WTM/SR/IVD/ID-2/12/04/2014

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER

ORDER

Under sections 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 11(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, against Dipti Kirit Parekh (Pan No.: ACGPP6952J), in the matter of Spice Communications Limited.

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1. Spice Communications Limited ("**SCL**"), a company incorporated under the Companies Act, 1956, came out with an Initial Public Offering ("**IPO**") of 11,31,11,111 equity shares of 10 each issued at a premium of 36 per equity share. The Issue, which was subscribed 37 times (3.83 times in the retail individual investor ("**RII**") category), opened on June 25, 2007 and closed on June 27, 2007.

2. Securities and Exchange Board of India ("**SEBI**") observed that certain entities who had applied for and were allotted shares in the RII category in the IPO of SCL, which was listed on the Bombay Stock Exchange ("**BSE**") on July 19, 2007, had immediately transferred those shares, upon listing, to certain operator(s) thereby enabling cornering of such shares in the RII category.

3. In view of the above, SEBI had conducted an investigation in respect of the IPO of SCL, which *inter alia* revealed that Dipti Kirit Parekh ("**Noticee**") had cornered shares issued in the IPO of SCL, which were meant for subscription by RIIs, by assisting in creating false applicants; funding and managing applications and subsequently selling such shares thereby making an unlawful gain of 1,28,563.12 on the price difference between the IPO price and the listing price of the shares of SCL.

4. On the basis of findings made in the investigation, a Show Cause Notice ("**SCN**") dated December 17, 2012, was issued to the Noticee under sections 11(4) and 11B of the SEBI Act, 1992 ("**SEBI Act**"), calling upon her to show cause as to why appropriate directions including restraining her from buying, selling or dealing in securities for a specified period, should not be issued against her for the violations alleged in the SCN. The

Noticee filed her reply to the SCN vide letter dated December 31, 2012. Subsequent to the issuance of SCN, an opportunity of personal hearing was granted to the Noticee on March 20, 2013. Upon a consideration of the SCN issued to the Noticee, her reply to the same alongwith the submissions made by her authorised representatives and also other relevant material available on record, SEBI vide Order dated May 15, 2013, disposed of the SCN with the following directions –

*"I, therefore, in exercise of the powers conferred upon me by virtue of section 19 read with section 11(4) and 11B of the SEBI Act and regulation 11(1) of the PFUTP Regulations, 2003 (SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003) ("**PFUTP Regulations**"), restrain the Noticee from buying, selling or otherwise dealing in securities, directly or indirectly, for a period of two years."*

5. Thereafter, the Noticee filed an appeal before the Hon'ble Securities Appellate Tribunal ("**SAT**") (Appeal No. 154 of 2013) challenging the abovementioned Order dated May 15, 2013. The Hon'ble SAT disposed of the aforesaid appeal vide Order dated January 31, 2014, with the following directions –

"6. … we deem it proper to set aside the impugned order dated May 15, 2013 and direct Whole Time Member to pass fresh order in accordance with law after affording a personal hearing to the Appellant within a period of two months from the date of receiving this order. We make it clear that ban imposed upon Appellant by impugned order dated May 15, 2013 however, shall continue for a period of two months from the date of receipt of this order by Appellant. We continue the ban imposed by Whole Time Member, because, from bank statements annexed to the show cause notice it is seen that Appellant had transferred funds to several others prior to their applying IPO shares of Spice Communications Ltd and inspite of opportunities Appellant had failed to explain the same before the Whole Time Member.
7. Appellant is directed to cooperate with Whole Time Member in passing fresh order on merits. It is made clear that if Whole Time Member fails to pass fresh order on merits within two months of receiving copy of this order, ban imposed by Whole Time Member would automatically come to an end."

6.1 Pursuant to receipt by SEBI of a certified copy of the abovementioned SAT Order from the SAT Registry i.e. on February 13, 2014, an opportunity of personal hearing was granted to the Noticee on February 26, 2014. Prior to the aforementioned personal hearing, the Noticee filed written submissions dated February 24, 2014, with SEBI. During the aforesaid hearing, the Noticee had made submissions through its authorised

representative i.e. M/s Ravikumar Varanasi & Co, Advocates; and considering the representations advanced on behalf of the Noticee, the Noticee was directed to –

"file the details of transactions (including dates of application of shares in the IPO of SCL, details of allotment of shares, dates of transfer of shares in off–market, dates of receipt of payment) with regard to Ajay Mansukhlal Rajani, Anwarkhan Pathan, Babubhai S. Jadeja, Hansaben Vinodbhai Parmar, Sanjay Balkrishna Dave, Yogesh Nathalal Parmar and Yogeshbhai Namakul Bhatt."

