

Sebi Vs. Ms. Himani Patel

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

Decided On : Nov-30-2007

Judge : G Anantharaman

Appellant : Sebi

Respondent : Ms. Himani Patel

Judgement :

1.1 A preliminary analysis into the buying, selling or dealing in the shares issued through Initial Public Offerings (IPOs) of various companies during the period 2003-2005, by Securities and Exchange Board of India (hereinafter referred to as SEBI) prima facie showed that, certain entities opened many demat accounts in fictitious/ benami names and the said entities had cornered/ acquired the shares of the such companies allotted in the IPOs, by making applications in fictitious/ benami names with each of the applications being of small value so as to make it eligible for allotment under the retail category. The said demat accounts opened in fictitious/ benami names are hereinafter referred to as the afferent accounts. It was further revealed that, subsequent to the allotment of IPO shares, the fictitious/benami allottees had transferred the said shares to their principals who were prima facie identified by SEBI as key operators / master account holders. The modus operandi as detailed above led to the prima facie view that the thousands of entities in whose names demat accounts and bank accounts had been opened and IPO applications made, were either benami (name lenders) or

non existent.

1.2 In the above facts and circumstances, SEBI vide an ad interim ex parte order dated April 27, 2006 inter alia directed various key operators including Ms Himani Patel not to buy, sell or deal in the securities market including in IPOs, directly or indirectly till further directions as it was inter alia found that they had prima facie violated the provisions of Regulation 3 of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (for short the FUTP Regulations) and the provisions of Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines 2000 (for short DIP Guidelines). It was further directed to treat the said interim order as show cause notice against the entities named therein and an opportunity was also provided to the said entities to file their objections, if aggrieved. SEBI also ordered for an investigation to look into the alleged violations.

2.1 Ms Himani Patel (hereinafter referred to as Ms Patel for the sake of brevity) vide letter dated nil (received by SEBI on May 16, 2006) inter alia requested for the inspection of documents relied upon by SEBI in the aforesaid ex-parte interim order and further requested for the extension of time for filing the objections. As requested by Ms Patel, SEBI granted an opportunity to her to inspect the documents, on June 19, 2006. Thereafter, vide letter dated June 26, 2006, Ms Patel inter alia stated that she was an investor in securities as well as financier to investors (loanees) who were in need of capital to make investments in the securities market. She added that she had entered into agreements mostly oral in nature with the loanees whereby, after the purchase of securities, the said loanees had transferred the securities into her demat account to discharge the obligations. She added that the consideration for transfer of the securities to her was calculated based on the cost of borrowing. She claimed that depending on the circumstances, she had either retained the securities or sold them at profit. She stated that in order to finance and to ensure the security of the amount lent, she opened joint bank accounts with the loanees and deposited money into the said accounts. She also enclosed the details of 22 joint bank accounts in Kalupur Commercial Co- operative Bank Ltd., (Bodakdev, Panchvati and Kalupur

Branches) opened by her with the purported applicants. In all such accounts, Ms Patel was shown as the first account holder. The details of some of the joint bank accounts (as per her reply) are as follows.

2.2 Ms Patel claimed that the payment for the securities purchased was made from her account, but the refunds were credited into the joint accounts. She added that the refunds were subsequently transferred to her personal account. She urged that the 61 persons financed by her were having demat accounts with depository participants of their own choice. She claimed that they had applied for a total of 635 applications to the IPO. According to her, the ad interim order dated April 27, 2006 was ultra vires of Securities and Exchange Board of India Act, 1992 (for short the Act) as there were no emergent circumstances to pass the said order. She contended that the directions under Section 11, 11B and 11(4) of the Act could be passed only after initiating an enquiry/investigation and in that context, she relied upon the judgment of the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Bhoruka Financial Services Ltd. v. SEBI.^{2.3} According to her, she had not subscribed to the shares in the IPO of Suzlon Energy Ltd. and that she had not committed any fraud which adversely affected the interest of investors. She stated that she had received shares from the allottees prior to the listing through off market transfers. According to her, she had no reason to believe that the demat accounts opened by the loanees were either benami or fictitious. She urged that it could not be said that there was parking of securities in her demat account simply because of the fact that she was the financier to the persons and that she had sold shares in the market. She contended that, she would not fall within the definition of the key operator and that SEBI had not brought on record any evidence or facts to show that the persons who transferred shares into her demat account were acting on her instructions or as part of a collective strategy. According to her, she adopted a business model wherein borrowers would sell shares to her after the allotment for a consideration that would reflect both the sale price and the cost of borrowing. She also enclosed the details of share application money financed to the loanees in the IPO of Suzlon Energy Ltd., details of application by loanees in the said IPO and the details of her joint bank accounts. She also requested for an opportunity of hearing.

2.4 SEBI granted an opportunity of hearing to Ms Patel on November 07, 2006. Shri Joby Mathew, advocate appeared before me on the said date and made submissions on behalf of Ms Patel on the lines of the aforesaid reply. Shri Navnit Patel, father of Ms Patel was also present during the course of hearing. Ms Patel was inter alia advised to produce the details of purported loanees (IPO applicants) with their respective demat account details, sample copy of the account opening form of one of the savings bank accounts, the source of funds etc. She was directed to file the said information/ documents by November 30, 2006. Ms Patel vide letter dated December 07, 2006 enclosed the details of the investors financed by her. She further stated that the funds were made available to her by her parents. She also enclosed a sample copy of the bank account (joint) opening form in her name along with others viz. Shri Hiren Ashok Kumar Patel, Ms. Trupatiben Birendra Kumar Patel and Ms. Shobhanaben Ashok Kumar Patel.

2.5 I have perused the reply of Ms. Patel, the oral submissions made on her behalf and other materials available on record. In the facts and circumstances, sole issue for consideration is, whether based on the available materials on record and considering the submissions made on behalf of Ms. Patel, the directions issued by SEBI vide ad interim ex parte order dated April 27, 2006 need to be continued, revoked or modified in any manner in so far as it relates to Ms. Patel.

3.1 At the outset, I note that Ms. Patel in her reply inter alia contended that the provisions of Sections, 11, 11B and 11 (4) of the Act could not be invoked without initiating an investigation / enquiry and that she had not received any intimation regarding the initiation of such enquiry or investigation. In this context, I note that the primary function and duty of SEBI is to protect the interests of the investors in securities and to regulate the securities market. The said duty is inter alia performed under Sections 11, 11B of the Act which is the very soul and heart of it. On a careful perusal of Section 11, it could be seen that SEBI has been mandated to protect the interests of investors in securities by such measures as it thinks fit which provide a large sweep to SEBI. The provisions of the Act such as 11B, 11(4) etc are meant to arm SEBI with authority so as to enable it effectively to exercise power and achieve the declared objectives of the Act. It is clear that a common thread runs through the various provisions of the Act to empower SEBI to take

preventive as well as punitive measures so as to protect the investors and to promote the securities market. One cannot lose sight of the fact that SEBI has to regulate a speculative market and in such a market varied situations may arise, all of which cannot be envisaged and that there may be an urgent need to pass an order. If one has regard to the aforesaid principles, it would follow that the power which has been conferred under Section 11B of the Act to issue direction are of a widest possible amplitude and are exercisable in the interests of investors. The powers of SEBI to pass orders under these sections have been judicially recognized by various judgments.

The Hon'ble High Court of Bombay in the matter of Anand Rathi v. SEBI had inter alia observed as follows: ...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...." Further the Hon'ble Court had observed "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....

3.2 As far as her contention that initiation of investigation/ enquiry is a condition precedent for passing a direction under Section 11 (4) of the Act, I note that the powers under Section 11 (4) of the Act are in addition to and not in derogation of powers under Sections 11 (1), (2), (2A) and (3) and 11B of the Act. SEBI being the regulator carries with it all the necessary powers expressed or implied which are essential to meet any exigencies, in order to protect the interest of investors. In such circumstances, the contention that the initiation of investigation/inquiry is a condition precedent for the issuance of direction under Section 11 (4) of the Act is difficult to accept.

Further, SAT, in its order dated January 08, 2007 inter alia observed in the matter of Karvy Stock Broking Ltd. v. SEBI "If the prima facie facts disclose a case for proceeding further in the matter and depending upon the nature and gravity of the wrong doing, it would decide what measures it needs to take under Section 11 to protect the securities market and also the interests of the investors. If it feels that immediate preventive action is essential, it can "restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities" with immediate effect".... The SAT further observed in the case cited supra "The provisions of the Act are basically intended to protect the interests of the investors and to promote the market. However, the Act as initially enacted provided primarily for taking promotional or protective measures. The power to take preventive or punitive measures was implicit. Now it has been expressly extended to taking even the preventive or punitive measures.... "In view of the above, we hold that the word 'inquiry' used in Section 11(4) refers to the inquiries held under Sections 11, 11B, also to the enquiry under the inquiry regulations framed under Section 12(3) and also to the inquiry held under Chapter VIA and it is during the pendency of any of these inquiries that an interim order could be passed with a view to protect the interests of investors or in the interest of the market" (Emphasis supplied). A contrary view of SAT in the matter of Bhoruka Financial Services Ltd. v. SEBI has been stayed by the Hon'ble Supreme Court of India, vide order dated August 25, 2006.

3.3 In the facts and circumstances, the contention that SEBI could not pass the ad interim directions against Ms. Patel is devoid of any merits and the same is accordingly rejected.

3.4 It is an undisputed fact that Ms. Patel had received (in her demat account) substantial number of shares which were allotted in the IPO of Suzlon Energy Ltd. from various afferent accounts through off market transfers, before listing as mentioned below: Number of afferent accounts from which shares received by Ms Patel through off market transfers 3.5 Ms Patel claimed that she had received funds (used by her to finance the investors) from her parents. She also produced the ledger copy of their accounts as reflected in her books. According to Ms.

Patel, she had received Rs.66,38,000/- from her father on October 1, 2005 and Rs.2.1 crores from her mother on October 3, 2005. However, on a perusal of the copy (as provided by her) of the statement of her bank account (account No. 00621000014) maintained with HDFC Bank, Ahmedabad, it is noticed that, a total amount of about Rs. 93.5 lakhs was credited to her aforesaid account on September 26, 2005 and September 27, 2005.

She has failed to explain the source of such funds and it remained unexplained. The above statement of accounts further shows a credit of Rs.66,38,000/- on October 1, 2005 by way of transfer from her father's account (no.0062340000789). However, her bank account transcript reveals that an amount of Rs.93 lakhs was transferred from her account to the aforesaid account of her father on September 29, 2005 from which she received back Rs.66,38,000/- on October 1, 2005. All these are in the nature of fund transfers between accounts maintained in the same branch of HDFC Bank. Therefore, the transfer of Rs.66,38,000/- by her father to the account of Ms Patel was nothing but the retransmission of the money earlier received by him from her out of unexplained credits in her Bank account. Irrespective of the source of funds for financing as claimed by her, the discussion about the bank accounts is only to drive home the point that such frequent fund transfers among accounts in the same branch of the Bank prima facie indicate her control over fund movements. The same is true of the joint bank accounts with the alleged afferent account holders, wherein she was the first account holder with equal control in the movement of funds in a make- believe arrangement. May be, it is her money or somebody else's money, but that is not the core issue at point in the present case. What is material to the instant case is whether Ms Patel had prima facie cornered IPO shares and made benefits to the disadvantage of the retail genuine investors.

3.6 Ms. Patel stated that she had opened 22 bank accounts (joint accounts) with 3 to 4 purported applicants with the Kalupur Commercial Co-operative Bank Ltd., (Bodakdev, Panchvati and Kalupur branches). In all such accounts, Ms. Patel is found to be the first account holder.

Further, some of the accounts were operated only by Ms Patel. She stated that 61 investors (financed by her) collectively made 635 applications in the IPO of Suzlon Energy Ltd. and in that context she had also given the details of the applications made by the purported investors numbering 61. It is noted that each of the said applicants filed number of applications (varying from 3 to 22) in the said IPO. Admittedly, the said applicants made multiple applications in the IPO of Suzlon Energy Ltd. The ledger account folio of the said applicants reflected in the books of Ms Patel, as submitted by her (wherein the details of the cheques given by her in respect of the said applications are indicated), also confirms such multiple applications by the alleged 61 investors. Even otherwise also the fact that there were 635 applications by 61 investors clearly indicates the existence of multiple applications to shore up the number of shares on allotment.

Admittedly, it was Ms. Patel who made the payments from her own bank account in respect of the above purported IPO applicants. I note that the application amount of Rs.48,960/- (for 96 shares per application) in respect of the IPO of Suzlon Energy Ltd. was debited to the bank account of Ms Patel. The application amount for the 635 applications in the said IPO works out to Rs.3,10,89,600/-, which was entirely met by Ms Patel. Apparently, no margin money was received from the purported applicants. Each application was for a value less than Rs.50,000/- thereby dispensing with the requirement of Permanent Account Number of the purported applicants. According to her, all the applicants had separate demat accounts with the depository participants of their choice. But the core of the matter is that there were only the 61 alleged investors behind the 635 demat accounts which detracts a great deal from the vaunted claim of separate demat accounts.

3.7 A perusal of the Ledger Account folio copy of the alleged investors shows that all the accounts have the same common features, viz. debit in the said account for application money, followed by credit for Refunded amount, followed by Journal entries (not involving any cash transactions) one by way of debit (notional) towards interest on the net loan amount and another by way of credit towards the notional value of shares after listing. The above uniform features comprising of debits and credits were designed to effectuate on record the scheme of putative loan

transaction, in the books of accounts under the control of Ms Patel, while the crucial entries of debit for interest and credit for notional value of shares on listing were Journal entries not involving any cash transactions. It is a clear case of erecting a form wherein the substance was totally different. The fact remains that she was in control of the alleged joint bank accounts as first account holder, that the entire application money came from her personal Bank accounts while the refund ultimately came to reside in her account, as submitted by her. The afferent accounts and demat accounts were created to impart credibility to a make - believe arrangement. The simultaneous off-market transfers before listing to her demat account besides exemplifying a command performance are of a piece with the general modus operandi seen in all the cases of key operators seeking to corner shares. Also, the loan theory falls to the ground on preponderance of probabilities, since no genuine investor would opt to forsake the gains on listing which are attractive and settle for a notional gain as adumbrated by the Journal entry which does not entail any cash flow.

The touted plea that the alleged afferent account holders did so for fear of losing on the first day runs counter to their projected desire to acquire the shares of Suzlon Energy Ltd. The abrupt turnaround as seen in the conduct of alleged investors to one of blasesignation to settle for a paltry notional gain is certainly out of character with the recently exhibited urge to invest in the IPO of Suzlon Energy Ltd. shares even by taking a loan, for obvious gains, while the apprehensions of the loss attributed to them ill accord with the prevailing sanguine mood on the opening day generally. Definitely such an explanation is opposed to human probabilities and passes comprehension, while not fitting into any credible logic based on prudence. The fact remains that the share price was at Rs.692.85/- at the end of first day of listing as against the issue price of Rs.510/-.

The same pattern was noticed in all the 21 IPOs which were examined.

Therefore, it would take extreme naivete to subscribe to the theory as canvassed that the alleged investors were keen to transfer the shares for a notional gain, when they could have easily paid off the loan and the derisive interest amount from a windfall to be gained on listing of the shares. Therefore, the weird

proposition taxes one's credence while the juggle with book entries was meant to mask an egregious attempt to corner the shares which Ms Patel would not have got on her own, by any stretch of imagination. The whole case is about cornering of shares and the materials garnered on record coupled with the appreciation of the nuances of the game plan (seen in other cases as well) prima facie reveal that Ms Patel created documents to give a veneer of acceptability to an otherwise blatant case of cornering of shares for profits, which is not denied.

3.8 A perusal of the demat accounts details of the purported applicants (as furnished by Ms Patel) indicate that they had opened number of accounts with a specific feature i.e. common address. Some of the common addresses noticed are 47, Subhash Nagar, Sanand, 1160 Vanivad, Saraspur, Ahmedabad, 1160 Lavarsheri, Saraspur, Ahmedabad etc. The pattern as above is of a piece with the modus operandi noticed in the cases of other key operators as well which was the very staple of the major irregularities in the allotment process of 21 IPOs leading to cornering of shares by a few to the detriment of retail investors.

Further, the payments made by Ms Patel in respect of the IPO applications (of the purported applicants) out of her bank accounts and the subsequent off market transfers of allotted shares to her demat account, majority of which were credited just before the date of listing would prima facie indicate her complicity in the entire game plan, meant for the purpose of cornering the IPO shares to the detriment of the retail genuine investors.

3.9 Ms Patel is prima facie found to be one of the key operators (as per the interim order of SEBI) who had received off market credit of shares of 500 or more dematerialised account holders in the IPO's of Suzlon Energy Ltd. In such a situation, her role has to be seen in the context of the large scale cornering of IPO shares at the time of issue that substantially interfered with the allotment process, tweaking it unfairly in favour of a few. Ms Patel has not disputed the credit of IPO shares as mentioned in the table at para 3.4.

3.10 According to Ms. Patel, she had received such large number of shares of Suzlon Energy Ltd. from the persons, who had borrowed money from her. She also claimed that the said borrowers were having their own demat accounts and

therefore, they could not be treated as afferent account holders. In all the cases of key operators, the afferent account holders had demat account, but it was seen that such accounts were either fictitious or represented by name lenders. Ingeniously, Ms Patel has invented a perfect fit to match the ebb and flow of the major sequence of the case with a view to obtruding loan theory with gaping holes. The fact remains that the application money was paid out of the bank accounts of Ms Patel, that the refunds were finally credited to her bank account, that there were simultaneous off market transfers of the allotted shares to the demat account of Ms Patel. Through a fair market practice, one could not have obtained such IPO allotments in large numbers as mentioned in the table at para 3.4. Admittedly, Ms.

Patel had received substantial number of IPO shares through off market transfers from numerous afferent account holders. Any market practice which facilitates cornering is an abomination. Prima facie, the cornering of shares as happened in this case can not be treated as a normal market practice. The abuse of allotment process for cornering shares in unjust enrichment smacks of a venality of the worst order and whoever participated in the same either on their own or on behalf of some financiers or jointly is tarred with the same brush and they can not be allowed to seek legitimacy for their unfair shenanigans by making a facile plea that she had only financed to the people who had made applications in the IPOs. The contention that the role of Ms.

Patel was only to the extent of financing money to the individual borrowers in making IPO application is unacceptable in the facts and circumstances of the case. There is no satisfactory evidence in support of the loan arrangement even though the money financed by her was to the tune of crores of rupees. The fact remains that Ms Patel alone paid for the IPOs out of her Bank Account. Further, it was Ms Patel only who received large number of IPO allotted shares as mentioned above, immediately after the allotment through off market transfers before the listing of the said shares. Besides, she either retained the shares or sold it for profits.

3.11 What more, the entire control over funds and movement into and out of afferent accounts have remained only with Ms Patel, thereby prima facie indicating

that such afferent accounts are just conduits for receiving shares on allotment and retransmitting them back to Ms Patel upon allotment in a make- believe arrangement to induce the impression that there were beneficiaries behind those accounts which was just a myth. Though the entire edifice has been built on such afferent account holders, they are hardly seen in action excepting that their names and addresses helped create and complete the paper work and documentation.

Therefore, all the exercise to reconstruct the case history to invest it with the trappings of a financial transaction is just an after thought to give a veneer of acceptability to unmitigated market abuse festering with all its enormity and gravity. Further, such an attempted rejig does not detract from what really transpired with the IPO allotment to the detriment of retail investors. Admittedly, the shares allotted to the purported applicants in the IPO of Suzlon Energy Ltd. were credited to the demat account of Ms. Patel through off market transfers before listing of the said shares. Any market practice which favours abusing the IPO allotment process (at the cost of genuine retail investors) through cornering and offloading on listing for raking in unfair gains can not be a standard or bench mark to defend such execrable activity hurting the retail investors by depriving them of their legitimate dues.

3.12 The circumstances of the present case prima facie indicate that even if the demat accounts existed in the name of the respective account holders (as contended by Ms Patel), they acted as mere name lenders, as the money for their IPO applications was debited from the account of Ms. Patel. Further, immediately after the allotment the shares were credited to her demat account through off market transfers.

The above, coupled with the fact that Ms. Patel stood to gain by such transfers, prima facie shows that she had made use of number of demat accounts which appear to be under her control, for the purpose of cornering such shares to the detriment of the retail genuine investors.

She is prima facie an unjust beneficiary of the entire transactions with or without the others.

3.13 Further, the conduct of a market participant has to be appraised in the overall context of the happenings in the market at the material point of time and the individual involvement can not be viewed in isolation. The facts and circumstances, would prima facie indicate that it was Ms. Patel who had made the payments in respect of numerous applications and upon receipt of IPO allotment in the demat accounts of the purported applicants, she had got the shares transferred to her demat account through off market transactions. Thus, prima facie, she had cornered IPO shares meant for retail investors. Also any suggestion attributing innocence to the parties involved in such transactions would give rise to an untenable situation where certain other third persons/entities alone would be responsible for the irregularities and none else. Apparently, Ms Patel had full control over the afferent accounts which have been used for the share transactions for the purpose of cornering IPO shares and the same prima facie establishes the role of Ms. Patel in cornering IPO shares to the detriment of genuine retail investors in retail quota.

3.14 The prima facie fact remains that the afferent accounts were pressed into service to corner shares with own money or borrowed funds for wangling a patently unfair advantage which no market practice can either bless or anoint. Any attempt to morph it to make it appear financing transaction is at once mischievous and beguiling and needs to be frowned upon, while the case history in the broad picture of IPO manipulation reeks of vilest of manipulative intent. It is very difficult to unravel all the threads in the tangled skin of the abuse of the IPO allotment process, since the intentions of the players are shrouded in secrecy and stealth. There can be no direct evidence to fathom the same, but it has to be a matter of inference from the attendant circumstances of the case which prima facie establishes that there was cornering of the shares by certain players either on their own or in concert with others in an abuse of the IPO allotment process.

The manner how it was executed through fictitious afferent accounts and exercise of control over them to facilitate off - market transfers on allotment has all the ingredients of a devious design and the same definitely casts a reflection on the conduct of parties including Ms.

Patel which can by no stretch of imagination be regarded as a fair market practice. The receipt of such large number of shares through off market transfers before listing from various afferent accounts cannot be considered as a normal market practice. Ms Patel in her reply stated that she had received shares allotted to the purported applicants in the IPO of Suzlon Energy Ltd through off market transfers prior to the listing. She even stated that depending on the circumstances, she had either retained the securities or sold them at profit. This would indicate that the purported applicants were either fictitious or name lenders and their role was limited to the extent of making the IPO applications. Therefore, the contention that SEBI had not brought on record any evidence to show that the persons who had transferred shares to her demat account were acting on her instructions, is out of context in the facts and circumstances. Further, the main thrust of the case is whether there was cornering of shares to the detriment of common investors and all other theories including one of financing were meant to obfuscate the core issue by imparting a different spin to the course of the case.

3.15 Thus, it prima facie appears that Ms. Patel had complete control over the dematerialized accounts held in the names of fictitious / benami entities and those fictitious / benami entities were merely name-lenders. Proof of manipulation almost always depends on inferences drawn from a mass of factual details. Findings must be gathered from patterns, nature of the transactions etc. 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. 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. The legal proof in such circumstances partakes the character of a prudent man's estimate as to the probabilities of the case. The SAT has observed in the matter of Ketan Parekh v. SEBI: ...Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases

may not be available....

3.16 In view of the above, it is apparently seen that Ms. Patel had played a major role in cornering the shares and inter alia thereby prima facie violated the provisions of FUTP Regulations and DIP Guidelines. Ms. Patel could not adduce anything convincing to rebut such a prima facie finding. On the other hand, the available records prima facie establish the role of Ms. Patel in cornering the shares in IPO allotment to the detriment of the genuine retail investors for the purpose of making unjust enrichment. I am, therefore, convinced that there are reasonable grounds to confirm the ad interim order dated April 27, 2006 against Ms. Himani Patel having her address at C/o Sunrise Fincap Ltd. B-802, Premium House, Opp. Gandhigram Railway Station, Ashram Road, Ahmedabad - 380009.

4.1 Therefore, in exercise of the powers delegated to me in terms of Section 19 read with Sections 11, 11B and 11(4) of the Securities and Exchange Board of India Act, 1992, I hereby confirm the ad interim order of Securities and Exchange Board of India dated April 27, 2006 against Ms. Himani Patel.

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