

In Re: Design Auto Systems Ltd.

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SooperKanoon Citation : sooperkanoon.com/58668

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

Decided On : Oct-22-2007

Judge : G Anantharaman

Appellant : In Re: Design Auto Systems Ltd.

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 broad course of events in the matter 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. There was no exchange of cash between the two.

b) DASL made application for listing the said shares allotted to BBL to MPSE and later to BSE. The MPSE granted listing permission albeit with undue haste and without exercising due diligence. However, it did not grant trading permission. The listing application which was made subsequently to BSE was kept pending by it, as it apprehended that DASL would have committed certain violations of law in the process.

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

d) After the allotments were made, a major chunk of the shares allotted by DASL to BBL were offloaded by BBL through a network of entities including Coverage & Consultants Ltd. (C & C) in the trading platform of the BSE even though these shares were not listed on BSE. Such offloading was contrary to provisions of the BSE bye-laws and constituted bad delivery on the exchange. However, neither the BSE Clearing House nor any of the other parties to the trade could detect this illegality, since the shares were in the dematerialized form and thereby fungible with other legally allotted shares. As a result, a number of innocent investors who purchased such unlisted shares on the BSE were defrauded and saddled with shares which could not be legally sold 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) Upon the above coming to its notice, BSE suspended trading in the DASL's shares from January 14, 2002. Upon instructions from SEBI, BSE also annulled all transactions in DASL shares allotted to BBL which had taken place on the exchange till that date. The annulment was subsequently set aside by the Mumbai High Court by an order passed on February 28, 2003 in W.P. No. 209 of 2003 and connected matters (a batch of Writ Petitions filed by aggrieved stock brokers of BSE), mainly on the ground of innocent third party interests which were already created and the matter was remanded to BSE's Governing Board for deciding the same afresh after giving a hearing to the Petitioners. The annulment order was subsequently reversed by the Governing Board itself as they found that the

interest of innocent third parties i.e. investors, would otherwise be affected.

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

1.2 During the course of the aforesaid investigations, summonses were issued to DASL and BBL to appear before the Investigating Authority.

However, 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 and the court directed SEBI to ensure expeditious completion of investigation. Further, DASL and BBL were also directed to co-operate 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. C & C was also found to be instrumental in offloading these unlisted shares of DASL into the market. Pursuant to this SEBI issued show cause notices (SCN) to DASL, BBL, C & C and other entities suspected to be involved in the transactions requiring them to show cause as to why appropriate directions should not be passed against them. The common show cause notice issued to BBL, C & C and their directors was dated June 30, 2005. The same SCN was also addressed to one Mr. Deep Trivedi, who allegedly dealt on behalf of C & C with its sub-broker, M/s Pinnacle Finstock Pvt. Ltd. ("Pinnacle") and one M/s Shree Parshwa Finance, who as an unregistered sub-broker of P. Suryankanth Share and Stock Brokers Pvt. Ltd. allegedly indulged in offloading the unlisted shares.

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 with a direction that 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.

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 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 SEBI was granted time 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 20, 2007 holding that the proper course would be to allow SEBI to pass the final order.

1.8 Accordingly SEBI passed final order against DASL on March 6, 2007.

On the same date SEBI passed order against BBL also wherein BBL was found to have violated Regulation 3 and 4 of PFUTP Regulations, 1995.

14171657 - DG Goenka 50,00,000 Equities Pvt. Ltd.3 19.11.2001 IN301485
 10000677 - Pinnacle 50,00,000 Finstock Pvt. Ltd.4 28.11.2001 IN300351
 10008759 - Shyam & 2,00,000 Lata Parwaney5 06.12.2001 IN301485 10029747 -
 Coverage & 1,00,00,000 Consultants6 27.12.2001 IN301983 10005042 - Ujjwal
 1,33,00,000 Shende7 27.12.2001 IN301983 10005059 - Ashutosh 1,50,00,000
 Kothari----- TOTAL

5,35,00,000-----

Sr.	No.	Date	BO	ID	Quantity	(No. of shares)
						8
	1302120000000363		-	Muralidharan		50,00,000

Sr.	No.	Date	BO	ID	Quantity	(No. of shares)
						9

11.12.2001 IN651178 - CD Equisearch 5,00,000 Pvt. Ltd.10 12.12.2001 IN651178
 - CD Equisearch 5,00,000 to CD Pvt. Ltd. Equisearch Pvt. Ltd.11 18.12.2001
 IN651178 - CD Equisearch 5,00,000 to CD Pvt. Ltd. Equisearch Pvt. Ltd.
 Ltd.----- TOTAL (B1 +B2)

65,00,000----- GRAND TOTAL

6,00,00,000 shares----- 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:-----Date Recd. From

Transferred	to	No.	of	shares
Balance				27.12.2001

4,00,00,000	10.01.2002	Ashutosh	1,50,00,000	6,83,00,000	Kothari	16.01.2002
Coverage & 58,83,151	7,80,83,151	Consultants	18.01.2002	Coverage & 5,05,000		
7,85,88,151	Consultants	18.01.2002	Pinnacle	22,09,816		8,07,97,967
Finstock	14.03.2002	Manoj H	41,14,500	8,49,12,457	Ganeriwala	Murali Nair
10,00,000	9,01,78,926					

Details of movement of the said unlisted 6 crore shares from the various accounts
 are as hereunder:

1. (IN300888/ 13162987) : Account of 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 400054-----Date
 Recd. From Transferred to No. of shares
 Balance-----13.11.2001 BBL
 50,00,000 50,00,000 22.11.2001 Pinnacle Finstock 50,00,000 Nil 12.12.2001 Murali
 Nair 10,00,000 10,00,000 29.01.2002 Coverage & 2,78,180 Consultants Pinnacle
 47,11,320 59,89,500 Finstock 05.03.2002 Arihant Capital 8,75,000
 Markets 14.03.2002 BBL 41,14,500 14.03.2002 Murali Nair 10,00,000
 Nil-----