6.2 The Noticee submitted only some of the details i.e. contract notes for transactions in her name, printouts of statement of ledger and bill/delivery notes maintained by her for certain entities, vide letter dated March 7, 2014.

7. **Submissions made by the Noticee.**

In her letters dated February 24, 2014 and March 7, 2014, –

i. The Noticee denied cornering of shares and submitted that only off–market shares were purchased from various allottees who were known friends and relatives after the IPO.
ii. No IPO had been funded by the Noticee in respect of any the allottees and the payments received or given to the allottees were in respect of off–market transactions for purchase of shares.
iii. The Noticee submitted that cornering of shares was not defined in Regulations or SEBI Guidelines. It is subjective factor and the actual gains made by Noticee is a very small amount compared to the notional gain mentioned in the SCN.

8. I have considered the SCN issued to the Noticee, the Order dated January 31, 2014 of the Hon'ble SAT, Noticee's letters dated February 24, 2014 and March 7, 2014, the submissions made by the Noticee through her authorised representative during the personal hearing before me on February 26, 2014 and all other relevant material available on record. In light of the same, I shall now proceed to deal with the charges levelled against the Noticee in the SCN.

9. **Consideration of Issues and Findings –**

9.1.1 As per the SCN, the Noticee is alleged to have cornered shares issued in the RII category of SCL's IPO, which were meant for subscription by RIIs, by assisting in creating false applicants; managing and funding applications in such IPO. Shares of SCL which were allotted to such applicants were alleged to have been transferred to the Noticee through off–market transfers. The Noticee is alleged to have then sold such shares in the open market, on the date of listing, thereby making an unlawful gain of 1,28,563.12 on the price difference between the IPO price and the listing price of the shares of SCL.

9.1.2 On the date of listing i.e. July 19, 2007, the shares of SCL opened at 55.75 and closed at 60.65, with a highest trading price of 67.05 and a lowest trading price of 48.50. On that date of listing of SCL and subsequently thereafter on July 20–21, 2007, the Noticee received 12,457 shares of that company, through off–market transfers from 38 allottees who were allotted shares in the RII category of SCL's IPO. The Noticee also purchased shares of SCL on the aforesaid date of listing. I note from the SCN that on July 19, 2007 i.e. the date of listing, the Noticee sold 13,607 shares of SCL at an average price of 56.16.

9.1.3 It is observed from the SCN that of the above-referred 38 allottees, 2 allottees viz. Mr. Anwarkhan Mahmadkhan Pathan (PAN No. i.e. AJEPP6373J) [who was also funded by the Noticee] and Mr. Anwarkhan Mohamadkhan Kureshi (PAN No. i.e. ARZPK0998F), were allotted 141 shares each in the IPO of SCL and such shares were subsequently transferred to the Noticee through off-market transfers. The PAN Card details of each of these allottees (which was submitted as part of their applications for shares in the IPO of SCL), *reflected the father's name as Mr. Mahmadkhan Jamal Khan Pathan and the date of birth as June 10, 1962*. Further, *both Pan Cards had the same photographs*. This leads to a conclusion that it was only one individual holding 2 Pan Cards, who was allotted a total of 282 shares, by virtue of having made fictitious applications in the IPO of SCL. The Noticee had then accepted such shares from the aforesaid individual through off-market transfers and subsequently sold them in the open market.

9.1.4 As per the SCN, the Noticee is stated to have introduced one of the above-referred 38 allottees to the depository participant i.e. Rajkot Nagarik Sahakari Bank. Further, in the delivery instruction slips of 13 such allottees, a common telephone number i.e. 2461190,

was mentioned. In the account opening form of one of the allottees i.e. Ms. Kavita Ajaybhai Chandrana, as obtained from the concerned depository participant, the aforesaid phone number alongwith another telephone number i.e. 2470265, were also mentioned. From the records obtained from Bharat Sanchar Nigam Limited, Gujarat Telecom Circle Directory, both these telephone numbers were registered in the name of Mr. Kirit Manilal Parekh, who is the Noticee's husband. As is apparent from the aforementioned, the Noticee clearly assisted in creating applicants for ensuring fictitious applications in the RII category of the IPO of SCL.

9.1.5 During the course of investigation, SEBI issued letters dated November 27, 2009, to all the above mentioned 38 allottees seeking information/clarification/details regarding the source of funds for making applications in the IPO of SCL, reasons for the off–market transfer of shares to the Noticee alongwith the details of consideration received for such transfer, their relationship with the Noticee, their residential address alongwith proof thereof, whether they had availed of any loan, copy of their bank statement highlighting payment/refund and also a copy of their PAN Card. Replies were received from only 20 such allottees; further, while 16 allottees did not respond at all, letters to 2 such allottees were returned as undelivered. From the letters forwarded to SEBI by the 20 allottees, replies were made in an identical and standardized typed format and had statements such as – *"I have applied in the IPO and I have applied my Rs not loan", "I have got my full payment from D K Parekh",* etc. Further, where handwritten details were provided, such details appeared to have been created by the same hand. With regard to the typed-written sentence in their replies i.e. *'Relation with D K Parekh'*, certain allottees had indicated *"Friendship"* while others mentioned *"Relatives*". Having regard to the similarity in the replies of the 20 allottees, a reasonable inference can certainly be drawn that the Noticee had facilitated and managed the same. Further, in her submissions, the Noticee also confirmed that common replies were prepared in respect of the said allottees.

9.1.6 The account statement of the Noticee's bank account with the Co-op Bank of Rajkot, Rajkot Branch, revealed fund transfers to 29 of the above-referred 38 allottees. As borne out from the SCN and on the basis of which allegations have been made therein, **Table A** below provides a detailed statement of the no. of shares applied by/application amount/shares allotted/amount paid/refund amount received by the aforesaid 29 allottees in the IPO of SCL alongwith the amount received from/paid to the Noticee.

Table A								
DATE	**NAME**	**No. Of Shares Applied In IPO of SCL**	**Application Amount in**	**No. Of Shares Allotted In IPO of SCL**	**Amount paid for the IPO**	**Refund amount in**	**Amount received from the Noticee**	**Amount paid to the Noticee**
6-Jun-07	Ajaybhai Mansukhlal Rajani	270	24840	141	6486	18354	17920	
6-Jun-07	Ajaybhai Mansukhlal Rajani						8952	
12-Jul-07	Ajaybhai Mansukhlal Rajani						18930	
24-Jul-07	Ajaybhai Mansukhlal Rajani						7555	
30-Jul-07	Ajaybhai Mansukhlal Rajani						6454	
							59811	
15-Jun-07	Anwarkhan M Pathan	540	24840	141	6486	18354	45943	
13-Jul-07	Anwarkhan M Pathan						39000	
19-Jul-07	Anwarkhan M Pathan						20600	
28-Jul-07	Anwarkhan M Pathan						41920	
							147463	
24-Jul-07	Artiben Arunbhai Mehta	2160	99360	564	25944	73416	28165	
							28165	
14-Jul-07	Arunbhai J Mehta	2160	99360	564	25944	73416	28165	38543
19-Jul-07	Arunbhai J Mehta							22666
24-Jul-07	Arunbhai J Mehta						28165	
							28165	**61209**
1-Jun-07	Babubhai Sajubhai Jadeja	2160	99360	564	25944	73416		150000
4-Jun-07	Babubhai Sajubhai Jadeja						16755	
4-Jun-07	Babubhai Sajubhai Jadeja						200675	
5-Jul-07	Babubhai Sajubhai Jadeja						23265	
7-Jul-07	Babubhai Sajubhai Jadeja						496346	
							737041	**150000**

12-Jun-07	Bachubhai Bhagwanjibhai Patel	2160	99360	564	25944	73416	8400	
5-Jul-07	Bachubhai Bhagwanjibhai Patel						9690	
12-Jul-07	Bachubhai Bhagwanjibhai Patel						194745	
25-Jul-07	Bachubhai Bhagwanjibhai Patel						27601	
							240436	
5-Jul-07	Chatrabhujbhai k Hansalia	1080	49680	282	12972	36708	6062	
12-Jul-07	Chatrabhujbhai k Hansalia						16576	
14-Jul-07	Chatrabhujbhai k Hansalia						11577	
24-Jul-07	Chatrabhujbhai k Hansalia						13801	
28-Jul-07	Chatrabhujbhai k Hansalia						8407	
							56423	
25-Jul-07	Dipali Sunilbhai Popat	405	18360	135	6210	6210	8009	
12-Jul-07	Hansaben Mansukhbhai Rajani	270	12420	135	6210	6210	5491	
24-Jul-07	Hansaben Mansukhbhai Rajani						7421	
7-Jun-07	Hansaben Vinodhbhai Parmar	540	24840	142	6532	18308	14906	
26-Jul-07	Hansaben Vinodhbhai Parmar						15153	
24-Jul-07	Ismailbhai Mamadbhai Pipervadia	270	12420	135	6210	6210	5768	
24-Jul-07	Ismailbhai Mamadbhai Pipervadia						7102	
25-Jul-07	Jagdishbhai Ramjibhai Desai	675	31050	176	8096	22954	1895	
24-Jul-07	Jatin R Jasani	2160	99360	564	25944	73416	28165	
24-Jul-07	Kasambhai Mamadbhai Pipervadia	270	12420	135	6210	6210	5768	
24-Jul-07	Kasambhai Mamadbhai Pipervadia						7102	

20-Jul-07	Kruti Jasani	2160	99360	564	25944	73416		75000
24-Jul-07	Kruti Jasani						28165	
25-Jul-07	Kruti Jasani							30000
12-Jul-07	Mahesh Mansukhbhai Rajani	270	12420	135	6210	6210	5491	
24-Jul-07	Mahesh Mansukhbhai Rajani						7428	
24-Jul-07	Manishaben J Jasani	2160	99360	564	25944	73416	28165	
27 Sep 07	Manishaben J Jasani						10714	
12-Jul-07	Nathabhai D Kotadiya	1080	49680	282	12972	36708	50000	
13-Jul-07	Nathabhai D Kotadiya						68561	
24-Jul-07	Nathabhai D Kotadiya						14849	
28-Jul-07	Nathabhai D Kotadiya						7994	
31-Jul-07	Nathabhai D Kotadiya						10713	
24-Jul-07	Nazirbhai Ismailbhai Piparvadia	270	12420	135	6210	6210	5768	
24-Jul-07	Nazirbhai Ismailbhai Piparvadia						7102	
12-Jul-07	Rameshbhai N Kotadiya	1080	49680	282	12972	36708	50000	
13-Jul-07	Rameshbhai N Kotadiya						55505	
24-Jul-07	Rameshbhai N Kotadiya						16046	
24-Jul-07	Ramnikbhai Jasani	2160	99360	564	25944	73416	28165	
24-Jul-07	Rekhaben Harishchandra Danesha	1080	49680	282	12972	36708	13941	
1-Jun-07	Sanjay Balkrishna Dave	2160	99360	564	25944	73416		90000
1-Jun-07	Sanjay Balkrishna Dave							90000
18-Jun-07	Sanjay Balkrishna Dave							20000
26-Jun-07	Sanjay Balkrishna Dave						20000	
28-Jun-07	Sanjay Balkrishna Dave						99360	

28-Jun-07	Sanjay Balkrishna Dave						99360	
5-Jul-07	Sanjay Balkrishna Dave						90000	
10-Jul-07	Sanjay Balkrishna Dave						90020	
10-Jul-07	Sanjay Balkrishna Dave						90020	
10-Jul-07	Sanjay Balkrishna Dave						90020	
10-Jul-07	Sanjay Balkrishna Dave						90000	
10-Jul-07	Sanjay Balkrishna Dave						90000	
10-Jul-07	Sanjay Balkrishna Dave						90000	
10-Jul-07	Sanjay Balkrishna Dave						90000	
10-Jul-07	Sanjay Balkrishna Dave						90000	
10-Jul-07	Sanjay Balkrishna Dave						400000	
11-Jul-07	Sanjay Balkrishna Dave						400000	
14-Jul-07	Sanjay Balkrishna Dave						27750	
14-Jul-07	Sanjay Balkrishna Dave						27750	
14-Jul-07	Sanjay Balkrishna Dave						27750	
20-Jul-07	Sanjay Balkrishna Dave						100000	
23-Jul-07	Sanjay Balkrishna Dave						35000	
							2047030	
12-Jul-07	Shantaben Patel	2160	99360	564	25944	73416	194529	
14-Jul-07	Shantaben Patel						12749	
25-Jul-07	Shantaben Patel						24509	
12-Jul-07	Smitaben Mahesh Rajani	270	12420	135	6210	6210	18352	
24-Jul-07	Smitaben Mahesh Rajani						7681	
30-Jul-07	Smitaben Mahesh Rajani						12320	
28-Jul-07	Vinodbhai Pragaibhai Parmar	540	24840	142	6532	18308	7859	
19-Jun-07	Yogesh Nathalal Parmar	270	12420	135	6210	6210	10659	
20-Jul-07	Yogesh Nathalal Parmar						11595	
23-Jul-07	Yogesh Nathalal Parmar						3033	

2-Jun-07	Yogeshbhai Namakul Bhatt	675	31050	176	8096	22954	14683	
11-Jul-07	Yogeshbhai Namakul Bhatt						40033	
24-Jul-07	Yogeshbhai Namakul Bhatt						10268	

i. From Table A above, it is observed that fund transfers were made by the Noticee from her bank account to several individuals who were allottees in the IPO of SCL. Herein, it may be pertinent to mention that the Noticee admittedly made fund transfers to 8 individuals who were allottees in the IPO of SCL, viz. Ajaybhai Mansukhlal Rajani, Anwarkhan Pathan, Babubhai Sajubhai Jadeja, Bachubhai Bhagwanjibhai Patel, Hansaben Vinodhbhai Parmar, Sanjay Balkrishna Dave, Yogesh Nathalal Parmar and Yogesh Namakul Bhatt, prior to the IPO of SCL i.e. Issue opened on June 25, 2007 and closed on June 27, 2007.

ii. Further, from the SCN, it is also observed that the Noticees had infused funds to the bank accounts of certain of the above–referred 38 allottees, whenever funds in such accounts stood exhausted. For example,

a. Upon an examination of the bank account of one of the allottees viz. Rashmi Jasani, it was observed that prior to her application for shares in the IPO of SCL, she had received a refund of 99,750 on June 23, 2007, from the IPO of Meghmani Organics Limited. As a result of such refund, the balance in her account rose from 9,539.63 to 1,09,289.63. Thereafter, the said allottee made an application for 2160 shares in the IPO of SCL. The application amount of 99,360/- was debited from her account on June 27, 2007, pursuant to which, she was allotted 564 shares of SCL. The allottee subsequently received a refund of 73,416/- on July 17, 2007, from the said IPO as a result of which, the balance in her account became 75,862.63. It was observed that on July 24, 2007, the Noticee had transferred funds from her account amounting to 28,165, to the allottee's account taking the balance in such account to approximately 1.04 Lakh. Immediately thereafter, the allottee was found to have made an application of 97,920 in the IPO of CBI which was again debited from her account on July 31, 2007.

b. It was also observed from the bank account of another allottee viz. Mr. Rameshbhai Kotadiya that on June 23, 2007, which was prior to his application in the IPO of SCL, he had deposited an amount of 49750. Subsequent to the said deposit, the balance in his account rose from 1087 to approximately 50000. The allottee then made an application for 1080 shares in the IPO of SCL and an application amount of 36708 was debited from his account on June 30, 2007. He was allotted 282 shares of SCL and subsequently, received a refund of 36708 on July 19, 2007. The balance in his account after receipt of this refund amount from SCL was 51520. On July 14, 2007, it is observed that the Noticee had transferred funds from her account amounting to 55505, to the allottee's account taking the balance in such account to approximately 1.14 Lakh. Immediately thereafter, the allottee was found to have made applications in 2 IPOs for 98000 on July 11, 2007 and 99900 on July 17, 2007, respectively.

c. Upon a consideration of the above, it apparent that the accounts of the aforesaid allottees appeared to be running accounts maintained by the Noticee with periodical infusion of funds. This fact also indicates that the Noticee was aware of the short–fall in the account of the allottees and had infused funds to the extent of such short–fall, as and when required.

iii. I note from the bank statements that out of the 38 allottees from whom the Noticee received off–market transfers, only 25 allottees received consideration from the Noticee, after sale of shares of SCL. With respect to the remaining allottees, there is no mention about the receipt of payments. Further, it is observed that on July 20 and July 21, 2007, the Noticee received shares from the 38 allottees as off–market transfers. From Table A, it is observed that the consideration paid by the Noticee to 13 allottees therein, started only from July 24, 2007, that is 3-4 days after the transfer of shares in off market by these allottees to her. In the case of Jatin R Jasani, Kruti Jasani, Manishaben Jasani, Ramnikbhai Jasani, the fund transfers took place only on July 24, 2007. I note that the consideration for off-market transfers are to be received within 24 hours of off–market transfer of shares as per section 13 and other provisions of the Securities Contract (Regulation) Act, 1956 (hereinafter referred as **"SCRA"**). The manner of sale and

purchase of the aforesaid shares by the Noticee appear to be irregular since she failed to explain the off–market transactions to her account and whether they were done within the time–frame mandated under the provisions of the SCRA Act.

9.1.7 I note that in these proceedings, the Noticee has made the following submissions –

i. SEBI, vide letter dated September 19, 2007, sought certain information from the Noticee including information regarding the IPO of SCL. Vide letter dated September 24, 2007, the Noticee replied to SEBI *inter alia* stating:

"I am investor… I have short selling Spice Commu. On listing day Dt. 19-07-07 and I have no share. So I collect this share from my friends and relatives. I have borrowed this share.
And I have sold this share at two brokers.

1) *Ajay Natvarlal Secu. P. Ltd. Neg. 5257 Bill No. 78-479 SEBI Regn. No. INB 0110585356 Code No. 30122. My code no. is A 575.*
2) *SKSE SECU. Ltd No. 7050 share vide Bill No. BW/078144353 B.W. 0708078 SEBI No. INB 011 07632.*

I have given all party and my friends' payment by cheque.
All this party I have considered payment."

ii. Thereafter, in her reply to the SCN, vide letter dated December 31, 2012, the Noticee *inter alia* submitted:

"It is true that Spice Communications Limited came out with a public issue in June 2007. I had also applied in this Public Issue. Since it is presumed that there is a meager chance to get allotment as it is oversubscribed, I had asked the people of my friend circle to spare me the shares if they get allotment in the IPO of Spice Communications Ltd. They willingly offered me their allotment of shares. Accordingly, I had received to my demat account 12,457 shares of the said IPO through off market from 38 allottees immediately on listing. On a normal trading practice, I had sold some shares in the market and also purchased some shares. As such, there was no malafide intention of price trigger.
The allottees of shares to my demat account through off market had also not any malafide intention. But, they transferred their shares on a normal trading practice.
The above practices are all on record and I had not done any unlawful trades for attracting any investigation by SEBI. However, in future, I will be more vigilant while trading."

iii. Subsequently, vide letter dated May 17, 2013 i.e. two days immediately after the SEBI Order dated May 15, 2013, the Noticee *inter alia* submitted:

"Never did I conceal any fact and figure and mislead the process of inquiry. In fact, I have been candid enough to admit that all the 38 allottees were my clients and they transferred the shares to my account so that I could sell their shares and give them their due of profit arising from the sale."

iv. In her submissions dated February 24, 2014 and March 7, 2014, the Noticee *inter alia* submitted:

"… only off–market shares were purchase from various allottees, who are known friends and relatives after the IPO has been completed … payments made and received by the Noticee in her bank account are towards the various off–market purchases and sales done by the allottees from time to time and not for the purpose of application of IPO of SCL as alleged.
… The payments that were given to the allottees or received from the allottees were in respect of off–market transactions of purchase (market sales) of shares from the persons who were holding shares for long time and selling in the off–market through the Noticee and some of the persons desire to buy shares in off–market from the Noticee hence the Noticee purchased in the market and sold to some of allottees."

v. From the aforesaid, it is clearly evident that the Noticee has time and again changed her stance in the instant matter.

a. For example, in her earlier replies to SEBI dated September 19, 2007 and December 31, 2012 respectively, the Noticee submitted: *"I am investor… I have short selling Spice Commu. On listing day Dt. 19-07-07 and I have no share. So I collect this share from my friends and relatives. I have borrowed this share."* and *"It is true that Spice Communications Limited came out with a public issue in June 2007. I had also applied in this Public Issue. Since it is presumed that there is a meager chance to get allotment as it is oversubscribed, I had asked the people of my friend circle to spare me the shares if they get allotment in the IPO of Spice Communications Ltd. They willingly offered me their allotment of shares."* From the aforesaid, it can clearly be concluded that the Noticee was entirely an investor in the securities market and borrowed shares in order to meet commitments arising out of short–selling without even

having the requisite number of shares for delivery. Further, the Noticee had borrowed such shares since she knew there was a possibility of a smaller allotment for her in the IPO of SCL on account of likely oversubscription in that IPO.

b. Subsequently, in her letter dated May 17, 2013 and her submissions dated February 24, 2014 and March 7, 2014, the Noticee submitted: *"… I have been candid enough to admit that all the 38 allottees were my clients and they transferred the shares to my account so that I could sell their shares and give them their due … profit arising from the sale."* and *"The payments that were given to the allottees or received from the allottees were in respect of off–market transactions of purchase (market sales) of shares from the persons who were holding shares for long time and selling in the off–market through the Noticee and some of the persons desire to buy shares in off–market from the Noticee hence the Noticee purchased in the market and sold to some of allottees."* From the aforesaid, it is observed that the Noticee's stance changed to the extent of her being a sub–broker facilitating the buying and selling of shares by the above - referred 38 allottees in the IPO of SCL.

c. It was in the context of the Noticee's submission that she was a sub–broker that she was directed to *"file the details of transactions (including dates of application of shares in the IPO of SCL, details of allotment of shares, dates of transfer of shares in off–market, dates of receipt of payment) with regard to Ajay Mansukhlal Rajani, Anwarkhan Pathan, Babubhai S. Jadeja, Hansaben Vinodbhai Parmar, Sanjay Balkrishna Dave, Yogesh Nathalal Parmar and Yogeshbhai Namakul Bhatt.",* during the hearing held on February 24, 2014. However, vide her letter dated March 7, 2014, the Noticee only provided contract notes for transactions in her name and not for clients' transactions. Further, the Noticee gave only printouts of statement of ledger and bill/delivery notes maintained by her for the aforementioned entities. The information provided by the Noticee is insufficient for substantiating her submission of being a sub–broker for the aforementioned entities.

d. The inconsistent submissions made by the Noticee in the instant matter clearly reflect total lack of credibility and genuineness on her part. The Noticee, while initially asserting that she was indeed an investor, has, through her latest

submissions, done a complete volte-face by trying to justify her role as a mere sub–broker who facilitated sale of shares to certain of the above–referred 38 allottees. All this appear to have been done by the Noticee as an after–thought on account of the gradual realization that she needed to change her stance in view of the challenge the allegations contained in the SCN posted and in order to escape liability. This becomes evident from the following factors –

- Fund transfers to 8 of the above–referred 38 allottees, prior to the IPO of SCL;
- Non–payment of consideration by the Noticee to 10 of the above–referred 38 allottees;
- Transfer of consideration by the Noticee to 13 of the above–referred 38 allottees, 3–4 days after the off–market receipt of shares.
- Identical replies given by the allottees who replied to the SEBI letter dated November 27, 2009, wherein they stated that they had received full consideration from the Noticee.
- 2 of the allottees, viz. Anwarkhan Pathan, who, on the basis of duplicate PAN cards (apparently indicating fictitious identity and applications), getting allotment and then transferring shares to the Noticee.
- Telephone number of the Noticee's husband being mentioned in the DIS slips of 13 allottees of the above–referred 38 allottees.

e. The abovementioned factors and circumstances of the case clearly indicate that the *modus operandi* adopted by the Noticee was for the sole objective of cornering shares in the IPO of SCL, which she otherwise would not have been eligible for allotment as RII.

9.1.8 Vide her letter dated March 7, 2014, the Noticee submitted that *'cornering of shares'* was not defined in Regulations or SEBI Guidelines. It may be noted that vide Clause 1.2.1(xxiv c) of DIP Guidelines, 2000, a specified quota was reserved for RIIs for the purpose of ensuring their participation in the securities market. This laudable objective would lose significance if such specified quota is allowed to be infringed upon through any illegal artifice that may be employed by participants in the securities market. By cornering shares meant for subscription by RIIs, the Noticee has tilted the IPO allotment process in her favour thereby circumventing the provisions of the SEBI Disclosure and Investor

Protection Guidelines, 2002 ("**DIP Guidelines**"), with an intention to achieve undue enrichment at the expense of genuine retail investors. Such behaviour which is fraught with immense mischief, if permitted, will result in incalculable damage to the allotment process of any IPO besides undermining the confidence of retail investors urging for a fair deal in the securities market.

9.1.9 Upon a consideration of the preceding paragraphs, I find that the Noticee assisted in creating fictitious applicants, engineered applications in the RII category of the IPO of SCL and subsequently, ensured transfer of shares allotted in such category to her own demat account, thereby cornering shares meant for RIIs. I find that the Noticee then sold the aforesaid shares in the open market thereby making a profit on the price difference between the IPO price and the listing price of such shares. I also find that the Noticee facilitated and managed the responses/replies provided to SEBI by certain allottees in the RII category of SCL's IPO with an intention to mislead the investigation conducted by SEBI. Further, the inconsistencies in the stance taken by the Noticee in the instant matter (as evident from the preceding paragraph 9.1.7) reflect a clear intention to escape liability arising out the violations stated in the SCN. In the facts and circumstances of the case, I find that the Noticee had employed fraudulent, deceptive and manipulative practices to corner shares meant for RIIs in the IPO and to dispose such shares for attaining profit. By indulging in such irregularities, the Noticee had deprived RIIs of their legitimate allocation in the allotment from the IPO of SCL thereby resulting in an unlawful gain of 1,28,563.12 for herself, to the detriment of such investors.

9.1.10 I note that the provisions of Section 12A(a)–(c) of the SEBI Act read with regulations 3(a)–(d) of the PFUTP Regulations, 2003, *inter alia* prohibit buying, selling or dealing in securities in a fraudulent manner; employment of any manipulative/deceptive device, scheme or artifice to defraud in connection with dealing in securities; engaging in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with dealing in securities. Further, Regulation 4(1) of the PFUTP Regulations *inter alia* prohibit indulgence in fraudulent and unfair trade practices in securities. In my view, any fraudulent or deceptive device, scheme, act, omission, etc. which has the potential to *inter alia* result in wrongful gain, etc. would be covered within the prohibition contained under the aforementioned provisions of the SEBI Act read with the PFUTP Regulations.

9.1.11 In this context, we may refer to the observations of the Hon'ble Securities Appellate Tribunal in the matter of *V. Natarajan vs. SEBI, SAT Appeal No.104 of 2011*, wherein it was held as follows:

"… we are satisfied that the provisions of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, were violated. These regulations, among others, prohibit any person from employing any device, scheme or artifice to defraud in connection with dealing in or Issue of securities which are listed or proposed to be listed on an exchange. They also prohibit persons from engaging in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities that are listed on stock exchanges. These regulations also prohibit persons from indulging in a fraudulent or unfair trade practice in securities which includes publishing any information which is not true or which he does not believe to be true.
… A basic premise that underlies the integrity of securities market is that persons connected with securities market conform to standards of transparency, good governance and ethical behaviour prescribed in securities laws and do not resort to fraudulent activities."

Further, in the matter of *Dipak J Panchal vs. SEBI, SAT Appeal No. 198 of 2011,* the Hon'ble Securities Appellate Tribunal observed:

"… the appellants have indulged in fraudulent/manipulative activities and employed deceptive devise to corner the shares reserved for retail individual investors in the IPOs to defraud the retail individual investors and such activity is not only in breach the integrity of the market, but also violative of the provisions of section 12A (a), (b) and (c) and Regulation 3 (a), (b), (c) and (d) and 4(1) of the FUTP regulations. There is a clear finding of the Board that the provisions, as noted above, stand violated and it was not necessary for the Board to give specific finding with regard to violation of each of the sub-regulation of the FUTP regulations or the sub-section of the Act."

While dealing with a matter of this nature, it would be worthwhile to refer to the following observations made by the Hon'ble Supreme Court in its judgment dated April 26, 2013, in *N. Narayanan v. Adjudicating Officer SEBI (Civil Appeal Nos.4112-4113 of 2013)* held that:

"SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote

orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate "market abuse" and that we are governed by the "Rule of Law". Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and 'market security' is our motto."

9.1.12 In view of the aforesaid, I have no hesitation in holding that the Noticee has violated the provisions of Section 12A(a)–(c) of the SEBI Act read with Regulations 3(a)–(d) and Regulation 4(1) of the PFUTP Regulations. I note that the aforementioned serious irregularities while enriching the Noticee at the cost of RIIs, also threaten the integrity and orderly development of the securities market and therefore, call for regulatory intervention in the interest of investors in such market.

Order –

10.1 In view of the foregoing, I, therefore, in exercise of the powers conferred upon me by virtue of section 19 read with section 11(4) and 11B of the SEBI Act and regulation 11(1) of the PFUTP Regulations, 2003, hereby restrain the Noticee from buying, selling or otherwise dealing in securities, directly or indirectly, for a period of **two years**.

10.2 The period of prohibition already undergone by the Noticee pursuant to the SEBI Order dated May 15, 2013, shall be taken into account for the purpose of computing the period of prohibition imposed vide this order.

11. This order shall come into force with immediate effect.

Place: Mumbai
Date: April 11, 2014

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA