

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER
IN THE MATTER OF EMPOWER INDUSTRIES INDIA LTD.**

IN RESPECT OF EMPOWER INDUSTRIES INDIA LTD.

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 in the scrip of Empower Industries India Ltd. (hereinafter referred to as 'the company'/'noticee') following an unusual rise in price and volume during the period from February 16, 2005 to March 11, 2005 (hereinafter referred to as the 'investigation period'). The shares of the company were listed on Bombay Stock Exchange Ltd. (hereinafter referred to as 'BSE'), wherein the price of the scrip rose from Rs.81.00 to Rs.113.00 during the investigation period, extending over 18 trading sessions with a total trading volume of 2,17,700 shares.
2. Investigation revealed that the company had made misleading corporate announcements which led to a spurt in the volume and an increase in the price of the scrip. It was alleged that there was a concerted effort by the company and its promoter-director, Devang Master, to raise the price of the scrip. The investigation period, spanning over a period of less than a month, saw false corporate announcements about expansion plans made by the company and unaudited quarterly results that showed profits of the company as significantly higher than what was subsequently reported in its audited results. Large quantities of the shares of the company were traded on BSE during the same time period, by certain entities that were found to be related to Devang Master. The promoter-director of the company off-loaded shares of the company at significantly higher prices soon after the investigation period. Based on the above facts, it was alleged that the announcements by the company were intended only to create investor interest in the scrip and thereby meant to mislead investors. The reporting of inflated profits by the company in its unaudited results was said to be another tool employed to mislead investors. Thus, it was alleged

that the company projected a false picture to the investors about the performance of the company. By making the said announcements, the company was also alleged to have assisted its promoter-director to trade in the scrip in a fraudulent manner.

3. On completion of the investigations, SEBI, *inter-alia*, issued a notice dated June 10, 2009 (hereinafter referred to as 'SCN') to the company under Sections 11, 11(4) and 11B of the SEBI Act, 1992, alleging that the aforesaid conduct of the company was in violation of Section 12A of SEBI Act, 1992, Regulations 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(k) and 4(2)(r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP, 2003') and the provisions of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'SEBI (PIT) Regulations') and SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as the 'SEBI (SAST) Regulations'). Accordingly, it called upon the company to show cause as to why suitable directions under Sections 11(4) and 11B of SEBI Act should not be issued.
4. The company did not reply to the SCN. An opportunity of personal hearing was granted to the company on November 19, 2010. On the scheduled date, Shri R Krishnan, Advocate, the authorized representative of the company, appeared before me and made oral and written submissions. The company filed additional written submissions, vide their letter dated November 23, 2010, and produced a signed affidavit by Devang Master, wherein he stated that the company was not aware of the transfer of shares by him.
5. I also note that the company had submitted an application for settlement of the proceedings through consent in terms of the SEBI Circular dated April 20, 2007. However, the application for settlement was rejected in terms of the aforesaid circular, and the same was communicated to the company vide letter dated December 30, 2010.
6. I have carefully considered the SCN, reply of the company and other material on record. The company has, *inter alia*, submitted:

- i) When the scheduled board meeting was cancelled, due intimation was given to the BSE regarding the same. The company was under the impression that the cancellation of a board meeting on a particular date leads to the cancellation of the proposed agenda.
- ii) The corporate announcement took place on March 2, 2005, whereas the price of the scrip rose from Rs. 81 on February 16, 2005 to Rs. 100.15 on March 1, 2005. Thus, there was an increase of around Rs. 19 before the announcement of the preferential issue. After the announcement on March 2, 2005, the price rose only by Rs. 14, that is, from Rs. 100.15 to Rs. 113.96.
- iii) The profit as per the unaudited balance sheet was higher as it did not contain the provisions of the deferred tax and other provisions.
- iv) The company is neither concerned, nor aware, nor involved, nor had any means to verify the facts and nature of alleged off market transactions between the entities mentioned in the SCN.
- v) The company was not aware of the off market transfer of shares by Devang Master at the time of such transfer. The company is a separate legal entity and is disconnected/ removed from their promoter or directors and activities thereof. In the absence of any knowledge, the company cannot be held responsible for Devang Master's alleged off market transactions.

7. Upon consideration of the material available on record, the issues that arise for my consideration are:

- i) Whether the company, by reporting higher profits in its unaudited quarterly results as compared to the audited results and not submitting explanation therefore to BSE as required under the listing agreement, projected a false picture to the investors about the performance of the company?
- ii) Whether the company made the corporate announcements only to mislead the investors, and thereby create investor's interest in the scrip?

- iii) Whether the company, by making the said announcements facilitated its promoter-director and his related entities in carrying out transactions that led to a rise in the price and volume of the scrip and thereby acted as a fraud on the gullible investors?
 - iv) Whether the company failed to make relevant disclosures under Regulation 13(6) of SEBI (PTT) Regulations and Regulation 7(3) of SEBI (SAST) Regulations to BSE.
8. I note that on March 2, 2005 the company made corporate announcements to the effect that on March 8, 2005 a board meeting was to be held to consider the options and ways for expansion plans, acquisition and any other related matter for growth of the company, as well as to consider the increase in authorized capital and a rights/ preferential issue and the pricing of the issue. Following the announcement, the average daily volume of 3,685 shares increased to 22,605 shares for the remaining part of the investigation period, i.e. upto March 11, 2005. The price also rose from Rs.100.15 (closing price) on March 1, 2005 to Rs.113.96 (closing price) on March 11, 2005. The company stated that the board meeting had been postponed, vide a letter dated March 8, 2005, which was received by BSE on March 11, 2005. Following this, the price of the shares of the company saw a decline from Rs.113.96 on March 11, 2005 to Rs.110.75 on the next trading day.
9. In this regard, the company has submitted that during the period 2004-05, the Information Technology (IT) retail segment had grown. The company wanted to take advantage of the market boom in the IT sector, HR placement and outsourcing services related to IT sector. Accordingly, the company decided to raise capital by way of preferential allotment of shares or any other source as may be decided by its board of directors, which was scheduled to meet on March 8, 2005. The board meeting did not take place owing to the unavailability of directors. Upon analysis, it was decided that such growth and expansion of the company was not possible. Thereafter the scheduled meeting was cancelled and due intimation was given to the BSE of the same.
10. I note that the intimation to the BSE specified that the meeting had been *postponed*. No mention was made of *cancellation* of the board meeting. Moreover, the company in its intimation stated that “any further notice in this regard will be given to you (BSE) in due course”. Such a statement leads to the inference that the board meeting would be re-scheduled, and that it has

simply been postponed. However, the company has stated that it was under the impression that the cancellation of a board meeting on a particular date leads to the cancellation of the proposed agenda.

11. Moreover, I note that though the company had stated in its reply/ written submissions that the preferential/ rights issue could not be proceeded with because of lack of allottees and non-finalization of the terms and conditions of the issue, the company has not been able to provide any details of the proposed list of allottees and the quantum of the issue despite their being asked to do so.

12. I further note that during the same period the company had reported high profits in its unaudited quarterly results. However, the audited results showed that the profit was Rs.3.42 lacs, and was at a large variance from the sum of the profit of the quarterly unaudited results, which was Rs. 11 lacs. As per the requirements of Clause 41 of the Listing Agreement, the company should have submitted to BSE an explanation of the reasons for variations. This, I note, was not done. The company has submitted that the profit as per the unaudited balance sheet was higher as it did not contain the provisions of the deferred tax and other provisions. However, it was the responsibility of the company to submit such reasons/ explanations to BSE in the Directors Report. In the absence of the same, coupled with the questionable corporate announcements, I find it difficult to accept the contention of the company.

13. Moreover, as mentioned earlier, around the same time as the corporate announcements certain entities traded in the scrip in large volumes. These entities were found to have received shares from and transferred shares to the promoter of the company, Mr. Devang Master, in off market transactions. The trading by these entities was divided into two legs.

- i. The first leg of the trading involved the major selling clients during the investigation period, who were Lata Agrawal, Vasudev Agrawal, Indira Agrawal, Shambhu Agrawal and Rajendra Agrawal (hereinafter referred to as the 'Agrawal Group'). The Agrawal Group together sold 1,07,000 shares, thus contributing to 49.15% of the market volume.

- ii. The other leg of the trading was on the buy side. The major buying clients were Girdharbhai Vagadia, Prasad Tandel, Nilesh Upadhyay, Prakash D'souza, Kalpesh Babaraya, Shila Suryavanshi, Vikas Bengani, Ashok Bhagat and Vithalbhai Gajera (hereinafter collectively referred to as the 'Buying Group').

TRADING BY THE GROUP

14. During the investigation period, I note that the clients from the Buying Group, that is, Girdharbhai Vagadia, Prasad Tandel, Nilesh Upadhyay, Prakash D'souza, Kalpesh Babaraya, Shila Suryavanshi, Vikas Bengani, Ashok Bhagat and Vithalbhai Gajera together bought 1,39,400 shares, amounting to 64.03% of the market volume.
15. I observe that, before the corporate announcements (i.e. from February 16, 2005 to March 1, 2005), two of the connected clients of the Buying Group, namely, Prasad Tandel and Girdharbhai Vagadia, repeatedly placed first trades at a price higher than the last traded price. On four trading days, during the aforementioned period, they entered into one trade per day, where each trade was for 50 shares and was the only trade of the day, establishing a higher price than the previous close. In this period, the price of the scrip increased from Rs.87.40 to Rs.100.15. I note that the company has contended that the price of the scrip was increasing even before the corporate announcements, and thus the corporate announcements were not the reason for the spurt in the volume and price of the scrip. However, this contention cannot be accepted as the increase in the price of the scrip before the corporate announcements may have well been due to the trades placed by the aforementioned Buying Group entities, Prasad Tandel and Girdharbhai Vagadia.
16. In the period after the corporate announcements (i.e. March 2, 2005 to March 11, 2005), certain other entities of the Buying Group, that is, Nilesh Upadhyay, Shila Suryavanshi and Prakash D'Souza, executed incremental trades. During this period, a total of 24 incremental trades were executed, of which these Buying Group entities entered into 18 incremental trades (first and intra day trades) for 4,200 shares. Out of the 18 incremental trades, the counterparties to 7 trades were clients of Agrawal Group for 3,200 shares. Further, the connected clients of the

Buying Group bought 1,12,350 shares after corporate announcements. Clients from the Agarwal Group were counterparties for 51,900 shares (48.50% of total sale by Agrawal Group). These transactions contributed largely to the increase in the price from Rs.101.90 to Rs.109.00 in the period after the corporate announcements.

17. I note that entities of the Buying Group thereafter transferred 1,76,400 shares (35.28% of the paid up capital) to Devang Master, promoter-director of the company. Such off market deals point to a link between the clients of the Group and Devang Master. Moreover, from the demat statement of Devang Master, I observe that he sold 36,000 shares in the market in the range of Rs.120 to Rs.127 during June 2005, after the investigation period, when the price of the scrip had increased.

TRADING BY THE AGARWAL GROUP

18. The Agrawal Group sold 1,07,000 shares during the investigation period, which accounted for 49.15% of the total market volume during the period. I note that at the time of selling of the shares, the members of the Agarwal Group were not holding any shares of the company. The delivery for the shares sold by the Agrawal Group was given by the following entities:

Sr.No.	Name	DP ID/ Client Id	No. of shares	Date
1	Devang Master	1601010000029818	2,500	January 27, 2005
2	Sanjay Mahadik	1601010000102332	7,500	January 27, 2005
3	Nilesh Kothari	1202700100023021	11,300	March 3, 2005
4	Nilesh Kothari	IN300183-12509826	1,700	March 4, 2005
5	Ashok Bhagat	IN300271-10112300	20,000	March 5, 2005
6	Nilesh Upadhyay	IN302269-10228324	20,000	March 10, 2005
7	Vipul Vora	1601010000098671	3,000	March 10, 2005
8	Ravi Farata	1601010000193478	2,000	March 10, 2005
9	Vijay Bhagawandas Shah	IN300271-10120983	15,000	March 11, 2005
10	Nilesh Kothari	IN300183-12509826	5,000	March 14, 2005
11	Nilesh Upadhyay	IN302269-10228324	6,950	March 14, 2005
12	Vijay Bhagawandas Shah	IN300271-10120983	14,800	March 15, 2005
	Total		1,09,750	

On analysis of the demat accounts of the above entities it was seen that they had received shares, directly and indirectly, from the clients of the Buying Group.

19. Further, from the information obtained from Sharex Dynamic Pvt. Ltd., Registrar and Share Transfer Agent (RTA) of the company I note that, prior to the investigation period, Devang Master had transferred a substantial number of shares to clients belonging to the Agarwal Group. Details of the same are as follows:

Buyers' Folio	Name Of The Buyer	No. Of Shares	Sellers' Folio	Name Of The Seller	Date Of Transfer
000244	Lata Agrawal	25,000	000241	Devang Master	October 30, 2004
000249	Indra Agrawal	25,000	000241	Devang Master	November 1, 2004
000256	Vasudev Agrawal	25,000	000241	Devang Master	November 1, 2004
000254	Rajendra Agrawal	25,000	000241	Devang Master	November 1, 2004
000255	Shambhu Agrawal	25,000	000241	Devang Master	November 1, 2004

Copies of transfer deeds were also obtained from the RTA and it was observed that the above transactions were direct transfers between the Agrawal Group and Devang Master, the promoter-director of the company. The above transfers indicate that Devang Master was connected to the Agarwal Family.

20. Thus, from the foregoing, I observe that during the time when the corporate announcements were made by the company certain clients were dealing in large quantities in the scrip. These entities had received/ transferred shares from/ to the promoter-director of the company, Devang Master, in off market transactions.
21. In view of the above, it becomes difficult to accept the submission of the company that corporate announcements were of a bona fide nature. It cannot be a mere coincidence that the company made announcements of a board meeting to discuss issues that would ordinarily create interest in the scrip at the same time as related entities of the promoter-director were trading heavily in the scrip. Nor can it be a coincidence that while trading of such a nature was going on, the company made announcements that the scheduled board meetings have been 'postponed' when the meetings along with the agenda thereof, were actually 'cancelled'. Moreover, during the same period the company also projected an inflated image of its profitability in the unaudited

results. Thus, on examination of the case as described above, it is apparent that the company made the corporate announcements only to create investor's interest in the scrip.

22. It is true that the company is a separate legal entity and cannot be held responsible for manipulative trading by its promoters and others. However, it does not appear to be a mere coincidence that the company made false announcements and declared misleading results that facilitated in creating a general interest in the scrip and helped the promoters and others in carrying out their nefarious designs.

23. From the foregoing, I observe that the company has facilitated its promoter-director and his related entities in carrying out transactions that led to a rise in the price and volume of the scrip and thereby acted as a fraud on the gullible investors.

24. Thus, I find that the aforesaid conduct of the company was in violation of Section 12A of the SEBI Act, 1992 and Regulation 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(k) and 4(2)(r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.

25. I further note that Devang Master, promoter-director of the company, who was holding 2,65,050 shares (53.01% of paid up capital) on December 31, 2004 rematerialized 2,40,500 shares and transferred 2,13,000 shares in physical form (42.60% of the paid up capital) by off market transfers on February 25, 2005 to various entities. A few of the entities who received shares from Devang Master, sold 63,300 shares during the period where majority counterparties to the trades were clients belonging to the Group. On February 25, 2005 his shareholding reduced from 53.01% to 9.91 % in the company. He acquired 2,15,500 (43.10% of the paid up capital) shares on 31st March, 2005 mainly from connected clients of Group by off market trades.

26. The aforesaid set of transactions by Devang Master required certain disclosures, both by him and the company under the SEBI (PIT) Regulations and SEBI (SAST) Regulations. The company, vide letters dated February 07, 2008 and March 14, 2008, submitted that off market transfers by Devang Master were on friendly basis and was not for any monetary/commercial purpose requiring disclosure. Subsequently, in its additional written submissions filed on November 23,

2010, the company has clarified that it was not aware of the aforesaid transactions by the promoter. The company has also submitted a signed affidavit by Devang Master stating that he had not informed the company about the transactions which required disclosure. I find merit in this argument of the company. The applicable disclosure requirements under both the SEBI (PIT) Regulations and SEBI (SAST) Regulations state a company must disclose relevant information with regard to change in shareholding above a certain percentage, to the stock exchanges where its shares are listed, on receipt of such information. In the absence of any evidence to show that Devang Master informed the company of transactions carried out by him, I find that violation of Regulation 13(6) of SEBI (PIT) Regulations and Regulation 7(3) of SEBI (SAST) Regulations by the company do not stand established.

27. 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 Sections 11, 11(4) and 11B of SEBI Act, 1992, hereby restrain Empower Industries India Ltd from accessing the securities market and prohibit it from buying, selling or otherwise dealing in securities, directly or indirectly, for a period of 6 months.

28. 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 27 above.

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

DATE : 6/JANUARY/2012

PLACE: MUMBAI

PRASHANT SARAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA