In Re: Bonanza Biotech Ltd.; in Re:

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SooperKanoon Citation : sooperkanoon.com/58553

Court : SEBI Securities and Exchange Board of India or Securities Appellate Tribunal SAT

Decided On : Mar-06-2007

Judge : G Anantharaman

Appellant : In Re: Bonanza Biotech Ltd.; in Re:

Judgement :

1.1 The Securities and Exchange Board of India (SEBI) conducted investigations into dealings in the shares of Design Auto Systems Ltd. (DASL) for the period between August 2001 and January 2002 pursuant to a preferential allotment made by the said company to another company called Bonanza Biotech Ltd. (BBL) on swap basis in the ratio of 1:1.

Both DASL and BBL shares were listed on various stock exchanges. DASL shares were listed on the Bombay Stock Exchange Ltd (BSE), Madhya Pradesh Stock Exchange (MPSE) and Ahmedabad Stock Exchange (ASE). BBL shares were listed on BSE and MPSE. The case history leading to the investigation is as under: (a) DASL made a preferential allotment of 10 crore of its shares (said shares) to BBL on October 29, 2001 which was about 14 times of the pre-issue paid up capital of DASL. The consideration was another preferential allotment of 10 crore shares made by BBL to DASL on the same date which was about 5 times of the pre-issue paid up capital of BBL before the allotment.

(b) DASL made application for listing the said shares allotted to BBL to various stock exchanges where its original shares were listed. The MPSE granted listing permission albeit with undue haste and without exercising due diligence. The BSE kept the listing application pending, as it apprehended that DASL would have committed certain violations of law in the process. However, even MPSE had not granted the trading permission.

(c) On the basis of listing permission given by MPSE, the Central Depositories Services Ltd. (CDSL), a depository registered with SEBI, dematerialized these DASL shares and credited them to the beneficial owner account of BBL.

(d) BBL offloaded substantial portion of these unlisted shares of DASL on the trading platform of BSE through a network of entities.

Offloading or trading of shares for which listing permission was not granted, is not permissible in terms of BSE Bye-laws and constitutes bad delivery thereunder. The BSE Clearing House or any other parties to the trades could not immediately detect the irregularity as these shares were in the dematerialized form and were fungible with the already existing and validly listed shares of DASL. As a result, a number of innocent investors were defrauded and saddled with unlisted shares of DASL which could not be legally transacted on the BSE. (e) When this came to the notice of SEBI and BSE, the demat account of BBL was frozen after recovering a portion of the shares that were offloaded by it.

(f) Subsequently, investigations were initiated by SEBI to probe into the alleged malpractices committed by DASL, BBL and other entities.

1.2 During the course of the aforesaid investigations, summons was issued to BBL to appear before the Investigating Authority since it was one of the parties to the principal transaction. BBL challenged it before the Hon'ble High Court of Madhya Pradesh, Indore Bench by filing a writ petition, raising various objections to SEBI's jurisdiction (WP No. 150/2004). DASL had also challenged a similar summons issued by SEBI before the same Court (WP No. 673/2004). Both the writ petitions were dismissed by the Hon'ble Court by orders dated March 04, 2005.

While dismissing the petitions, the Hon'ble Court directed SEBI to ensure expeditious completion of investigation and further directed DASL and BBL to cooperate in the investigation so as to enable the Investigating Authority to complete the same expeditiously.

1.3 The findings of investigation pointed to various violations including that of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices in the Securities Market) Regulations, 1995 ("the PFUTP Regulations") by DASL, BBL and other entities suspected to be involved.

SEBI, therefore issued show cause notices to DASL, BBL and other entities suspected to be involved in the transactions requiring them to show cause as to why appropriate directions should not be passed. The show cause notice (SCN) issued to BBL was dated June 30, 2005.

1.4 DASL, instead of replying to the show cause notice, raised certain objections challenging SEBI's jurisdiction and further sought inspection of certain documents vide its letters dated July 21, 2005 and August 31, 2005. SEBI, thereupon replied vide letters dated August 22, 2005 and September 19, 2005 that the jurisdictional objections, if any, might be raised before the authority conducting proceeding in relation to SCN dated June 30, 2005 issued to DASL, i.e., Whole Time Member, SEBI.1.5 DASL challenged the aforesaid letter dated September 19, 2005 of SEBI by filing another writ petition before the Hon'ble High Court of Madhya Pradesh, Indore Bench. The Hon'ble Court disposed of the writ petition by an order dated February 13, 2006 which was received at SEBI office on February 27, 2006 with the following observations: Since only show cause notice has been issued, therefore, at this stage the petition cannot be entertained. The submission of petitioner is that petitioner should be heard first on the question of preliminary objection.

In view of this, the petition is disposed of with the direction that before proceeding further the Competent Authority shall take into consideration the preliminary objection regarding jurisdiction as raised by the petitioner and shall pass a reasoned Order after giving an opportunity of hearing to the petitioner. If the Competent Authority is of the view that it has the jurisdiction then it shall be at liberty to proceed further. With the aforesaid observations the petition stands disposed of.

1.6 In compliance with the directions of the Hon'ble Court, SEBI had disposed of DASL's preliminary objections, including the jurisdictional question, by an order dated June 22, 2006, after granting an opportunity of hearing to DASL. It was held that SEBI had jurisdiction in the matter and that the preliminary objections raised by DASL were not sustainable. It was accordingly directed that the proceedings initiated by show cause notice dated June 30, 2005 should be continued in accordance with law and that DASL shall file its reply to the show cause notice within 15 days.

