

Sebi Vs. Vb Impex Pvt. Ltd. and Its

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

Decided On : Mar-31-2007

Judge : G Anantharaman

Appellant : Sebi

Respondent : Vb Impex Pvt. Ltd. and Its

Judgement :

1.1 The shares of Padmini Technologies Ltd. (formerly known as Padmini Packaging Pvt. Ltd.) are listed inter alia at the Stock Exchange Mumbai, now known as the Bombay Stock Exchange Limited (hereinafter referred to as BSE), Delhi Stock Exchange Association Ltd. (hereinafter referred to as DSE), and National Stock Exchange of India Ltd. (hereinafter referred to as NSE). It was noticed that the share price of Padmini had continuously increased from Rs. 60.95/- on December 13, 1999 to Rs. 266/- on March 09, 2000/-at DSE. Thereafter, the price of the said shares had declined to Rs. 47/- on May 15, 2000. Subsequently, the price increased from Rs. 60.25/- on June 05, 2000 to Rs. 118.10/- on July 06, 2000 and touched a low of Rs. 55.65/- on August 8, 2000.

The price of the shares of Padmini had again increased to Rs. 201.55/- on August 29, 2000. The increase in share price of Padmini was coupled with the increase in traded volume at the exchange. Similar pattern of trading was observed in all other stock exchanges. The trading in the shares of Padmini had, thereby witnessed price fluctuations and unusual price movement at the stock exchanges.

1.2 In view of the above unusual price movement, Securities and Exchange Board of India (hereinafter referred to as SEBI) conducted investigations into the alleged price manipulation of the shares of Padmini and inter alia the role of Padmini, its directors and other entities, to look into the possible violations inter alia of the provisions of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as the FUTP Regulations) in respect of the said price movement.

1.3 The investigation conducted by SEBI inter alia revealed that the Padmini (erstwhile Padmini Polymers Ltd.) had made preferential allotment of 2,00,00,000 equity shares for cash at par to the following persons/entities in the year 1999, as per the details mentioned below:-----Sl.

Allotment (Rs)	Name	of Shares	Paid upno	Date	allottees	allotted value
1	31.5.1999	Unit Trust of India	2000000	10	2	20.6.1999
2	Contessa Commercial Co. P Ltd.	900000	2.5	3	-do-	Bllumenfeld Ltd.
4	-do- Jiwansagar Promoters Pvt. Ltd.	900000	2.5	5	-do-	Bhagwandas Sagarmal
6	-do- Raj Kumar Kishorepuria	900000	2.5	7	-do-	Pramod Kumar Kishorepuria
8	-do- Alok Khetan	900000	2.5	9	-do-	Savara Tie-up P Ltd.
10	-do- Royal Bengal Exports Pvt. Ltd.	900000	2.5	11	-do-	S Beriwal
12	-do- Prakash Kumar Damani (HUF)	900000	2.5	13	-do-	Prakash Kumar Damani
14	-do- Cama Enterprises P Ltd.	900000	2.5	15	-do-	Zinga Chemicals P Ltd
16	-do- Hermonite Consultants P Ltd.	900000	2.5	17	-do-	Cherry Marketing P Ltd.
18	-do- HT Ferro P Ltd.	900000	2.5	19	-do-	Hermonite Surgicals P Ltd.
20	-do- V B Impex P Ltd.	900000	1021	-do-	J P Promoters P Ltd.	900000
10	-----	2,00,00,000	1.4	For the sake of convenience, the aforesaid allottees (except Unit Trust of India) are broadly categorized into the following two groups:	1.5	From the above table it can be seen that Padmini had allotted 1,80,00,000 shares to the Delhi and Kolkata based allottees for cash at par on June 20, 1999. It was noticed that the preferential shares allotted by Padmini were not subject to lock-in, as none of the

aforesaid allottees were shown as part of the promoter group of Padmini. The investigation conducted by SEBI inter alia revealed that Padmini had allotted preferential shares to the Delhi and Kolkata based allottees without the actual receipt of any application/allotment money.

1.6. The Delhi based allottees consisted of Cama Enterprises, Hermonite Consultants Pvt. Ltd., Zinga Chemicals Pvt. Ltd., Cherry Marketing Pvt.

Ltd. Hermonite Surgicals Pvt. Ltd. and H T Ferro Pvt. Ltd., VB Impex Pvt. Ltd. and M/s JP Promoters Pvt. Ltd, out of which Cama Enterprises, Hermonite Consultants Pvt. Ltd., Zinga Chemicals Pvt. Ltd., Cherry Marketing Pvt. Ltd. Hermonite Surgicals Pvt. Ltd. and H T Ferro Pvt.

Ltd., admittedly belonged to same Group companies (hereinafter referred to as Goenka Group companies), as these companies have Shri Arun Goenka and Shri Umesh Goenka as common directors. In addition, the said companies were sharing the same address i.e. JG-1/120, Vikas Puri, New Delhi -110018. VB Impex Pvt. Ltd. and M/s JP Promoters Pvt. Ltd. allegedly belonged to the same group (collectively referred to as the VB Impex Group). It was observed that Shri Vinod Kumar, who was director of VB Impex Pvt. Ltd. and Shri Pradeep Kumar, who was director of JP Promoters P Ltd. were sharing a common address i.e. D-323, Nawada Housing Complex, Vipin Garden, New Delhi.

1.7 SEBI had also found that certain other companies viz., M/s Churuwala Exports Pvt. Ltd. M/s DKG Buildcon Pvt. Ltd., Mikona Impex Traders Pvt. Ltd. and Iris Infrastructurals Pvt. Ltd. were allegedly connected to VB Impex Group and Shri Sanjay Kumar Gupta was found to be managing the affairs of the said companies. Shri Sanjay Kumar Gupta (who is also a Chartered accountant) admitted before the investigating authority of SEBI that he was the authorised signatory of M/s VB Impex Pvt. Ltd. and JP Promoters Pvt. Ltd. From the Income Tax assessment order passed against M/s VB Impex Pvt. Ltd. and M/s JP promoters Pvt.

Ltd. for assessment year 2000-01 (i.e. financial year 1999-2000), it has been observed that the said Shri Sanjay Kumar Gupta, had represented the said companies before Income Tax authorities. Infact, as per the said assessment

order, the address of M/s VB Impex was L-53, Bal Udhyan Marg, Uttam Nagar, New Delhi. As admitted by Shri Sanjay Kumar Gupta in his statement to SEBI, the address also happened to be his residence cum office. The investigation conducted by SEBI also found that the aforesaid companies acquired the preferential shares of Padmini from the allottees and that they had further off loaded the said shares to KP entities which in turn sold in the secondary market thereby created artificial volume and price in the shares of Padmini.

As a matter of fact, the preferential shares allotted to Kolkata and Delhi based allottees were also off loaded to KP entities. The cheques issued by Kolkata and Delhi based allottees were cleared or payments were made to Padmini much after the allotment of preferential shares and even after the listing of the preferential shares of Padmini at DSE on December 23, 1999.

1.8 It was inter alia found that application/allotment money (for the preferential shares of Padmini) reportedly came to be paid by the Kolkata and Delhi based allottees after the allotment. Further, Kolkata and Delhi based allottees were found to be name lenders in the entire preferential allotment process. It was also observed that some of the Kolkata based allottees had sold their shares to Shri Sanjay Kumar Gupta and bills were raised in favour of Cross Country Exports Pvt.

Ltd., RN Dyechem Pvt. Ltd., Mudra Capital Services P. Ltd. and All Seasons Hotels Pvt. Ltd. (Delhi based companies allegedly connected to VB Impex Group)

1.9. In the above facts and circumstances, it has been alleged that the Kolkata and Delhi based allottees, M/s Churuwala Exports Ltd. M/s DKG Buildcon Pvt. Ltd., Mikona Impex Traders Pvt. Ltd., Iris Infrastructurals Pvt. Ltd., Shri Sanjay Kumar Gupta, Cross Country Exports Pvt. Ltd., RN Dyechem Pvt. Ltd., Mudra Capital Services Pvt.

Ltd. and All Seasons Hotels Pvt. Ltd. have prima facie violated Regulation 3 and 6(a) Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (hereinafter referred to as the FUTP Regulations) and Section 16 of the Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as SCRA). 1.10 Accordingly SEBI issued notices to the aforesaid persons/entities asking them to show cause as to

why proceedings u/s 11B of SEBI Act 1992 read with Regulation of 12 of the FUTP Regulations should not be initiated against them and their directors inter-alia debarring them from dealing in securities, accessing the capital market and associating with any of the intermediaries in the capital market for appropriate period.

