

## SECURITIES AND EXCHANGE BOARD OF INDIA

## ORDER

UNDER SECTIONS 11 AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - IN THE MATTER OF MISHKA FINANCE AND TRADING LIMITED.

In respect of:

Sr. No.	Entities	PAN
<b>Company:</b>		
1.	Mishka Finance And Trading Limited	AAACP2548R
<b>Directors of Mishka Finance And Trading Limited:</b>		
2.	Amit Kumar Vashishta	AKNPV5025B
3.	Ankit Garodia	ARRPG4567A
4.	Jugalkishore Pralhadrai Sharma	ABLPS6840A
5.	Rameshwar Manohar Wagh	ABLPW8901G
<b>Promoters of Mishka Finance And Trading Limited:</b>		
6.	Embassy Finance & Consultants P Limited	AAACE1313P
7.	Tohee Trading & Agencies Private Limited	AAACT1354P
8.	Vijay Kumar Jain	AAAPJ3197K
9.	Wave Inter Trades Private Limited	AAACW0576A
10.	Pearl Arcade Trading Private Limited	AAFCP6925M
<b>promoter related entities:</b>		
11.	A K Roonga	ABBPR3992G
12.	A K Roongta HUF	AABHA9528A
13.	Atul Moreshwar Save	ACHPS7762G
14.	Chatterjee Pritish K	ACRPC4740L
15.	Agarwal Gajanand	AAGPA3508D
16.	Parul Poddar	AKKPP3508Q
17.	Rupesh Poddar	AELPP0183N
18.	Seema Jain	ACRPJ3552D
19.	Sunil Kumar Jain	ABYPJ9937E
20.	Sunil Kumar Jain And Sons	AAOHS4973C
21.	Jay Navin Chandra Shah	BHKPS8506F
22.	Malti Navinchandra Shah	AAGPS9498A
23.	Navinchandra Khimchand Shah	AAGPS9497R
24.	Pranit Lalit Agarwal	BEIPA7823N

25.	Lalit Dindayal Agrawal	ACNPA1462H
26.	Dindayal Malchand Agarwal HUF	AAEHD5856M
27.	Jyoti Khanna	AAIPK5106B
28.	Khanna Aadisht	AJVPK5048G
29.	Pankaj Agarwal	AACPA9922H
30.	Ravi Khanna	AFMPK8726N
31.	Ravi Khanna HUF	AAGHR7451A
32.	Bhavya Khanna	ARIPK3181H
33.	Krishan Agarwal	AACPA5733E
34.	Gandotra Bharat	AANPG3179K
<b>Preferential Allotees</b>		
35.	Chowatia Ashokkumar	AADPC6863A
36.	Chowatia Madanlal Babulal	AADPC6859J
37.	Jain Saradkumar	AJGPS8091J
38.	Lumbchand Tarachandlumbchand	ABQPL6153L
39.	Prakash Mangilal Surya	AAGPS6393C
40.	Sadhna Rani	ABHPA9244J
41.	Savita Bansal	AEJPB6903J
42.	Mahabir Prasad Jalan	ACFPJ2428J
43.	Mahabir Prasad Jalan HUF	AACHM0965N
44.	Naresh Jalan	ACUPJ1252F
45.	Naresh Jalan HUF	AABHN4403P
46.	Ravindra Kumar Gupta HUF	AADHR3405B
47.	Shankar Batra	ACSPB5838R
48.	Brij Bhushan Singal HUF	AAAHB6923R
49.	Brij Bhushan Singal	AEFPS6298M
50.	Tarun Chandak	ADGPC1107P
51.	Gokuldham Enterprises LLP	AALFG1236F
52.	Chirag Maheshkumar Vyas	ABYPV5751G
53.	Harleen Kaur	AECPC7959J
54.	Jignesh Mahesh Amin	AAJPA2349H
55.	Sheetal Sanjay Udeshi	AAAPU2596F
56.	Khatri Mahesh Kumar	AADPK9309F
57.	Khatri Prakash Chand Radhakrishna	AADPK1946Q
58.	Nitinkumar Dindayal Didwania	AACPD7055J
59.	Prakash Chand Sharma	AGMPS2776H
60.	Kalawati Sharma	ACAPS1025K
61.	Ranidevi Agarwal	AGEPA7936K
62.	Rashmi Jain	ABTPS0026N

63.	Vimal Banawarilal Jain	AADPJ5579L
<b>Exit Providers</b>		
64.	Antaryami Traders Private Limited	AALCA7880J
65.	Amrit Sales Promotion Private Limited	AACCA3220D
66.	Bazigar Trading Private Limited	AABCB3052B
67.	Symphony Merchants Private Limited	AADCS5411K
68.	Ritesh Projects Private Limited	AADCR6224M
69.	Ritesh Commercial Holding.Limited.	AABCR1974J
70.	Dynamic Portfolio Management & Services Limited.	AAACD9125E
71.	Apex Commotrade Private Limited Limited	AAJCA4459K
72.	Gajgamani Merchandise Private Limited	AAFCA72554B
73.	Mobixa Distributors Private Limited	AAICM4750C
74.	Duari Marketing Private Limited	AAECD9323N
75.	Sanklap Vincom Private Limited	AAMCS1711P
76.	Scope Vyapar Private Limited	AAICS6023N
77.	Signet Vinimay Private Limited	AAMCS1712Q
78.	Triala Dealers Private Limited	AAECT5548F
79.	Vishnudham Marketing Private Limited	AAECV4988P
80.	Hari Om Suppliers Private Limited	AABCH2251E
81.	Winall Vinimay Private Limited	AAACW8004B
82.	Kalakar Commercial Private Limited	AADCK9346B
83.	Ludios Trading Private Limited	AACCL3868N
84.	Muchmore Vincom Private Limited	AAICM6982C
85.	Raina Vyapaar Private Limited	AABCR3482R
86.	Stardox Vinimoy Private Limited	AAECS0352C
87.	RC Suppliers Private Limited	AABCR2904A
88.	Ramya Mercantile Private Limited	AAGCR6009M
89.	Rangan Vincom Private Limited	AAGCR1715E
90.	Dreamlight Exim Private Limited	AAECD5782B
91.	Rochak Vinimay Private Limited	AAGCR8142P
92.	Rochi Dealcom Private Limited	AAGCR7017M
93.	Runicha Merchants Private Limited	AAECR0580M
94.	Sidhiman Vyapaar Private Limited	AATCS3687H
95.	SkM Travels Private Limited	AAICS0688K
96.	Spice Merchants Private Limited	AAPCS7492G
97.	Srinivasan Srinivasan	ACIPS8803M
98.	Vibgyor Financial Services Private Limited	AAACV8378B
<b>LTP Contributors</b>		
99.	Manjulaben Sukhdev Pandya	ALVPP7764J
100.	Bharat Bagri HUF	AADHB8488A
101.	Shyam Kanheyalal Vyas	ACTPV2787Q

The entities mentioned at Sr. No. 1 to 101 are hereinafter collectively referred to as “the noticees” or individually by their respective names.