2. (IN300888/ 14171657) : Account of DG Goenka Equities Pvt. Ltd., member BSE
 (Address : PS9, Rotunda Building, Bombay Samachar Marg, Fort, Mumbai 400
 023).-----Date Recd. From
 Transferred to No. of shares
 Balance-----13.11.2001 BBL
 50,00,000 12.12.2001 Murali Nair 1,00,000 51,00,000 13.12.2001 Delivered in
 23,100 Market 12.01.2002 CDSL a/c of DG 76,900 50,00,000 Goenka 12.01.2002
 Delivered in 5,16,541 market 14.01.2002 Delivered in 2,17,000 42,66,459
 market 15.03.2002 BBL 42,66,459
 Nil-----

3. (IN301485/10000677) : Account of Pinnacle Finstock Pvt. Ltd. (Address : B-81,
 Pariseema Complex, CG Road, Ellisbridge, Ahmedabad 380 006), sub broker to
 Active Finstock Pvt. Ltd.-----
 Date Recd. From Transferred to No. of shares
 Balance-----19.11.2001 BBL
 50,00,000 22.11.2001 Manoj 50,00,000 Ganeriwala 18.01.2002 BBL
 22,09,816 29.01.2002 Manoj 47,11,320 30,78,864 Ganeriwala

4. (IN301485/10029747) : Account of Coverage & Consultants Ltd. (Address : 203,
 Apollo Towers, 2 MG Road, Indore, MP 452
 001).-----Date Recd. From
 Transferred to No. of shares
 Balance-----06.12.2001 BBL
 1,00,00,000 18.01.2002 Manoj 2,78,180 Ganeriwala 16.01.2002 BBL

58,83,15118.01.2002

BBL

5,05,000

33,33,669-----

5. (IN301983/ 10004669) : Account of Murali Nair (Address: 108-B, Vardha Vihar, Lalaram Nagar, Indore, MP 452 001)-----Date Recd. From Transferred to No. of shares Balance-----13.11.2001 BBL 50,00,00012.12.2001 Manoj 10,00,000 Ganeriwala12.12.2001 DG Goenka 1,00,00029.12.2001 BBL 39,00,000 NIL14.03.2002 Manoj 10,00,000 Ganeriwala BBL 10,00,000 NIL----- e) a

reconciliation of the transfer of 10 crore unlisted shares of DASL from BBL's demat account was as mentioned below:Reconciliation of transfer of 10 crore shares of BBLTotal Shares credited - 10,00,00,000Shares frozen in the DP a/c - 9,01,78,926 -----Shares delivered in the market/Unaccounted for - 98,21,074 ----- Coverage & Consultants 33,33,669Pinnacle Finstock 30,78,864CD Equisearch 15,00,000Shyam Parwaney 2,00,000Manoj Ganeriwala 8,75,000D.G. Goenka 8,33,541 ----- f) In this regard, it was stated that the shares were transferred for arranging loans against the mortgage of shares except for those transferred to CD Equisearch and Murali Nair. However, when those transferee entities were confronted, they denied their engagement in arranging finances. Some of these entities have stated that these shares were transferred on their account at the instruction of Mr.

Murali Nair and M/s. Vargin Finance P Ltd. and for the purposes of their margin requirements and future market obligations. Further, Pinnacle Finstock Ltd. (Pinnacle), a sub-broker of Active Finstock Pvt. Ltd. (Active), 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) That C & C had received 1 crore unlisted shares of DASL from BBL on 06.12.2001. It was also noted that C & C and BBL were sharing the same address during the relevant period of investigation, i.e., 203, Apollo Towers, 2 MG Road,

Indore, MP - 452 001. It was observed that Shri Deep Trivedi, who earlier has been director of BBL, used to deal for C & C. h) The movement of shares to and from the demat account of C & C are as under: i) That C & C was also dealing through the Equisearch Broking Pvt.

Ltd. ("Equisearch" - a stock broker), Pinnacle, M/s Shri Parshwa Finance and M/s Admiral Securities (a stock broker). Details were given of the large share of C & C's transactions vis-a-vis the total transactions in the DASL scrip during the relevant period.

j) That a Director of BBL, Shri B 1 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).

k) That out of one crore unlisted shares of DASL transferred to it, 63,88,151 shares had been transferred back into the account BBL and the remaining 33,33,669 shares were seen to have been offloaded in the market.

l) That 50,00,000 unlisted shares of DASL were transferred by BBL to Pinnacle, which was acting as a sub broker to Active. Its account No. was IN301485/10000677. The movement of shares to and from the demat account of Pinnacle during the period was as stated below: m) It was pointed out in the SCN that Pinnacle was in receipt of total 1, 08, 75,000 unlisted shares of DASL. On being asked to explain this Pinnacle admitted that these shares were transferred to their account as advance pay-in from C & C so that there was no obligation of payments. It was also stated that the unsold shares were transferred back as per the instruction of C&C. Pinnacle had made substantial funding to C & C and the debit balance went up to the tune of Rs. 2.26 crores and as per their explanation the debit balance would be cleared by selling the shares of DASL.

n) That C & C had dealt with broker Equisearch Pvt. Ltd. (Equisearch) also. It was observed that the noticee was continuously transferring unlisted shares of DASL into the account of Equisearch and 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.

o) That C & C had also dealt through Admiral Securities, which was acting as a sub-broker with VSE Securities Ltd., a subsidiary of VSE (Vadodara Stock Exchange). The sub broker has admitted that they had got 10,00,000 shares of DASL from their client C & C on 12.12.2001 as advance pay-in and that the noticee had directed them to sell these shares in the secondary market giving the price range between Rs. 5 and Rs. 6. After selling 4, 95,000 shares the sub-broker stopped dealing in DASL scrips and 5, 05,000 shares which were not sold were returned to C & C on 16.01.2002.

p) 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 observed that all of them were acting in concert while dealing in the unlisted scrips of DASL.

q) On the basis of aforementioned facts, it was concluded in the SCN that C & C and its directors namely Shri Sharad Gujrathi, Shri B 1 Joshi, Shri Narendra Chouhan and one Shri Deep Trivedi, who was not its director but acting on behalf of C & C, with the help of various other entities had violated Regulation 3, 4(a), (b), (c), and (d) of SEBI PFUTP Regulations, 1995.