1.7 Instead of complying with the said direction, DASL again filed a writ petition before the Hon'ble High Court of Madhya Pradesh, Indore Bench challenging the said order dated June 22, 2006 (WP No. 4479 of 2006). The writ petition came up for hearing before the Hon'ble Court on October 17, 2006 when it granted time to SEBI to file its reply. The Hon'ble Court also passed an interim order on October 17, 2006 permitting SEBI to continue the proceedings but restrained it from passing any final order in the matter. Subsequently, the Hon'ble Court dismissed the writ petition vide an order dated February 13, 2007 holding that the proper course would be to allow SEBI to pass the final order. The said order was received by SEBI on February 27, 2007. The Hon'ble Court directed in para 8, as follows: In view of the foregoing discussion the petition fails and is dismissed. As a consequence, the interim order dated 17.10.2006 passed by this Court is vacated. The respondent No. 2 (SEBI) is granted 2 weeks time to pass final orders after completing the investigations in accordance with law if not so far completed so as to enable him to pass final orders.

Accordingly SEBI is passing final orders against DASL. The present proceedings against BBL have also been delayed due to the same reasons that occasioned delay in proceedings against DASL, as the roles of DASL and BBL were inextricably interlinked in the alleged transactions.

2.1 The following are the main allegations made in the show cause notice dated June 30, 2005 issued to BBL: (a) The issued subscribed and paid up capital of DASL is Rs. 107.325 and it had entered into an agreement with BBL to swap 10 crore shares of Rs. 10 each at par value on a preferential basis at the ratio of 1:1.

The Directors of BBL included Shri Sharad Gujrati, Shri Amit Patel, Shri Rakesh Pandya and Smt. Druma Vaghela during the period of investigation as per the information supplied by BBL vide their letter dated November 14, 2003.

(b) On September 15, 2001, DASL had entered into an agreement with BBL to swap 10 crore shares of Rs. 10 each at par value on a preferential basis at the ratio of 1:1. That DASL, pursuant to the said agreement dated September 15, 2001, called meeting of Board of Directors of DASL on October 2, 2001 and further, an Extraordinary General Meeting (EGM) was called on October, 25 of 2001, as claimed.

Finally on October 29, 2001, the said ten crores shares of DASL were allotted to BBL.

(c) It was further observed that subsequent to the allotment of ten crores share to BBL, DASL applied for listing of the said shares on MPSE on November 1, 2001, where it got the listing permission on November 5, 2001. On BSE, the listing application was made on December 20, 2001, however, the same was kept pending. No application was made with ASE. On November 10, 2001, CDSL dematerialized the said 10 crores equity shares of DASL and credited the same into the account of BBL (a/c No. 1302120000000344).

Further, it was observed that DASL had also issued a jumbo certificate of in respect of its aforesaid 10 crore equity shares to BBL on October 29, 2001 bearing distinctive Nos. 23900800 to 123900800.

(d) Of the said 10 crore unlisted shares of DASL dematerialized with CDSL, 6 crore unlisted shares were transferred from the account of BBL to different entities as stated below: The remaining 4 crore shares have been frozen by CDSL on January 8,2002 A detail of DP a/c of BBL is as below: Details of movement of the said unlisted 6 crore shares from the various accounts are as hereunder: 1. (IN300888/13162987): Manoj H Ganeriwala and Madhu M Ganeriwala.

(Manoj H Ganeriwala is a Director of the broker DG Goenka Equities Pvt. Ltd. Address: Shankerdeep, Flat No. 1, Tagore Road, Santacruz (W), Mumbai 400 054

2. (IN300888/ 14171657): Account belongs to DG Goenka Equities Pvt.

Ltd., member BSE (Address: PS9, Rotunda Building, Bombay Samachar Marg, Fort, Mumbai 400 023).

3. (IN301485/ 10000677): Account belongs to Pinnacle Finstock Pvt.

Ltd. (Address: B-81, Pariseema Complex, CG Road, Ellisbridge, Ahmedabad 380 006), sub broker to Active Finstock Pvt. Ltd. 4. (IN301485/ 10029747): Account belongs to Coverage & Consultants Ltd. (Address: 203, Apollo Towers, 2 MG Road, Indore, MP 452 001).

5. (IN301983/10004669): Account belongs to Murali Nair (Address: 108-B, Vardha Vihar, Lalaram Nagar, Indore, MP 452 001) (e) a reconciliation of the transfer of 10 crore unlisted shares of DASL from BBL's demat account was as mentioned below: Total Shares credited - 10,00,00,000 Shares frozen in the DP a/c - 9,01,78,926 Shares delivered in the market/ Unaccounted for - 98,21,074 Coverage & Consultants 33,33,669 Pinnacle Finstock 30,78,864 CD Equisearch 15,00,000 Shyam Parwaney 2,00,000 Manoj Ganeriwala 8,75,000 D.G. Goenka 8,33,541 ----------- (f) That when BBL was asked about the reason of the said transfer it replied that other than CD Equisearch and Murali Nair the same were done for the purpose of arranging loans against the mortgage of shares. However, when the other entities to which the shares of DASL had been transferred were confronted, they replied that they were not arranging finances. Mr. Manoj Ganeriwala to whom BBL had transferred 50 lac shares, stated in his sworn statement that he is not in the business of arranging finance, etc. Further, M/s. DG Goenka Equities P Ltd. to whom 50 lac shares were transferred has mentioned in their statement that these shares were transferred on their account at the instruction of Mr. Murali Nair and M/s. Vargin Finance P Ltd. and these shares were transferred to their account from BBL in respect of their margin requirements and future market obligations. Further, PFPL, to whom 50 lac shares were transferred and also got transfer of 50 lac shares from Manoj Ganeriwala, has stated in their statement that these shares were arranged by C&C towards their likely transactions and as a risk management measure they have requested for advanced pay-in.