1. Securities and Exchange Board of India ("SEBI"), vide an *ad interim ex-parte* order dated April 17, 2015 (hereinafter referred to as “*interim order*”), restrained 129 entities, including *Mishka Finance and Trading Limited* (formerly known as “Pyramid Finance and Trading Limited and hereinafter referred to as “*Mishka*”) and its promoters and directors from accessing the securities market and further prohibited them from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever, till further directions.
2. Upon preliminary examination, it was *prima facie* observed that *Mishka* and persons in charge of its affairs created a facade of preferential issue of equity shares of around ₹6.74 crore in order to provide fictitious long term capital gains ("LTCCG") to *Mishka's* preferential allottees and *promoter related entities* (i.e. entities to whom *Mishka's* promoters transferred their shares in physical form) so as to convert their unaccounted income into accounted one. It was observed that after the release of compulsory lock-in period, the preferential allottees and the *promoter related entities* were provided exit at a high price by the entities related/connected amongst themselves and with *Mishka* (hereinafter referred to as “Exit Providers”). In the process Exit Providers and allottees artificially increased the volume of the scrip and misused securities market system for making illegal gains and to convert ill-gotten gains into genuine one to avail fictitious long term capital gains. The *modus operandi* used by these entities is summarised as under:
  - a) As on September 30, 2011, *Mishka* had only 7 shareholders (5 under promoters and 2 under public category).
  - b) Thereafter, the aforesaid 7 shareholders transferred a total of 4, 96,000 shares to 452 entities i.e. the promoter related entities directly/indirectly during 2011-2013.
  - c) In the meantime, *Mishka* allotted 7,93,700 shares by way of a preferential allotment to 46 related/associated entities including 1 promoter, *viz.* Pearl Arcade Trading Private Limited, (i.e. the preferential allottees), at an exorbitant premium of ₹75/- per share on September 24, 2012.
  - d) Then, on February 06, 2013, *Mishka* announced bonus shares in the ratio of 7:1. As a result, the share capital of *Mishka* increased to 1, 03, 33,600 shares.
  - e) Thereafter, suddenly trading started in the scrip of *Mishka* from February 14, 2013. In Patch I, i.e. from February 14, 2013 to February 14, 2014, the price of the scrip gradually increased from ₹5.50/- to ₹499/- (unadjusted) and ₹49.90/- (adjusted) with very low volume.
  - f) Prior to February 14, 2013, the entire share capital of *Mishka* was with Promoters, *Promoter related entities* and Preferential allottees.

- g) Once the price of the scrip increased exponentially, *Mishka* announced a stock-split in the ratio of 1:10 on January 16, 2014 to make a passage for preferential allottees to exit since the stock split would reduce the per share price and increase liquidity.
  - h) One month after the stock split, i.e. from February 17, 2014, 59 entities, connected / related, directly or indirectly, to *Mishka*, started providing hugely profitable exit to the preferential allottees and *promoter related entities*. During patch II i.e. from February 17, 2014 to December 30, 2014, the price of scrip moved between ₹29.05 to ₹57.00 but the average volume in the scrip sharply jumped to 2,97, 319 shares.
  - i) The said price movement was not backed by fundamentals of *Mishka* and its financials.
3. The *interim order* provided the restrained entities opportunity to file their objections, if any, within twenty one days from the date of the order and, if they so desire, to avail opportunity of personal hearing before SEBI. All the noticees were granted opportunities of personal hearings on several dates. Several noticees filed their replies in the said matter and availed opportunity/ies of personal hearing on several dates and filed additional written submissions after personal hearings. Some of the entities who had filed their written reply, sought exemption from personal hearing. Some of these entities had also sought inspection/ information/documents relied upon for passing the *interim order* and the same were provided to them.
  4. It is pertinent to mention that SEBI has passed several *interim orders* in similar cases against several entities based upon *prima facie* findings and pending investigations in those matters. Considering the large number of entities covered in such orders (more than 1200), entities common across different orders, complexities involved in the issues such as inter linkages of different tranches of alleged schemes, connection/relation amongst transacting parties in different tranche of scheme, it was considered appropriate to consider the facts and circumstances in totality after hearing maximum possible entities.
  5. In the meanwhile, after considering the facts and circumstances brought out by the restrained entities who had responded to *interim orders*, to avoid erosion of value of securities due to volatility, maintain some investment avenues in the Capital Market such as Mutual Fund and to address the need of funds for meeting the business/ any other exigencies, these entities who have communicated were granted certain common *interim* reliefs.
  6. In the above background, vide letters dated January 15, 2016, January 20, 2016, January 21, 2016, January 22, 2016, January 29, 2016 February 9, 2016 and June 9, 2016 the following were allowed to the noticees except Mr. Vimal Jain who had not submitted any reply then:
    1. “to subscribe to units of the mutual funds including through SIP and redeem the units of the mutual funds so subscribed;

2. *To avail the benefits of corporate actions like rights issue, bonus issue, stock split, dividend, etc.*
  3. *to sell the securities lying in your demat accounts as on the date of the interim order, other than the shares of the companies which are suspended from trading by the concerned stock exchange, in orderly manner under the supervision of the stock exchanges so as not to disturb the market equilibrium and deposit the sale proceeds in an interest bearing escrow account with a nationalized bank.*
  4. *the sale proceeds lying in the aforesaid escrow account shall be dealt with and utilised under the supervision of the concerned stock exchange as provided hereunder:-*
    - a. *the sale proceeds may be kept in a fixed deposit with a nationalized bank or may be utilised for subscription to units of the mutual funds which shall always be held in the demat form and if such units are redeemed the proceeds thereof shall be credited to the aforesaid escrow account or may be utilised for subscription to the units of mutual funds;*
  5. *The aforementioned window for sale of shares lying in respective portfolio shall be withdrawn if you execute any trade beyond those mentioned in point (3) above. The aforesaid reliefs shall be subject to the supervision of exchanges and depositories. The concerned depositories / exchanges may be contacted in this regard.”*
7. Further, the noticees i.e Sr. No. 1 to 10, 16, 17, 42-45, 47-49, 58 and from Sr. no. 64 to 101 were also permitted the following, subject to the condition that the residual value of the portfolio (i.e. remaining 75%) is higher/equal to the profit made as indicated in the *interim order*:
- “To utilise up to 25% of the value of their portfolio as on the date of the interim order for their business purposes and/or for meeting other exigencies.*
- Explanation: For the purposes of determining the portfolio value of the entities, the value of portfolio of securities lying in the demat account/s (individual and joint both) on the date of the interim order after excluding the value of shares that have been suspended from trading as on the date of the communication shall be considered. For NBFCs and stock brokers the value of portfolio shall exclude the value of clients' securities lying in their demat accounts.”*
8. It is relevant to mention that the above decision was taken considering the precedents followed in several cases in light of the principles and reasons noted by Hon'ble SAT in certain cases, for example:-

(a) In the matter of *Mentor Capital Vs. SEBI*– Order dated October 18,2011-

*“A prayer is made that the Board should permit the shares in regard to which the purchase is complete to come into the demat account of the appellant as set out in prayer 7(c) of the memorandum of appeal. The prayer appears to be reasonable and the same is granted. It is further pointed out that the appellant is also holding shares of a large number of companies by way of investment and in view of the falling market, the appellant may be allowed to dispose of those shares with a view to reduce their losses. This prayer is also reasonable and hence granted. We, therefore,*

*direct that the appellant may sell the shares which it is presently holding to safeguard against the erosion in the value of its portfolio. The details of the sales shall be furnished to the Board within 24 hours of the sale and the sale proceeds shall be kept in a separate escrow account. The appellant wants to utilize the sale proceeds to meet with its outstanding liabilities including government dues. It may in this regard approach the Board and seek its permission. If such an application is made to the Board, the same should be considered expeditiously within a reasonable time.”*

(b) In the matter of *India Focus Cardinal Fund Vs. SEBI*- Order dated November 21, 2011-  
*“Having regard to the nature of the disputes raised in this appeal and taking note of the fact that the ad interim order is adversely affecting the business of the appellant, we further direct the Board to conclude the investigations before the end of February, 2012. In the meanwhile, the appellant is allowed to sell all the securities held by it as enlisted in Exhibits ‘G’ and ‘J’ to the appeal and the sale proceeds therefrom shall be deposited in a fixed deposit with ICICI Bank earning interest. The appellant shall not be allowed to withdraw monies from that account including interest without the prior permission of the Board. In case the appellant wants to utilize any or whole of the sale proceeds, it shall seek the permission of the Board in this regard which shall be considered expeditiously. The direction regarding sale of securities has been given with the consent of the parties in view of the falling market to avoid further erosion in the value of the portfolio held by the appellant.*

9. Further, specific representation of any such entity was being separately decided on case to case basis and communicated to them separately during pendency of the proceedings for passing of confirmatory orders. It was also taken into account that such *interim reliefs* were reasonable and that the same may be granted expeditiously pending passing of the confirmatory order in respective cases which had to take time considering factors mentioned in above paras. Therefore, the decision to grant such *interim reliefs* were caused to be communicated by separate letters to respective entities and were to be subsumed in the confirmatory orders.
10. While the proceedings pursuant to the *interim order* were going on, appeals were filed before the Hon'ble Securities Appellate Tribunal ("SAT") by certain restrained entities at various points of time challenging the *interim order*. In terms of the directions of Hon'ble SAT, it was deemed necessary to pass confirmatory orders in respect of the following entities:

Sl no.	Name of the Entity	Date of Confirmatory order
1	Shrenik Nalin Zaveri	October 12, 2015
2	Manharlal Narottamdas Shah	October 21, 2015
3	Rohini Vijaysingh Patwardhan	July 05, 2016

11. Vide order dated November 10, 2015, the directions issued against Mr. Jayesh Kesharia stand revoked. It is also noted that Mishka Finance and Trading Limited has filed an appeal

before Hon'ble SAT. The said appeal was disposed off by Hon'ble SAT vide order dated July 25, 2016 directing SEBI to pass an appropriate order in the matter.

12. Considering the fact that no response was received from the 24 entities, an *ex-parte* order dated April 13, 2016 was passed against 24 entities as mentioned in table below, confirming the directions issued vide *interim order* based on material available on record after providing ample time to them to respond to the *interim order* and to avail an opportunity of personal hearing.

Sl.	Name of the entity	PAN	Category
1	Mr. Amit Singh	BABPS7447D	Exit Provider
2	Badamisati Apartments Private Limited	AAFCEB4546A	Exit Provider
3	Function Financial Consultants Private Limited	AABCF5486H	Exit Provider
4	Cheroot Vanijya Private. Limited.	AAECC9285A	Exit Provider
5	Dhlriti Traders Private Limited	AAECD8235D	Exit Provider
6	Esha Securities Limited	AAACE2862P	Exit Provider
7	Blue Horizon Commosales Private Limited	AAFCEB0211J	Exit Provider
8	Helot Properties Private Limited	AACCH8885R	Exit Provider
9	Helpful Investment Advisory Private Limited	AACCH4303G	Exit Provider
10	Kapeeshwar Vintrade Private. Limited.	AAECK7329P	Exit Provider
11	Overload Financial Advisory Private. Limited.	AABCO6950F	Exit Provider
12	Reachsmart Construction Private. Limited.	AAGCR4662J	Exit Provider
13	Samridhipurn Services Private Limited	AATCS4365E	Exit Provider
14	Sebika Commodities Private Limited	AARCS9144H	Exit Provider
15	Sinjan Overseas Private Limited	AAMCS8721P	Exit Provider
16	Swarnprakash Traders Private. Limited.	AATCS6718D	Exit Provider
17	Topwell Properties Private Limited	AADCT8403C	Exit Provider
18	Wonder Procon Private Limited	AABCW0317N	Exit Provider
19	Mr. Arunavo Mukherjee	ATIPM7500N	Exit Provider
20	Indrawati Nirman Private Limited	AADCI5139E	Exit Provider
21	Dhyaneswar Dealers Private Limited	AAECD8010E	Exit Provider
22	Goldensight Traders Private Limited	AAFCG4773J	Exit Provider
23	Reachsmart Dealtrade Private. Limited.	AAFCR9881C	Exit Provider
24	Sulabh Impex Limited.	AAICS7362Q	Promoter

13. Thus, out of total 129 debarred entities orders has already been passed against 28, proceedings against remaining 101 entities are being dealt with in this order.

14. I note that the *interim order* highlighted the profit/gain earned by the allottees. The details of the profit/gain earned by the preferential allottees covered in this order and against whom confirmatory directions have already been passed are tabulated below:



S.No.	PAN	Name	Profit earned on the sale of shares (₹)
1	AALFG1236F	Gokuldham Enterprises LLP	99770176
2	AAGPS6393C	Prakash Mangilal Surya	47777357
3	AAJPA2349H	Jignesh M. Amin	50533906
4	AAAPZ1721B	Shrenik Nalin Zaveri	51717459
5	AADPK9309F	Mahesh Kumar Khatry	53833135
6	AADPK1946Q	Prakash Chand Khatry	52664913
7	ADGPC1107P	Tarun Kumar Chandak	48619650
8	ACAPS1025K	Kalawati Sharma	46384450
9	AGMPS2776H	Prakash Chand Sharma	46139608
10	ABYPV5751G	Chirag Maheshkumar Vyas	45119625
11	AACPD7055J	Nitin Kumar Didwania	38430782
12	AAAPU2596F	Sheetal Sanjay Udeshi	50145741
13	AADPJ5579L	Vimal Jain	31524600
14	ACUPJ1252F	Naresh Jalan	29022944
15	AABHN4403P	Naresh Jalan HUF	28859136
16	ACFPJ2428J	Mahabir Prasad Jalan	31071500
17	AACHM0965N	Mahabir Prasad Jalan HUF	25300725
18	ACSPB5838R	Shankar Batra	19739502
19	AECPC7959J	Harleen Kaur	19310416
20	AEJPB6903J	Savita Bansal	16950775
21	AJGPS8091J	Sarad Kumar B Jain	15645969
22	ABTPS0026N	Smt Rashmi Jain	14988106
23	AADPC6863A	Ashok Kumar Chowatia	13092706
24	ABQPL6153L	Tarachand L Shah	12657981
25	AADPC6859J	Madanlal Babulal Chowatia	11496719
26	AEFPS6298M	Brij Bhushan Singal	6472580.8
27	ABHPA9244J	Sadhna Rani	5413750
28	AGEPA7936K	Ranidevi Agarwal	3671437.5
29	AADHR3405B	Ravinder Kumar Gupta HUF	2376300

15. I note that the *interim order* highlighted the fact that the Exit Providers bought most of the shares sold by the preferential allottees and the promoter related entities. The details of the value of the exit provided by the exit providers covered in this order and against whom confirmatory directions have already been passed are tabulated below. The details of the profit/gain earned by the promoter related entities covered in this order are tabulated below.

As the promoter related entities had acquired the shares through off-market transactions, the purchase price has been considered at face value of the scrip (post split).

**Value of exit provided By Exit Providers**

S. No.	PAN	Name	Total No. of shares purchased from promoter related/prefential allottees	Total No. of shares purchased from promoter related/prefential allottees (%)	Value of the exit provided to promoter related/prefential allottees (₹)
1	AAECD8235D	Dhlriti Traders Private Limited	8485818	97.24	427607546.6
2	AAGCR6009M	Ramya Mercantile Private Limited	5290081	98.39	267343096.1
3	AAPCS7492G	Spice Merchants Private Limited	2100797	73.14	108291885.7
4	AAJCA4459K	Apex Commotrade Private Limited	1961565	87.21	101576550.6
5	AAACW8004B	Winall Vinimay Private Limited	976671	89.6	50793186.7
6	AAECV4988P	Vishnudham Marketing Private Limited	490025	73.55	26056414.55
7	AAECD5782B	Dreamlight Exim Private Limited	426525	73.55	22847278.9
8	AAMCS1712Q	Signet Vinimay Private Limited	361354	81.12	18216444.7
9	AAFCG2554B	Gajgamani Merchandise Private Limited	356151	87.29	18610214.25
10	AAECD9323N	Duari Marketing Private Limited	347260	82.22	16601551.75
11	AAECR0580M	Runicha Merchants Private Limited	204035	62.27	10713449.45
12	AATCS3687H	Sidhiman Vyapaar Private Limited	313840	95.42	15919153.8
13	AAICS6023N	Scope Vyapar Private Limited	310000	100	15638500
14	AAACE2862P	Esha Securities Limited	295500	100	14870738
15	AALCA7880J	Antaryami Traders Private Limited	260075	91.45	13218343.8
16	AAECC9285A	Cheroot Vanijya Private Limited	269250	94.72	13287396.75