1.11 The show cause notices were issued to the aforesaid persons/entities including their directors/partners on the dates as mentioned below: 1.12 Some of the aforesaid persons/entities replied to the aforesaid show cause notices as mentioned below: b) Iris Infrastructurals Pvt. Ltd. - received by SEBI on March 1, 2006 k) Arun Goenka (director of entities named at (e) to (j) above) September 29, 2005 1.13 The reply furnished by Shri Kishen Goenka, Cama Enterprises, Zinca Chemicals Ltd., Hermonite Consultants Ltd, HTF Pvt. Ltd., C Marketing Pvt Ltd, H Surgicals Pvt Ltd., carry a common refrain and can be summed up as under: a) A copy of the investigation report with annexures has not been provided.

b) Investment in Padmini preference shares was done in the ordinary course of business.

d) There was no financial accommodation for any unwritten understanding between Padmini and the allottees.

f) Regulation 3 and 6(a) of the FUTP Regulations would not be applicable to them.

1.14 Shri Sanjay Kumar Gupta vide letter dated June 17, 2005 inter alia stated that by not providing all relevant documents/papers, SEBI had violated the basic principles of natural justice. He further stated that before taking any action under Regulation 10 of FUTP Regulations, a reasonable opportunity of being heard had to be provided to the person concerned and in the absence of the investigation report, the same was meaningless. He clarified that he never met the Kolkata based allottees and his relationship with DKG Buildcon, JP Promoters and VB Impex Pvt. Ltd. was limited and restricted to the professional nature only. He claimed that simply because he had professional relationship with the aforesaid entities and represented them by virtue of the said professional relationship, it could not be concluded that he was in nexus with the aforesaid people. He denied

the fact that he was nominated or deputed by the management of Padmini to facilitate the Kolkata based allottees to exit after the allotment. He further contended that the provisions of Regulation 3 would not be applicable in the present case. He contended that powers under Section 11B could not be invoked for the alleged violation of the provisions of SCRA. He further submitted that Regulation 3 and 6(a) of the FUTP Regulations would not be applicable in his case.

1.15 JP Promoters Pvt. Ltd. vide its letter dated February 21, 2006 inter alia stated that the copies of all the documents relied upon by SEBI for levelling the charges alleged in the show cause notice including the copy of the investigation report were not provided to it which was in close violation of principles of natural justice. It had also sought for cross examination of all the persons whose statements had been recorded and relied upon by SEBI. It is further clarified that it had issued cheques to Padmini towards the share application money and the shares were allotted only pursuant to that. Further it denied any informal understanding in respect of the payment of consideration.

In respect of its sale transaction with Classic Credit Ltd., it clarified that the same was done in the ordinary course of business and that it had no relationship with the said entity or KP entities. It denied of having any connection with VB Impex Pvt. Ltd. It also denied that Churuwala Exports Pvt. Ltd., DKG Buildcon, Mikona Impex and Iris Infrastructurals were its group companies as alleged. Further, it stated that Shri Sanjay Kumar Gupta was its chartered accountant. The company also stated that it was not aware that the preferential allotment made by Padmini was full of serious irregularities and violative of Regulation 3 and 6(a) of the FUTP Regulations. It further contended that its purchase/sale transactions were in respect of unlisted shares of Padmini and therefore the provisions of SCRA would not be applicable.

1.16 Iris Infrastructurals Pvt. Ltd in its reply (received by SEBI on March 1, 2006) made more or less similar submissions as that of JP Promoters Ltd. and inter alia stated that it was not a part of VB Impex Group. It also claimed that there were no linkages between it and the VB Impex Group. It further denied having any

relationship with Shri Sanjay Kumar and that it had never authorised him to act on its behalf.

While admitting the sale transactions of 7,00,000 shares of Padmini to Triumph International Ltd. it claimed that it was not aware what the said Triumph International Ltd. did with the said shares. It further denied that it was a part of VB Impex Group and that it was not aware of any allotment of preferential shares to them. It also denied that Shri Sanjay Kumar was its authorised representative. It further added that it was not aware that the said Triumph International Ltd. had bought the shares of Padmini from M/s Cama Enterprises Pvt. Ltd., Cherry marketing , HT Ferro, ZInga Chemicals and Mikona Impex . It further denied of having any connection with Shri Ketan Parekh and added that 2003 Regulations would not be applicable in the case.

1.17 DKG Buildcon Pvt. Ltd. vide letter dated February 21, 2006 inter alia replied that the copies of the documents relied upon including the investigation report were not provided to them whereby it was incapacitated to give a proper reply, resulting in the violation of natural justice. It further denied of having any knowledge of any preferential allotment of Padmini. It further clarified that there was no connection between it and VB Impex Group companies. It also stated that it had not applied for any shares of Padmini. It also submitted that SEBI could not invoke Section 11 B for the violations of the provisions of SCRA.1.18 In response to the aforesaid Show Cause Notices, the Kolkata based allottees have submitted their reply which has been taken on record.

Shri Raj Kumar Kishorepuria, Shri Promod Kumar Kishorepuria, Contessa Commercial Company Pvt. Ltd. Blumenfield Ltd. (now BFL Pvt. Ltd.), Jeevan Sagar Promoters Pvt. Ltd. and M/s Bhagwan Das Sagarmal wherein Shri Raj Kumar Kishorepuria was also the director, admittedly belonged to the same group and the submissions made by them vide aforesaid replies, which were identical in content, are being summarized below: i) It was submitted that they had never dealt in the shares of Padmini. Their applications for share allotment were merely proposals and cheques were enclosed with the applications. The said proposals were later withdrawn before acceptance. It was stated that Padmini sought to

make allotment on new terms, which were counter offers and not accepted by them. The matter remained pending and there was no concluding contract. The provisions of FUTP Regulations 2003 are not applicable in respect of their case. They had also stated that the copy of the investigation report has not been provided to them. They further stated that no payment was received from KP entities and that they had no relationship and dealings whatsoever with KP entities. They further contended that the provisions of Regulation 3 and 6(a) of the FUTP Regulations would not be applicable in respect of their case. They contended that powers under Section 11B could not be invoked for the alleged violation of the provisions of SCRA. ii) It was submitted that there was no sale or purchase of shares between them and Padmini.

iii) It was further submitted that there was an actionable claim against Padmini, which was settled by transferring the same to new companies.

iv) It was stated that there was no evidence to suggest that they had agreed to purchase the shares or had sold them to anybody else.

It was stated that admission by company that cheque was not encashed showed that there were new terms.

v) As far as allegation regarding purchase of shares @Rs. 10/ when the market price was Rs. 7/-, was concerned, it was stated that there was no availability of bulk shares in normal market.

vi) It was further stated that their indoor transactions of unlisted shares in June 1999 could not cause a spurt in the market after 6 months and that the introduction of their shares in January 2000 did not make any dent as far as price fluctuations were concerned.

vii) Regarding the other two charges that they were key parties to irregular preferential allotment and that the said transactions between preferential allottees and others to whom shares were supposedly sold through Sanjay Kumar did not meet requirement related to spot delivery contract as defined in SCRA, no detailed submissions were made but the allottees had merely denied the violation.

1.19 Replies received from Shri Sunil Kishorepuria in response to the aforesaid show cause notice are being summarized below: i) it was submitted that the allottee companies had taken their own action and denied influencing their decision. It was further submitted that Show Cause Notice were issued to these companies separately, which were replied by them.

ii) He also stated that he came to know that Padmini had failed to pay market debts and thus he revoked the offer.

iii) He denied acting in nexus with Padmini and its promoters. He denied that his companies purchased/sold any shares of Padmini.

1.20 The replies of Shri Prakash Damani, Shri Sanjeev Beriwal and Shri Alok Khetan are more or less identical. All of them have denied any connection with any of the Ketan Parekh entities. Further they have contended that powers under Section 11B cannot be invoked for alleged violation of provisions of SCRA. Similarly they feel that Regulations 3 and 6a of FUTP Regulations would not be applicable to them.

1.21 An opportunity of hearing was granted to the Kolkatta based allottees on November 22, 2004 in Kolkatta. However, some of the allottees informed SEBI that a call for bandh was announced in Kolkatta on November 22, 2004 and thus the said hearing was postponed. Another opportunity was granted to the said entities on November 30, 2004 in Delhi; however letters were received from many allottees informing about their inconvenience in attending the said hearing in view of the non availability of tickets to Delhi. None of these entities appeared for hearing on the said date.

1.22 In the meanwhile, Kolkatta based allottees namely Shri Raj Kumar Kishorepuria, Shri Alok Khetan and M/s BFL P. Ltd. filed a writ petition before Hon'ble High Court of Calcutta inter alia against the show cause notices issued by SEBI. The Hon'ble court vide its interim order dated December 14, 2004 restrained the proceedings of SEBI. Subsequently, SEBI appeared before the Hon'ble court and made its submissions. Thereafter the Hon'ble Court vide order dated March 23, 2005 dismissed the writ petitions filed by Shri Raj Kumar Kishorepuria, Shri

Alok Khetan and M/s BFL Pvt. Ltd. and inter alia observed that "Moreover it is apparent from the impugned post investigation show cause notice that the board contemplated actions against the petitioner under Section 11B, which empowers it to issue all or any of the directions specified in regn. 11 of the new Regulations. I say so because Section 11B confers power in the board to issue such directions as may be appropriate in the interest of investors in securities and securities market. Therefore, to my mind, in any case, the petitioner cannot say that the measures mentioned in regn. 11 cannot be taken against him, if there are good and sufficient reasons for taking any of them.

1.23 Subsequently an opportunity of hearing was granted to the said Kolkatta based entities on October 6 -7, 2005. On the said date, written submissions were received from these entities and they also sought another opportunity of personal hearing. Accordingly, another opportunity for personal hearing was granted to these entities on December 15, 2005 at SEBI, NRO, New Delhi. However, a request dated December 10, 2005 was received from Shri Alok Khetan to change the hearing date and also venue to Mumbai. The hearing was postponed in light of his request. Another opportunity for personal hearing was granted to these Kolkatta based allottees companies & their directors on April 19, 2006 at SEBI, ERO, Kolkatta, which was attended by the entities/their authorized representatives. Shri Alok Khetan informed that he was a director of M/s Ishanika Securities P. Ltd., member NSE. He stated that he stood by his previous submissions before SEBI. He also requested for a lenient treatment. He had also filed written submissions vide letter dated April 28, 2006. Shri Sudhir Kumar Mehta, advocate represented all the Kolkata based allottees including Shri Sajjan Kumar Kishorepuria, Shri Anil Kishorepuria, Shri Sunil Kishorepuria and Shri Bijay Kumar Kishorepuria, except Shri Alok Khetan. Written submissions were also filed by Shri Sudhir Kumar Mehta on behalf of all the entities as stated above except Shri Alok Khetan.

In the said written submissions it has been stated that Section 11B of SEBI Act could be used for interim stage proceedings. It has been further stated that Regulations 11 of the FUTP Regulations were only interlocutory in nature. They also stated that Section 11(4) of SEBI Act is not having retrospective applications

and the punishment indicated in show cause notices which was covered by Section 11(4) could not be imposed.

1.24 In respect of Delhi based entities, an opportunity for personal hearing was granted on March 15, 2005. However, letters dated March 12, 2005 were received from VB Impex, JP Promoters, DKG Buildcon, Iris Infrastructurals and Mikona Impex seeking postponement of hearing.

Letter dated March 11, 2005 was received from Shri Sanjay Kumar Gupta that he was not well. In respect of Goenka group of entities, letter for personal hearing was received on behalf of Shri Arun Goenka.

However, he or any other representative of Goenka group of companies failed to attend the personal hearing. Another opportunity for personal hearing was granted to these Delhi based entities for September 30, 2005. All the letters addressed to Goenka group of entities were delivered. However in respect of VB Impex group, letters for hearing were received only by DKG Buildcon, Iris Infrastructurals and Mikona Impex. In respect of other entities belonging to this group, letters were served through affixture. Letter for hearing was also served on Shri Sanjay Kumar Gupta; however he sought adjournment in view of a pending case filed by SEBI against him. Another opportunity for personal hearing was granted to these Delhi based entities for December 15, 2005, which was also not availed by them. Thus, a final opportunity for personal hearing was granted to these entities for August 25, 2006.

The letters sent for personal hearing to VB Impex group of entities were served through affixture. In respect of Shri Sanjay Kumar Gupta, the same was delivered. Similarly, letters sent to Goenka group of entities were also delivered. In respect of All Seasons Hotels, M/s RN Dye Chem, M/s Cross Country Export and M/s Mudra Capital, the letters for personal hearing were served through affixture at their last known address in presence of 2 independent witnesses.

1.25 SEBI received letters dated August 24, 2006 from Shri Kishan Goenka and Shri Arun Goenka (on behalf of various Goenka group) stating that they were not able to attend the hearing. They further have requested SEBI to proceed in the

matter based on their submissions already made in the case. Among the entities belonging to VB Impex group, letters dated August 24, 2006 were received from M/s JP promoters P. Ltd., M/s Iris Infrastructural P. Ltd. and Shri Sanjay Kumar Gupta informing that they were not able to attend the hearing while requesting SEBI to proceed in the matter based on their submissions already made in the case. No reply was received from other entities. I note that sufficient opportunities of hearing were provided to the aforesaid companies. Therefore no purpose will be served in giving more opportunities to entities who have failed to respond and the matter can be decided in respect of such entities on the basis of the materials available on record.

2.1 I have perused the investigation report, the show cause notices sent to the allottees/entities/persons as mentioned above, the replies received from them (as the case may be) and other relevant material available on record.

2.2 At the outset, I note that the investigation conducted by SEBI in the wake of excessive volatility during the period from April 01, 2000 to March 31, 2001 revealed that entities connected/associated with KP entities had indulged in certain manipulative activities such as, synchronized trades, circular trading and creation of artificial volume of the prices of various scrips of the companies against the interest of the investors in the securities market. Inter alia the said transactions made by the KP entities were found to be non-genuine as there was no change in the beneficial ownership of shares i.e. the shares were merely rotating from one KP entity to same or other KP entity and were found to be circular trades undertaken to create artificial volumes and artificial markets in the said scrips. In the facts and circumstances, SEBI vide order dated December 12, 2003, prohibited the KP entities from buying, selling or dealing in securities in any manner directly or indirectly and also debarred them from associating with the securities market, for a period of fourteen years.

2.3 The aforesaid order of SEBI was challenged before the Hon'ble Securities Appellate Tribunal (SAT) and SAT vide its order dated July 14, 2006 had inter alia observed that We have, therefore, no hesitation to hold that if Ketan Parekh and his entities are allowed to continue with their operations they would pose a serious

threat to the integrity of the securities market and endanger the interests of the investors.

2.4 Coming to the present case, I note that preferential allotment of shares by Padmini to various allottees including the Kolkata based and Delhi based allottees is not disputed.

2.5 A pictorial representation of the preferential allotment of Padmini and the subsequent transfer of the said shares are shown below for the sake of convenience.

Goenka Group VB Impex Ltd. & JP Promoters Kolkata Based Allottees Bllumenfeld Contessa Commercial Jeevan Sagar All Seasons Hotels RN Dyechem Shivesh Computers Cross Country Exports DKG Buildcon Mudra Capital JP Promoters Sanjeev Beriwal Padmini Preferential Shares Delhi Based Allottees Savera Tieup Royal Bengal Exports Prakash Kumar Damani (HUF) Prakash Kumar Damani Pramod K Kishorepuria Raj K Kishorepuria Alok Chetan Bhagwan Das Sagarmal KP Entities.

2.6. It is an undisputed fact that, immediately after the said allotment, the Kolkata based and Delhi based allottees sold the preferential shares allotted to them, to various entities/persons and a large chunk (72 lacs) of the said preferential shares ultimately reached KP entities which had subsequently off-loaded these shares in the securities market at higher price. The application/allotment money was paid by the Delhi and Kolkata based allottees much after the allotment and in most of the cases after getting the sale proceeds from the third parties. The fact that Padmini had not received the cash for the preferential allotment is not disputed. Though Padmini had received cheques from the Delhi and Kolkata allottees in the month of May 1999 the same were revalidated to January 2000 (in majority of the cases), after the listing approval granted by DSE. Not only the cheques were realized after the listing approval but also Padmini, Shri Vivek Nagpal (promoter of Padmini) and its statutory auditors Shri Kailash Chandra Agrawal, partner of M/s Ashok Amar & Associates, Chartered Accountants had given various certificates to the effect that the same were credited and the money was in fact realized into the account of Padmini before the dates on which certificates were issued, which were found to

be false. By giving such certificates Padmini got its preferential shares listed at DSE and the preferential shares allotted to Kolkata and Delhi based allottees were manipulated by KP entities to the detriment of the genuine investors. In this connection, it would be relevant to refer to the order under Section 11B of SEBI Act, 1992 passed by me in the cases of Padmini (including its whole time directors) on January 31, 2007 and its statutory auditors Shri Kailash Chandra Agrawal, partner of M/s Ashok Amar & Associates, Chartered Accountants, on January 11, 2007 and the same may be read as part of this order, in so far as they are material to the present order.

2.7. In the context of the above facts and circumstances and considering the replies of entities/persons, the issues to be decided are (a) whether the Kolkata and Delhi based allottees, Shri Sanjay Kumar Gupta and other entities mentioned above either individually or acting in concert with other people had facilitated KP entities in manipulating the market in the shares of Padmini in violation of the provisions of Regulations 3 and 6(a) of the FUTP Regulations and (b) Whether the transactions by these allottees were in any way in violation to the provisions of Securities Contracts (Regulation) Act, 1956.

2.8. At the outset, the preferential allotment to Delhi and Kolkata based allottees were made by Padmini on June 20, 1999. The application/allotment money was not paid by the allottees at the time of the allotment. The investigation conducted by SEBI revealed that the accounts of the Delhi and Kolkata based allottees were not having sufficient funds to pay for the application/allotment money, at the time of the allotment. The contention put forward by the said allottees was that they had given cheques to Padmini in respect of the application /allotment money at the time of allotment. In this context, Padmini had clarified that, after the receipt of cheques for allotment of shares, the Delhi and Kolkata based allottees had requested for withholding the said cheques for presentation on some grounds and that having made the allotment, it was left with no other option but to consider their request for delayed presentation, particularly when the market price of the share was ruling below par. Padmini had also clarified that in the above circumstances it was left with little choice but to hold on to the cheques as desired/requested by the said allottees. This has been borne out from the bank accounts of Padmini and the

said allottees that the cheques given by the Kolkata and Delhi based allottees, in respect of the application/allotment money were realised and credited into the account of Padmini only in the months of October 1999 to March 2000. The consideration for the aforesaid allotments (in majority of the cases) was paid by the Kolkata and Delhi based allottees after they sold the shares allotted to them to third parties including entities connected to Shri Ketan Parekh. The details of the said sale transactions effected by Kolkata and Delhi based allottees after the allotment of preferential shares are mentioned below:

I. Sale of preferential shares by Kolkata based allottees-----

Name of preferential allottees through 20.6.99)	No. of Shares Allotted payment	Entities to whom sold by	Date of sale (D.D.)	Date of receipt of bills (D.D.)	Entities whose acco (on payment)
Contessa Commercial Available	9,00,000	All Seasons Hotels	28/7/99	29.12.99	Not Available
Bllumenfeld	9,00,000	All Seasons Hotels	28/7/99	5.1.00	Not Available
Jeevan Sagar	9,00,000	RN Dyechem	25/8/99	7.1.00	VB Impex Ltd.
Bhagwan Das Sagarmal	9,00,000	Shivesh Computers	25/7/99	12.1.00	Not Available
Raj Kumar Kishorepuria	9,00,000	Cross Country Exports	15/7/99	6.1.00	VB Impex Ltd.
Pramod Kumar Kishorepuria	9,00,000	Cross Country Exports	15/9/00	7.1.00	VB Impex Ltd.
Alok Khetan	9,00,000	Shivesh Computers	15.7.99	12.1.00	DKG Buildcon
Royal Bengal Exports	9,00,000	DKG Buildcon	25.6.99	12.1.00	DKG Buildcon
Savera Tieup	9,00,000	JP Promoters	25.6.99	9.3.00	JP Promoters
Sanjeev Beriwal	9,00,000	RN Dyechem	25.8.99	17.1.00	Not Available
Prakash Kumar Damani	9,00,000	Mudra Capital	25.8.99	9.3.00	JP Promoters
Prakash Kumar Damani (HUF)	9,00,000	Mudra Capital	25.8.99	9.3.00	JP Promoters

II. Sale of preferential shares by Delhi based allottees-----

Name of Allottees	Shares Allotted On 20.6.99	Entities to whom sold (at Rs. 20/each)	Date of sale	Date of receipt of sale

Cherry Marketing P Ltd.	9,00,000	Panther Fincap	9,00,000	12.10.99
28.12.99Hermonite Surgicals P Ltd	9,00,000	Miscellaneous entities	Zinga	
Chemicals P Ltd.	9,00,000	Triumph International	3,00,000	18.2.00
8.3.00Consultants P Ltd.	9,00,000	Panther Fincap	7,00,000	12.10.99 24.12.99
Ferro P Ltd.	9,00,000	Triumph International	3,00,000	18.2.00 7.3.00
Enterprises P Ltd.	9,00,000	Panther Fincap	9,00,000	12.10.99 24.12.99
Impex P Ltd.	9,00,000	Classic Credits Ltd.	9,00,000	12.10.99 24.12.99
Promoters P Ltd.	9,00,000	Classic Credits Ltd.	9,00,000	12.10.99 24.12.99

2.9. The Kolkata and Delhi based allottees (in majority of the cases) paid the application/allotment money only after the receipt of aforesaid sale consideration. The details of the payments made by Kolkata and Delhi based allottees towards the preferential allotment are specified below:-----

Name of	Clg.	Date	Cheque	Amount due	Shares	No. of	preferential
Contessa							
Commercial	90 lacs	21.5.99	9,00,000	90 lacs	9,00,000	90 lacs	21.5.99
5.1.00Bllumenfeld	90 lacs	17.5.99	9,00,000	90 lacs	9,00,000	90 lacs	17.5.99
6.1.00Jeevan Sagar	22.50 lacs	7.6.99	9,00,000	22.50 lacs	9,00,000	22.50 lacs	7.6.99
19.1.00Bhagwan Das Sagarmal	22.50 lacs	28.5.99	9,00,000	22.50 lacs	9,00,000	22.50 lacs	28.5.99
14.1.00Raj Kumar Kishorepuria	22.50 lacs	1.6.99	9,00,000	22.50 lacs	9,00,000	22.50 lacs	1.6.99
14.1.00Pramod Kumar Kishorepuria	22.50 lacs	18.1.00	9,00,000	22.50 lacs	9,00,000	22.50 lacs	18.1.00
19.1.00Royal Bengal Exports	22.50 lacs	3.6.99	9,00,000	22.50 lacs	9,00,000	22.50 lacs	3.6.99
18.1.00Savera Tieup	22.50 lacs	16.3.00	9,00,000	22.50 lacs	9,00,000	22.50 lacs	16.3.00
18.1.00Prakash Kumar Damani	22.50 lacs	25.6.99	9,00,000	22.50 lacs	9,00,000	22.50 lacs	25.6.99
14.3.00Prakash Kumar Damani (HUF)	22.50 lacs	14.3.00	9,00,000	22.50 lacs	9,00,000	22.50 lacs	14.3.00

Name of	Clg.	Date	Cheque	Amount due	Shares	No. of	preferential
Cherry Marketing P Ltd.	90 lacs	27.12.99	9,00,000	90 lacs	9,00,000	90 lacs	27.12.99
7.3.00M/s JP Promoters P Ltd.	90 lacs	21.5.99	9,00,000	90 lacs	9,00,000	90 lacs	21.5.99

2.10 From the above, it can be seen that the application/allotment money was paid by the allottees to Padmini only after listing on DSE excepting in the case of VB Impex Pvt. Ltd. wherein the payment came on October 11, 1999. Apparently the

said consideration was paid subsequent to the sale of shares of Padmini to KP entities ultimately (allotted on preferential basis to third parties as mentioned in the above table).

Therefore, at the outset, it can be seen that the Kolkata and Delhi based allottees received the preferential shares without any allotment/application money at the time of the allotment. It was also revealed from the bank account of the allottees that there were no sufficient funds in their respective accounts to make the payments towards the consideration of the preferential shares allotment.

2.11 Having found that the Kolkata and Delhi based allottees received the preferential shares without the payment of the application/allotment money at the time of the allotment, it has to be examined whether the said allottees facilitated KP entities in creating artificial volume and price in the shares of Padmini. The aforesaid allottees had not disputed the sale of the preferential shares to third parties including the KP entities as mentioned in the Table specified in para 2.8. The only contention raised by them was that the said transactions were carried out in the ordinary course of business.

2.12 Admittedly, VB Impex Pvt. Ltd and JB Promoters Pvt. Ltd (two of the Delhi based allottees) had sold the preferential shares allotted to them to Classic Credits Ltd. (KP entity) on October 12 1999 and received the sale consideration in respect of the said transaction on December 24, 1999. The aforesaid VB Impex Pvt. Ltd. had paid the application /allotment money to Padmini in respect of the preferential allotment on October 11, 1999, whereas JB Promoters Pvt. Ltd paid the same only on March 7, 2000. The said credit has been reflected in the bank account of Padmini as well as the said allottees. This would clearly establish that VB Impex Pvt. Ltd. and JB Promoters Pvt. Ltd. had no specific interest in the shares of Padmini as stated by Shri Sanjay Kumar Gupta in his statement dated February 04, 2002. They were simply a conduit in the flow of shares from Padmini to KP entities.

They did not even wait for the shares to be listed at the stock exchanges. The shares sold to KP entities were offloaded in the secondary market immediately after the listing of the said shares, thereby creating artificial volume in the shares

of Padmini. It is also observed that 25 lacs shares were sold by VB Impex Group to Classic Credits Ltd. @ Rs. 20/- per share on October 12, 1999. However, the payments for these shares were made by way of demand draft issued on December 22, 1999 after a gap of more than 2 months. In the scheme of things as they transpired, the entire preferential allotment by Padmini to certain coterie of trustworthy entities without receiving allotment money was a well crafted design to flood the market with such preferentially allotted shares through KP entities for creating artificial volume in the market and the allottees in Delhi like VB Impex Pvt. Ltd. and JP Promoters Pvt. Ltd. were the necessary intermediary layers to impart a verisimilitude to the entire make-believe by making it appear that the process of allotment to the original allottees was genuine, at arm's length, so that Padmini would be distanced from KP entities while insinuating cleverly that the allottees in the intermediary layer sold the shares to KP entities directly or indirectly in the ordinary course of business. Thus in the process, the original allottees in the intermediary layer were necessary parties in facilitating the ultimate design of Padmini and to that extent, they were part of the manipulative assemblage.

2.13 Further, I note that VB Impex Pvt. Ltd. and JP Promoters Pvt. Ltd. had made the payment in respect of the transactions entered into between the Kolkata based allottees and various other entities including JP Promoters Pvt. Ltd. in respect of the preferential shares of Padmini allotted to Kolkata based allottees. The payments were routed either through VP Impex Ltd or through JP Promoters. This is amply brought out in the table below:-----

Name of Allottees whose shares sold	Entities to whom bills of payment(D.D) accounts buyers)	Date of sale	Date of receipt	Entities through whom payment was made to allottees
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M/s Jeevan Sagar RN Dyechem	25/8/99	7.1.00	VB Impex Ltd.	Raj Kumar Kishorepuria
Cross Country Exports	15/7/99	6.1.00	VB Impex Ltd.	Pramod Kumar Kishorepuria
Cross Country Exports	15/9/00	7.1.00	VB Impex Ltd.	Savera Tieup (P) Ltd.
JP Promoters	25.6.99	9.3.00	JP Promoters	Prakash Kumar Damani
Capital Promoters	25.8.99	9.3.00		JP

2.14 From the above, it would reveal that both VB Impex Pvt. Ltd. and JP Promoters Pvt. Ltd. not only sold the preferential shares allotted to them to KP entities but also made payments in respect of the transactions entered into between some of the Kolkata based allottees and third parties. This shows that VB Impex Pvt. Ltd. and JP Promoters Pvt. Ltd. were necessary parties in the entire transactions. Further, it can also be seen that the entities as above namely RN Dyechem, Cross Country Exports and Mudra Capital acted in unison with the Kolkata and Delhi based allottees (as mentioned above) and were equally central to the entire process which ultimately resulted in the manipulation of the securities market by KP entities. It has been admitted by representatives of various Kolkata based entities that bills were issued in favour of these companies at the behest of Shri Sanjay Kumar Gupta, who admittedly happened to be a representative of VB Impex and JP Promoters. It can be seen that the sale consideration in respect of the purchase of Padmini shares by RN Dyechem was made by VB Impex Pvt.

Ltd. and there was no satisfactory explanation in respect of the said payment by third parties. Similarly in the case of purchase of shares by Cross Country Exports (from Raj Kumar Kishorepuria and Promod Kumar Kishorepuria), the payments were made by VB Impex Pvt. Ltd. The investigation conducted by SEBI revealed that the said Cross Country Exports did not exist at the address given. Similar modus operandi was noticed in the case of Mudra Capital Services Ltd. The above transactions wherein the payments were made by third parties would establish that the aforesaid entities namely RN Dyechem, Cross Country Exports and Mudra Capital were only name lenders and that their role was to facilitate KP entities to manipulate the market. The factum of payment by VB Impex Pvt. Ltd. and JP Promoters Pvt. Ltd. to the Kolkata allottees on account of Delhi based buyers as indicated above clearly demonstrates a strong interconnection amongst various parties involved in the web of transfers designed to obfuscate the true purport of the transactions, namely market manipulation by Padmini and KP entities in the shares of Padmini with the active facilitation from the allottees and their own connected business entities lending their names.

2.15 The contention of JP Promoters Pvt. Ltd. regarding non receipt of all documents relied upon by SEBI is not sustainable, since I find from SEBI's letter

dated December 14, 2004 that the copies of documents relied on in the show cause notice were made available to it.

2.16 Further, I note that M/s Churuwala Exports Pvt. Ltd. had informed SEBI in the letter dated April 12, 2003 about the purchase of Padmini shares by it between June 1999- December 1999. It is seen from the records that M/s Churuwala Exports Pvt. Ltd. acquired 36 lac preferential shares of Padmini on June 25, 1999 from some of the Kolkata based allottees. In addition to the above, it is noted that M/s Churuwala Exports Pvt. Ltd. had also acquired 5 lac shares of Padmini from HT Ferro Pvt. Ltd. and 1 lac shares from Hermonite Consultants Pvt. Ltd. (Delhi based allottee) on June 28, 1999 and October 11, 1999.

Further it is seen that out of these, 7,00,000 shares were sold by M/s Churuwala Exports Pvt. Ltd. to Classic Credit Ltd. (KP entity) on October 12, 1999, which clearly indicates that M/s Churuwala Exports Pvt. Ltd. which is connected to VB Impex Pvt. Ltd. has provided the necessary additional layer to create an intricate web to disguise the true purport of the transaction in market manipulation.

2.17 Further, one M/s DKG Buildcon Pvt. Ltd. was involved in the purchase of preferential shares of Padmini by certain entities (including it) from some Kolkata based allottees by making the payment on their account as detailed below:-----

Name of Allottees	Entities to whom bills of	Date of sale	Date of receipt	Entities through shares sold	whose accounts-----
			payment(D.D.)		Alok
Khetan Shivesh Computers		15.7.99	12.1.00	DKG Buildcon	Royal Bengal Exports
DKG Buildcon		25.6.99	12.1.00	DKG Buildcon	

2.18 I further note that entities namely, Iris Infrastructural Pvt.

Ltd. and Mikona Impex and Traders Pvt. Ltd. sold 7,00,000 preferential shares each to Triumph International Finance Ltd., a KP entity on February 18, 2000. I note that DKG Buildcon Pvt. Ltd, M/s Churuwala Exports Pvt. Ltd., Iris Infrastructural Pvt. Ltd. and Mikona Impex and Traders Pvt. Ltd were connected to each other and were also a part of VB Impex Group companies, I note that the

director of Iris Infrastructural Pvt. Ltd., is Shri Navneet Kumar having address of C - 438, East Babarpur, Chajjupur, Shahadara, New Delhi. The director of Mikona Impex & Traders Pvt. Ltd, Shri Sandeep Kumar Gupta had also the same address. Further, Shri Vinod Kumar having address of D-322, Nawada Housing Complex, Vipin Garden, New Delhi is a common director of Mikona Impex & Traders P Ltd and Iris Infrastructurals P Ltd. The said Shri Vinod Kumar was also a director of VB Impex Private Ltd. sharing the common address with Shri. Pradip Kumar, director of JP Promoters.

Investigation conducted by SEBI revealed that M/s DKG Buildcon P Ltd. appeared to be a part of same group consisting of M/s VB Impex P Ltd. and M/s JP Promoters Pvt. Ltd. and was also linked to M/s Churuwala Exports P Ltd., Mikona Impex and Iris Infrastructural on the basis of common directors/addresses. Thus the companies namely M/s VB Impex P Ltd. and M/s JP Promoters P Ltd., DKG Buildcon Pvt. Ltd, M/s Churuwala Exports Pvt. Ltd., Iris Infrastructural Pvt. Ltd. and Mikona Impex and Traders Pvt. Ltd. were connected to each other. It is also seen that DKG Buildcon Pvt. Ltd. and VB Impex Pvt. Ltd. share business relationship.

2.19 Thus, I note that the VB Impex group had sold large chunk of shares allotted to them in the preferential allotment and also the shares which were subsequently acquired from Kolkata based allottees through Sanjay Kumar Gupta, to KP entities. The bank statement of Classic Credits Ltd. (a KP entity) indicates that on December 22, 1999 it issued cheques which were debited apparently for issue of demand draft in favour of VB Impex Pvt. Ltd. (for Rs. 1.80 crores), JP Promoters P. Ltd. (for Rs. 1.80 crores) and Churuwala Exports P Ltd. (for Rs. 1.40 crores). These payments were made towards shares purchased by KP entity. The association between VB Impex Group, KP entities and Padmini is further evidenced from the analysis of shares purchased by SBI Mutual Fund (SBIMF) from KP entity (Triumph International Finance Ltd.). Triumph International Finance Ltd., trading member NSE acquired 24 lac shares in an off market deal on February 18, 2000 from the following entities who were either allottees or connected

connected		to	VB	Impex
Group:-----			Shares acquired from	
Quantity	Rate		(Rs.)	Amount

(Rs.)-----	Cama Enterprises P
Ltd. 2,00,000 162.75 3,25,50,000	Cherry Marketing P Ltd. 2,00,000 162.75
3,25,50,000	HT Ferro P Ltd. 3,00,000 162.75 4,88,25,000
Zinga Chemical P Ltd.	3,00,000 162.75 4,88,25,000
Iris Infrastructurals P Ltd.	7,00,000 162.75
Mikona Impex & Traders P Ltd.	7,00,000 162.65
11,39,25,000	-----
11,38,55,000	Total

2.21 Further the inter connection between JP promoters Pvt. Ltd. and VB Impex Pvt. Ltd. is borne out by the statement of Shri Sanjay Kumar Gupta. Shri Sanjay Kumar Gupta admitted that JP Promoters Pvt. Ltd. and VB Impex Pvt. Ltd. had sold the preferential shares allotted to them at the rate of Rs. 20 per share to Classic Credits Ltd. in October 1999.

2.22 In addition to the above, I also note that VB Impex Pvt Ltd., JP Promoters Pvt. Ltd and DKG Buildcon were having accounts in Vijaya Bank, Karol Bagh Branch, New Delhi with account numbers CA4502, CA 4552 and CA4501

respectively. On a perusal of the said bank statements, it can be seen that on October 11, 1999, an amount of Rs. 90,00,000/- was transferred from the account of DKG Buildcon to the account of the VB Impex Pvt Ltd.. The debit and credit were mentioned in the respective accounts. Further, on October 13, 1999 an amount of Rs. 90,00,000/- was transferred from the account of VB Impex Pvt Ltd to the account of Padmini which was also in the same branch. I also note that an amount of Rs. 1,80,00,000/- was credited into the account of VB Impex Pvt Ltd. on December 24, 1999. Further, the bank account opening form (in the case of JP Promoters) was introduced by DKG Buildcon. Even Padmini and Mikona were also having an account in the same branch. On March 07, 2000, there was a debit of Rs. 2,70,50,000/- from the account of Mikona Impex (account No. CA 4550) and the same was credited into the account of JP Promoters. From the account of JP Promoters, on the same day an amount of Rs. 20,25,000/- was debited to the account of Padmini. The inter se transactions as above would establish that Mikona Impex, JP Promoters, VB Impex and DKG Buildcon are connected to each other. No sufficient explanations were received from the parties for the said fund movement. Actually they did not avail the hearing to explain their position. The above things will go on to prove that the Delhi and Kolkata based allottees and other entities namely DKG Buildcon Pvt.

Ltd, M/s Churuwala Exports Pvt. Ltd., Iris Infrastructural Pvt. Ltd. and Mikona Impex and Traders Pvt. Ltd. singly and collectively aided and facilitated KP entities in manipulating the market in the shares of Padmini.

2.23 Shri Sanjay Kumar Gupta, chartered accountant representing VB Impex Pvt. Ltd. and JP Promoters Pvt. Ltd. has been provided the relevant documents as sought by him and hence his contention that he has not been provided all the documents is devoid of any merit. On the contrary, I find that Shri Sanjay Kumar Gupta had been recalcitrant and non - co operative. In this context, I note that Shri Sanjay Kumar Gupta had failed to cooperate during the investigations and appear before the investigating officer despite receipt of summons seeking his personal attendance. Thus, SEBI had initiated adjudication proceedings against Shri Sanjay Kumar Gupta. The Adjudicating Officer vide his order dated August 18, 2004 had held Shri Sanjay Kumar guilty of violation of Section 15A of SEBI Act and imposed

a penalty of Rs. 2 lacs. The said order was appealed before Securities Appellant Tribunal by Shri Sanjay Kumar Gupta. The Hon'ble Tribunal vide its order dated February 10, 2005 has held that "Non cooperation of the appellant has delayed the investigation proceedings as alleged by the respondent.

Taking all the facts and circumstances into account we agree with the Respondent (SEBI) that he was right in imposing penalty in such a situation". However, the quantum of penalty was reduced to Rs. 25,000/-. This amount was duly paid by Shri Sanjay Kumar Gupta. It is not open to a person who had not co operated with the authority to allege that the authority has violated the principles of natural justice, when he is solely responsible for the impasse he has created and when the entire legal tangle is of his own making, to frustrate investigation and to derail the quasi judicial procedure through a labyrinth of legal cavils with an air of injured innocence.

2.24. The other Delhi allottees, namely Cama Enterprises, Hermonite Consultants Pvt. Ltd., Zinga Chemicals Pvt. Ltd., Cherry Marketing Pvt.

Ltd. Hermonite Surgicals Pvt. Ltd. and H T Ferro Pvt. Ltd., (Goenka Group of companies) had also sold the preferential shares allotted to them to various KP entities namely Panther Fincap, Triumph International Ltd. and Classic Credits Ltd. Admittedly, the said Delhi based allottees belonged to the same management. According to the statement of Shri Kishen Goenka on April 11, 2003, all of the above mentioned Delhi based allottees were their family concerns and were under his active control. Thus, the Goenka Group of family concerns (Delhi allottees) has played a major role in market manipulation by acting as conduits and facilitating the process of flooding the market through KP entities.

2.25. In respect of the Kolkata based allottees, I note that 9,00,000 shares of Padmini were inter alia allotted on June 20, 1999 each to Shri Raj Kumar Kishorepuria, Shri Promod Kumar Kishorepuria, Contessa Commercial Company Pvt. Ltd. Blumenfield Ltd. (now BFL Pvt. Ltd.), Jeevan Sagar Promoters Pvt. Ltd. and M/s Bhagwan Das Sagarmal wherein Shri Raj Kumar Kishorepuria was the director. Immediately after the said allotment the aforesaid persons/ entities sold the shares to buyers in Delhi in the months of July /September 1999. In respect of

the aforesaid transactions (in majority of the cases) the payments were made by VB Impex Ltd. in the months of December 1999 / January 2000 as reflected in the table at 2.26. I further note that one Shri Sunil Kishorepuria represented all the above entities before SEBI. Shri Sunil Kishorepuria was the father of Shri Raj Kumar Kishorepuria and the nephew of Shri Promod Kumar Kishorepuria. Further Shri Sunil Kishorepuria was found to be a director / partner in M/s Bhagwandas Sagarmal and Blumenfield Ltd. (now BFL Pvt. Ltd.). Shri Sunil Kishorepuria in his reply inter alia stated that Contessa Commercial Company Pvt. Ltd. Blumenfield Ltd. (now BFL Pvt. Ltd.), Jeevan Sagar Promoters Pvt. Ltd. and M/s Bhagwan Das Sagarmal were his family concerns. Though Shri Sunil Kishorepuria represented the aforesaid entities/persons before SEBI, he could not furnish any justifiable reasons for the financial accommodation offered by Padmini against preferential allotments and the receipt of funds from entities other than to whom they sold the shares. I note that the allotments to the aforesaid persons/entities which were represented by Shri Sunil Kishorepuria were substantial (54 lac shares for Rs. 5.40 crore). They have also not given cogent reasons as to why the applications were withdrawn.

2.27. I further observe that the nexus between the Kolkata based allottees and Padmini can be inferred from the reply of Shri Vivek Nagpal which is reproduced as hereinunder ...it is further submitted that the company came to know about acting in concert by the above parties for the first time only on June 10, 1999 when Contessa Commercial Co. Pvt. Ltd. made a disclosure under Regulation 7 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 to the company regarding their acting in concert with other companies. Contessa Commercial Co. Pvt. Ltd. had made a disclosure that it was acting in concert with Blumenfield Ltd. Jeevan Sagar Promoters Pvt. Ltd., Promod Kr.

Kishorepuria, Raj Kumar Kishorepuria and Bhagawandas Sagarmal.

2.28 Despite the said knowledge Padmini allotted its preferential shares to the above entities on June 20, 1999.

2.29. I note that during investigations, statements of representatives of various Kolkata based allottees i.e. Shri Sanjeev Beriwal, Shri Alok Khetan and Shri

Jitender Agarwal (for Savara Tieup P. Ltd. and Royal Bengal Exports P. Ltd.) were recorded. By SEBI. It was stated by them that Padmini had made a presentation at Hotel Taj Bengal, Kolkatta around March-April 1999. This fact has also been admitted by Padmini. I note that all the Kolkatta based allottees amongst others had appeared in the said presentation. Shri Sunil Kishorepuria represented the entities listed at sr. Nos. 2 to 7 in Table given at para 1.3. above.

It has been stated that Padmini & its promoter namely Shri. Vivek Nagpal were known to Shri Sunil Kishorepuria since 1993-94, as he had business dealings with Padmini. It appears that Shri Sunil Kishorepuria had served as the main contact point for facilitating preferential allotments to other Kolkatta based allottees and that Padmini had agreed that the cheques of the allottees would be presented for collection only after obtaining their consent.

2.30. It appears that the financial accommodation as above might have been mediated by Shri Sunil Kishorepuria to the Kolkatta based allottees and accordingly, preferential shares were allotted on June 20, 1999 to the said allottees without the actual receipt of consideration and the allotment letters were also issued to the allottees. The investigations conducted by SEBI further revealed that at the instance of the Kolkatta based allottees for exiting out of the allotment, one Shri Sanjay Kumar was deputed by the management of Padmini to Kolkatta based allottees. Shri. Sanjay Kumar, Chartered Accountant approached the allottees and offered to purchase allotments of all the allottees at their cost price. The said move is an indication of the fact that the Kolkatta based allottees helped to channelise the transactions.

2.31. Considering the above details, the inescapable conclusion would be that Shri Sunil Kishorepuria and his group and Padmini were in cahoots to palm off the illegally allotted preferential shares in the market on gullible investors.

2.32. Further, the argument that the transaction in the months of June/July 1999 would not have any connection with the market manipulation later in January 2000 is not acceptable as it has been revealed that these entities/persons were necessary intermediaries in the chain of events culminating in the final manipulation as described already.

2.33. I find a similar modus operandi in respect of other Kolkata allottees namely Shri Sanjeev Beriwal, Shri Prakash Kumar Damani and Shri Prakash Kumar Damani(HUF), Shri Alok Khetan. Also the design is in keeping with what was noticed in the case of Delhi Allottees, excepting for the fact that while Delhi based allottees directly sold to KP entities, the Kolkata allottees routed the transactions through Delhi buyers before the shares finally reached KP entities. The whole picture on the canvass contains tell- tale strands of how each one of the entities at various sequences in the chain has catalysed the routing of shares , in a web of make believe transfers meant to mislead and obfuscate, to the final confluence in the market amidst artificial volume and price rise entrapping the unsuspecting investors.

2.34 I note that the allottees of preferential shares of Padmini sold the shares allotted to them immediately after the allotment to third parties including KP entities. As both the buyers and sellers were not members of recognised stock exchanges, the contracts for purchase/sale of shares between them were essentially in the nature of spot delivery contract. In terms of Section 2(i) (a) of SCRA, payment of the price in respect of spot delivery contract, should be made either on the date of contract or on the next date, as mentioned thereof. The aforesaid transactions entered into between the allottees and the third parties are admitted and in most of the cases, the payments were made beyond the period prescribed in Section 2(i) (a) of SCRA. I note that in some cases there was a gap of more than 6 months for the receipt of sale consideration. Thus, these transactions were in violation of the said provision. Section 16 of SCRA empowers the Central Government to declare (by way of notification) that no person can enter into any contract for the sale or purchase of any securitises as specified in the notification. In this context, I note that the Central Government had issued notification No. S.O. 2561 dated June 27, 1969 prohibiting all contracts in securities other than contracts for cash or hand delivery or special delivery as is permitted under the SCRA and Rules, bye-laws and Regulations of a recognised stock exchange. Therefore, the transactions entered into between the preferential allottees and third parties as mentioned above are in violation of Section 16 of SCRA and accordingly fall in the prohibited category.

2.35 I note the contention made by some of the entities that for the violations of the provisions of SCRA, SEBI could not invoke its power specified under Section 11B of SEBI Act, 1992. In terms of Section 11B, SEBI is inter alia empowered to issue such directions to any person or class of persons referred to in Section 12 in the said act or associated with the securities market inter alia in the interest of investors or orderly development of securities market. Therefore, SEBI is empowered to pass directions as specified in Section 11B of SEBI Act, 1992 in the interest of investors and for the orderly development of securities market. In this context the observation of the Hon'ble High Court of Bombay in the matter of Anand Rathi v. SEBI is quoted below: ...It cannot be gainsaid that SEBI has to regulate speculative market and in case of speculative market varied situations may arise and looking into the exigencies and requirements, it has been entrusted with the duty and functions to take such measures as it thinks fit. Section 11B is an enabling provision enacted to empower the SEBI Board to regulate securities market in order to protect the interest of the investors. Such an enabling provision must be so construed as to subserve the purpose for which it has been enacted.

It is well settled principle of statutory construction that it is the duty of the Court to further Parliament's aim of providing of a remedy for the mischief against which enactment is directed and the Court should prefer construction which will suppress the mischief and advance remedy and avoid evasions for the continuance of the mischief.

Section 11B is an enabling provision enacted to empower SEBI to protect interest of investors and to promote the development of and to regulate the securities market and to prevent malpractices and manipulations inter alia by brokers. Such an enabling provision must be construed so as to subserve the purpose for which it is enacted.

It would be the duty of the court to further the legislative object of providing a remedy for the mischief. A construction which advances this object should be preferred rather than one which attempts to find a way to circumvent it.

2.37 Further, the Hon'ble High Court of Gujarat in the matter of Karnavati Fincap Ltd. and Alka Spinners Ltd. v. Securities and Exchange Board of India had inter

alia observed that "In ordinary meaning, the persons associated with the securities market would include all and sundry who have something to do with the securities market. It is to be noted that the securities market in the sense is not confined to stock exchanges only. The words "persons associated with the securities market" are of much wider import than intermediaries." Persons associated with" denotes a person having connection or having intercourse with the other; in the present case that "other" with whom a person is to have connection or intercourse is the securities market.

2.38. The preferential shares of Padmini were intended to be listed at the time of the transfer to third parties and the same came to be listed subsequently at DSE in the month of December 1999. Therefore, the contention that SEBI could not invoke the provisions of Section 11B is not tenable in as much as SEBI has power under Section 55A of the Companies Act, 1956 inter alia in case of public companies which intended to get their securities listed on any recognised stock exchange in India. The allottees had contended that the applicable Regulation in respect of the alleged violation is the provisions of FUTP Regulations and not 2003 Regulations. I note that all the entities have been charged for violating the provisions of FUTP Regulations (95 Regulations) and not the provisions of 2003 Regulations. Only proceedings are continued under the provisions of 2003 Regulations for the violations of 1995 Regulations, as specified in Regulation 13 of 2003 Regulations. It has been alleged that Regulation 6(a) is not applicable as they are not engaged in business of trading in securities. In terms of Regulation 6 of the FUTP Regulations no person shall in the course of his business engage in any act or practice which would operate as a fraud upon any person in connection with the purchase or sale of or any other dealings in securities. In terms of Regulation 2(c) of the FUTP Regulations frauds inter alia includes any act fitted to deceive. In the above context, I note that the preferential allotment of shares in Padmini was a ruse to manipulate the market with the help of a solid-phalanx of connected entities in a web of transfers by artificially creating volumes and price in the said shares. In the present matter, it is fairly established that the entities who acted as conduits in the scheme facilitated the KP entities to manipulate the shares of Padmini. In the process, interests of the investors were affected. SAT in the matter of Ketan Parekh v. SEBI had inter alia observed that: When a person

takes part in or enters into transactions in securities with the intention to artificially raise or depress the price he thereby automatically induces the innocent investors in the market to buy/sell their stocks. The buyer or the seller is invariably influenced by the price of the stocks and if that is being manipulated the person doing so is necessarily influencing the decision of the buyer/seller thereby inducing him to buy or sell depending upon how the market has been manipulated. We are therefore of the view that inducement to any person to buy or sell securities is the necessary consequence of manipulation and flows therefrom. In other words, if the factum of manipulation is established it will necessarily follow that the investors in the market had been induced to buy or sell and that no further proof in this regard is required.

The market, as already observed, is so wide spread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and law can never impose on the Board a burden which is impossible to be discharged. This, in our view, clearly flows from the plain language of Regulation 4(a) of the Regulations.

2.39 Further, it has been alleged that "fraud" as defined Regulation 2(c) is also stated to be not applicable as the same is restricted to parties to the contract. The fact that these entities had acquired and subsequently sold the shares of Padmini clearly showed that they had traded in securities of Padmini. The contention that it is not a party to contract for attracting Regulation 2(c) of the FUTP Regulations is also not tenable as it has been discussed in detail above that by aiding the process of preferential allotment by indulging in unusual financial accommodation, and thereafter facilitating off-loading of shares to Ketan Parekh entities for subsequent manipulation, these entities have committed the violations of the provisions of 3, 6 (a) of the FUTP Regulations.

2.40. As mentioned earlier in this order, KP entities have been held liable for market manipulation under FUTP Regulations as confirmed by SAT's order dated July 14, 2006. If that is so, the entities who have dealt with Shri Ketan Parekh in some capacity or other in the scrips he traded for rigging the market would have definitely had a role in market manipulation. Market dynamics is replete with

interplay of forces, though the size of the market and scale of operations in market may overshadow them. There is no gainsaying the fact that such interplay of forces accounts for the kinesis of the market under the overlay of voluminous trade and order logs. The influence of such interplay in the market cannot be discounted merely on a scale of numbers because its influence can either be subtle or overly aggressive depending upon the level of support to the prime mover, as in the cases of Ketan Parekh and related entities. Therefore, such activities adjudged in the broadspread of the market on real time impact cannot be dismissed as of no consequence on the plea that the entity was not aware of the intentions of Ketan Parekh et al while dealing with them.

A mere denial on self serving assertion cannot displace the presumption of fact arising from inferences drawn from a mass of factual details which are incontrovertible.

2.41. The circumstances are tell-tale and the presumption based upon them should prevail, more so where intentions are shrouded in secrecy or within the special or peculiar knowledge of persons concerned.

Several circumstances of a determinative character coupled with the inference arising from the conduct of the parties in a major market manipulation which could not simply be the handiwork of Ketan Parekh alone could reasonably lead to conclusion that the others were also responsible in varying measures. The evidence, direct or circumstantial, should be sufficient to raise a presumption in its favour with regard to the existence of a fact sought to be proved. As pointed out by Best in "Law of Evidence", the presumption of innocence is no doubt presumptio juris; but everyday practice shows that it may be successfully encountered by the presumption of guilt arising from circumstances, though it may be a presumption of fact. Since it is exceedingly difficult to prove facts which are especially within the knowledge of parties concerned, the legal proof in such circumstances partakes the character of a prudent man's estimate as to the probabilities of the case.

2.42. Manipulation is often predicated upon the extent to which the market was dominated by the person. Manipulation connotes a deceptive conduct designed to deceive or defraud investors by controlling or artificially affecting the price of

securities. At its core, manipulation is the interference with free forces of supply and demand.

By impeding the natural interplay of market forces, the manipulator misleads the investor by masking the true value of the stock. Through interference with the market, a manipulator may affect a price increase by artificially either constricting supply or increasing demand.

2.43. There are certain types of manipulations which are easier to prove because guilt may be imputed from the fact of the transaction itself, for instance, fictitious accounts, matched orders, wash sales, dissemination of false literature. There is no scale to measure manipulative transactions. Proof of manipulation almost always depends on inferences drawn from a mass of factual details. Findings must be gleaned from patterns of behavior, from apparent irregularities, and from trading data. When all of these are considered together, they can emerge as ingredients in a manipulative scheme designed to tamper with free market forces. Some evidences of manipulation are price leadership, domination and control of the market, collapse of market after ceasing of activity, reduction in the floating supply of the security, parking of shares, accumulating inventory of shares, etc.

2.44. It is established that the allotment/application money was not paid by the Kolkata/Delhi based allottees and that the shares allotted to them by Padmini were immediately sold to KP entities. In most of the cases, the consideration was paid by allottees to Padmini after the aforesaid sale to KP entities. Therefore, it is seen that aforesaid entities including the allottees were necessary parties in the game plan of market manipulation. The fact remains that the entities mentioned aided and facilitated Padmini and KP entities.

2.45. Given the fact that there was enormity of market manipulation by Shri Ketan Parekh and his related entities in certain scrips and that Shri Ketan Parekh and his related entities could not have manipulated the market to such huge proportions alone, it stands to reason that the entities who had direct dealings with KP entities can't escape their responsibility on the plea that they were not aware of Shri Ketan Parekh's manipulative intentions in the market. There can be no direct evidence in the context of market operations as to whether there was a constructive

knowledge on the part of the entities on manipulation while dealing with Shri Ketan Parekh and his entities. Proof of manipulation always is drawn from a mass of details and accordingly, it is purely inferential on the materials available in a given case.

Further such a proof has to be a prudent man's estimate as to the probabilities of the case, in the absence of recorded contemporaneous material evidences like communications through e-mail, telephone or other forms of correspondences etc. Accordingly, presumption plays a critical role in coming to a finding as to the involvement or otherwise of an entity in any large scale manipulation. For instance, while trading, a lip service can be paid to a screen based trading system while agreement is reached beforehand between brokers to effect the transaction. Anonymity can be a cloak to cover anastomosis of interest.

Therefore, the hackneyed plea based on intentions in the market place can not pass muster in all circumstances, more so when such intentions are in the special/peculiar knowledge of the parties to the transactions.

2.46. It is exceedingly difficult to prove facts which are especially within the knowledge of the parties proceeded against and in that view the findings would be inferential from the conduct of the parties. I note that, any suggestion attributing innocence to the parties involved in such transactions would give rise to an untenable situation where Shri Ketan Parekh and his entities alone would be responsible for the manipulation and none else.

2.47. I also note that the considerations in respect of the allotment of preferential shares were received by Padmini subsequent to the receipt of money from third parties including KP entities as mentioned above and the same is also reflected in the bank account of the allottees and Padmini.

2.48. The entire gamut of events commencing from the typical gambit of allotment to a select coterie, running through the maze of transfers amongst chosen interconnected parties which is a classic example of touch-me-not distancing through intermediation and culminating in the final denouement wherein KP entities with all their manipulative assemblage come to the fore setting a seal on

the transactions would clearly establish that the allottees/aforesaid companies/persons were necessary parties in the machinations of market manipulation to the detriment of unsuspecting investors. The period 1999-2000 was rife with dubious preferential allotments designed to manipulate the market. The one, the subject matter of the order, was no exception and the attendant trappings with all tell -tale suspicious features as detailed supra do not leave any room for doubt that it was a fraud on the market in collusion with the name lenders and KP entities in creating artificial volume/price for luring the unsuspecting investors. In terms of Regulation 6(a) of the FUTP Regulations no person shall knowingly engage in any act or practice which would operate as a fraud upon any person in connection with the purchase or sale of, or any other dealing in any securities.

2.49 In view of the above, it is fairly established that the Kolkata and Delhi based allottees, Shri Sanjay Kumar Gupta, chartered accountant and other entities/persons mentioned in the show cause notices had violated Regulations 3 and 6 (a) of FUTP Regulations and I dispose off the proceedings in respect of 32 show cause notices as ordered herein under.

2.50 I note that in view of the role of Padmini/its whole time directors namely Shri Vivek Nagpal, Shri Vishnu Sarup Gupta and Shri Praveen Kumar Jain in the frauds committed inter-alia in preferential allotment, SEBI had vide order dated January 31, 2007 debarred them from associating with the capital market related activities including buying and selling and dealing in securities directly or indirectly and also from accessing the capital market in any capacity whatsoever and associating with any of the intermediary in the capital market for a period of five years.

2.51 Similar directions were also passed against Shri Kailash Chandra Agarwal, Chartered Accountant and statutory auditor of Padmini vide order dated January 11, 2007 for his role of suppressio veri and suggestio falsi while certifying the financial statement for the purpose of listing on DSE. He has also been prohibited from issuing any certificate with respect to compliance of obligations and requirements under securities laws (Securities and Exchange Board of India Act,

1992, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and the provisions of the Companies Act, 1956 which are administered by SEBI under Section 55A thereof, the Rules, Regulations, Guidelines etc. made under these Acts and the Listing Agreement) for a period of 5 years.

3.1 In view of the foregoing I in exercise of powers conferred upon Sections 19 read with Sections 11B of the SEBI Act, 1992 and Regulation 10 of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 hereby prohibit VB Impex Pvt. Ltd. and its directors namely Shri Vinod kumar and Shri Vinay Bansal, M/s JP Promoters Pvt. Ltd. and its directors namely Shri Anurag Gupta and Shri Pradeep Kumar Gupta, M/s Churuwala Exports Pvt. Ltd. and its directors Smt.Kiran Devi Agarwal and Shri Sandeep Kumar Gupta, M/s DKG Buildcon Pvt. Ltd. and its Directors namely Shri DK Gupta, Shri Navneet Kumar And Ms. Indu Gupta, M/s Mikona Impex Traders Pvt. Ltd. and Its Directors namely Shri Vinod Kumar and Shri Sandeep Kumar, M/s Iris Infrastructurals Pvt. Ltd. and its directors Shri Navneet Kumar and Shri Vinod Kumar, Shri Sanjay Kumar Gupta, M/s Cama Enterprises Pvt. Ltd. and its directors namely Shri Arun Goenka, Shri Umesh Goenka and Shri Ashok Sood, M/s Hermonite Consultants Pvt. Ltd. and its directors namely Shri Arun Goenka, Shri Umesh Goenka and Shri Himangshu Bhadra, M/s Zinga Chemicals Pvt. Ltd. and its directors namely Shri Arun Goenka, Shri Umesh Goenka and Shri P. Ratna Rao, M/s Cherry Marketing Pvt. Ltd and its directors namely Shri Arun Goenka, Shri Umesh Goenka and Shri Ashok Sood, M/s Hermonite Surgicals Pvt. Ltd. and its directors namely Shri Arun Goenka, Shri Umesh Goenka and Shri Shiv Prasad Agarwal, M/s H T Ferro Pvt. Ltd. and its directors namely Shri Arun Goenka and Shri Umesh Goenka, Shri Kishen Goenka, Shri Prakash Kumar Damani, M/S Prakash Kumar Damani (HUF), Shri Sanjeev Beriwal, M/s Royal Bengal Exports Pvt. Ltd. and its directors Shri Jitenra Agarwal, Shri S Chaterjee M/s Savara Tie-Up Pvt.

Ltd. and its director Shri Jitenra Agarwal, Shri Alok Khetan, Shri Pramod Kumar Kishorepuria, Shri Raj Kumar Kishorepuria, M/s Bhagwandas Sagarmal and its partners Shri Sajjan Kumar Kishorepuria, Shri Anil Kishorepuria M/s Jiwansagar Promoters Pvt. Ltd. and its directors Shri Sajjan Kumar Kishorepuria, Shri Anil

Kishorepuria, Shri Anil Kishorepuria M/s Bllumenfield Ltd. and its directors Shri Anil Kishorepuria, Shri Sunil isharepuria, M/s Contessa Commercial Co. Pvt Ltd. and its directors, Shri Sajjan Kumar Kishorepuria, Shri Bijay Kumar Kishorepuria, Shri Sunil Kumar Kishorepuria, M/s All Seasons Hotels Pvt. Ltd., M/s RN Dye Chem Pvt. Ltd., M/s Cross Country Export Pvt. Ltd. and M/s Mudra Capital Services Pvt. Ltd. from associating with the capital market related activities including buying and selling and dealing in securities directly or indirectly and also from accessing the capital market in any capacity whatsoever and associating with any of the intermediary in the capital market for a period of five years.

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