entities and that they are also related to Sunearth, from the findings in the Enquiry Report.
 - b. It is seen that Mr. Deven Mehta, one of the directors of noticee, introduced the entities related to Sunearth to various brokers. The details thereof are as under:
 - Deven Mehta introduced Habiscus and Mayfair to the broker Goldcrest Capital Market Limited.
 - Deven Mehta introduced Habiscus, Onlooker and Mayfair to Novel Securities Pvt. Limited.

- Deven Mehta introduced Mayfair to Amgis Holdings Pvt. Limited.

Therefore, I find that Deven Mehta was having close relationship with these entities. The argument of the noticee that it was not aware of the inter-relationship between the said clients finds no merit. From the trading details of the noticee as brought out in the Enquiry Report, it is noted that Goldcrest Capital Market Limited had also acted as counterparty broker to the trades of the noticee.

- c. The noticee in its reply has argued that it is a separate legal entity and the activities carried out by Deven Mehta do not bind it. I have considered the argument of the noticee. However, it is noted that the noticee has not denied its relationship with Deven Mehta. As noted above, Deven Mehta was related to the clients of the noticee and had also introduced these to the broker, Goldcrest Capital Market Limited.
- d. I have noted the pattern of trading of the noticee in the scrip of Sunearth, as described in the Enquiry Report. Noticee has argued that the details forwarded by the Enquiry Officer are incomprehensible and lacks material particulars. I have seen the table 2 as brought out in the Enquiry Report and note that the same do not show the order quantity and price at which orders were placed. However, it is seen that the orders were matched with counterparty within close proximity of each other. The noticee has annexed a table along with the written submissions to show the time difference between the orders. Even this table as produced by the noticee shows that there was no time gap between the placing of orders. I note that the noticee has executed 119 structured trades for a quantity of 26,05,000 shares.
- e. Upon considering these tables, it is noted that the counterparty in all the said trades is clearing no. 326 (i.e. Goldcrest Capital Market Limited). It is seen that on some occasion the clients of the noticee are appearing on both the sides of the trade i.e. buying as well as selling. An instance of such matching of orders is being discussed from the table 2 of the Enquiry Report. On

February 23, 2001, clearing no. 326 on one leg of the transaction placed a buy order at 10:25:10. Noticee on the other side placed a sell order at 10:25:16. These orders matched and got executed for 15,000 share at the rate of ₹92.50 with time difference of just 6 seconds. It is noted that on the both sides of the trades same client was present.

- f. Under the facts and circumstances described above, I am convinced that the trades between the noticee and counterparty were executed with some prior understanding. The submission of the noticee that they were not aware of the dealings of their clients in the scrip of Sunearth as they had merely acted in accordance with the instructions received from the clients. This submission of the noticee can be taken into account in case it related to one or few transactions involving small proportion of the total volumes of the shares dealt in Sunearth. In the present context, the dealings of the noticee have been substantial.
- g. All these, points to the culpability of the noticee in generating interest in the scrip of Sunearth. The noticee by participating in the trading in this structured manner has clearly aided its clients in achieving their objectives which has led to the execution of fictitious transactions on the screen of the exchange. The intention of the parties to execute such transactions could only be inferred from the attending circumstances because direct evidence in such cases may not be available. Synchronization of trades tampers with price discovery mechanism of the stock exchange and also hampers the transparency. Thus, the noticee has put these trades with a view to create misleading appearance of trading which in turn had led to the creation of artificial liquidity in the scrip.
- h. The acts of the noticee described above relating to the structured trades for clients related among themselves and with the promoters/ director of Sunearth and the introduction of these clients to other brokers by the director of the noticee leads me to the conclusion that noticee has aided and abetted and had acted in concert with related clients in the manipulative trades in the scrip of Sunearth.

11. Whether the noticee had failed to exercise due care and diligence?

- a. From the above discussion and considering the nature of the trades, I note that the noticee should have exercised due diligence in respect of the trading pattern entered by its clients which were also related to it through its director, while taking such high positions in the scrip of Sunearth. I am of the considered view that the matching of such high volumes cannot be continuous for 119 trades as executed by noticee.
- b. Having seen this, I am of the view that the noticee has failed to perform its duties which are expected from a prudent stock broker who has a duty not only towards its client but also towards the securities market. A registered intermediary is expected to have high level of compliance of the rules/ regulations and the directives issued by SEBI.

12. I note that the noticee has relied upon the orders passed by SEBI as against the counterparty where mostly a penalty of warning has been given. It is seen that the charge as against the noticee is more serious than its counterparties and the relationship of its director, Deven Mehta with its clients and introduction of these clients by him to the counterparty broker further differentiates the case from others.

13. I have also noted the order of Hon'ble Securities Appellate Tribunal in the matter of Amgis Holdings Private Limited dated December 27, 2010, wherein Hon'ble Tribunal while dealing with the statement of Deven Mehta had held as under:

"The fact that the appellant introduced the clients to Goldcrest and Patel is borne out from the statement of Deven Mehta who is a director of the appellant company. This is what he stated in his reply to question no. 6 when his statement was recorded during the course of the investigations.

"The clients M/s. Onlooker, M/s. Habiscus, M/s. Akira, M/s. Alkan, M/s. M' belle and M/s. Mayfair Realtors were in need of funds and as they were known to us, on some occasions, we did introduce them to other brokers viz. M/s.

Goldcrest, M/s. Prashant J Patel, M/s. Express Securities and M/s Bharat J Patel. However, I would like to state that the business was directly done between them and the clients. I understand that transactions between the clients and the broking entities mentioned above were in the nature of spot transactions wherein money was immediately collected by them from those brokers after executing the sale transactions."

This conduct of the appellant, in our view, clearly tilts the balance against the appellant and we are unable to agree with Shri P.N. Modi, Advocate that the appellant was as innocent as he wanted us to believe."

14. Having seen the *modus operandi* of the noticee it is clear that in the present case also, the same set of clients have operated and Deven Mehta only had introduced the clients to other brokers. In the facts and circumstances of the case, I find that the noticee had dealt in the scrip of Sunearth in a manner detrimental to interest of investors, it had put the entire trading and settlement system at risk. The noticee has aided and abetted its clients in entering structured trades which were meant to distort the market integrity by creation of artificial liquidity/ false market in the scrip of Sunearth. In light of above discussion, it can be concluded that if a large group of persons connive with each other, the market mechanism can be tampered substantially even when the percentage of trades carried out by each is a small percentage of the total market volume.
15. These acts of the noticee are in violation of the Regulation 4(b) of PFUTP Regulations and Clause A(2) of the Code of Conduct specified under Schedule II of the Broker Regulations. However, considering the violation found to have been committed by the noticee in the present proceedings and the period of investigation, I consider imposition of penalty of suspension of the certificate of registration for a period of twelve months as recommended by the Enquiry Officer would be severe. In the interest of justice and equity, I dispose of the present Enquiry proceedings as ordered herein below:

- 16.** I note that pursuant to the notification of the Intermediaries Regulations, the Enquiry Regulations have been repealed and in terms of Regulation 38(2) of the Intermediaries Regulations, notwithstanding such repeal, any enquiry commenced under the Enquiry Regulations, shall be deemed to have been commenced under the corresponding provisions of Intermediaries Regulations.
- 17.** Taking into consideration, 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 suspend the certificate of registration of the stock broker, Pals Overseas Pvt. Limited, registered with SEBI as stock broker, bearing registration no. INB 011143436 for a period of two months.
- 18.** This order shall come into force on expiry of twenty one days from the date of this order.

DATE : 24/2/2011
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA