WTM/MSS/ISD/ 90 /2011

SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: M. S. SAHOO, WHOLE TIME MEMBER

IN THE MATTER OF IPO IRREGULARITIES - DEALINGS BY:

1. **Ms. Roopalben N. Panchal alias Rupalben N. Panchal**
2. **Ms. Devangi Dipak Panchal**
3. **Mr. Dipak Jashvantlal Panchal**
4. **Mr. Bhargav Ranchhodlal Panchal**
5. **Ms. Hina Bhargav Panchal, and**
6. **Mr. Arjav Nareshbhai Panchal.**

IN THE INITIAL PUBLIC OFFERS OF:

1. **IL&FS LTD. (ILFS)**
2. **IDFC LTD. (IDFC)**
3. **FCS SOFTWARE SOLUTIONS LTD. (FCS)**
4. **GATEWAY DISTRIPARKS LTD. (GATEWAY)**
5. **SHOPPERS STOP LTD. (SHOPPERS)**
6. **DATAMATICS TECHNOLOGIES LTD. (DATAMATICS)**
7. **NANDAN EXIM LTD. (NANDAN)**
8. **YES BANK LTD. (YBL)**
9. **SPL INDUSTRIES LTD. (SPL)**
10. **NATIONAL THERMAL POWER CORPORATION LTD. (NTPC)**
11. **DISHMAN PHARMACEUTICALS LTD. (DISHMAN)**
12. **TATA CONSULTANCY SERVICES LTD. (TCS)**
13. **NECTAR LIFESCIENCES LTD. (NECTAR)**
14. **SASKEN COMMUNICATION TECHNOLOGIES LTD. (SASKEN)**
15. **AMAR REMEDIES LTD. (AMAR)**
16. **SUZLON ENERGY LTD. (SUZLON)**
17. **PATNI COMPUTERS LTD. (PATNI), AND**
18. **TV TODAY NETWORK LTD. (TV).**

Date of Hearing: September 20, 2010

Appearances:

For Noticees: Mr. H. D. Dave, Advocate
Mr. Sunit S. Shah, Advocate, and
Mr. Rahul Arote, Advocate.

For SEBI: Mr. Jai Sebastian, Assistant Legal Adviser (Presenting Officer)
Mr. S. Ramann, Officer on Special Duty
Mr. B. J. Dilip, Deputy General Manager
Mr. Vineet Kumar Biyani, Manager, and
Ms. Kshama Wagherkar, Assistant Legal Adviser.

ORDER
UNDER SECTIONS 11, 11 (4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

1. On noticing certain irregularities in the transactions in shares, that were issued through initial public offerings (IPOs) during the period 2003-2005, before their listing on the stock exchanges, the Securities and Exchange Board of India (SEBI), pending investigations, vide ad

interim ex-parte Orders dated December 15, 2005, January 12, 2006 and April 27, 2006, which were also the show cause notices, directed certain persons, including Ms. Roopalben N. Panchal alias Ms. Rupalben N. Panchal (Roopal), Ms. Devangi Dipak Panchal (Devangi), Mr. Dipak Jashvantlal Panchal (Dipak), Mr. Bhargav Ranchhodlal Panchal (Bhargav), Ms. Hina Bhargav Panchal (Hina), Mr. Arjav Nareshbhai Panchal (Arjav) (collectively referred to as 'noticees') not to buy, sell or deal in the securities market, including in IPOs, directly or indirectly, till further directions. The said notices offered opportunities of inspection of documents and personal hearing to the noticees. The noticees did not file any reply to any of the show cause notices. Nor did they avail of inspection of documents or seek personal hearing. After providing an opportunity of personal hearing to four of the noticees, namely, Devangi, Dipak, Bhargav and Hina on November 4, 2008, which they failed to avail, vide Order dated November 12, 2008, SEBI confirmed the directions contained in the interim Order dated April 27, 2006 against the said four noticees until further orders.

2. On completion of investigations, SEBI issued a common show cause notice (SCN) dated December 01, 2009 to the noticees under Sections 11, 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 (SEBI Act). The SCN alleges that the noticees opened thousands of demat accounts in fictitious names (afferent accounts) and engineered applications in the retail category of several IPOs through these afferent accounts. On receipt of shares on allotment in these afferent accounts, they got the shares transferred to their own demat accounts before listing. They retained a portion of the shares themselves and transferred the balance in off-market to financiers and others. They as well as the financiers and others made unlawful gains by sale of those shares. The noticees together made an unlawful gain of Rs. 15.90 crore and facilitated financiers and others to make an unlawful gain of Rs. 28.48 crore. The SCN further alleges that the noticees, in concert with a depository participant (DP) and financiers, employed fraudulent, deceptive and manipulative practices and cornered the shares meant for retail individual investors (RIIs) in various IPOs. These acts of the noticees were in violation of Section 12A (a), (b) and (c) of the SEBI Act, 1992, regulations 3 (a), (b), (c) and (d) and 4 (1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (PFUTP Regulations) and Guideline 1.2.1 (xxiva) read with Guideline 7.6.1.2.1 of the SEBI (Disclosure and Investor Protection) Guidelines, 2000 (DIP Guidelines). Accordingly, it called upon the noticees to show cause as to why suitable directions under Section 11(4) read with Sections 11 and 11B of the SEBI Act, 1992, including directions to restrain them from buying, selling or dealing in securities in any manner, disgorge ill-gotten gains made by them along with interest, disgorge ill gotten gains made by the financiers and others in

connivance with them, and realize the shares in their frozen demat accounts. The SCN also offered an opportunity of personal hearing.

3. Since the issue of the SCN, SEBI has been following up with the noticees for replies to the SCN. After protracted correspondences, each noticee submitted two replies (dated August 2 and September 16, 2010 by Roopal and Arjav, dated August 3 and September 16, 2010 by Dipak and Devangi, and dated August 24 and September 16, 2010 by Bhargav and Hina) to the SCN. SEBI scheduled hearings on March 31, 2010, May 24, 2010, and August 26, 2010, which they did not avail on some pretext or the other. They availed the personal hearing on September 20, 2010, when the hearing could not be concluded. To conclude the hearing, SEBI offered two more opportunities on October 11 and November 2, 2010, which the noticees did not avail.

4. I find that the noticees are bent upon dragging the matter indefinitely. They delayed the proceedings by seeking the settlement of the present proceedings twice through the consent procedure. They, however, did not offer appropriate terms for the settlement and SEBI, after following due process, declined to settle the same. They have been offered six opportunities of hearing. They availed the opportunity only on September 20, 2010 and have been avoiding thereafter. They usually sought postponement of the hearing on the day of hearing or the day before the date of hearing. For example, vide letter dated May 4, 2010, SEBI scheduled a hearing on May 24, 2010. The noticees, vide their communications dated May 24, 2010, sought postponement of the said hearing. Similarly, vide their communications dated October 10, 2010 and November 1, 2010 respectively, they sought postponement of the hearings scheduled on October 11, 2010 and November 2, 2010. They often sought postponement of hearing on flimsy grounds. For example, vide their communication dated October 10, 2010, they requested to keep the proceedings in abeyance till the Hon'ble High Court of Gujarat disposes of a petition that were yet to file. They sought cross examination of certain persons with no apparent justification, even though no statement of any such person has been used in the SCN or is being relied upon in this proceeding. Though they have availed opportunities of inspection, they insist upon inspection of unrelated documents without justification even after SEBI categorically clarified that no document which has not been provided to them would be relied on. For example, Roopal, vide her email dated August 30, 2010, requested for inspection of periodical audit reports of CDSL / NSDL for Karvy DP and copies of CDSL / NSDL manuals for demat account opening. Roopal and Arjav, vide email dated October 6, 2010, sought inspection of the report of Enquiry Officer of Karvy group of companies and replies filed by Karvy Group of companies to the Enquiry Officer. I note that these documents are not being relied upon in the present proceedings. I am, therefore, of the considered view that principles of natural justice

have been more than adequately complied with by SEBI and no purpose would be served by offering further opportunities of hearing to the noticees, except facilitating them in their attempt to delay the disposal of the proceedings indefinitely. I cannot lose sight of the fact that this case involves an unprecedented fraud which had a devastating impact on the securities market and caused loss to lakhs of investors. It would cause severe prejudice to the interests of investors, if the present proceedings are delayed any further.

5. I have carefully considered the SCN, the written and oral submissions of the noticees and the material available on records. I proceed to dispose of the proceedings on merit.

6. It is alleged in the SCN that the noticees are closely related. They held joint demat and bank accounts and shared the same address. They opened bank accounts in their own names with Bharat Overseas Bank (BhOB). Using these bank accounts, they manufactured bank introduction letters for thousands of fictitious names and based on such introduction letters as proof of identity and address, they opened thousands of afferent demat accounts. For example, Arjav opened a bank account no. 9550 with BhOB in December 2004. The noticees prepared a list of 1,000 fictitious names, starting with Kunal and ending with Ritu, each having surname 'Zala'. They created another list of 1,000 fictitious names, starting with Kunal and ending with Ritu, each having surname 'Rathod'. They created 15 such lists with the same set of first names but with a different surname and thereby created 15,000 fictitious persons. They manufactured bank introduction letters, purportedly issued by BhOB, in favour of each of the 15,000 fictitious names by assigning the bank account number 9550 with a suffix to every name. The introduction letter for the first fictitious person carried bank account number 9550/1, while the letter for the last fictitious person carried bank account number 9550/15000. Based on only one bank account number 9550, they generated 15,000 bank introduction letters and using these letters as proof of identity and address, they opened 15,000 afferent accounts with a DP on 15th and 16th July 2005. Following this modus operandi, the noticees opened thousands of afferent accounts, each with the same address as that of the noticees. They paid to DP the account maintenance charges (AMC) and transaction charges for many of these accounts. Separately, they prepared several lists each with 50 fictitious persons with same surname in the same order as were in the lists used for opening afferent accounts. Many such lists of 50 persons were purportedly certified by Karvy DP. They opened several bank accounts, each jointly with 50 fictitious persons in a list. For example, Roopal opened a bank account no. 11954 with Indian Overseas Bank (IOB) on October 9, 2004 jointly with 50 fictitious names starting from Daksha Panchal to Drumil Panchal. Arjav and Roopal opened another account no. 11969 with IOB on October 11, 2004 jointly with 50 fictitious names starting from Madhuri Panchal to Padma Panchal. They opened

39 such bank accounts each with the same address as that of the noticees. These bank accounts enabled the noticees to avail finance for IPOs from banks. They also obtained finance from many other financiers. With the funds procured from various sources, the noticees engineered thousands of applications in the retail category over 18 IPOs. For example, they engineered applications from 27,444 afferent accounts in the retail category of IDFC IPO which fetched an aggregate allotment of 73,00,014 shares. Before listing, the noticees got the entire 73,00,014 shares transferred from the afferent accounts to their own demat accounts in off-market and, in turn, disposed of the shares directly or through the financiers. After the allotment, they also received the consolidated refunds from issuers through bank and, in turn, returned the same to financiers. They repeated this modus operandi over 18 IPOs. In the process, they cornered the shares meant for RIIs in 18 IPOs and made unlawful gains. The afferent accounts were used only for receiving allotment of shares in these IPOs and transferring those shares to demat accounts of the noticees. Table A presents the details of applications made from afferent accounts, shares received on allotment in those accounts and their transfer to the demat accounts of the noticees and further disposal of such shares. Table B presents the unlawful gains made on disposal of such shares by financiers, noticees and others. For example, in the IPO of Dishman, Roopal cornered 1,00,250 shares. She transferred 17,000 shares to Dipak who sold those shares in the market and made an unlawful gain of Rs.62,26,250. She transferred balance 83,250 shares to financiers who sold those shares in market and made an unlawful gain of Rs.3,04,90,313. Thus, the noticees made an unlawful gain of Rs.62,26,250 and facilitated financiers to make an unlawful gain of Rs.3,04,90,313 - the total unlawful gain being Rs.3,67,16,563 from the Dishman IPO.

7. Tables B indicates slightly different figures of unlawful gains than the noticees have been called upon to disgorge in the SCN. This difference is essentially because the disgorgement amount in the SCN did not inadvertently include the gains from TV Today IPO, though the SCN alleges that the noticees made the said unlawful gain. Table C presents, based on the material in the SCN, the correct amounts of unlawful gains made by the noticees and the unlawful gains facilitated by them. The noticees made an unlawful gain of Rs.16.54 crore and facilitated the financiers and others to make an unlawful gain of Rs.28.57 crore.

8. Vide their separate, but similar written submissions dated September 16, 2010, the noticees have sought a ruling on certain preliminary issues. These were heard on September 20, 2010. The issues raised by them are as under:

Table A: Transactions by Noticees

Noticee	IPO	No. of applications made	Retail application Size	No. of shares received	No. of Shares transferred to					
					Devangi	Dipak	Hina	Bhargav	Financiers	Others
Roopal	**DISHMAN**	2,005	50	1,00,250	0	17,000	0	0	83,250	0
	DATAMATICS	1,635	50	81,750	8,400	0	0	0	73,000	350
	TCS	8,077 897 12	17 20 34	1,37,309 17,940 408	52,336	10,842	0	1,581	87,870	2,975
	NTPC	8,224	214	17,59,936	15,00,000	0	21,400	0	175000	63,536
	GATEWAY	971	90	87,390	0	0	0	0	87,390	0
	SHOPPERS	1,564	25	39,100	5,775	0	0	0	33,325	0
	NANDAN	1,982	250	4,95,500	43,750	0	0	1,750	4,28,000	22,000
	YBL	6,509	150	9,76,350	2,57,250	0	0	2,550	7,11,600	4,950
	NECTAR	4,102	25	1,02,550	42,075	0	0	0	60,475	0
	SPL	1,330	100	1,33,000	7,100	0	0	0	1,25,900	0
	ILFS	5,162	50	2,58,100	1,02,200	0	0	600	1,54,350	950
	IDFC	27,444	266	73,00,104	10,80,169	17,10,374	11,000	8,684	33,77,641	11,12,236
	SASKEN	2,217	25	55,425	10,800	0	0	0	8,125	36,500
	AMAR	884	250	2,21,000	2,21,000	0	0	0	0	0
	FCS	3,153	100	3,15,300	22,015	0	0	2,400	172,000	1,18,885
	SUZLON	8,998	16	1,43,968	1,248	0	0	0	22,000	1,20,720
Arjav	**PATNI**	2,541	50	1,27,050	0	1,15,250	0	0	10,250	1,550
Devangi	**TV TODAY**	862	100	86,200	0	35,500	0	0	6,900	43,800

Table B: Computation of Unlawful Gains **(Rs.)**

Name of IPO	Noticees						Financiers	Others	Total
	Devangi	Dipak	Bhargav	Hina	Roopal	Total			
DISHMAN	0	62,26,250	0	0	0	62,26,250	3,04,90,313	**0**	3,67,16,563
DATAMATICS	0	1,44,480		0	0	1,44,480	12,55,600	6,020	14,06,100
TCS	72,19,751	14,95,654	2,18,099	0	0	89,33,504	1,21,21,667	4,10,401	2,14,65,572
NTPC	2,02,50,000	0	0	2,88,900	0	2,05,38,900	23,71,250	5,63,355	2,34,73,505
GATEWAY	0	0	0	0	0	0	34,99,969	**0**	34,99,969
SHOPPERS	7,77,315	0	0	0	0	7,77,315	44,85,545	**0**	52,62,860
NANDAN	13,21,250	0	0	0	0	13,21,250	1,29,25,600	6,64,400	14,911,250
YBL	44,19,800	0	45,237	0	0	44,65,037	1,12,43,280	78,210	1,57,86,527
NECTAR	12,40,663	0	0	0	0	12,40,663	12,08,512	**0**	24,49,175
SPL	2,41,400	0	0	0	0	2,41,400	41,98,765	**0**	44,40,165
ILFS	64,02,967	0	47,610	0	0	64,50,577	92,84,153	57,143	1,57,91,872
IDFC	3,73,55,991	6,03,64,165	2,76,238	3,72,130	0	98,368,524	11,99,06,256	3,94,84,378	25,77,59,158
SASKEN	22,09,139	0	0	0	3,65,000	25,74,139	16,61,968	3,65,000	46,01,107
AMAR	49,68,930	0	0	0	0	49,68,930	0	**0**	49,68,930
FCS	0	0	3,09,840	0	6,29,962	9,39,802	2,22,05,200	10,55,992	2,42,00,994
SUZLON	2,28,197	0	0	0	12,07,200	14,35,397	40,22,700	12,45,227	67,03,324
PATNI	0	3,68,800	0	0	0	3,68,800	32,800	4,960	4,06,560
TV Today	33,57,620	30,65,425	0	0	0	64,23,045	5,95,815	2,24,510	72,43,370
Total	**8,99,93,023**	**7,16,64,774**	**8,97,024**	**6,61,030**	**22,02,162**	**16,54,18,013**	**24,15,09,393**	**4,41,59,596**	**45,10,87,001**

Table C: Reconciliation of Unlawful Gains

Particulars	Gains by Financiers and Others (Rs.)	Gains by Noticees (Rs.)
As per SCN	28,48,10,904	15,90,62,768
Add: Gain from TV Today	8,20,325	64,23,045
Add: Gain from Patni	37,760	3,68,800
Less: Gain from Patni wrongly included	---	3,61,600
Less: Calculation Error in the Gains of Devangi	---	75,000
Total	28,56,68,989	16,54,18,013

a. The noticees are not persons associated with the securities market either as intermediary or otherwise as any person on whom powers under Sections 11 and 11B can be invoked. SEBI lacks jurisdiction to issue the SCN to them.

b. SEBI or its delegate does not have power to hold any investigation or inquiry under Sections 11, 11(4) and 11B of the SEBI Act. The SCN, which is issued under these Sections is bad in law as it contemplates to investigate or inquire into allegations leveled in the SCN.

c. The matter is pending before the Adjudicating Officer for inquiry. Before the inquiry is over, SEBI cannot pass orders of disgorgement.

d. SEBI does not have power of disgorgement under section 11, 11(4) or 11B of the SEBI Act. This is already built in 'three times the profits' in Section 15HA and hence if required, disgorgement could only be made under that Section. If the power of disgorgement is assumed under Sections 11 and 11B, it would result in double jeopardy.

e. Section 11B / 11(4) (b), which are not penal provisions, cannot be used to impose penalty on the noticees.

f. The same authority should have issued the SCN as well as the directions under Sections 11 and 11B. In the instant case, the directions would be issued by the WTM, while the SCN has been issued by OSD, which is not permissible.

g. Roopal may be granted opportunity to cross examine all persons whose statements have been relied upon by SEBI to arrive at the charges and findings against her.

h. The noticees cannot be treated as one group and held jointly and severally liable. They had been trading in shares among themselves since 1999 and are related to one another.

9. Let me deal with the above preliminary issues in seriatim:

9a. From their own admission, I find that the noticees used thousands of afferent accounts opened by a DP for making IPO applications in retail category of IPOs, arranged money for these applications, received the shares on transfer in off-market from thousands of afferent accounts after allotment in IPOs and disposed of the said shares. These activities obviously make the noticees persons associated with the securities market. I rely on the observations of the Hon'ble High Court of Gujarat in the matter of ***Karnavati Fincap Ltd. and Alka Spinners Ltd. Vs SEBI***[1]: *"….. In ordinary meaning, the persons associated with the securities market would include* **all and sundry** *who have something to do with the securities market. …… The words "persons associated with the*

[1] SCA Nos. 2692 and 2694 of 1996 dated 06.05.1996

securities market" are of much wider import than intermediaries. ……It is inconceivable to think that a buyer or seller of a scrip is not a person associated with securities market, where or through which he transacts his business, whether as trader or as investor, of selling or buying the required scrip." The phrase *"**all and sundry"*** above would include the noticees and co-relating the facts before me with the above judgment, it is very clear that the noticees are persons associated with the securities market as stated under Sections 11 and 11B of the SEBI Act.

9b. Hon'ble SAT had opportunity to visit this issue in the matter **of *Karvy Stock Broking Ltd. v. SEBI***[2], where it observed: *"As is clear from the language of sub section (4) the measures that the Board may take or the orders that it may pass would be "either pending investigation or enquiry or on completion of such investigation or enquiry". The word 'investigation' as used in section 11(4) has not been defined. It obviously refers to the investigation as ordered under section 11-C of the Act because sections 11- C and 11(4) were introduced simultaneously in the year 2002 when Parliament found that the Board prior to their introduction did not have statutory power to investigate. The word 'inquiry' too has not been defined in the Act though it finds mention in Sections 11, 11B, 11D and 15I. Under section 12(3) of the Act also, the Board holds an inquiry under the inquiry regulations for imposing major or minor penalties including the penalty of suspension or cancellation of a certificate of registration. It is, thus, clear that an inquiry is held under sections 11, 11B and 11D, it is also held under section 12(3) and also under* section 15I." Further, I find that Section 11B very explicitly enables SEBI to issue suitable directions after making an enquiry**.** Thus, the contention of the noticees that SEBI or its delegate does not have power to hold any investigation or inquiry under section 11, 11(4) or 11B of the SEBI Act is devoid of merit.

9c. I note that SEBI Act empowers SEBI to initiate appropriate proceedings like 11B, adjudication, prosecution, etc. or any combinations of these, as may be warranted in the circumstances, to deal with the violations of the provisions of SEBI Act, Rules and Regulations made there under. These proceedings undergo the prescribed process for determination of violation and the measures required to deal with it. The conclusion of one proceeding does not have to wait for the conclusion of another. For example, a Section 11B proceeding does not have to wait till the conclusion of the related criminal proceeding or adjudication proceeding, as they are not expected to result in exactly the same finding or the same directions. The law contemplates these proceedings to be concluded independently, but as expeditiously as possible.

[2] Appeal No. 92/2006 dated 08.01.2007

9d. It is a well settled principle that a person, who unjustly enriches himself by unlawful means should be required to give up the unjust enrichment. Hon'ble SAT has upheld SEBI's power to do so and also upheld SEBI's orders directing disgorgement. In the matter of ***Karvy Stock Broking Ltd. Vs. SEBI***[3], Hon'ble SAT held: *"5. … Disgorgement is a monetary equitable remedy that is designed to prevent a wrongdoer from unjustly enriching himself as a result of his illegal conduct. It is not a punishment nor is it concerned with the damages sustained by the victims of the unlawful conduct. Disgorgement of ill-gotten gains may be ordered against one who has violated the securities laws/regulations but it is not every violator who could be asked to disgorge….."* In the matter of **Dhaval Mehta Vs. SEBI**[4]**,** Hon'ble SAT held: *"Disgorgement is a monetary equitable remedy to prevent a wrong doer from unjustly enriching himself as a result of his illegal conduct. Disgorgement of illegal gains are ordered against those who violate the securities laws and make unlawful gains. The amount should not exceed the total profits realized as a result of the unlawful activity and the amount ordered to be disgorged should be approximately be equal to the amount of unjust enrichment. In the instant case, the whole time member has worked out the amount from the prices that were available and we find no ground to interfere with the order in this regard."* Similarly, in the matter of ***Shri Shadilal Chopra Vs. SEBI***[5]***,*** Hon'ble SAT held: *"Disgorgement is the forced giving up of profits obtained by illegal or unethical acts. It is a repayment of ill-gotten gains that is imposed on wrong doers. It is a monetary equitable remedy that is designed to prevent a wrong doer from unjustly enriching himself as a result of his illegal conduct. It is not a punishment. In this view of the matter, no fault can be found with the impugned order passed by the whole time member."* Recently in the matter of ***Dushyant Dalal, Puloma Dalal Vs. SEBI***[6]***,*** **Hon'ble SAT** held: *"Since disgorgement is not a punishment but a monetary equitable remedy meant to prevent a wrong doer from unjustly enriching himself as a result of his illegal conduct, we are of the view that there need be no specific provision in the Act in this regard and this power to order disgorgement is inherent in the Board."* I, therefore, cannot agree with the noticees that Sections 11, 11(4) and 11B do not empower SEBI to seek disgorgement of unlawful gains. The argument of the noticees that the disgorgement is included in the penalty under Section 15HA is amusing. As stated earlier, disgorgement is not a penalty, but an equitable remedy and the penalty under Section 15HA is designed to have also deterrent effect on potential offenders of law.

9e. It follows from the above observations of Hon'ble SAT that disgorgement is not a penalty, but a monetary equitable remedy. The instant proceedings are not being used to impose a

[3] Appeal No. 6 of 2007 dated 02.05.2008
[4] Appeal No. 155 of 2008 dated 08.09.2009
[5] Appeal No. 201 of 2009 dated 02.12.2009
[6] Appeal No. 182 of 2009 dated 12.11.2010

penalty on the noticees, though there is no prohibition to do so under Sections 11, 11(4) and 11B. This clarity has been provided by Hon'ble SAT in the matter of ***Karvy Stock Broking Ltd. v. SEBI***[7]***:*** *"…. Even under section 11(1) and thereafter with the introduction of section 11B in the year 1995, the power of the Board was very wide and it could take every measure that a situation would demand and issue such directions that it considered necessary….Yet to put everything beyond the shadow of doubt, even the implicit has been made explicit by adding sub-section (4) in Section 11 which now expressly authorizes the Board to issue various kinds of orders. …. The power to take preventive or punitive measures was implicit. Now it has been expressly extended to taking even the preventive or punitive measures. Without doubt, these too, are ultimately aimed at achieving the basic objectives of investor protection and the promotion of the development of the securities market as contained in the preamble."*

9f. I do not find any illegality, or even irregularity, in this. The SCN has been issued and directions are sought to be issued by the functionaries who have been delegated powers to do so. In fact, it is desirable that the allegations are made by a functionary lower in Grade while the determination of the allegations is made by a functionary higher in Grade, which has happened in this case. Further, SEBI follows a practice that a Whole Time Member, who does not supervise the Department which has issued SCN, determines the allegations made in the SCN. This brings in higher objectivity to quasi-judicial proceedings.

9g. The noticees have sought cross-examination and not justified its need. Further, I find that the allegations in the SCN are based on the transactions in the bank and demat accounts of the noticees and not on any statement of any person. Hence the demand for cross examination is misplaced.

9h. I note from the SCN that noticees are related to one another and they use the same address in their demat and bank accounts. They have joint bank accounts as well as demat accounts. They have followed the same modus operandi to open afferent accounts. For example, Devangi opened the bank account no. 54119 with BhOB and by using this account, opened 3450 afferent accounts with NSDL. Similarly, Arjav opened the bank account no. 9550 and using this account, opened 15,000 afferent accounts with CDSL. They also followed the same modus operandi to open joint bank accounts. For example, Roopal opened the bank account no. 11954 with IOB with 50 fictitious joint holders. Dipak opened the bank account no. 11974 with IOB with 50 fictitious joint holders. The lists of fictitious persons used for opening afferent accounts and bank account had the same names / surnames in the same order. For example, Devangi, based

[7] Appeal No. 92/2006 dated 08.01.2007

on her bank account no. 54119, opened 50 afferent accounts in NSDL in favour of 50 fictitious persons in the list starting from Suresh Seth and ending with Aditi Seth. Arjav, based on his bank account no. 9550, opened 50 afferent accounts in CDSL in favour of the same 50 names starting from Suresh and ending with Aditi, only innovation being these names have a surname 'Zala' instead of 'Seth'. Further, Roopal opened a bank account no. 12140 in IOB jointly with the same 50 fictitious persons starting from Suresh Seth and ending with Aditi Seth. Further, the afferent accounts were created by one noticee and used by another. For example, using Arjav's bank account no. 9550, 15,000 afferent accounts were created. These accounts were used by Roopal to make applications in the IPOs. The noticees, on receipt of shares from different afferent accounts transferred the shares to other noticees in off-market, as indicated in Table A. There are instances where shares transferred by one noticee to another were transferred further by the latter noticee to other entities at the instance of former noticee. For example, Roopal transferred 2,21,000 shares of Amar remedies to Devangi who, in turn, transferred 17,000 shares to Mr. Rajan Dapki and 59,000 shares to Zealous Trading at the instance of Roopal. The conduct of the noticees in response to the SCN has also been similar. All these indicate that the noticees form a well orchestrated group.

10. Roopal has submitted that the officials of a DP approached her with an idea paper and a process flow and explained that they could enable her to apply for and obtain more shares than normally possible in an IPO **in legal manner** using their large number of associates, viz. 7,000 employees and more than 3,00,000 clients in whose names demat accounts were open or could be opened. This would enable her to make short term gains by investing in IPOs and selling the shares allotted to her in such IPOs after listing. She would not have to do anything except providing margin and arranging finance from / through other financiers. Roopal acted on the misrepresentations made by the officials of the DP; she acted under the guidance, supervision and full control of the DP and banks. She arranged finance from financiers and made payment for the IPO applicants and interacted with DP, Banks, issuer companies, Registrars and Transfer Agents, brokers, etc. for the purpose. She was not aware that the DP was using fictitious names and false accounts. The DP fabricated bank letters and opened, operated, managed, supervised and controlled demat accounts in fictitious names. It introduced lists of additional names to her bank accounts with BhOB and IOB. It executed delivery instruction slips (DIS) and transferred shares allotted in the afferent accounts to her demat account. Roopal, being a house wife and not having an organized workforce, could not have opened thousands of afferent accounts,

made thousands of IPO applications or arranged signatures on thousands of DISs for transfer of shares to her demat account in a day or within a few days. She, therefore, cannot be held liable for any irregularities while subscribing to / financing subscription to IPOs at the behest of the DP. Besides, she has contested some of the payments made by her, alleged in the SCN, towards AMC.

11. Roopal has stated that a DP induced her to get more shares than legally permissible. She admits that she used thousands of afferent accounts created by the DP, which she believed to be genuine accounts, for making IPO applications in retail category of IPOs. She admits that she paid the maintenance charges of some of these afferent accounts. She also admits that she arranged money for these applications. She further admits that she received the shares on transfer in off-market from thousands of afferent accounts after allotment in IPOs. She also received corresponding refunds from issuers directly. I find from records that all the afferent accounts had the address of the noticees. All the bank accounts used in the transactions were jointly or singly held by the noticees. The noticees and their financiers are the sole beneficiaries from the disposal of shares received on transfer from the afferent accounts. This is enough to conclude that the noticees manipulated the demand for shares in the retail segment of 18 IPOs and cornered such shares and made unlawful gains at the cost of RIIs. Even if I agree with the submission of Roopal that the DP did all that is required to corner the shares in the retail category of IPOs, it is not by chance that the DP choose to bestow upon Roopal more shares than legally permissible. Even if the DP did all that, it was done with the full knowledge and consent of the noticees with clear understanding that the address, the demat accounts and the bank accounts of the noticees would be used, the afferent accounts would be created and used to make applications in IPOs, the shares allotted to afferent accounts would be transferred to demat accounts of the noticees directly or indirectly, the noticees would get more shares than legally permissible and benefits from disposal of such shares would accrue to the noticees and their financiers. Seen from this perspective also, the noticees are squarely liable for cornering the shares in the retail category of 18 IPOs.

12. Other noticees have generally submitted that they merely purchased the shares from Roopal at market / negotiated price and they have no role to play in acquiring shares as done by Roopal. This is not a fact. As stated in Para 9h above, some noticees opened afferent accounts, some used them for making applications in retail category of IPOs, some helped in transfer of shares to financiers and others and some disposed off the shares so acquired. Naturally all of

them did not play the exactly same role as played by Roopal. They complemented one another in executing the game plan, though Roopal had a greater role.

13. The noticees have some disagreement on the amount sought to be disgorged. They have submitted:

a. There are certain discrepancies in the rates at which the shares were transferred and the quantities of such transfers.

b. Roopal incurred an expenditure of Rs.3,37,22,130 for making IPO applications and getting allotment of shares. This amount needs to be deducted from the disgorgement amount estimated by SEBI. Disgorgement is the net amount gained after deducting all related expenses exclusively necessary and expended for such gain.

c. SEBI is proceeding separately against the financiers and passed orders of disgorgement in some cases. It is illegal to seek the same amount from Roopal again for facilitating the unlawful gains to financiers.

14. Let me deal with these in seriatim:

14a. I find that the noticees have contested certain rates and quantities. For example, Roopal has stated that she transferred 6,80,169 shares in off market to Devangi @ Rs.38 per share. She has not produced any evidence in support of her claim. On the contrary, I find from annexure 16 to SCN that the rate was Rs.34. In any case, it makes little difference, as the unlawful gain is calculated as the difference between the issue price and the ultimate sale price / closing price on the day of listing and the entire gain from sale of such shares has been appropriated by the noticees. Devangi has submitted that she received 10,80,169 IDFC shares erroneously from Roopal instead of 6,80,169 shares. If it were so, she would have transferred the additional 4,00,000 shares back to Roopal, instead of transferring further to others. In any case, the SCN merely asks for disgorgement of gain from sale of such shares.

14b. I do not agree with the contention to deduct from the disgorgement amount the expenses incurred exclusively to make unlawful gain. It is preposterous to allow set off for the expenses incurred on illegal activities.

14c. I agree with the noticees that wherever the financiers have already disgorged the unlawful gain, the noticees cannot be asked to disgorge the same unlawful gain again. However, wherever the financiers have not yet disgorged, and we do not know how the unlawful gains from sale of shares by a financier have been shared between the noticees and the financier, I find it appropriate to ask the noticees to disgorge 50% of the unlawful gain made by the financiers.

Based on this, as indicated in Table D, the noticees would be liable to disgorge Rs.7.52 crore out of the unlawful gain of Rs.28.57 crore which they facilitated the financiers and others to make. Thus, the noticees are liable to disgorge a total of Rs.24,06,25,028 – the sum of unlawful gain of Rs.16,54,18,013 made by them and their share of Rs.7,52,07,015 in the unlawful gain yet to be disgorged by the financiers and others.

Table D: Share of noticees in unlawful gains of the financiers and others **(Rs.)**

Particulars	**IPOs**			**Total**
	Patni	**TV Today**	**Other 16 IPOs**	
Profits made by financiers and others as per Table B	37,760	8,20,325	28,48,10,904	28,56,68,989
Less: Amount already disgorged from financiers and others	32,800	595,815	13,46,26,344	13,52,54,959
Balance to be disgorged from financiers and others	4,960	2,24,510	15,01,84,560	15,04,14,030
50 % of the balance amount	**2,480**	**1,12,255**	**7,50,92,280**	**7,52,07,015**

15. I note that all the noticees have played a significant role in cornering shares in the retail category of IPOs. As submitted by the noticees, all did not have exactly the same role as played by Roopal. I find that Roopal alone engineered applications from afferent accounts and arranged funds for the same in 16 IPOs and got the shares transferred to her demat account from the afferent accounts on allotment. She transferred the shares to other noticees, financiers or others, who ultimately sold them and made unlawful gains. I have no information as to how the unlawful gains have been shared among the noticees, financiers and others. In the absence of this information, I hold Roopal liable for the unlawful gain made by her from direct sale of illegally acquired shares and the 50% of yet to be disgorged unlawful gain of the financiers and others made in 16 IPOs, as indicated in Para 14c above. I hold other noticees liable for the unlawful gains made by them from sale of the illegally acquired shares and the 50% of yet to be disgorged unlawful gain of the financiers and others made in the IPOs of Patni and TV Today, as indicated in Para 14c above. Accordingly, the noticees would be liable to disgorge the amounts as under:

(Rs.)

Description	**Roopal**	**Devangi**	**Dipak**	**Bhargav**	**Hina**	**Arjav**
Unlawful gains from direct sale	22,02,162	8,99,93,023	7,16,64,774	8,97,024	6,61,030	-
Share in unlawful gains as per Table D above	7,50,92,280	1,12,255	-	-	-	2,480
Total unlawful gains	7,72,94,442	9,01,05,278	7,16,64,774	8,97,024	6,61,030	2,480

16. Roopal may be right that a DP had a major role. I tend to agree with her that the noticees could not have cornered shares in the retail category of IPOs but for the help and support, possibly connivance, of the DP and the financiers. I, however, note that appropriate proceedings have been initiated against them also. In the facts and circumstances of the case, I find that the noticees acted in concert with a DP to open thousands of afferent accounts. They acted in concert with financiers to make applications under the retail category of 18 IPOs. They opened the afferent accounts, arranged finance for making thousands of applications in the retail category of IPOs, engineered thousands of applications from afferent accounts, transferred the shares received in afferent accounts on allotment to their own demat accounts and thereby cornered shares meant for RIIs. They transferred a large portion of the shares received on allotment to financiers as per the prior understanding with them and refunded the balance money. In the process, they deprived the RIIs of their legitimate share in the allotment in the IPOs, made an unlawful gain of Rs.16.54 crore and facilitated financiers and other to make an unlawful gain of Rs.28.57 crore, to the detriment of the RIIs. The noticees, therefore, manipulated the demand for shares in the RII category of IPOs and distorted the market integrity. I, therefore, conclude that the noticees employed fraudulent, deceptive and manipulative practices to corner the shares meant for RIIs in 18 IPOs stated in tables above, and made unlawful gains by selling the shares so cornered. Hence, I hold that the noticees have violated Section 12A (a), (b) and (c) of the SEBI Act and Regulations 3(a),(b),(c)and (d) and 4 (1) of the PFUTP Regulations and Guideline 1.2.1 (xxiva) read with Guideline 7.6.1.2.1 of the SEBI (Disclosure and Investor Protection) Guidelines, 2000.

17. These acts of serious irregularities enriched the noticees at the cost of RIIs and threatened the market integrity and orderly development of the market and call for regulatory intervention in the interest of investors. Accordingly, in exercise of the powers conferred upon me under Section 19, read with Sections 11, 11 (4) and 11B of the SEBI Act, 1992, and after taking into account the period of prohibition already undergone by the noticees pursuant to the interim orders, I hereby issue the following directions:

a. Ms. Roopalben N. Panchal (PAN AFVPP3739H), Ms. Devangi Panchal (PAN ABOPP7151Q), Mr. Dipak Jashvantlal Panchal (PAN ABOPP7152D), Ms. Hina Bhargav Panchal (PAN AFUPP7738M), Mr. Bhargav Ranchhodlal Panchal (PAN AADHP0704R), and Mr. Arjav Nareshbhai Panchal (PAN AGZPP2986M) shall not buy, sell or deal in the securities

market in any manner whatsoever or access the securities market, directly or indirectly, for three months from the date of this Order;

b. Ms. Roopalben N. Panchal, Ms. Devangi Panchal, Mr. Dipak Jashvantlal Panchal, Ms. Hina Bhargav Panchal, Mr. Bhargav Ranchhodlal Panchal, and Mr. Arjav Nareshbhai Panchal shall disgorge the unlawful gain and shall also pay simple interest at the rate of 10% per annum for 5 years (2005-10) on the unlawful gains, as indicated against their names below, within 45 (forty five) days from the date of this Order by way of crossed demand draft drawn in favour of "Securities and Exchange Board of India", payable at Mumbai:

(Rs.)

Sl. No.	Noticee	Unlawful gain	Interest on unlawful gain	Total amount to be disgorged
1	Ms. Roopalben N. Panchal	7,72,94,442	3,86,47,221	11,59,41,663
2	Ms. Devangi Panchal	9,01,05,278	4,50,52,639	13,51,57,917
3	Mr. Dipak Jashvantlal Panchal	7,16,64,774	3,58,32,387	10,74,97,161
4	Ms. Hina Bhargav Panchal	6,61,030	3,30,515	9,91,545
5	Mr. Bhargav Ranchhodlal Panchal	8,97,024	4,48,512	13,45,536
6	Mr. Arjav Nareshbhai Panchal	2,480	1,240	3,720
Total		**24,06,25,028**	**12,03,12,514**	**36,09,37,542**

c. In case the aforesaid amounts are not received by SEBI within the specified time, they shall be restrained from buying, selling or dealing in securities market in any manner whatsoever or accessing the securities market directly or indirectly for a further period of nine years, without prejudice to SEBI's right to enforce disgorgement. Until the said amounts are realized by SEBI, the securities in the demat accounts of the noticees shall remain frozen.

18. This Order shall supersede all the directions issued against noticees vide interim Orders dated December 15, 2005, dated January 12, 2006, and dated April 27, 2006 and the confirmatory order dated November 12, 2008.

19. This Order shall be served on all recognized stock exchanges and depositories to ensure that the directions issued against Ms. Roopalben N. Panchal, Ms. Devangi Panchal, Mr. Dipak Jashvantlal Panchal, Ms. Hina Bhargav Panchal, Mr. Bhargav Ranchhodlal Panchal, and Mr. Arjav Nareshbhai Panchal at Para 17 above are strictly complied with.

20. This Order shall come into force with immediate effect.

PLACE: MUMBAI **M. S. SAHOO**
DATE: February 25, 2011 **WHOLE TIME MEMBER**
SECURITIES AND EXCHANGE BOARD OF INDIA