2.2 In response to the aforesaid SCN, C & C submitted its written reply dated August 16, 2005. The sum and substance of their submissions is as under: a. That they were not a SEBI registered intermediary and therefore they did not come under the jurisdiction of SEBI and also that the notice had been issued belatedly i.e. after about four years which was not explained to them. That the notice under reply was in a sequence to several previous developments/litigation/proceedings at BSE/SEBI/Bombay High Court/SFIO, etc before various forums in the dealing of DASL shares and that they were being coerced into unnecessary investigations and legal proceedings repeatedly by different Regulatory Authorities especially even when the ultimate buyer didn't take any action against them.

b. That their involvement and participation in transaction of DASL scrip was for a very limited period of time and that all the dealings were in BOLT, while deliveries of DASL shares were made in demat mode only. In this view, they have submitted that the notice under reply was issued under some misapprehension and accordingly they had requested to consider whether doctrines of waiver, estoppel and res judicata were applicable in their favour.

c. That under Regulation 27 of the SEBI (Depository and Participants) Regulations, 1996, depositories were authorised to specify in their bye-laws as to the securities which would be eligible for being held in dematerialised form in the depository and that Regulation 28(b), further, specified unlisted securities as eligible for being held in dematerialised form. In addition, byelaw 11.1 of CDSL Bye-laws, was cited to contend that the securities which were declared as eligible for being held in dematerialised form under Regulation 28 shall be eligible for being held in dematerialised form in CDSL. From the above, the noticee concluded that since CDSL was entitled in law to hold unlisted securities in dematerialized form, the trade done in some unlisted shares of DASL by itself did not result into violation of any legal provision.

d. The noticee had further submitted that while dealing through Equisearch Broking Pvt. Ltd. (a stock broker), they sold and delivered about 24 lacs shares of DASL for which they were paid by cheques by Equisearch and that they never disowned any trade or settlement and that as a matter of precaution DASL share were dealt in demat mode only.

e. They denied that they were an accomplice to the management of BBL in offloading of unlisted shares of DASL. It was said that Mr. Deep Trivedi was neither a director of the noticee company nor authorised to deal on their behalf. With reference to being mentioned as habitual non-compliant in the SCN, they contended that reference of Ojas Technocam Ltd. showed the prejudiced mind of Investigating Authority.

f. With reference to violation of PFUTP Regulations, the noticee submitted that they had not dealt in said securities in a fraudulent manner or with any intention to artificially raise or depress the prices of securities or for creating misleading

appearance of trading in securities and that they did not indulge in any act which could reflect wrong prices of securities and that they never entered into such transaction with intention to effect transfer of beneficial ownership. It was also submitted that the investigation report did not specify the manner in which they were alleged to have violated the said provisions.

g. It was also argued that SEBI, having invoked its powers under Section 11(4) & 11B, was estopped and precluded from using its power under Section 24 and also that there was no specific finding as to which particular act brought them within the purview of Section 24.

Further, the SEBI Act did not define the expression "...any person who contravenes or attempts to contravene or abets the contravention of the Provisions of this Act or the rules or Regulations made there under..." and that in this view the intention of legislature was clear to exclude the entities like C&C. It was also submitted that they had not been provided the BSE's report relying on which investigation was initiated.

h. That Sections 11C and 11(4) were inserted in the SEBI Act with effect from 29.10.2002 and that the subject matter for which details were sought pertained to the period November 2001 to January 2002 and hence these provisions were being applied retrospectively. With reference to the provisions of 11B & 11 (4)(b), of SEBI Act, it was submitted that SEBI was not competent to issue such directions which tantamounted to imposition of penalty.

i. That the trades in DASL scrip were regularized by BSE after collecting fine from their broker/sub-broker and also by ratifying the trades by deciding not to annul them. It was also argued that had BSE, which was first level regulatory authority, considered transactions in DASL shares harmful, it could have suspended their members and taken drastic action and not merely fined, as was done.

In this view, it was submitted that the findings of investigations could not become a basis for invoking extraordinary powers under Sections 11(4)(b) and 11B. j. That SEBI had exercised its inherent power of Section 11B when it issued a direction to BSE to annul the trades during the relevant period. The said decision was later

challenged by few BSE brokers in the High Court and accordingly the matter had already been judicially reviewed. In this view the noticee had submitted that the same matter could not be reopened when Honb'le High Court has judicially examined the matter in its entirety.

k. That there was no mechanism to identify that all the trades were done out of the unlisted shares. It was also contended that when BSE or depositories were not able to distinguish between the listed and unlisted shares, how the noticee could be held liable for any such flaw in the system.

l. It had also cited two SAT orders namely Contact Consultancy Services Pvt. Ltd. v. SEBI (138/2004) and Reliance Industries Ltd. v. SEBI (39/2002) and one Supreme Court judgment Ex-Naik Sardar Singh v. UOI in support of the contention that it was not guilty of committing any violation.

m. That their transactions were bonafide and for value which had not caused any harm to any person or entity. There was no specific allegation of any wrong doing or finding which could be calculated as to create a false and misleading appearance of trading in the market. It was also submitted that volume of business by itself did not reflect any intention to manipulate the price and hence no malafide intention could be attributed. The allegations made were merely based on the conjectures & surmises and were contrary to law and facts and extrinsic evidence and the basis thereof was not only devoid of logic but defied logic.

2.3 Mr. Deep Trivedi, to whom SCN had been served in the capacity of a person dealing on behalf of C & C, had given his separate written submission. The crux of his submissions are as under: a) That he never received any notice in the matter of investigation conducted by SEBI in said unlisted scrip of DASL and therefore he was surprised and shocked in receiving the SCN dated June 30, 2005.

b) That he had never been director of DASL. In BBL he was on Board of Directors only for a limited period of time up to October 10, 2000 and he had signed only one year annual accounts of BBL.

c) He had denied having played any role in the affairs of BBL after leaving the directorship or having any concern, with transfer of unlisted shares of DASL, which were allotted to BBL. He had also denied that he had signed any document in connection with the alleged transfer of DASL scrip from the BBL account to C & C or to Pinnacle Finstock Pvt. Ltd., (a sub-broker through whom C & C allegedly offloaded many unlisted shares).

d) With reference to relationship with C & C, he had denied that he was a director of C & C during the relevant period of investigation.

