

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. PG/AO-115/2011]**

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**UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD  
OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE  
FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY  
ADJUDICATING (OFFICER) RULES, 1995**

**In respect of**

**Mr. G. Jayaraman**

**[PAN: ACWPG4618A]**

**In the matter of  
Satyam Computer Services Limited**

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**Background of the case**

1. SEBI conducted investigation pertaining to issues relating to insider trading in the scrip of Satyam Computer Services Limited (SCSL) during the financial year 2008-09 (hereinafter referred to as the '**investigation period**'). The investigation revealed that SCSL's announcement on December 16, 2008 to acquire Maytas Infra Ltd. (MIL), Maytas Properties Ltd. (MPL), the subsequent withdrawal of the said proposal on December 17, 2008 and the confessions made by Mr. Ramalinga Raju, the then Chairman of SCSL on January 07, 2009 was price sensitive information. It was observed that certain employees and clients had sold SCSL shares between November 25, 2008 and December 16, 2008 till before the announcement and

some 80 clients sold before January 7, 2009. The trading window was closed from December 17, 2008 and stayed closed till beyond January 9, 2009. On December 17, 2008, the scrip fell to a low of ₹ 151, a 33.5% fall from previous close but after the cancellation of the decision, it recovered marginally to close at ₹ 157.10 on NSE.

2. The investigation further revealed that Mr. G Jayaraman, Compliance Officer of SCSL (hereinafter referred to as the '**Noticee**') had allegedly violated the provisions of the 'Model Code of Conduct for Prevention of Insider Trading for Listed Companies' (hereinafter referred to as the '**Code**') prescribed under the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**') during the investigation period by not closing the trading window when there was unpublished price sensitive information about the acquisition of MIL and MPL by SCSL.
3. In view of the findings of the Investigation as given above, SEBI has initiated adjudication proceedings against the Noticee for allegedly breaching the Code, thereby violating Clauses 1.2 and 3.2-3 of Part A, Schedule I under Regulation 12 (1) of the PIT Regulations.

#### **Appointment of Adjudicating Officer**

4. SEBI vide Order dated September 12, 2011 had appointed the undersigned as Adjudicating Officer (AO) under Section 15-I of

the SEBI Act, 1992 (hereinafter referred to as the '**SEBI Act**') read with Rule 3 of Securities and Exchange Board of India (Procedure for holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Adjudication Rules**') to inquire into and adjudge under Section 15HB of the SEBI Act, the alleged violation of the abovementioned provisions of the PIT Regulations by the Noticee.

### **Show Cause Notice, Reply & Personal hearing**

5. Show Cause Notice dated September 27, 2011 (SCN) was issued to the Noticee in terms of the provision of Rule 4 (1) of the Adjudication Rules to show cause as to why an inquiry should not be held against him in respect of the violations alleged to have been committed by him. The SCN alleged that the Noticee failed to follow the duties of a Compliance Officer prescribed under the Code under PIT Regulations by not closing the trading window when there was unpublished price sensitive information.
  
6. The Noticee vide his letter dated October 14, 2011, submitted that he is the company secretary of SCSL since March 2000 and in terms of SCSL's Statement of Policies and Procedures for Preventing Insider Trading (**policy**), the Noticee has been designated as the compliance officer of SCSL and is working under the overall superintendence and guidance of the Board of Directors of SCSL (**Board**). That the Noticee has, to the best of his ability, at all times discharged his responsibilities consistent with SCSL's policy. That as per Clause 3.2-3A of the

Code, a company is required to determine the time for commencement of closing the trading window and company's decisions are taken by the Board of Directors. That since there was no direction from the Board of Directors of SCSL to close the trading window, the same was not closed by the Noticee. The Noticee had further stated that on December 15, 2008, he became aware of the agenda for the Board meeting scheduled on December 16, 2008 regarding the proposal to acquire MIL and MPL, and that he had no reason to believe that, the said board meeting warranted closure of the trading window as the matter was merely in the nature of a proposal which was subject to discussion and approval by the board and he was not specifically instructed by the Board to close the trading window. That the Noticee's responsibilities in SCSL are to be discharged under the overall supervision of the Board of Directors. The Noticee further submitted that the purpose of the PIT Regulations is to prohibit trading by which an insider should not gain advantage by virtue of his access to price sensitive information. Further, unless it is communicated to the compliance officer, he will have no knowledge of the price sensitive information warranting closure of the trading window.

7. On considering the facts of the case as available on record, it was decided to conduct an inquiry in the matter. Accordingly, the undersigned had granted an opportunity of personal hearing on November 08, 2011 vide notice of hearing dated October 17, 2011. On the scheduled date, the authorised representative Mr. Yogesh Chande, Naik Naik & Company, Advocates had appeared on behalf of the Noticee and reiterated their submissions filed in their earlier reply dated October 14, 2011 and stated that additional written submissions

would be filed by November 9, 2011. Vide reply dated November 9, 2011, the Noticee had submitted that no disturbance was caused to the market price of SCSL shares, which could be attributable to non-closure of trading window by the Noticee.

8. Thus the inquiry is being proceeded with taking into account the facts of the case, oral/written submissions made by the Noticee and other material available on record.

### **Consideration of Issues, Evidence and Findings**

9. I have carefully perused the documents available on record. The issues that arise for consideration in the present case are:
  - (a) Whether the Noticee has violated Clauses 1.2 and 3.2-3 of the Coder of Part A, Schedule I under Regulation 12 (1) of the PIT Regulations?
  - (b) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15HB of SEBI Act?
  - (c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?
10. The relevant provisions of the PIT Regulations are as follows:  
***Reg. 12 (1), PIT Regulations- Code of internal procedures and conduct for listed companies and other entities: All listed***

*companies and organizations associated with securities markets including:*

- (a) the intermediaries as mentioned in Section 12 of the SEBI Act, asset management company and trustees of mutual funds;*
- (b) the self-regulatory organizations recognized or authorized by the Board;*
- (c) .....*
- (d) .....*
- (e) .....*

*shall frame a code of internal procedures and conduct as near thereto the Model Conduct specified in Schedule I of these Regulations.*

***SCHEDULE I, Part-A- Model Code of Conduct For Prevention of Insider Trading for Listed Companies.***

***Clause 1.0- Compliance Officer***

*1.1 .....*

*1.2 The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of 'Price Sensitive Information', pre-clearing; of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.*

*Explanation: For the purpose of this Schedule, the term 'designated employee' shall include:-*

- (i) officers comprising the top three tiers of the company management;*
- (j) the employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct.*

***Clause 3.2- Trading Window***

3.2-1.....

3.2-2.....

3.2-3 *The trading window shall be, inter alia, closed at the time:-*

- (a) *Declaration of financial results (quarterly, half-yearly and annually),*
- (b) *Declaration of dividends (interim and final),*
- (c) *issue of securities by way of public/rights/bonus etc,*
- (d) *any major expansion plans or execution of new projects,*
- (e) *amalgamation, mergers, takeovers and buy-back,*
- (f) *disposal of whole or substantially whole of the undertaking,*
- (g) *any changes in policies, plans or operations of the company.*

3.2-3A *The time for commencement of closing of trading window shall be decided by the company.*

11. As per Clause 3.2-1 of the Code prescribed under PIT Regulations, the Company shall specify a trading period to be called 'trading window', for trading in the company's securities and the trading window shall be closed during the time the information referred to in Clause 3.2-3 of the Code is unpublished like the price sensitive information about acquisition of MIL and MPL, which falls under sub-clause (e) of Clause 3.2-3 of the Code, viz., amalgamation, mergers, takeovers and buy-back. As per clause 3.2-3A, the time for commencement of closing of trading window shall be decided by the company. Regulation 12 (1) of the PIT Regulations further requires that all listed companies shall frame a Code of Internal Procedures and Conduct as near thereto the Code and as per Clause 1.2 thereto, the Compliance Officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of 'price sensitive information' and the implementation of the code of conduct under the overall supervision of the Board of the listed company.

12. I find that as per the abovementioned provisions, the Noticee being the Compliance Officer of SCSL, one of the key personnel had very major role to play in the company, of monitoring adherence to the rules for preservation of price sensitive information and implementation of the Code. Even though the clause specifies that the compliance officer is to execute his responsibilities under the overall supervision of the Board, yet the provision confers key responsibilities on the compliance officer per se, which cannot be overlooked. The Noticee, thus, carries the responsibility of monitoring the closure of the trading window under the circumstances given in Clause 3.2-3 of the Code, other than when it was automatically closed for the release of financial statements, even though the time period for such closure shall be decided by the company. I find that the trading window was not closed at the time when the unpublished price sensitive information regarding the acquisition of MIL and MPL was known to the top management officials of SCSL before the public announcement of the same on December 16, 2008 was to come.
13. As per SCSL's letter dated October 18, 2010, the company's policy for prevention of insider trading, as approved by the Board of Directors, states that the trading window shall be closed 15 days prior to the end of the third month of any fiscal quarter of the Company and ending two days after the release of financial results. The policy further states that the Compliance officer may also notify the period for any other occasion during which the trading window shall be closed. In response to the queries put forth by SEBI in this regard, the Noticee vide his letter dated October 18, 2010 and e-mails dated October 06, 2010 and November 22, 2010, stated that in-principle approval of the Board is required to go ahead with the announcement of closure of trading window and that the then

Chairman Mr Ramalinga Raju directed that the proposal shall be kept under utmost confidentiality and even though he briefed the identified associates, the trading window was not closed as any such intimation would have resulted in speculative trading by innocent investors and also that there was no instance prior to December 16, 2008 when the company was required to close the trading window for the Board meetings called for reasons other than the declaration of financial results. SCSL vide its e-mail dated March 15, 2010 to SEBI, had informed that the trading window was closed only from December 17, 2008.

14. The Noticee has contended that since there was no direction from the Board of Directors of SCSL to close the trading window, the same was not closed by the Noticee. I observe that the Noticee is the compliance officer of SCSL responsible for closing the trading window whenever issues specified in clause 3.2-3 of Code and other similar issues are under consideration. Matters like consideration of accounts, declaration of dividend, bonus, acquisition of entities etc are put up as proposals before the Board. From the proposal stage itself, such information becomes price sensitive and remains so till decision thereon is disseminated to the public. As the proposal is not in public domain, it is imperative on the compliance officer to close the trading window so that insiders and connected persons do not take advantage of such information. In case any internal approvals are required, he may take them but ensure that the trading window is closed on time. As compliance officer, he cannot raise the defence that internal approvals were not available. Such contention, if accepted, would render the concept of appointment of compliance officer meaningless and is therefore not acceptable.

Further, the Noticee's stand that the matter was merely in the nature of a proposal which was subject to discussion and approval by the Board and as such it didn't warrant closure of trading window is not proper as the matter was price sensitive information specifically covered under clause 3.2-3 of Code thus warranting necessary action on the part of the Noticee. Further, the Noticee's contention that unless it is communicated to the compliance officer, he will have no knowledge of the price sensitive information warranting closure of the trading window is not true as I find that in his reply dated October 14, 2011, he has stated that on becoming aware of the agenda by the mergers and acquisitions department of SCSL on December 15, 2008, he prepared the agenda paper regarding the proposal to acquire MIL & MPL.

15. I find that certain employees of SCSL got to know about the announcement of acquisition of MIL and MPL, much in advance and had indulged in insider trading. As the Compliance officer of SCSL, the Noticee carried the responsibility to close the trading window on the above occasion as prescribed under specified clauses of the Code prescribed under Regulation 12 (1) of the PIT Regulations.
16. From the foregoing, I conclude that the Noticee has not fulfilled his duties and responsibilities as the Compliance officer of SCSL, thereby breaching Clauses 1.2 and 3.2-3 of the Code read with Regulation 12 (1) of the PIT Regulations warranting imposition of monetary penalty under Section 15HB of the SEBI Act.
17. The basic purpose of the closure requirement in the abovementioned regulations is to prohibit trading by insiders by virtue of their easy access to price sensitive information and

thereby not gain at the cost of investors. This is to bring about transparency in the securities market. Thus, any violation of the code requirements has to be viewed seriously.

18. The Hon'ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund**<sup>1</sup> held that “once the violation of statutory regulations is established, imposition of penalty becomes *sine qua non* of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow.”
19. Thus, the aforesaid violations by the Noticee make him liable for penalty u/s. 15HB of the SEBI Act which reads thus:

***“Penalty for contravention where no separate penalty has been provided:*** Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.”
20. While determining the quantum of penalty u/s. 15HB, it is important to consider the factors stipulated in S.15J of SEBI Act, which reads as under:-

***“Factors to be taken into account by the adjudicating officer.***  
*While adjudging quantum of penalty under S.15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

  - (a) *the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
  - (b) *the amount of loss caused to an investor or group of investors as a result of the default;*
  - (c) *the repetitive nature of the default.”*

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<sup>1</sup> (2006) 68SCL 216 (SC)

21. It is noted that it is difficult to assess the disproportionate gain or unfair advantage made by the Noticee and it is also not possible to ascertain the loss to investors, as a result of the said failure to close the trading window when there was unpublished price sensitive information. This was very significant information which led to a fall of 33.5 % of share price which is quite substantial. It has been established that the Noticee failed to comply with the Code requirements under the PIT Regulations and some of the employees even traded in SCSL shares. It is essential for every market player to fulfill the requirements mandated in the law, especially, the duty weighs even more on persons like Compliance Officer, who is conferred upon with key responsibilities in a company. Hence, the violation by the Noticee needs to be viewed seriously.

## **ORDER**

22. After taking into consideration all the facts and circumstances of the case, I come to conclusion that this is a fit case for imposing the monetary penalty on the aforesaid Noticee. I, in exercise of the powers conferred upon me under section 15- I (2) of the SEBI Act, impose a penalty of ₹ 5, 00,000/- (Rupees Five lakhs only) on the Noticee in terms of Section 15HB of the SEBI Act for violation of Clauses 1.2 and 3.2-3 of the Code of Part A, Schedule I under Regulation 12 (1) of the PIT Regulations. I am of the view that the said penalty is commensurate with the violation committed by the Noticee.

23. The penalty shall be paid by way of a duly crossed demand draft drawn in favour of "SEBI- Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this order.

The said demand draft shall be forwarded to Deputy General Manager, Investigation Department-6 (IVD-ID6), Securities and Exchange Board of India, Plot no.C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai- 400 051.

24. In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India. The matter is disposed of accordingly.

**DATE: November 29, 2011**

**PIYOOSH GUPTA**

**PLACE: Mumbai**

**ADJUDICATING OFFICER**