(g) Shri Murali Nair, who was an employee of DASL and had also contacted various entities on behalf of BBL, in his sworn statement to the investigating authority, had stated that he was in charge of the transfer of shares in the physical form to the RSTA, Ankit Consultancy Pvt. Ltd. for their eventual dematerialization on behalf of DASL, Bonanza Biotech Ltd., Vargin Finance Pvt. Ltd. and Shri Sarvesh Garg and tha he used to follow up with Ankit Consultancy on behalf of the afore mentioned entities." (h) Further, it was noted that Coverage & Consultants Ltd. (C&C) had received 1 crore unlisted shares of DASL from BBL on 06.12.2001. It was also noted that C&C having the address as 203, Apollo Towers, 2 MG Road, Indore, MP 452 001, shared the same address with that of BBL. Further, from the statements recorded of M/s Parshwa Finance, who is a sub broker to the broker P Suryakant Share & Stock Brokers Ltd., it was observed that a Director of BBL, Shri Deep Trivedi, used to deal for C&C through them.

(i) The movement of shares to and from the demat account of C&C are as under: (j) That C & C was dealing through the member, Equisearch Broking Ltd. and Active Finstock Ltd. (through sub-broker Pinnacle Finstock). They have also dealt through Shri Parshwa Finance, sub-broker to P Suryakant Share and Stock Brokers Ltd. As per analysis made by BSE, large trades accounted for 42% of the total trading volumes during the period 05.11.2001 to 11.01.2002 (unified as well as rolling settlement). It was observed that transaction of C&C accounted for 47.92% and 15.99% respectively of the total traded volume during the period of investigation.

(k) That a Director of BBL, Shri B L Joshi was the person dealing on behalf of C&C. with various brokers. The other Directors of C&C were Shri Sharad Gujarathi, Shri Narendra Chouhan and Shri Deep Trivedi (as per the statement of Shri Parshwa Finance). Shri Sharad Gujarathi is also the Director of BBL and the address of C&C and BBL are the same.

(l) That 63, 88,151 shares of DASL had been transferred back into the account C&C and the remaining 33,33,669 shares out of the 1 crore shares of DASL transferred to its account by BBL was seen to have been offloaded in the market. Besides, C&C has also off-loaded the shares which were credited directly in the account of PFPL.

These shares belonged to Sh. Prashant Rajgaria, the director of DASL.

(m) BBL in its submissions has mentioned that 1 crore shares were transferred to C&C for the purpose of arranging loans and the shares were to be used for collateral purposes. However, the brokers through whom C&C has dealt have maintained that the shares were brought in for the purpose of sale only.

(n) Further, during the investigation, it was found that 50,00,000 unlisted shares of DASL were transferred by BBL to PFPL, which was acting as a sub broker to Active Finstock Pvt. Ltd. Its account No. is IN301485/ 10000677. The movement of shares to and from the demat account during the period was as stated below: (o) As per the movement of shares from this account, it was pointed out in the SCN that PFPL was in receipt of total 1, 08, 75,000 unlisted shares of DASL. On being asked the reason of these transfer, C&C responded as "We got the shares to the tune of 1, 08, 75,000 as advance pay-in from C&C. These shares were transferred as a matter of advance pay in so that there was no obligation of payments. The unsold shares were transferred back as per the instruction of C&C. (p) when the sub broker was asked about the fact that from the records submitted it appeared that 1 crore shares were transferred as on 22.11.2001 to the entity, which works out to more than listed capital of DASL (at BSE) and 9.4% of the unlisted capital of DASL they replied as, "We did not make any disclosures to SEBI which are required as per SEBI (SAST), 1997 regulations." (q) That the investigation also revealed that PFPL had made substantial funding to the client C&C and the debit balance as on 19.12.2001 was to the tune of Rs. 2.26 crores and on 18.12.2001 the debit balance in the account of C&C was to the tune of Rs. 1.41 crores despite that a further payment of Rs. 85 lacs was made to C&C. When it was asked from the sub-broker why he has made these payments, their reply was "we were told by C&C that the debit balance will be cleared by selling the shares of DASL".

(r) When PFPL was asked to comment on the due diligence measures taken by it with regard to huge sales made by C&C of unlisted shares of DASL, their reply was "we did trading on behalf of C&C mainly. As mentioned we were not aware that these shares were unlisted".

(s) Further, it was also found that during the relevant period of investigation, C&C had dealt with broker Equisearch Pvt. Ltd., C&C was the main client of the broker. It was also submitted by the broker that C&C had started trading with them in DASL on 23.10.2001 with 100 shares. However, it was observed that the trading of C&C in the said scrip had swelled as on 08.12.2001, 8,34,149 shares were transferred from C&C to their a/c and similarly on 11th December 2001 - 5,000 shares, on 15th December 2001 - 6,72,650, on 22nd December 2001 - 14,900 shares, on 31st December 2001 - 1,08,300 shares and on 2nd January 2002 - 1,25,450 shares were transferred to their demat account by C&C. Further, it was observed there was a sudden jump in trading activity from Sett. No. 37/2001-2002 when 1.90 lac shares had been purchased by C&C and 10.25 lac shares were sold by C&C which was a big increase from C&C's trading volumes in the previous settlements.

(t) From the aforesaid facts, appearing during the course of investigations, it was concluded in the SCN that C&C, while trading through Equisearch Broking Pvt. Ltd., had attempted to offload the said unlisted shares of DASL in the market and in this nefarious design and purpose Equisearch Broking Pvt. Ltd was also acting in concert with BBL, C&C and other entities involved therein.

(u) The investigation further revealed that C&C had also dealt through one Admiral Securities, which was working as a sub broker with VSE Securities Ltd., subsidiary of Vadodara Stock Exchange (VSE). During the relevant period of investigation C&C was the only client for Admiral Securities in the scrip of DASL.

The details of trades done by the broker for client C&C were as under: (v) The sub broker has submitted that they got 10, 00,000 shares of DASL from their client C&C on 12.12.2001 as advance pay-in. Further, he stated that for 10 lakh shares they were directed by C&C to sell these shares in the secondary market giving the price range between Rs. 5 and Rs. 6 and after selling 4, 95,000 shares, when they felt some mis-match then stopped dealing in DASL on behalf of C&C. And 5, 05,000 shares which were not sold were returned to Coverage and Consultants on 16.01.2002.

(w) It was also noted in the SCN that C&C had also dealt in the said scrip of DASL through Shri Parshawa Finance, which was an unregistered sub broker to P. Suryakant Share & Stock Brokers Pvt.

Ltd. The main clients of this sub broker were C&C and M/s Kishore Corporation. It was found that they did not enter into any client agreement form with C&C. They got registered as sub broker with P. Suryakant on 13th Feb., 2002. The regn. No. is INS011245110/01-11590.

The details of trades done by the sub broker for client C&C were as under: (x) Further, the sub broker stated that it had traded on behalf of M/s Kishore Corporation only. However, when it was asked to explain, he replied that, they were told by M/s Kishore Corporation to raise the bills in the name of C&C that the dealings of DASL should be in their account. when the shares received by them to meet the pay in obligation of C&C, they realized that the shares were transferred from the account of M/s Kishore Corporation and then they were told by M/s Kishore Corporation to issue cheques towards the sale of 650000 in the name of M/s Kishore Corporation (y) On the basis of aforementioned facts, it was concluded in the SCN that BBL and its directors with the help of various other entities like C&C, PFPL and etc. have violated Regulation 3, 4(a), (b), (c), and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995.

2.2 There was no reply to the SCN. An opportunity of personal hearing was given to BBL and its directors to appear before me on February 7, 2006 to make their submissions. However, they did not turn up for the hearing. In the attendant circumstances of the case, rife with non-compliance bordering on contumacious conduct, I am satisfied that no useful purpose would be served affording any further opportunity.

Even during the interregnum period after the hearing date, necessitated on account of co-ordinated and concerted examination of both cases DASL & BBL together, there was no response from BBL. Accordingly, I proceed to consider the case on the principles of best judgment based on SCN and other materials available on record.

3.1 I note at the outset that BBL did not respond to various summons issued by SEBI. Since it was a principal party to the transactions, its absence has hampered the investigations. As mentioned in the SCN, the following are the instances when BBL failed to respond to summons of the investigating authority: Summons to furnish information Under Section 11C (3) by 05.07.2003 in respect of their dealings in the scrip of Design Auto Systems Ltd. for the period November 2001 to January 2002 2nd summons to furnish information Under Section 11C (3) by 07.11.2003 in respect of their dealings in the scrip of Design Auto Systems Ltd. for the period November 2001 to January 2002 Summons to furnish information Under Section 11C (3) by 25.11.2003 in respect of their dealings in the scrip of Design Auto Systems Ltd. for the period November 2001 to January 2002 o BBL furnished information vide letter dated 14.11.2003 that reached SEBI on 20.11.2003 Summons to appear in person before investigating authority Under Section. 11C (5) of SEBI Act, 1992 on 19.12.2003 in respect of their dealings in the scrip of Design Auto Systems Ltd. for the period November 2001 to January 2002 Summons to appear in person before investigating authority Under Section. 11C (5) of SEBI Act, 1992 on 02.01.2004 in respect of their dealings in the scrip of Design Auto Systems Ltd. for the period November 2001 to January 2002 Summons to appear in person before investigating authority Under Section. 11C (5) of SEBI Act, 1992 on 16.01.2004 in respect of their dealings in the scrip of Design Auto Systems Ltd. for the period November 2001 to January 2002 Summons to appear in person before investigating authority Under Section. 11C (5) of SEBI Act, 1992 on 29.01.2004 in respect of their dealings in the scrip of Design Auto Systems Ltd. for the period November 2001 to January 2002 Reminder to summons to appear in person before investigating authority Under Section. 11C (5) of SEBI Act, 1992 on 06.02.2004 in respect of their dealings in the scrip of Design Auto Systems Ltd. for the period November 2001 to January 2002 o BBL did not appear citing the reason that they had filed Writ Petition before Hon'ble High Court, M.P. on 05.02.2004 challenging the jurisdiction of Investigating Authority of General Manager, SEBI Reminder to summons to appear in person before investigating authority Under Section. 11C (5) of SEBI Act, 1992 on 16.02.2004 in respect of their dealings in the scrip of Design Auto Systems Ltd. for the period November 2001 to January 2002 o BBL did not appear citing the reason that the Writ Petition filed before Hon'ble High Court, M.P. on 05.02.2004 had been listed on 16.02.2004 Reminder to summons to appear in person before investigating authority Under Section. 11C (5) of SEBI Act, 1992 on 03.03.2004 in respect of their dealings in the scrip of Design Auto Systems Ltd. for the period November 2001 to January 2002 o BBL did not appear citing the same reason that the Writ Petition filed before Hon'ble High Court, M.P. on 05.02.2004 had been listed on 16.02.2004 and hence the matter is sub judice Reminder to summons to appear in person before investigating authority Under Section. 11C (5) of SEBI Act, 1992 on 08.03.2004 in respect of their dealings in the scrip of Design Auto Systems Ltd. for the period November 2001 to January 2002.

32. As mentioned above, BBL did not appear before investigating authority, citing pending writ petition filed before Hon'ble High Court, M.P. Vide order dated March 05, 2005 MP High Court dismissed the writ petition filed by BBL and directed BBL to cooperate with the investigation authority to complete the investigation expeditiously.

33. Keeping in view the principle of natural justice, dismissal of writ petition of BBL before MP High Court and directions of court to BBL to cooperate with investigating authority, three more opportunities was granted to BBL as detailed under.

Reminder to summons to appear in person before investigating authority Under Section. 11C (5) of SEBI Act, 1992 on 21.04.2005 in respect of their dealings in the scrip of Design Auto Systems Ltd. for the period November 2001 to January 2002.

Reminder to summons to appear in person before investigating authority Under Section. 11C (5) of SEBI Act, 1992 on 20.05.2005 in respect of their dealings in the scrip of Design Auto Systems Ltd. for the period November 2001 to January 2002.

Reminder to summons to appear in person before investigating authority Under Section. 11C (5) of SEBI Act, 1992 on 09.06.2005 in respect of their dealings in the scrip of Design Auto Systems Ltd. for the period November 2001 to January

2002.

3.2 I further note that SEBI had initiated adjudication proceedings against BBL under Section 15A of the SEBI Act for non-compliance with summons. By an order dated January 30, 2006, the Adjudicating Officer had imposed a monetary penalty of Rs. 1 crore against BBL for the said non-compliance. The said order has been upheld by the Securities Appellate Tribunal (SAT) vide its order dated August 23, 2006 passed in Appeal Nos. 61/2006 and 86/2006. I further note that SEBI has also filed a prosecution under Section 11C (6) of the SEBI Act for the said non-compliance [CC No. 272/M/2005 filed before the ACMM, 47th Court, Esplanade, Mumbai], which is pending. It is not as if the company is not in existence. They are very much in picture as seen from their conduct of filing and prosecuting the aforesaid appeals before SAT.Thus, their failure to respond to summons is deliberate and with a view to evading the regulatory process. Another party Coverage & Consultants Ltd. (C&C), a company sharing the same address with BBL and through whom BBL offloaded substantial quantity of unlisted shares also failed to respond to summons and investigations have been hampered on that account also.

3.3 I have taken into consideration the SCN and other material on record. My findings are as under: 3.4 Pursuant to an alleged MOU entered between DASL and BBL on September 15, 2001, they made preferential allotment of 10 crores shares to each other on swap basis. The allotment made by DASL to BBL was huge with reference to its existing capital, as seen from the table showing details of equity capital of DASL, as given below: Allotment of 11 lakh shares at Rs 10 per share on a preferential basis to its promoters and associates namely Vargin Finance Pvt. Ltd., Sarvesh Garg and Rita Garg.

Allotment of 10 crore shares at Rs. 10 per share on a preferential basis to Bonanza Biotech Ltd. Whereas 62.25 lakh shares are listed at all the stock exchanges named above, the remaining 10.11 crore shares issued on a preferential basis were not granted listing permission at BSE though they are listed at MPSE. No listing application in that regard was made with ASE.3.5 The allotment made to BBL amounted to about 14 times the pre-issue capital of DASL.

It is seen that DASL did not have any passable commercial reason for making this huge allotment to BBL. In view of the irregularities in allotment, BSE had withheld listing permission to the shares so allotted to BBL. However, at the instance of DASL, CDSL proceeded to dematerialize the said shares and gave demat credit to the account of BBL. It is further noted that before such demat credit was given, DASL had allotted the same 10 crores shares to BBL by issuing a jumbo share certificate. No legitimate reason has been advanced either by DASL or by BBL for making or receiving such duplicate allotment of the same shares both in physical as well as demat mode. In any event, there can be no conceivable reason for knowingly duplicating issuance and acceptance of the same shares both in the physical as well as the demat form.

3.6 As seen from the tables mentioned in para 2.1 (d), BBL had transferred 6 crores (out of the 10 crores allotted to it) equity shares of DASL to various entities, soon after the demat credit. This has to be seen in conjunction with the sequential developments relating to the DASL scrip, which may be outlined as follows: Allotment of 10 crores DASL shares made to BBL on swap basis. Jumbo share certificate issued by DASL to BBL for the said shares.

BBL makes substantial off-market transfers of DASL shares to two parties, i.e. 50 lakhs shares to the joint account of Mr. and Mrs.

Ganeriwala and 50 lakhs shares to one M/s DG Goenka Equities Pvt. Ltd. (each transfer amounting to more than 80% of the validly listed capital of DASL) Similarly huge quantities were transferred by BBL to various other entities on various other dates as given in detail at para 2.1 (d).

Subsequently, various parties return the shares transferred to them with a view to eventually return them to the account of BBL. However, as mentioned in para 2.1 (d) a total of 98,21,074 shares remain unaccounted for.

3.7 As seen from the above table, the listing application in respect of the said shares was made to BSE as late as December 12, 2001, almost 40 days after the allotment. However, in the meantime BBL had transferred the dematerialized shares to various parties, with a view to eventually offloading them to innocent investors through the trading platform of BSE. Many shares transferred by BBL to certain immediate transferees were in fact delivered in BSE, even though they were not listed on BSE.3.8 The intention of BBL and DASL in going through a concerted move as described above is not far to seek. In this connection, it has to be kept in mind that shares so transferred by BBL were several times the number of DASL shares validly listed on BSE. BBL had in its letter dated November 14, 2003 addressed to SEBI submitted that the transfer to parties other than CD Equisearch and Mr. Murali Nair were made for the purpose of arranging loans against mortgage of shares. The total number of DASL shares covered by this explanation is 5.35 crores. It is inconceivable as to how such a huge quantity (which is far in excess of the validly listed capital of DASL) could be transferred soon after the allotment for the purpose of raising loans. BBL has further failed to substantiate its claim with evidence of any loan raised or money received. BBL also does not have any explanation regarding why those shares were transferred back to BBL after the trading was suspended in the DASL scrip by BSE on January 14, 2002. Thus, the concatenation of events in the case gives the lie to the vaunted intentions of raising money for business. On the contrary, the only commercial consideration that can be deduced from the whole chain of events is to flood and contaminate the market with a huge volume of shares taking advantage of fungibility of shares for their own unjust enrichment at the cost of lay investors.

3.9 Further, the clarifications obtained by SEBI from other parties to the transactions make it evident that the huge transfers by BBL to Manoj Ganeriwala and DG Goenka Equities Ltd. were not for arranging any finance. Mr. Manoj Ganeriwal to whom BBL transferred 50 lacs shares has stated that he was not in the business of arranging finance etc. He claims that the transfer was made to him by mistake. Another transferee, DG Goenka Equities Pvt. Ltd. (DG Goenka), a stock broker have submitted to SEBI that the shares were transferred to their account at the instruction of Mr. Murali Nair and Vargin Finance Pvt.

Ltd. (VFPL) in respect of BBL's margin requirements and future market obligations. They have denied having any arrangement with BBL for loans. BBL stated that it transferred 1 crore DASL shares each to Coverage & Consultants Ltd. (C&C), a company sharing the same address with BBL and Pinnacle Finstock Pvt. Ltd. (PFPL, a sub broker) for the purpose of arranging mid term loan of Rs. 75 lacs and Rs. 60 lacs respectively for their projects. However, PFPL, to whom 50 lacs shares were transferred directly by BBL and another 50 lacs transferred through C&C, stated that these shares were transferred towards C&C's likely transaction and as advance pay-in.

3.10 Thus, BBL's version is riddled with holes. BBL has also made further false statements to SEBI and the Exchanges. They submitted to BSE vide their letter dated February 22, 2002 that only 2 crores shares were transferred out of the 10 crores shares allotted to them. This is clearly false in view of the transactions culled out from the DP account statement of BBL, as extracted in para 2.1 (d). Further, they also stated that they transferred DASL shares only to C&C and PFPL and that they did not deliver any shares in the market directly or through any other broker. This statement is also patently false in view of the transactions reflected in the demat account statement. Thus, the charge that BBL deliberately provided false information to SEBI as well as Stock Exchanges in order to mislead and hamper the investigation stands established.

3.11 As noted above, BBL has not come out with any evidence which may substantiate its claim of raising finance. There is nothing on record to show that BBL checked the antecedents of the parties before advancing them the shares of such huge quantity. Coupled with subsequent events whereby these parties offloaded or attempted to offload shares in the market, it becomes clear that BBL's objective (in concert with DASL, C&C and other entities), was to offload the unlisted shares to unsuspecting investors. This object would have been carried out with impunity and in entirety but for the regulatory intervention of SEBI and BSE. When the trading in shares was suspended by BSE on January 14, 2002, the various parties realized that their design was effectively scuttled and therefore returned the remaining shares to BBL and attempted to exit the scene, lest their role should be exposed.

3.12 It is further seen that BBL has been furnishing incorrect information even as regards the identity of its directors. As per the information supplied by BBL by letter dated November 14, 2003, the directors of BBL were Shri Sharad Gujarati, Shri Amit Patel, Shri Rakesh Pandya and Smt. Druna Vaghela. However, it is seen from the Form 2 and Form 23 submitted by BBL to ROC on January 18, 2002 that these papers were presented by one Shri Arvind Vaswani as director of BBL. It is seen that Shri Arvind Vaswani was also an employee of DASL during the relevant time. The fact that Shri Arvind Vaswani was a director of BBL was also confirmed in the statement given by Shri Sarvesh Garg, MD of DASL, wherein it was stated that Shri Vaswani joined the Board of BBL in November 2001 and resigned in January 2002. Further, it is seen from a BBL Board resolution attached to the Member Client Agreement Form entered into between BBL and its broker, CD Equisearch Ltd. that the resolution was purportedly passed on June 5, 2001 and signed by Shri Arvind Vaswani as director of BBL. The agreement is dated October 11, 2001. Thus, it is sufficiently clear that Mr. Vaswani was the director of BBL from June, 2001 or at least before October, 2001.

3.13 Further, it is seen that the client registration form entered into between BBL and CD Equisearch Ltd. was executed on behalf of BBL by one Mr. Manish Ganeriwala as director of BBL. It is also seen that Mr.

Manish Ganeriwala was authorized by a Board resolution purportedly passed on June 05, 2001 to execute the client registration form with CD Equisearch Ltd., as a director of BBL. Thus, Mr. Manish Ganeriwala was also a director of the Board of BBL, whose presence on the Board was sought to be concealed by BBL.

3.14 As already noted above, Shri Arvind Vaswani who was an employee of BBL was also a director of BBL and had engaged in dealings with CD Equisearch on behalf of BBL.

3.15 Shri Murali Nair, an employee of DASL, was also admittedly a consultant to BBL. He dealt on behalf of BBL with various brokers in the course of offloading the unlisted DASL shares. He further interacted with Ankit Consultancy Ltd., Registrar and Share Transfer Agents of DASL on behalf of DASL, BBL and other parties.

3.16 Further, as is clear from the extract of his DP account statement extracted in para 2.1 (d), BBL had transferred 50 lacs shares to Mr.

Murali Nair in order to facilitate the offloading. Mr. Murali Naiir in turn transferred 11 lacs shares to Manoj Ganeriwala and DG Goenka.

However, in the meantime BSE suspended trading in the BSE scrip, thereby foiling the offloading plans of BBL and Mr. Murali Nair and eventually Mr. Murali Nair transferred 49 lacs shares back to BBL.

3.17 Mr. Murali Nair, further in his statement stated that he had opened two demat accounts in his name, one at the behest of BBL and another at the behest of DASL. Mr. Murali Nair had further stated in his statement that he was drawing Rs. 3500 per month as consultancy fees from BBL and Rs. 2500 per month as consultancy fees from DASL.

3.18 I further note that Mr. Murali Nair had been giving instructions to DG Goenka Equities Ltd. and Shri Manoj Ganeriwala in the course of the attempted offloading of the unlisted shares, as noted above.

3.19 The sum and substance of these facts is that Mr. Murali Nair was closely associated both with DASL and BBL - with the former as the Secretarial Executive and with the latter as a consultant and was drawing remuneration from both of them. He had opened the demat accounts at the behest of both of them and was actively involved in the offloading activities of BBL and other entities.

3.20 Further, in the Annual Report of DASL for the year 2001-02 it has been mentioned that Shri Murali Nair was designated as the Executive Officer (Secretarial) of DASL. This finds place under the head 'Report on Corporate Governance' which was authenticated as late as August 29, 2002 by the statutory auditors. It may be recalled that by this date all material transactions of this case had taken place. Therefore, the irresistible conclusion is that Shri Murali Nair was in the employment of DASL at all material points of time.

3.21 C&C was a main intermediating party in the offloading by BBL. BSE had analyzed large trade in the DASL scrip (i.e. single trades of 5000 shares or more) during the period November 05, 2001 to January 11, 2002. The following observations were made by BSE - a) large trades accounted for 42% of the total trading volumes during the period 05.11.2001 to 11.01.2002; b) many of these large trades were matched transactions where the buy and sell orders were placed within a minute; c) C&C has accounted for 11.54% on purchase and 28.7% on sales of the large trades; d) C&C has entered into self transactions which accounted for 10.24% of the large trades; e) gross sales and gross purchases of C&C accounted for 47.92% and 15.99% respectively of the total traded volume during the period of investigation.

3.22 It is seen from the demat account statements of C&C that BBL had transferred 1 crore unlisted DASL shares to C&C on December 06, 2001.

Out of this, 63,88,151 shares have been returned to BBL on January 16 and 18, 2002 i.e. after suspension of trading in DASL scrip by BSE.These shares were returned after it was clear that further offloading would not be possible in view of trading suspension imposed by BSE on January 14, 2002. However, before this date, 33,33,669 unlisted DASL shares were offloaded in the market by C&C.3.23 Further, I find that C&C has its address at 203, Apollo Towers, 2 MG Road, Indore, MP 452 001, which is the same address as that of BBL.

Shri Sharad Gujarati was a director both of BBL as well as C&C during the relevant period. Shri Deep Trivedi who was earlier a director of BBL was a director of C&C during the relevant period. It was noted during investigation that Shri B.L. Joshi, who was a director of BBL, was dealing with various brokers on behalf of C&C. Thus, it is clear that there are strong linkages between BBL and C&C.3.24 The next question is whether the conduct of BBL and its directors falls within the prohibition of the PFUTP Regulations, 1995. As regards whether the above conduct violates Regulations 3 or 4 of the PFUTP Regulations, 1995, it is necessary to refer to the provisions [and to Regulation 2(1)(c) which is required to understand Regulation 3]: (c) "fraud" includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract: (1) the suggestion, as to a fact, of that which is not true, by one who does not believe it to be true; (2) the active concealment of a fact by one having knowledge or belief of the fact; (5) any such act or omission as the law specially declares to be fraudulent; and "fraudulent" shall be construed accordingly.

Explanation: Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

3. No person shall buy, sell or otherwise deal in securities in a fraudulent manner.

(a) effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person; (b) indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market; (c) indulge in any act which results in reflection of prices of securities based on transactions that are not genuine trade transactions; (d) enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress, or cause fluctuations in the market price of securities; (e) pay, offer or agree to pay or offer, directly or indirectly, to any person any money or money's worth for inducing another person to purchase or sell any security with the sole object of inflating, depressing, or causing fluctuations in the market price of securities.

3.25 BBL and other entities who offloaded the unlisted shares on the trading floor of BSE, impliedly represented that these were listed shares which could be validly delivered in the BSE as per its bye-laws.

The clearing house of BSE and various counter parties to the transactions, being innocent investors, were unsuspecting and took delivery of such shares aggregating in number to 98,21,074. As noted above, as the shares were in the dematerialized form, they were indistinguishable from other validly listed shares of DASL. BBL was integrally connected in the transaction, whereby the unlisted shares were allotted, dematerialized and offloaded as noted in this order.

Further, all transactions starting from entering of MOU between DASL and BBL and up to offloading of shares by BBL, actively aided by DASL, are an integral part of a grand design to defraud investors by palming off the unlisted shares for unjust and unfair gains at the cost of lay investors. The number of shares so palmed off amount to 98,21,074 in number. Thus, their act is fraudulent within the meaning of Regulation 2 (1)(c)(1) and (2) of the PFUTP Regulations. The defrauded parties are the numerous investors who were counter parties to the transactions. In this view of the matter, I hold that BBL and its directors are guilty of violating Regulation 3 of the PFUTP Regulations, 1995. Their act has also resulted in incidental violation of Regulation 4 of the PFUTP Regulations, 1995 in as much as their offloading of DASL shares in bulk resulted in spurt in volumes.

3.26 In addition, the continued recalcitrant and defiant attitude on the part of BBL and its directors was meant to frustrate the investigation which would have uncovered the entire gamut of the devious activities in an orchestrated move to hoodwink the lay investors in the make believe of burgeoning volumes in the scrip.

4.1 The general course of events following the swap allotments made by DASL have undermined investor confidence in the demat system and in the integrity of the securities market in general. As seen above, the noticees have played an important part in the allotment, dematerialization and subsequent offloading of the unlisted shares of DASL in BSE and are an integral part of the massive fraud played on innocent investors.

4.2 Having regard to the fact that 98,21,074 of the unlisted DASL shares are still with lay investors, who are saddled with the same on account of fraud played by BBL and its directors, I deem it necessary to pass remedial directions to afford the public shareholders of DASL an exit opportunity at appropriate price. This is all the more necessary in view of the massive fraud played by BBL and the consequent suspension of trading in the scrip of DASL by BSE since January 14, 2002, whereby the lay investors have lost all avenues of exit.

4.3 As noted above, the noticees have violated Regulations 3 and 4 of the PFUTP Regulations, 1995. I therefore in the exercise of power conferred upon me by sections 11 and 11B of the SEBI Act, 1992 hereby direct BBL and its directors, namely Shri Sharad Gujrathi, Shri Amit Patel, Shri Rakesh Pandya, Smt. Druma Vaghela, Shri Arvind Vaswani and Shri Manish Ganeriwala, as under: a) BBL and its directors shall not access the capital market, or buy, sell or deal in securities in any manner, directly or indirectly (except to the extent mentioned hereinbelow) for a period of seven years from date of this order; b) With a view to give exit opportunity to the entrapped public shareholders of DASL, who are saddled with unlisted shares aggregating in number to 98,21,074, BBL which was instrumental in offloading these shares fraudulently shall offer to purchase an equivalent amount of 98,21,074 DASL shares from such entrapped shareholders by making an offer at the higher of the prices to be determined on the following parameters: i) the price paid for any acquisition made by BBL in the 26 weeks preceding the reference date; ii) other parameters relating to shares of DASL including return on networth, book-value, earning per share, price earning multiple vis-is industry average.

i) The reference date shall be January 14, 2002 on which date BSE suspended trading in the DASL scrip. BBL shall also pay an interest of 10% from the said date till the date of payment of consideration to shareholders who tender their DASL shares pursuant to the offer.

The promoters of DASL and other entities associated with DASL and BBL shall not participate in the offer.

ii) The offer through public announcement shall be made within a period of 30 days from the date of this order and the consideration shall be paid within a period of 90 days from the date of the public announcement.

iii) The provisions of Chapter III of the SEBI (Buyback of Securities) Regulations, 1998 shall, so far as may be, apply to and shall be complied with in respect of, such offer.