It was also submitted that he was not concerned with the transfer of shares of DASL, which were allotted to BBL. He submitted that he didn't sign any document in connection with the alleged transfer of DASL shares from BBL to demat accounts of C & C and Pinnacle. He submitted that he had not dealt on behalf of C & C in DASL scrip. It was further stated that except for one party, no one had mentioned his name in their deposition made before the Investigating Authority.

e) Rest of his submissions were exactly same as those advanced by C & C and therefore it would not be necessary to repeat the same.

2.4 An opportunity of personal hearing was given to C & C, its directors and Shri Deep Trivedi 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, essentially on account of coordinated examination of cases of the principal parties DASL & BBL together with that of the present noticees, there was no response from the noticees. 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 C & C did not respond to various summons issued by SEBI. Since C & C figures significantly in the offloading of unlisted shares, its non-cooperation has frustrated the investigations.

In this context, I further note the well settled position that burden of proving facts especially within the knowledge of a party is on that party and adverse inference may be drawn if that party does not present itself before the Investigating Authority without sufficient reasons.

3.2 I further note that SEBI had initiated adjudication proceedings against C & C twice - for not submitting information summoned by the investigating authority and for not making requisite disclosures under Regulation 7(1) and (2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ('Takeover Regulations') even though they jointly acquired more than 5% shares in DASL. By an order dated July 19, 2004, the Adjudicating Officer in the first case imposed a penalty of Rs. 5 lakhs upon C & C for violating Sections 15A and 15HB of the SEBI Act. On appeal, the Securities Appellate Tribunal, while upholding the findings, reduced the penalty to Rs. 20,000/- [Order dated October 15, 2004 in Appeal No. 164/2004]. I further note that SEBI has also filed a prosecution under Section 11C(6) of the SEBI Act for the said non-compliance with summons [CC No. 32/SW/2004 filed before the ACMM, 47th Court, Esplanade, Mumbai], which is pending. It is not as if the company were not in existence. They were very much in the picture as seen from their conduct of filing and prosecuting the aforesaid appeal before SAT. Thus, their failure to respond to summons is deliberate and with a view to evading the regulatory process. BBL, the allottee of the preferentially allotted DASL shares and a principal party to the transaction also evaded summons and thereby hampered regulatory efforts to arrive at the findings of fact. It is noteworthy that BBL shared the same address with C & C and had a common director with C & C, in Shri Sharad Gujrathi. It is also noteworthy, as will be explained later in this order, that BBL offloaded substantial quantity of unlisted shares through C & C and that their roles were quite inextricably intertwined. In the second case, the Adjudicating Officer by an order dated August 30, 2005, found C & C guilty of violation of Regulation 7(1) and 7(2) of the Takeover Regulations and imposed a penalty of Rs. 1 lakh. The said penalty has been paid.

3.3 I have taken into consideration the SCN, the reply thereto and other materials 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 on October 29, 2001 amounted to about 14 times the pre-issue capital of DASL. It was 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. Once the credit was given, BBL and other entities (including C & C) took advantage of the fact that the shares became fungible with and indistinguishable from other validly listed DASL shares and offloaded a part of it in the BSE, even though they were not supposed to do so in terms of the BSE Bye-laws.

3.6 Having regard to all relevant factors, SEBI passed orders on March 6, 2007 against DASL and BBL, the principal parties to the primary transaction of swap allotment made on October 29, 2001. Both of them were found guilty of violation of Regulations 3 and 4 of the PFUTP Regulations, 1995. In the order passed against DASL, it was held that it had no passable commercial reason for making the huge allotment of 10 crore shares and the allotment was only a ruse to cover the offloading of unlisted shares to innocent investors. It was also found that DASL had fabricated some documents and cooked up imaginary reasons for giving false commercial colour to the allotment. It was also found that DASL issued the same 10 crore shares both physically by way of a jumbo certificate and in the demat form to BBL. It was further found that DASL and BBL had close links through Mr.

Murali Nair and Mr.

Arvind Vaswani. In the order passed against BBL on the same date, it was observed that BBL had off loaded 6 crore shares to various entities including C & C, out of the 10 crore unlisted DASL shares allotted to it. BBL's version that the relevant shares were transferred for the purpose of arranging finance was found to be not substantiated. The nexus between C & C and BBL in the form of a common director and common address was also pointed out.

3.7 As seen from the tables mentioned in para 2.1(d), BBL had transferred 6 crores equity shares of DASL (out of the 10 crores shares allotted to it) to various entities, soon after the demat credit. Out of the 6 crores shares so transferred, 1 crore shares were transferred to C & C alone. Subsequent transactions in C & C's demat account have already been extracted at para 2.1 (i). For the sake of ready reference, the same is reproduced below with further explanation which will assist correct understanding of the transactions:

NAME	No.	CREDIT	DEBIT	Date
BALANCE				5-Dec-01
PL 10000677	2000	2000		To CM Equisearch Brkg 5-Dec-01
800 1200				By Khandwala Int. Fin. S6-Dec-01
PL 10000677	100000		11012006	Dec-01 PL/Physical
1100000	1200			By Inter depository 6-Dec-01
1302120000000340	10000000		100012008	Dec-01 PL/Physical
0102037			834149	
916705110				Dec-01 To Khandwala Int. Fin. S
PL 10000254	1000000		816705111	Dec-01 To CM Equisearch Brkg
PL Rolling Mkt Lot	0102177		5000	816205112
Dec-01 To CDS	1301670000006940		1000000	716205112
Dec-01 To ASE Capital				
Markets	10000026		225000	693705113
Dec-01 To Stock Holdg				
Corpn of India	14881209		30000	690705115
Dec-01 To CM Equisearch				
Brkg	PL/Physical			
0102038	672650		623440	122-Dec-01
To CM Equisearch				
Brkg	PL/Physical			
0102039	14900		621950	124-Dec-01
To Stock Holdg				
Corpn of India	14881209			
15000	620450		131	Dec-01
To CM Equisearch				
Brkg	PL/Physical			
0102040	108300			
60962011				Jan-02
To HDFC Bank Ltd.	15396587		70000	60262012
Jan-02				
PL/Rollg Mkt Lot	0102190		73900	59523012
Jan-02				
PL/Rollg Mkt Lot	0102191			
51550	590075		110	Jan-02
India	14881209		300000	560075115
Jan-02				
India				

30202236 107400 570815115-Jan-02 PL 10000254 175000 588315116-Jan-02
To CDS 1302120000000344 5883151016-Jan-02 transfer CDS
1301670000006940 505000 50500018-Jan-02 PL 10000677 278180 78318018-
Jan-02 To CDS 1302120000000344 505000 27818029-Jan-02 India 13162987
278180 0----- 3.8 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. BBL transfers 1 crore unlisted DASL shares to C&C (transfer amounting to more than 160% of the validly listed capital of DASL). This was pursuant to the larger design whereby similar 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 remained unaccounted for. C&C returned 2,78,180 shares to one Shri Manoj Ganeriwala on 18.01.2002 and 58,83,151 shares and 5,05,000 shares respectively to BBL on 16.01.2002 and 18.01.2002. However, out of the 1 crore shares transferred to C&C, 33,33,669 shares remained unaccounted for and had been delivered in the market.

3.9 Thus, it is seen that C & C was the largest single intermediating party in the off loading of unlisted DASL shares by BBL. The fraudulent objective of BBL, C & C and other parties would have been achieved in entirety but for intervention of SEBI and BSE, whereby the trades in the DASL scrip were suspended on January 14, 2002. As the objective could not further be achieved, C & C and other parties returned the unsold unlisted shares to BBL to obviate any regulatory scrutiny.

3.10 An analysis of large trades in the DASL scrip (i.e. single trades of 5000 shares or more) during the period November 05, 2001 to January 11, 2002 shows the following: 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.

3.11 The above transactions and figures are based on records of trades and have not been controverted by C & C. No credible explanation has been advanced by C & C for such out-of-the-ordinary transactions.

Efforts by the SEBI investigation at fact finding were thwarted repeatedly by BBL and C & C by not responding to numerous summons issued to them. Even in the written reply to the present SCN, C & C has sought to only advance technical objections to the proceedings and has not advanced any reason which might have legitimately persuaded them to enter into such transactions. Obviously, they are skirting the substantive issues. Their submission that their involvement and participation in transactions in the DASL scrip was for a very limited period of time is bland and does not discharge the onus cast on them.

The fact that the transactions were executed for a limited period would go to show that they were out-of-the-ordinary, not fitting into their normal course of activities and that there existed definite reasons for such transactions which had not been disclosed, lest the same should be to their disadvantage. Any reasons for such unusual activity are conspicuous by their absence in the otherwise prolix reply of C & C. It should be noted that the burden of proving facts especially within the knowledge of C & C is on C & C and adverse inference can be drawn and is accordingly drawn against C & C as it has not explained these transactions at all.

3.12 The reasons for such unusual behaviour are not far to seek. As already found in the orders dated March 6, 2007, the object of DASL and BBL was to wangle unfair gains by defrauding the innocent investors by depriving them of valuable

consideration and saddling them with unlisted shares which could not legally be sold on the BSE. C & C was the most important conduit through which such shares were offloaded as seen from the tables extracted in para 2.1 (d) and was thus a necessary party in the elaborate design of offloading unlisted shares in the market. The following facts have also to be seen in this conjunction, which go to show that BBL and C & C had very close connections during the relevant period: a) BBL and C & C shared the same registered office address which is 203, Apollo Towers, 2 MG Road, Indore - 452 001.

c) As seen from the table at para 2.1(d), BBL transferred 50 lakhs shares to one Pinnacle, who is a registered sub-broker. This sub-broker is one who acted in the market for C & C and to whom C & C had separately transferred 58,75,000 unlisted DASL shares during the same period. The sub-broker had in its statement contended that even the 50 lakhs shares directly transferred by BBL to it was on account of advance pay-in for trades of C & C. This has not been controverted by C & C.3.13 All the above factors taken together point to a single conclusion, that C & C was hand-in-glove with DASL and BBL in their fraudulent effort to offload unlisted DASL shares on unsuspecting investors.

Having regard to the substantial involvement of C & C in the offloading process, it is abundantly clear that there was prior understanding in this regard between BBL and C&C. The fact that C & C eventually returned 63,88,151 DASL shares (which could not be sold on account of BSE's trading suspension in the DASL scrip) back to BBL also confirms the said finding.

3.14 It is further seen that the unlisted DASL shares were offloaded by C & C through Pinnacle (a sub-broker based in Ahmedabad; main broker being Active Finstock Ltd.), Equisearch Broking Pvt. Ltd. (EBPL - a stock broker in BSE, based in Mumbai), M/s Admiral Securities (a sub-broker with VSE Securities Ltd., who was a broker with BSE; based in Vadodara) and M/s Shree Parshwa Finance (an unregistered sub-broker during relevant period to P. Suryakant Share and Stock Brokers Pvt.

Ltd.; based in Ahmedabad). Pinnacle itself had delivered a total of 34,57,939 unlisted DASL shares in the BSE on behalf of C & C, as per the following

details:	-----Settlement		
No.	Client	Quantity	Transferred
on-----			37/2001-02 C & C
12,36,010*			
13.12.2001-----			DR/176
Pinnacle		Finstock	400
13.12.2001-----			38/2001-
02	C	& C	3,85,950
20.12.2001-----			40/2001-
02`	C	& C	5,42,299
03.01.2002-----			DR/190
C	&	C	1,20,100
03.01.2002-----			DR/192
C	&	C	4,13,600
03.01.2002-----			DR/191
C	&	C	1,92,400
03.01.2002-----			DR/193
C	&	C	3,41,750
09.01.2002-----			DR/194
C	&	C	76,770
10.01.2002-----			DR/195
C	&	C	1,49,060
12.01.2002-----			* It was

observed from the demat transaction statement of Pinnacle Finstock P Ltd. that on 13.12.2001, 12,36,010 shares were delivered to the pool account of Active Finstock P Ltd. to meet the pay-in obligation of settlement No. 37/200-02 for the ultimate selling clients C & C. Subsequently, 11 lac shares were received back from the said member on 15.12.2001, as the pay-in obligation was met by C & C from its demat account No. IN301485/10029747.

3.15 Pinnacle have stated that even 50 lakhs shares transferred to it by BBL on November 19, 2001 and another 50 lakhs shares transferred to it by Shri Manoj Ganeriwala on November 22, 2001 were towards likely transactions of C&C. This has not been contraverted by C&C. Thus, it is clear that even apart from the huge

quantities mentioned in para 2.1(d), a higher quantity was offloaded or at least partially offloaded by Pinnacle at the instance of C & C, which shares came from the demat accounts of BBL and Shri Manoj Ganeriwala. The connection that C & C had with Pinnacle in the devious exercise is clear from the substantial funding made by Pinnacle to C & C during the course of these trades. As on December 18, 2001, Pinnacle had advanced a total of Rs. 1.41 crores to C&C. Despite such huge outstanding advance, a further sum of Rs. 85 lakhs was advanced by Pinnacle to C & C on December 19, 2001 and such cash advances continued thereafter also. As on January 10, 2002, the total amount so advanced amounted to a total of Rs. 3.67 crores. No clear commercial reason was advanced by Pinnacle for such huge advances. It clearly indicates that the moneys were advanced in anticipation of the windfall profits that were expected from the delivery of huge quantities of unlisted DASL shares tendered by C & C and by BBL and Shri Ganeriwala on behalf of C&C. When further fraudulent efforts were thwarted by the BSE suspending the trading in the DASL scrip, the advances were stopped and moneys recovered from C & C by Pinnacle. The unsold unlisted DASL shares were thereupon transferred back to BBL (22,09,816 shares on January 18, 2002) and to Shri Ganeriwala (47, 11, 820 shares on January 29, 2001) at the instance of C & C. 3.16 C & C sold 23.79 lakhs unlisted shares through Equisearch in the course of various transactions out of the 1 crore shares received from BBL. It also sold another 4.95 lakhs unlisted shares through M/s Admiral Securities in a single settlement. In line with the generally observed modus operandi, Admiral Securities returned 5.05 lakhs unlisted shares which were not sold by it on January 16, 2002, immediately after the suspension of trading in the DASL scrip, back to C & C, which in turn returned them to BBL. Further, C & C had sold a net of 8.75 lakhs unlisted shares through M/s Parshwa Finance (a subbroker).

3.17 It has to be further noted that C & C had entered into synchronized trades and self-trades during the same period through Pinnacle. In the self-trades Equisearch was also involved in the other leg. From the following table it would be evident that synchronized transactions were done by C & C and other counterparties (principally one HB Stockholdings Ltd.) as many as 59 times on a single day, (resulting out of 15 orders) i.e., December 5, 2001 (apart from other days). D0171 : DG Goenka Equities Pvt. Ltd. D0486 : Merwanjee Securities

Ltd.D0062 : B.R. Jalan Securities Pvt. Ltd.D0015 : ACK Capital Management Pvt. Ltd.D0780 : Integrated Master Securities Pvt. Ltd. 3.18 It would be seen from the above table that there was a matching of the buy and sell quantities in the buy and sell orders. The almost perfect matching in all these trades with regard to quantity, price and to some extent time conclusively indicate synchronization in the logging in of orders in the system. The phenomenal regularity with which orders were matched between the same brokers and the same counter parties on as many as 59 occasions on the same day also cements this conclusion. No reasons have been disclosed by C & C for making such a large quantity of synchronized trades. The only conceivable reason in light of all the facts of the case, as brought out above, could be that C & C wanted to manipulate the market in the DASL scrip by creating a false appearance of trading to sustain investors' interest in the scrip.

3.19 The self-trades indulged in by C & C during the same period through two different brokers (Pinnacle and EBPL) are as follows: 3.20 These self-trades (on 6/12/2001 and 07/12/2001) closely following on the heels of the synchronized trades on 05/12/2001 are eloquently demonstrative of various artifices employed by C & C and Pinnacle on successive dates for creating a false appearance of trading. The idea of making such synchronized trades and self-trades was in all probability to generate interest in the DASL scrip in the market so that the unlisted shares could be disposed at the most favourable prices. It can be seen from the table that on December 06, 2001, 9 self trades were executed within a span of two hours and on the next day, 9 transactions were executed within a matter of 45 minutes.

3.21 Since C & C has no explanation regarding such synchronized trades and self trades it is clear that they were only an artifice to attract attention of innocent investors to the DASL scrip, when viewed in light of all the above facts. Taking advantage of such investor interest induced on the back of such artificial appearances, C & C offloaded DASL shares amounting to 33,33,669 in the market conveniently camouflaging them as validly listed shares. This is a highly reprehensible act which has damaged investors confidence in the market.

3.22 C & C has submitted that the trades undertaken by it in the DASL scrip were done in good faith and has sought to justify them for the reasons as detailed hereinunder: a) All their dealings in the relevant DASL shares were made through the BOLT system of BSE. b) All the shares dealt by them were in demat mode and as per CDSL byelaws, even unlisted shares can be dematerialized. There is therefore no violation while dealing in unlisted DASL shares in demat form.

c) As regards the trades done through Equisearch, they received the payment by cheque and they did not disown any trade or settlement.

3.23 A majority of manipulative or fraudulent transactions on the securities market can be given a veneer of legitimacy by following the procedural requirements relating to trading therein. Merely because a transaction was duly routed through registered intermediaries, and duly settled by the client cannot lead to the conclusion that they are not fraudulent or manipulative. The transactions albeit seemingly normal, need to be evaluated on the touchstone of what they were meant to achieve in the market. If the effect was to create an artificial appearance of trade for offloading unlisted shares to hoodwink the lay investors for unfair personal gains, such transactions would lose the cover of legitimacy and would stand exposed as fraudulent or manipulative transactions. C & C further contended that they did not deal in huge number of such unlisted shares in a fraudulent manner or with any intention to artificially raise or depress its prices or for creating misleading appearance of trading in such shares. However, as already noted, they have not given any credible reason for executing trades of such large quantities in the DASL scrip and for engaging in synchronized trades and self trades. The irresistible conclusion therefore is that the transactions of C & C in the unlisted DASL shares were fraudulent in as much as unlisted shares were palmed off to innocent investors as validly listed shares and were manipulative to the extent it indulged self trades and synchronized trades. The contention that their trades were transparent are incorrect in as much as C & C was found guilty of violation of the disclosure requirements of Regulation 7(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations for which a monetary penalty of Rs. 1 lakh was imposed by the SEBI Adjudicating Officer, by order dated August 25, 2005, and the penalty has since been paid.

3.24 C & C had also contended that there was no mechanism to identify the trades done out of unlisted shares and further submitted that when BSE or depositories had not been able to distinguish between the listed and unlisted shares, how the noticee could be held liable for the systemic flaw. This argument would have passed muster had C & C been an unwitting participant in the trades that took place in the unlisted DASL shares and further had such transactions been in sync with its other transactions in the normal course of business. However, as already noted and as admitted by the noticees themselves, the trades during the relevant period were out of the ordinary. It did not deal with such shares in similar quantity or frequency either before or after the relevant period. Further as already found above, C & C was hand in glove with BBL and DASL in their crafty design to offload unlisted shares to innocent investors. That being so, the attempt of C & C to feign ignorance about the unlisted nature of the shares does not hold water in as much as the materiality of circumstances of the case establishes it as a necessary party to the entire design. I further note that SEBI has already taken requisite action against CDSL for dematerializing the relevant shares without due verification.

3.25 C & C have further alluded to proceedings before the Hon'ble Bombay High Court following which the Governing Board of the BSE had reversed its earlier decision of annulment of trades in the DASL scrip during the relevant period. I find in this context that BSE's decision to suspend trading in the DASL scrip, its decision to refuse listing for the 10 crore DASL shares which were allotted to BBL and its decision to withhold payouts during a portion of the relevant period had not been challenged by anyone or set aside. Thus, the fact that irregularities took place in the DASL scrip during the relevant period is beyond doubt. Only the decision of the BSE to annul trades in the DASL scrip pertaining to an anterior period (November 12, 2001 to January 2, 2002) was the subject matter before the Hon'ble Court in WP No. 209 of 2003 and connected matters, which were filed by certain stock brokers of BSE who were aggrieved by the annulment. The Hon'ble Court had by its order dated February 28, 2003 passed in the said writ petitions directed the Governing Board of BSE to consider the matter afresh after giving an opportunity of hearing to the petitioners and by way of passing a speaking order. Pursuant to the directions of the Hon'ble Court, the Governing Board reconsidered

the matter and reversed its decision to annul the trades. The Governing Board however did not rule that no irregularity took place. In the order dated April 10, 2003 the Governing Board had clearly held that delivery of unlisted shares was not in conformity with the mandate of Securities Contracts (Regulation) Act, 1956, but that in view of the overwhelming equities in favour of third parties against annulment, it would not be fair to go ahead with the annulment. The Governing Board observed "No party who has acted bona fide can be penalized merely by reason of subsequent discovery of facts unknown at the time of completion of settlements." Thus, the Governing Board cannot, by any stretch of imagination, be said to have 'ratified' or 'sanctified' the transactions by the said order. Moreover, all these findings relate to innocent third parties, and cannot be invoked by an entity with an air of injured innocence which is otherwise found to be deeply involved in fraudulent manipulative design. In this view of the matter, I find that all these proceedings do not provide any mitigation to C & C in the present proceedings instituted for deciding whether the noticees are guilty of violation of the PFUTP Regulations or not.

3.26 They have also referred to other legal proceedings between one HB Stockholding Ltd. (who is the counter party client in the synchronized trades of C & C as already noted in para 3.16 above) and DASL, which I find to be totally irrelevant for purpose of the present proceedings.

They have further cited Regulations 27 and 28 of the SEBI (Depositories and Participants) Regulations, 1996 and bye-law 11 of CDSL Bye-laws and contended that unlisted securities are eligible to be dematerialised as per those provisions. This specious argument seeks to cloak a downright fraud as a legally permissible activity. What is objectionable is the act of C & C in passing off dematerialised unlisted shares as validly listed securities, taking advantage of their fungibility. This is a deliberate act calculated to deceive innocent investors and hence the argument that such securities can be legally dematerialised will not advance the case of C & C.3.27 They contended that Section 24 is not applicable in the present case and have elaborated on this contention. I find it unnecessary to deal with this contention as the present proceedings are not under Section 24 and it is for the competent court to rule on its applicability or otherwise in the relevant

proceedings.

3.28 They further contended that the powers of SEBI under Section 11B and 11(4)(b) of the SEBI Act did not extend to imposition of penalty. I find that a similar contention was advanced before the SAT earlier and was accepted by SAT in certain cases. However, I find that in an appeal against one of such cases, an absolute stay has been granted by the Hon'ble Supreme Court against the order of SAT Interim order dated March 7, 2005 in CA No. 4242 of 2005 SEBI v. Roopram Sharma. In view of the same, the said contention is of no avail to C & C.3.29 C & C has further referred to the delay caused in the present proceedings and contended that on account of loss of currency, urgency and contemporarity, such extraordinary and discretionary powers could not now be used belatedly. In this context, I find that the reasons for the delay have been the main parties themselves. As already noted, C & C and BBL had been repeatedly evading summons at the investigation stage, thereby impeding expeditious conclusion of the investigation.

During investigation and thereafter also, at every stage DASL and BBL had been approaching the Hon'ble High Court of Indore, in the process delaying proceedings against all the parties. I therefore do not find any unjustified delay in the present proceedings. For the same reasons I find that the doctrines of waiver, estoppel and resjudicata do not apply in the present case, as sought to be made applicable by the noticees.

3.30 The noticees have alluded to the proceedings taken by different regulatory authorities. The fact of existence of proceedings initiated by such different authorities only points to the substantial nature and gravity of the fraud indulged in by them. However, the question of whether the noticees are guilty of violation of the PFUTP Regulations is the question which is to be determined only in the present proceedings and not by any other authority. The other authorities may be looking into other violations, which by itself will not act as a bar on the present proceedings.

3.31 They further contended that the ultimate buyers did not take any action against them and therefore SEBI action was untenable. In this context, it would

suffice to note that the SAT has held in the matter of Ketan Parekh v. SEBI Order dated January 14, 2006 in Appeal No.2/2004 that when a person takes part in or enters into transaction in securities with the intention to artificially raise or depress the price, he thereby automatically induces innocent investors in the market to buy or sell their stocks and no separate proof in this regard is required. The synchronized trades and self trades undertaken by C & C undoubtedly fall within the ratio of the SAT in the above judgment.

The said order recognises that the market is so wide spread that it may not be humanly possible for SEBI to track persons who actually were induced to buy or sell securities and therefore holds that the law does not impose such a burden upon SEBI. I am therefore satisfied that absence of specific investor actions cannot be twisted to the advantage of the noticees. It is further an unimpeachable fact that 33,33,669 unlisted shares offloaded by C & C on the BSE trading floor were palmed off on innocent investors who continue to be saddled with them even today.

3.32 C & C further contended that they had raised objections to issuance of summons under Section 11C of the SEBI Act as the said Section was inserted only in 2002, after the alleged violations had taken place. I note that Section 11C is an enabling provision of procedural nature and as per settled principles of interpretation, it can be used even to call for information in respect of past substantive violations, provided that it was in existence as on the date of issuance of the summons. Even assuming that Section 11C cannot be so used, I note that even prior to insertion of Section 11C in the SEBI Act, SEBI had power to issue summons under Section 11(2)(i). In this context, it is also to be noted that mere misquoting of source of power will not invalidate an action where the authority had valid power under some other provision to take the same action BSE Brokers Forum v. SEBI . I further note, as elaborated in paras 3.1 and 3.2 that C & C failed to respond to various summons issued by SEBI and it had not taken any such stand at that stage.

3.33 They further contended that the power to take measures under Section 11(4) of the SEBI Act cannot be used against them as it was also inserted later in the

statute book, in 2002. I find in this regard that the proposed action against the noticees can be independently sustained under Section 11B of the SEBI Act, which is in the statute book since 1995.

3.34 They also contended that BSE's Report which was the basis for initiating investigation and the full Investigation Report of SEBI were not forwarded to them. I find in this regard that all relevant materials on which reliance was placed had already been furnished to the noticees. As also held by the SAT Mega Resources v. SEBI [2002] 36 SCL 569, furnishing of the relevant portion of the investigation report, which also incorporates the relevant confirmed findings of the BSE report, would be sufficient to meet the ends of natural justice.

3.35 The noticees have further made certain veiled allegations against SEBI, which are not substantiated and which, therefore, I find unnecessary to examine further. I further note that SCNs have been issued by SEBI against C & C and its directors with regard to dealings in the Ojas Technochem scrip alleging similar violations. A SCN has also been issued against C & C for its alleged role in manipulating price and volumes in the scrips of Top Telemedia Ltd. and Top Media Ltd. These instances were mentioned in the present SCN only as a passing reference not to prejudice, but to set the record straight.

Since a final decision has not been taken in those proceedings so far, I do not find it necessary to consider them further.

3.36 Before parting I note that C & C has referred to certain precedents, which are not relevant for the reasons mentioned below: (a) Contact Consultancy Services Ltd. v. SEBI SAT order dated November 17, 2004 in Appeal No. 138/2004 - deals with imposition of monetary penalty after directions for making public offer under Takeover Regulations.

(b) Ex-naik Sardar Singh v. UOI Deals with the doctrine of proportionality, which is not relevant at this stage.

This doctrine has been kept in mind while determining the nature of directions to be passed, as is explained subsequently.

(c) Reliance Industries v. SEBI [2004] 55 SCL 81 Bona fide error of judgment is a mitigating factor - As already found, the conduct of C & C was anything but bona fide. Submissions made by Shri Deep Trivedi 3.37 Shri Deep Trivedi has in his separate reply contended that he ceased to be a director of C & C on October 10, 2000 and was not aware of the transactions of C & C which took place later. He submits that except one party no one else had given his name and his name did not appear anywhere else in connection with the dealings in unlisted shares of DASL.

3.38 I have carefully considered the submissions made by Shri Trivedi.

I find indeed that only one sub-broker, i.e., representative of M/s Shree Parshwa Finance had mentioned Shri Trivedi's name as dealing on behalf of C & C. In the absence of any other material brought on record by investigation, it stands to reason that no case has been made out against him, excepting for an ipse dixit which is otherwise not corroborated in material particulars. Therefore, I hereby drop the proceedings as against him. Conclusion 3.39 The next question is whether the conduct of C & C 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.

3.40 C & C, 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, out of which 33,33,669 shares were introduced by C & C itself. (Apart from those offloaded on its behalf by Pinnacle and Mr. Manoj Ganeriwala). As noted above, as the shares were in the dematerialized form, they were indistinguishable from other validly listed shares of DASL. Further, the close nexus observed between C & C and BBL shows that C & C and its directors were 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 through C & C amount to 33,33,369 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 C & C and its directors are guilty of violating Regulation 3 of the PFUTP Regulations,

1995.

3.41 Further, C & C has entered into synchronized trades and self-trades which are by no means insignificant, and have thereby created artificial appearance of trading in the DASL scrip. It was also observed that there was a decline in price due to the continuous selling of unlisted shares by C & C and other entities. I therefore hold that by entering into synchronized trades and selftrades and offloading substantial quantities of unlisted shares, C & C and its directors have also violated Regulations 4(a), (b), (c) and (d) of the PFUTP Regulations, 1995.

3.42 In addition, the continued recalcitrant and defiant attitude on the part of C & C 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 offloading of the unlisted shares of DASL in BSE and hence were part of the fraud outfit designed to cheat the innocent investors.

4.2 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 that C & C and its directors, namely Shri Sharad Gujrathi, Shri B.L. Joshi and Shri Narendra Chouhan, be restrained from accessing the securities market and also prohibited from buying, selling or dealing in securities either directly or indirectly for a period of seven years from the date of this order.

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