17	AAFCB4 546A	Badamisati Apartments Private Limited	181160	92.9	9134848
18	AAECS0 352C	Stardox Vinimoy Private Limited	180000	100	9918000
19	AABCO 6950F	Overload Financial Advisory Private Limited	174260	100	9616168
20	AABCR3 482R	Raina Vyapaar Private Limited	166540	100	8967931
21	AAMCS1 711P	Sanklap Vincom P Limited	131049	86.76	6618917.2
22	AACCH 8885R	Helot Properties Private Limited	128660	85.97	6946213.5
23	AAICM4 750C	Mobixa Distributors Private Limited	104250	75.76	5470212.5
24	AAICM6 982C	Muchmore Vincom Private Limited	104650	91.48	5449207.55
25	BABPS7 447D	Amit Singh	114320	100	5725129.55
26	AAICS06 88K	SkM Travels Private Limited	110900	99.91	5581312.8
27	AAGCR 8142P	Rochak Vinimay Private Limited	90150	82.71	4709922.5
28	AAFCB0 211J	Blue Horizon Commosales Private Limited	79780	77.78	4270816.5
29	AABCF5 486H	Function Financial Consultants Private Limited	53300	61.05	2755100
30	AABCH 2251E	Hari Om Suppliers Private. Limited.	81450	99.94	4491967.5
31	ACIPS88 03M	S N Srinivasan	296985	87.61	14346818.5
32	AACCA3 220D	Amrit Sales Promotion Private Limited	60000	85.71	3269000
33	AAACV 8378B	Vibgyor Financial ServicePrivate Limited	0	0	0
34	AACCH 4303G	Helpful Investment Advisory Private Limited	71663	100	3796629.45
35	AAECT5 548F	Triala Dealers Private Limited	69800	99.71	3511480.1
36	AADCR 6224M	Ritesh Projects Private Limited.	72195	100	3903746.5
37	AAFCR9 881C	Reachsmart Dealtrade Private Limited	57000	100	3033050

38	AAMCS8 721P	Sinjan Overseas Private Limited	56000	100	2951200
39	AABCW 0317N	Wonder Procon Private Limited Wppl	50000	100	2750000
40	AAGCR 7017M	Rochi Dealcom Private Limited	52500	100	2890625
41	AABCR2 904A	R C Suppliers Private Lim Ited	45000	100	2481750
42	AAF CG4 773J	Goldensight Traders Private Limited	5000	13.16	273750
43	AADCS5 411K	Symphony Merchant Private Limited	32500	100	1709500
44	AABCB3 052B	Bazigar Trading Private Limited	29500	100	1555950
45	AAECD 8010E	Dhyaneshwar Dealers Private Limited	165500	89.22	5308575
46	AACCL3 868N	Ladios Trading Private Limited	25000	100	1252500
47	AADCT 8403C	Topwell Properties Private Limited	25000	100	1251250
48	AADCK 9346B	Kalakar Commercial Private Limited	25000	100	1378750
49	ATIPM7 500N	Arunavo Mukherjee	20000	100	1055925
50	AARCS9 144H	Sebika Commodities Private Limited	13785	100	759242.75
51	AATCS6 718D	Swarnprakash Traders Private Limited	15000	100	790500
52	AAACD 9125E	Dynamic Portfolio Management & Services Limited	15955	100	877038.25
53	AADCI5 139E	Indrawati Nirman Private Limited	72000	100	2648152.5
54	AAKPS3 276J	Manharlal Narottamdas Shah	11650	100	641915
55	AAGCR 4662J	Reachsmart Construction Private Limited	9900	100	521530.05
56	AABCR1 974J	Ritesh Commercial Holdings Limited	11545	100	634514.5
57	AAECK 7329P	Kapeeshwar Vintrade Private Limited	11000	100	606650
58	AATCS4 365E	Samridhipurn Services Private Limited	6000	100	300900

59	AAGCR 1715E	Rangan Vincom Private Limited	2000	100	100000
<b>Total</b>			25476894		1295848441

**Profit/Gain earned by promoter related entities**

S. No.	PAN	Name	Gr Sell Vol	Gr Sell Value (₹)	Purchase Value* (₹)	Profit (₹)
1	ABBP R3992 G	A K Roongta	495980	26061788.1	495980	25565808.10
2	AGLP P3159L	Rohini Vijaysingh Patwardhan	400000	20172775	400000	19772775.00
3	ACRP C4740 L	Riteshkumar Amitkumar Chatterjee	319950	16599474.8	319950	16279524.80
4	AKKP P3508 Q	Parul Rupesh Poddar	303980	15323564.7	303980	15019584.70
5	AAOH S4973C	Sunil Kumar Jain & Sons HUF	281000	13694150	281000	13413150.00
6	AANP G3179 K	Bharat Gandotra	280000	15406625	280000	15126625.00
7	AAIPK 5106B	Jyoti Khanna	280000	15349359.9	280000	15069359.90
8	ACNP A1462 H	Lalit Agarwal	280000	14703750	280000	14423750.00
9	AFMP K8726 N	Ravi Khanna	280000	14508200	280000	14228200.00
10	AAGP A3508 D	Gajanand Agarwal	280000	14245564.4	280000	13965564.40
11	AACP A9922 H	Pankaj Agarwal	280000	14100250	280000	13820250.00
12	AJVPK 5048G	Aadist Khanna	280000	13868625	280000	13588625.00
13	ARIPK 3181H	Bhavya Khanna	280000	12911875	280000	12631875.00
14	AAGH R7451 A	Ravi Khanna HUF	280000	10336750	280000	10056750.00
15	AELP P0183 N	Rupesh Kumar Poddar	279980	14486619.9	279980	14206639.90
16	BEIPA 7823N	Pranit Agarwal	260000	13472937.0 5	260000	13212937.05

17	ACHP S7762 G	Atul Moreshawar Save	253000	12916015	253000	12663015.00
18	ACRPJ 3552D	Seema Jain	249200	13320640	249200	13071440.00
19	BHKP S8506F	Jay N Shah	240000	13209275	240000	12969275.00
20	ABYPJ 9937E	Sunil Kumar Jain	240000	11261260	240000	11021260.00
21	AAGP S9497R	Navinchandra K Shah	216000	11893150	216000	11677150.00
22	AAEH D5856 M	Dindayal Malchand Agarwal Huf	210000	10531818.5	210000	10321818.50
23	AAGP S9498 A	Malti Navinchandra Shah	208000	11457000	208000	11249000.00
24	AACP A5733 E	Krishan Agarwal	202500	10273820.6	202500	10071320.60
25	AABH A9528 A	A K Roongta HUF	199980	10192877.9	199980	9992897.90

\*Purchase value of the shares sold assumed at the face value at the time of sale to be ₹ 1/-  
(Post split)

16. Considering the fact that majority of entities have already been heard and that the replies are similar/identical, even though some of the entities are delaying by seeking adjournment /documents, it is felt that at this stage a view can be taken for the Noticees based on reply/submissions already received.

17. It is noted that some of the entities belonging to the same category, have submitted replies that are similar /identical in nature. Such replies have been grouped together for the sake of brevity. The noticees have *inter alia* submitted the following:

#### **I) MISHKA AND ITS DIRECTORS**

**Mishka Finance and Trading Limited, Mr. Amit Kumar Vashishta, Mr. Ankit Garodia, Mr. Jugalkishore Pralhadrai Sharma and Mr. Rameshwar Manohar Wagh:**

- i) They denied each and every statement, allegation, and contention made in the *Interim order* and submitted that it is based on conjectures and surmises, it was taken out after a gross delay, there was no evidence to substantiate that either *Mishka* or its directors were responsible for the market movements in the its scrip.

- ii) *Mishka* had made an extensive progress since 2012-13 which can be evinced from last 3 years financials and has made profits after the preferential allotment with the inflow of further capital.
- iii) *Mishka* and its promoters/directors did not have any role, interest or benefit in LTCCG made by certain parties.
- iv) To exit after completion of lock is the decision made by investor wherein *Mishka* and its directors have no say and *Mishka* has no powers or control over it.
- v) The Directors were introduced to the preferential allottees by a broker named Mr. Subhash Maheshwari who agreed to invest in *Mishka's* preferential allotment.
- vi) The promoters who sold their shares have complied with all the rules and regulations.
- vii) They submitted that the allegations are based merely on a presumption that the 452 entities are “promoter related entities”.
- viii) The bonus was issued as per the guidelines since the *Mishka* had sufficient reserves.
- ix) Only the number of shares was increased but the share capital was constant.
- x) They submitted that the figures mentioned in the *interim order* with regard to the profit and loss of *Mishka* are misleading. The report was made on 17th April 2015, the profits made by *Mishka* should not have been restricted to 31st March 2013 only. Business of *Mishka* was revived and the revenue earned from its operations was to the tune of ₹16,45,23,003/- in the very 1st year ending 31st March 2013. The profits before tax of *Mishka* as on 31st March 2013 was ₹17,55,803/- and in the year ending 31st March 2014 was ₹58,13,401/-. In fact the revenue from operations in the said year was to the tune of ₹27, 10, 64,568/-.
- xi) They denied that the said price movement was not backed by fundamentals of *Mishka* and its Financials. The Company's earnings were raised from EPS -2.4 to EPS 0.12. The *interim order* wrongly refers to the period when *Mishka* was dormant.
- xii) They submitted that the *Mishka's* performance post revival is required to be seen and not the past period when it was suspended and dormant. *Mishka* has shown strong potential as backed by investors.
- xiii) They submitted that investor interest depends on a large number of factors subjective to the investor or investors. It is not merely announcements or the undefined 'fundamentals' that SEBI is referring to.
- xiv) The price movements in the market have not always been backed by fundamentals and financials but many times on the basis of market news or buzz, business contracts, management personnel etc., which the Company may be likely to enter into or may procure and like risks to which the Company or its directors have no control.
- xv) They denied that the directors had any connection with the entities referred to the *interim order*.
- xvi) They have not received any benefits from any of the entities who were alleged to have made profits from the alleged trades.

- xvii) The nomenclature/connotation "*Mishka* Group" is a fiction of imagination of SEBI. There were no direct transactions between *Mishka* and the other named entities mentioned in Annexure A of *interim order*. The Company cannot be stated to be connected with the entities without establishing that the Company or their Directors had any connection with the said entities.
- xviii) The Company had used the funds raised from preferential allotment for the stated purpose only.
- xix) They submitted that the SEBI had not given sufficient advance notice for the directors to attend the meeting and hence the directors could not attend the same.
- xx) Payments made to CD Equisearch Private Limited were for buying shares of other listed companies where CD Equisearch Private Limited acted as broker for the Company. Payments to Esha Securities Limited and Jitendra Dewoolkar were given as advance for business proposals. As the transactions did not materialize Esha Securities and Jitendra Dewoolkar refunded the said payments. In view of the aforesaid, there was no question of corporate announcement by the Company under Clause 43(a) of the listing agreement indicating the non- utilisation of the proceeds from the preferential allotment as alleged or at all.
- xxi) No direct remittance of money was shown between entities.
- xxii) They stated that SEBI had not given particulars of investors who have lost money nor of any investor complaint or grievance since 2012 till date which was brought to the knowledge of *Mishka*.

## **II) PROMOTERS OF MISHKA FINANCE AND TRADING LIMITED:**

### **1) Vijay Kumar Jain, Wave Inter Trade Private Limited, Embassy Finance & Consultants Private Limited, Tohee Trading & Agencies Private Limited**

Following are the key submissions made by Vijay Kumar Jain on behalf of himself and other promoters viz. Wave Inter Trade Private Limited, Embassy Finance & Consultants Private Limited, Tohee Trading & Agencies Private Limited:

- i. The *Interim order* is quasi penal in nature as it restrains from dealing in shares of other companies also and is in violation of the principles of natural justice, equity and fair play.
- ii. The company M/s Wave Inter Trade Private Limited is not associated and was not directly or indirectly responsible for the affairs of the Company with the present promoters/persons or persons acting in concert or associated directly or indirectly and therefore is not responsible/liable for any non-compliances.
- iii. Mishka was suspended on the Stock Exchange from January 2007 to May 2012 and was not trading on stock exchange. Mr. Vijay Kumar Jain met Mr. Subhash Maheshwari in some social gathering and discussed the matter of transfer of the Mishka. Mr. Subhash



Maheshwari then introduced M/s Roongta Rising Stock Private Limited. It was decided to enter into a formal MOU to transfer of Mishka. The MOU was signed between the Mr. Vijay Kumar Jain and Shri Subhash Maheshwari for the transfer of Entire Shareholding of the Company from the then existing shareholders to the new Promoters / Shareholders / Directors

- iv. Pursuant to signing of MOU existing directors namely Mr. Vijay Kumar Jain, Mr. Ajay Parelkar and Mr. Anand Gupta resigned after transfer of equity shares. Further, they never participated in any of the management decisions.
- v. The intention of the MOU was:
  - a) That the transferor promoters /shareholders were not responsible or liable to list the shares of the *Mishka* on BSE.
  - b) The shares will be transferred off the market since the *Mishka's* shares are suspended from stock exchange.
  - c) The entire shareholding except 2000 equity shares shall be transferred by the transferors to the transferee at a price of ₹ 5/- (Five) per share. The original copy of the said MOU was left with Mr. Subhash Maheshwari.
- vi. The erstwhile shareholders namely, Mr. AnkitJain, Mr. Vijay Kumar Jain, Ms. Rashmi Jain, M/s Wave Inter Trade Private Limited, M/s Embassy Finance & Consultants Private Limited and M/s Tohee Trading & Agencies Private Limited sold 496000 (Four Lac Ninety Six Thousand Only) equity shares in physical form only to M/s Roongta Rising Stock Private Limited on the instructions of Shri Subhash Maheshwari and received the consideration for the sale of their shares between 19<sup>th</sup> March, 2012 and up to 10<sup>th</sup> December, 2012. The financial transactions were made through the M/s Roongta Rising Stock Private Limited and the consideration of shares sold was paid by M/s Roongta Rising Stock Private Limited only who raised invoices of various dates. One of the shareholders M/s. Embassy Finance & Consultants Private Limited continued to hold 2000 (two thousand) equity shares in Physical Form.
- vii. Mr. Ankit Garodia (DIN 05172218) and Mr. Jugal Kishore Pralhadrai Sharma (DIN 05205981) were nominated as directors on the Board of the company w.e.f. 21st February, 2012 who started taking management decisions immediately.
- viii. The directors namely Mr. Amit Kumar Vasishtha (05358607) and Mr. Rameshwar Manohar Wagh (06413315) were appointed and the old Promoter/Directors namely Mr. Anand Gupta (00649031) and Mr. Vijay Kumar Jain (00166175), resigned from the Board of the Company w.e.f. 30.03.2013. The above appointment and resignation was done by the transferees i.e. Digital Signature of Mr. Ankit Garodia having DIN 05172218. The other director also resigned from the directorship after the transfer of shares.
- ix. The name of the Company was changed some where in 2013 from Pyramid Trading and Finance Limited to Mishka Finance and Trading Limited.

- x. They duly informed the BSE and SEBI of the proposed transfer of shares on different dates.
- xi. They never dealt with the sale and purchase of shares of the company either in physical or demat form
- xii. The effect of the *Interim order* is that Mr. Vijay Kumar Jain cannot sell others shares or securities even in case he requires money to meet his needs and that of his family.
- xiii. The Interim order is speculative and is based on conjectures and surmises. In paragraph 20 of the same, the authority records the basis "it can safely be assumed". In paragraph 25, it records the basis as "can be reasonably inferred".
- xiv. It is unfair to restrain them as and further inquiry and investigation are pending.
- xv. In all the management decision, directors of promoter entities did not participate in any decision making process.
- xvi. They were not involved with either so called groups as given in para 6 of the interim order for pushing the price and/or as buyer.
- xvii. There was no violation of any of the provisions mentioned in paragraph 28 of Interim order by them.

## **2) Pearl Arcade Trading Private Limited**

- i) The *Interim order* is quasi penal in nature.
- ii) The Interim order was taken out after a gross delay. There was no justification or reason for the Interim order being passed without affording them a prior notice and hearing.
- iii) The Interim order was based on conjectures and surmises. The Interim order proceeds on arbitrary assumptions, classifications and pre conceived notions. In particular:
  - a. All persons who purchased shares from preferential allottees were labelled 'exit providers' first thereby pre judging their actions.
  - b. All persons who ever purchased shares from Promoters were arbitrarily classified as persons 'directly or indirectly related to the Promoters'.
  - c. The *Interim order* refers to the preferential issue at a premium of ₹75/- per share as 'exorbitant', however, the issue and the pricing was in accordance with guidelines of SEBI and Stock Exchange themselves.
- iv) They do not fall in any of the parameters sought to be relied upon by SEBI which call for the measures against them. They were introduced to the promoters of the Company by one Mr. Subhash Maheshwari. Subsequently, they invested in the Company through preferential shares allotment purely for the purpose of investment.
- v) They and Mishka do not have any common directors or shareholders.
- vi) Even if some parties made LTCG, they as a promoter of Mishka have no interest therein.
- vii) After having raised funds through such preferential allotment, Mishka has consistently made profits.

- viii) It is unfair and illegal to totally restrain them to access the security market as is done in the present case, since further inquiry and investigation is pending.
- ix) There is no violation of any of legal provisions relied upon in paragraph 27 of the Interim order by them.
- x) They have not sold a single share till date. They have taken a business decision not to be involved in the management of the Company

### **III) PROMOTER RELATED ENTITIES:**

#### **1) Mr. A. K. Roongta, A. K. Roongta (HUF), Mr. Atul Save and Mr. Pritish Kumar Chatterjee**

- i) The said Order is passed in defiance of principles of natural justice as an opportunity of personal hearing was not provided before passing the order and there was no emergent situation for passing the said order in exercise of powers under section 11(1), 11(4) and 11(B) of the SEBI Act.
- ii) Section 11(4)(e) of SEBI Act mandates an approval from Judicial Magistrate for attachment of accounts, which is not obtained before attaching thier accounts.
- iii) Any direction under the provisions of sections 19, read with sections 11(1), 11(4) and 11B of the SEBI Act could be passed only by all the members of the Board. However, the said order is passed by the Whole Time Member individually. Hence, the order is unauthorized and exceeds authority.
- iv) They do not have any link/connection/nexus with Mishka or its promoter/directors or the entities of Mishka group.
- v) Mr. A. K. Roongta submitted that Mr. Subhash Maheshwari approached him with an intension to sell the shares of Mishka. He was informed by Mr. Subhash Maheshwari that the company is planning to relist and shall come out with preferential allotment of shares. Therefore, he bought 6,300 shares of Mishka worth ₹55700/- in his account as well as 2,500 shares in his HUF account for ₹15,000/-.
- vi) Mr. Atul Save and Mr. Pritish Kumar Chatterjee submitted that Late Mr. Moreshwar Save, father of Mr. Atul Save, used to take investment decisions on their behalf. Mr. Moreshwar Save bought 4,000 shares at a price of ₹30/- from Roongta Rising Stocks Private Limited in October 2012 on their behalf.
- vii) If they had been the part of modus operandi then they would have sold the shares of Mishka at the highest price. However, they started selling the shares from April 2013 when the price of the shares of Mishka was very low. They had sold the shares of Mishka in the price range of ₹7.69 to ₹55.30/-. Further, their trading was less than 0.50% of market volume during the examination period.
- viii) SEBI had provided the opportunity to the directors and promoters of Mishka for explaining their stand before passing the Interim order. However, the same opportunity

was not granted to them. This has not just amounted to infringement of their rights, but has also been resulted in double standard behaviour of SEBI which is grossly unjust and unacceptable.

- ix) It is observed many times that such orders have caused huge financial losses to the affected parties and SEBI reverse the order after some time saying that there was no fault. Though there are many such cases, one such case pertains to the matter of *Littilestar Vanija Private Limited* where SEBI blocked the demat account through a similar ex parte ad interim order on August 3, 2012 and reversed it on November 9, 2012. During this period the holding of the affected company faced severe devaluation.
- x) The entire Order has wrongly assumed that they are a part of 'Promoter related entities', merely because their shares once belonged to the promoters. Moreover, the purchase of shares in off-market transaction is a permitted method of purchasing the shares of a company. Thus, they are yet to understand how, even without any evidence or specific role attributed to them, they are being penalised in the Order.
- xi) The benefit of tax exemption on Long Term Capital Gain has been afforded as per the prevailing policy under the Income Tax Act, 1961 and merely because they availed of the same does not make their actions fraudulent. Therefore, the Order fails to reconcile how, merely by making Long Term Capital Gains, they violated any prevailing law.
- xii) The entire concept and categorisation of 'Exit providers' is fallacious and illogical as why the exit providers would enrich them at their own costs by buying the shares, knowing that the price they pay is actually not the price of the share.
- xiii) SEBI has restrained only those entities who have sold more than 2,00,000 shares, even when there are other entities, who have received shares from Promoters of the company in physical form, had sold the shares of Mishka. Therefore, the stand of SEBI to ban only those promoter related entities who have sold more than 2,00,000 shares is highly objectionable. Further, HUF account of Mr. A. K. Roongta has also been included in the order, even though, the said account does not meet the short listing criteria mentioned in the Order.
- xiv) They have prayed that the Ex-parte Order be revoked and set aside forthwith and all proceedings be dropped without any further directions.
- xv) Without prejudice to the above prayer, they have sought the following interim reliefs:
  - a. to allow them to sell the shares and the units of Mutual Funds lying in the beneficiary accounts and to keep the such proceeds in an interest bearing escrow account;
  - b. To allow them to access the units of mutual funds.

## 2) Shri Gajanand Agarwal:

- i) He does not have any link/connection/nexus with *Mishka* or its promoter/directors or the entities of *Mishka* group.

- ii) He bought the shares of *Mishka* from Roongta Rising Stocks Private Limited based on a newspaper advertisement as well as based on his research.
- iii) He does not have any role at all in the alleged 'manipulation' of the price or volume of the scrip of *Mishka*. All transactions executed in the scrip of *Mishka* were genuine and were backed by actual delivery. Further, all the trades were executed on screen based mechanism of the Stock Exchange and, hence, he was not aware of the identity of the counter party.
- iv) The order fails to establish relationship in any manner except the untenable ground of being purchaser of shares in off market transaction.
- v) The subject order has erroneously questioned his investment in the Company by limiting its sight only to the past of the Company. Whereas Hon'ble SAT in the matter of *52 Weeks entertainment Limited vs. SEBI and Ors* considerably opined that "Price of scrip depends on so many factors for scrips of company's operating in different segments and sectors that is not possible to relate the price of the scrip on simply one or two such factors. As a matter of fact these factors may run into hundreds and still it may not be possible to say that all have been accounted for."
- vi) He has cited the judgement of Hon'ble SAT in the matter of *KSL Industries Limited v. SEBI and EssEss Intermediaries Vs SEBI* in his defence with respect to the allegation of Fraud levelled against him in the order.
- vii) He has prayed that the Ex-parte Order be revoked and set aside forthwith and all proceedings be dropped without any further directions

### **3) Mr. Rupesh Poddar and Ms. Parul Poddar:**

- i) They invested in the scrip of *Mishka* based on a newspaper advertisement published by Roongta Rising Stocks Private Limited in Economic Times on 17<sup>th</sup> September, 2012. They contacted Ajay Banka of Roongta Rising Stocks Private Limited. Mr. Banka informed them about the good business prospects of *Mishka* and they may have good returns in future.
- ii) Therefore, both Mr. Rupesh Poddar and Ms. Parul Poddar bought 1000 shares and 1300 shares respectively in April 2012 at ₹6/-. They again bought 2500 shares at ₹30/- in November 2012. Further, at the time of buying the shares in physical form, they were not aware about the identity of the person who was selling the shares to them.
- iii) They were not informed by Roongta Rising Stocks Private Limited that the shares were under suspension. Further, since the amount involved was ₹2, 00,000/-, which was a small amount, they did not do any due diligence of the company before buying the shares.
- iv) They do not have any link/connection/nexus with *Mishka* or its promoter/directors or the entities of *Mishka* group.

- v) They do not have any role at all in the alleged 'manipulation' of the price or volume of the scrip of Mishka. All transactions executed in the scrip of *Mishka* were genuine and were backed by actual delivery. Further, all the trades were executed on screen based mechanism of the Stock Exchange and, hence, they were not aware of the identity of the counter party.
  - vi) They have not acted or conducted their affairs, in a manner detrimental to the interest of the investors or securities market.
- 4) Shri Sunil Jain, Ms Seema Jain and Sunil Kumar Jain & Sons
- i) They have been termed as a Promoter related entity merely on the basis that they had purchased shares through a broker *viz* M/s Roongta Shares Private Limited from promoters namely M/S wave Inter Trade Private Limited and M/s Embassy Finance & Consultants Private Limited., who are indicated as promoters of *Mishka* and were not aware of the counterparty to the trade.
  - ii) They have neither been aware or concerned with either Mishka nor with its promoters mentioned in above para in any capacity.
  - iii) They state that all the findings and allegations against them are based on mere assumptions, presumptions, conjectures and surmises. They deny each and every allegation made in the said order.
  - iv) No connection has been established between them and the promoter/promoter group of Mishka in any manner whatsoever.
  - v) They are unable to submit a comprehensive rebut the allegation levelled against them, as they have not been provided with all the documents referred to and relied upon by SEBI while passing interim order.
  - vi) Their investment decisions are based on performance of the scrip in terms of price and not on fundamentals.
  - vii) They have traded through their broker in the normal course of business on stock exchange platform and were not aware of counterparties.
  - viii) There is no specific role/allegation against them. Further, the allegations against them are levelled only by taking their trades together with the trades of other entities which are not related/connected to them.
  - ix) They have not traded during Patch 2 (February 14, 2013 to December 31, 2014) nor concerned with the entities who have traded in Patch 2.
  - x) They are nowhere related to or concerned with the trades of net buyers and net sellers in totality with either or any of the parties to the trades during Patch 2 as shown in the.
  - xi) They had no intentions nor aware or concerned with the inter relatedness of trades and fund transfers made by the alleged Mishka Group.
  - xii) They had never intended nor wished to violate nor violated any provisions alleged upon them.

- xiii) SEBI before passing such an order against them, ought to have granted an opportunity of hearing in the matter.
- xiv) They submitted that *ad interim ex parte order* bearing no: WTM/RKA /ISD / 30 /2015 dated April 17, 2015 passed by SEBI against them is prima facie illegal, erroneous, unjustified, and unsustainable.
- xv) They have prayed as under:
  - a) That the ad interim ex parte order may be withdrawn against them and they be released/exonerated from the present proceeding.
  - b) That the restraint and freezing of their demat account be lifted.
  - c) Any other relief which SEBI may deem fit and appropriate in the facts and circumstances of the matter.

**5) Shri Navinchandra Khimchand Shah, Shri Jay Navinchandra Shah and Smt. Malti Navinchandra Shah**

- i) The said Order is passed in defiance of principles of natural justice as an opportunity of personal hearing was not provided before passing the order and there was no emergent situation for passing the said order in exercise of powers under section 11(1), 11(4) and 11(B) of the SEBI Act.
- ii) No case has been made by SEBI against them of having any direct or indirect relationship/connection/nexus with any of the parties mentioned in the *interim order*.
- iii) That SEBI has named them as promoter related entities in ex-parte order without considering facts and circumstances of their case.
- iv) The stand of SEBI to ban only those promoter related entities who have sold more than 2, 00,000 shares is unjust and arbitrary.
- v) They bought shares of Mishka on advice by a representatives of Pranjal Trading Company Private Limited whom they met in a private social gathering. Further they were not aware that Tohee Trading and Agencies Private Limited and Wave Inter trade Private Limited were the promoters of the company.
- vi) They do not have any role at all in the alleged ‘manipulation’ of the price or volume of the scrip of Mishka. Further, all the trades were executed on Stock Exchange platform and not aware of the identity of the counter party.
- vii) Further, out of total shares sold by Shri Jay N Shah, Navinchandra K Shah and Malti N Shah, 2,39,110 (99.53%), 1,90,555 (88%) and 1,83,700 (88%) shares respectively were purchased by the entities other than Exit Providers as alleged by SEBI.
- viii) There has been a complete denial of inspection of the records and documents as requested by them through various letters. SEBI has just provided them a CD containing certain documents which does not have all documents they requested.

- ix) They have submitted that the rational investment decision is facts specific and the said decision is taken considering various individual parameters and facts which are solely subjective.
- x) Their investment in Mishka was a very small amount as compared to their total assets and was a calculated risk.
- xi) They have also cited the Hon'ble Supreme Court judgement in the matter of Union of India vs. Chaturbhai M. Patel, Hon'ble SAT in the matter of Parsoli Corporate Limited vs. SEBI in their defence.
- xii) They have contributed not even 1% of market total number of orders and number of trades. In this regard, they have cited Hon'ble SAT judgment in the matter of *Vikash Bengani v SEBI* in their defense.
- xiii) They do not have any link/connection/nexus with Mishka or its promoter/directors or the entities of Mishka group.
- xiv) They have not acted or conducted their affairs, in a manner detrimental to the interest of the investors or securities market.

**6) Shri Lalit Dindayal Agrawal, Shri Pranit Lal Agarwal and Dindayal Malchand (HUF)**

- i) The said Order is speculative, arbitrary, based on conjectures and surmises, capricious and opposed to the principles of natural justice, bad in law and ought to be set aside as an opportunity of personal hearing was not provided before passing the order.
- ii) They do not have any link/connection/nexus with Mishka or its promoter/directors or the entities of Mishka group.
- iii) They bought the shares of Mishka based on the advice of Shri Subhash Maheshwari from Roongta Rising Stocks Private Limited.
- iv) The entire Order has wrongly assumed that they are a part of '*Promoter related entities*', merely because their shares once belonged to the promoters.
- v) In paragraph 20 of the same, the authority records the basis as "*it can safely be assumed*" and in paragraph 25, it records the basis as "*it can be reasonably inferred*". All these aforesaid assumptions, statements and inferences are totally insufficient to pass a quasi-penal order like the Interim order and demonstrate on the face of it that the *Interim order* is purely speculative and arbitrary.
- vi) The penalty imposed on them is extreme and deprive them of their livelihood merely on the basis of a hypothesis not supported by actual proof of that basis. The very fact that the Interim order is stated to be only an interim order and further inquiry and investigation are pending [as stated in paragraph 36 of the order], it is absolutely unfair and illegal to totally restrain them to access the security market as is done in the present case. They cannot be barred from practising their trade or profession on suspicion when admittedly further investigation is required and the Order is based on conjecture and



surmises. They have also cited the judgement of the Hon'ble Supreme Court in the case of *An Advocate v. Bar Council of India*, 1989 Supp (2) SCC 25 and *L.D. Jaisinghani v. Naraindas N. Punjabi*.

- vii) Even in cases where manipulation was proved beyond doubt after hearing the concerned parties, which is not even the case at hand, the remedial measures can be taken in respect of the trading in the scrip of the involved company but the investors of such company cannot be barred from accessing the security market in respect of other scrip which had no connection with the involved company.
- viii) Para 24 of the Order states that the amount of ₹254 Crores as long term capital gain [LTCG] was the required fictitious amount. There is no basis for assuming this was either a 'required' amount or 'fictitious'. The sales are on the exchange and fully paid for and settled on the exchange.
- ix) They have prayed that the Ex-parte Order be revoked and set aside forthwith and all proceedings be dropped without any further directions.
- x) Without prejudice to the above prayer, they have sought the following interim reliefs:
  - a) To allow them to sell the shares lying in the demat account and to utilise the proceeds of such sell transactions on such terms and conditions as SEBI deem fit;
  - b) To allow them to deal in the units of mutual funds.
  - c) To allow them to avail the benefits of corporate actions like bonus shares, share split, etc.

**7) Mr. Ravi Khanna, Ravi Khanna (HUF), Ms. Jyoti Khanna, Mr. Adisht Khanna, Ms. Bhavya Khanna, Mr. Krishan Agarwal, Mr. Pankaj Agarwal and Mr. Bharat Gandotra:**

- i) The said Order is passed in defiance of principles of natural justice as an opportunity of personal hearing was not provided before passing the order and there was no emergent situation for passing the said order in exercise of powers under section 11(1), 11(4) and 11(B) of the SEBI Act.
- ii) SEBI has restrained only those entities who have sold more than 2,00,000 shares, even when there are other entities, who have received shares from Promoters of the company in physical form, had sold the shares of *Mishka*. Therefore, the stand of SEBI to ban only those promoter related entities who have sold more than 2, 00,000 shares is unjust and arbitrary.
- iii) They have purchased the shares of *Mishka* from Roongta Rising Stocks Private Limited based on the advertisement in the newspaper.
- iv) They have referred to SAT judgement in the matter of 52 Weeks, in which SAT has observed that if some of the preferential shareholders are market manipulators, it cannot be a ground to consider that all the preferential allottees are market manipulators. Further, in the matter of *Alok Ketan v SEBI*, SAT observed that SEBI

has dealt with all the 73 entities together instead of separately dealing with each entity.

#### **IV) PREFERENTIAL ALLOTEES**

##### **1. Savita Bansal, Sadhna Rani, Madanlal Babulal Chowatia, Ashok Kumar Chowatia, Tarachand L Jain and Sarad Kumar B Jain:**

- i) They denied the charges against them made specifically and generally in the *Interim order*.
- ii) They submitted that SEBI has not identified, delineated or outlined any connection between them and Mishka Company, its promoters/directors/ key management persons or any connected entity named in the Interim order.
- iii) They submitted that the said Order “Pre-supposes” and presumes a nexus between them and the Promoters, alleged Promoter related entities of Mishka or the alleged Exit Providers. Further, they have no connection of whatsoever nature with the alleged 'Mishka Group' and any of its 'connected' entities and with Promoters and Directors of Mishka.
- iv) Mr. Madanlal Babulal Chowatia, Mr. Ashok Kumar Chowatia, Mr. Tarachand L Jain and Mr. Sarad Kumar Jain submitted that their investment decision in the shares of Mishka was made by them independently based on the recommendation given to them by broker Mr. Subhash Maheshwari.
- v) They submitted that the interim order was in gross violation of the basic principles of 'audi alteram partem'.
- vi) They submitted that power to issue directions under section 11, 11 (4) and 11 (B) is a drastic power having serious civil consequences and ramifications on the repute and livelihood of those against whom it is directed. In large number of cases, the Hon'ble SAT has observed that such a discretionary power is thus not available for routine application and it should be used only in exceptional and extraordinary measure. However, no such need, necessity or rationalization has been delineated in present Interim order for use of such severe and drastic power against them.
- vii) An open ended restraint order against them was in breach of their fundamental right of carrying on business bestowed upon every citizen of India guaranteed under Article 19 (g) of the 'Constitution of India'.
- viii) They (Ms. Savita Bansal and Ms. Sadhna Rani) have stated that they are lay retail investors and do not have much knowledge of capital market. Unlike informed institutional investors, retail investors like them have limited skill and expertise of fundamental and technical research before making an investment decision. Thus the investment decisions are mostly made on the basis of news and rumors in print

media, electronic media, grapevines, investment decision of other investors, intuition and psychology of the investors in the market.

- ix) Curiously, the Interim Order is silent as to on what basis or material the fundamental jurisdictional fact giving rise to consequent findings and observations has been arrived at.
- x) They submitted that they purchased the shares with their legitimate income.
- xi) Ms. Savita Bansal had sold the shares of *Mishka* merely on 3 days out of more than 1 year 9 months of Investigation period and she understood that the said shares were purchased by many different entities. Except 2 entities; none of the other purchasers had been made a part of present proceedings and neither had they been debarred from accessing the securities market.
- xii) Ms. Savita Bansal sold shares of *Mishka* merely on 3 days and 97.28 % of her trades matched with entities that were not even made a part of present proceedings and just because 2.76 % of her trade allegedly matched with two entities with which she had no connection, association or relationship of whatsoever nature.
- xiii) Ms. Sadhna Rani sold the shares of *Mishka* only on a single day i.e. 26.05.2014 and she understood that the shares were purchased by the two entities, Sunil Kumar Saraogi (AKUPS5274J) and Suyash Sarogi (AMWPS4239F). These entities had not been made a part of present proceedings and neither had been debarred from accessing the securities market.
- xiv) They sold on stock exchange platform through their broker and were not aware of identity of their counterparties. They have no connection of whatsoever nature with the any of their counterparties.
- xv) All their transactions were in compliance with all the rules and regulations as prescribed by SEBI from time to time.
- xvi) They have not sold their entire shareholding in *Mishka* and if they were aware of or if they were a party to alleged "scheme" they would have done so at the highest possible price.
- xvii) The Ad-interim Ex-parte Order was totally silent on their specific role in relation to the alleged scheme by the *Mishka* Company. It is untenable for any authority to arrive at a grave finding of fraud (that too on 'prima facie findings') without demonstrating any connection of whatsoever nature other than that they were Preferential Allottee in *Mishka* Company. They draw attention to case of *Sterlite Industries (India) Limited. V. SEBI* (2001) 34 SCL 485 (SAT).
- xviii) They stated that it is well-settled law that the taint of fraud cannot be attached or charged merely on the basis of association. In fact, compelling evidence should be brought on record for a person/entity to be held liable for fraud. They draw attention to the case of *Ram Sharan Yadav v. Thakur Muneshwar Nath Singh* (1984) 4 SCC 649 (AIR 1985 SC 24).

- xix) Ms. Savita Bansal, Ms. Sadhna Rani, Mr. Madanlal Babulal Chowatia and Mr Sarad Kumar Jain submitted that they may be allowed to sell the shares held in their portfolio and use the proceeds thereof for their need based requirements. They draw attention to the Orders of SEBI wherein similar relief was granted to the Noticees, Mr. Amresh Modi & 2 Ors in the matter of Radford Global Limited and Mr. Shrenik Zaveri in the matter of Mishka.
- xx) Mr. Tarachand L Jain and Mr. Sarad Kumar Jain requested to provide some details, reports and documents referred to and relied upon by SEBI in present proceedings and grant him copies thereof at the earliest.

**2. Prakash Mangilal Surya:**

- i) He submitted that SEBI's aforesaid *Interim order* has been issued to him *ex parte* without any prior communication, notice, letter or any correspondence seeking his explanation or clarification on the subject matter. Thus, he submitted that the *interim order* was in gross violation of the basic principles of '*audi alteram parte*'.
- ii) He submitted that the interim order was against the natural principle of equity, fair play, natural justice and hence bad in law and should be withdrawn *in limine*.
- iii) He submitted that power to issue directions under section 11, 11 (4) and 11 (B) is a drastic power having serious civil consequences and ramifications on the reputations and livelihood of those against whom it is directed. In large number of cases, the Hon'ble SAT has observed that such a discretionary power is thus not available for routine application and it should be used only in exceptional and extraordinary measure. However, no such need, necessity or rationalization has been delineated in present Interim order for use of such severe and drastic power against him.
- iv) An open ended restraint order against him was in breach of his fundamental right of carrying on business bestowed upon every citizen of India guaranteed under Article 19 (g) of the 'Constitution of India'.
- v) He invested in Mishka on advice of Mr. Devendra Kumar Mithalal Jain (Samdaria) using his legitimate income.
- vi) He sold shares on stock exchange platform and is not aware of the identity of his counterparties. Further, he was not connected or related to any person whose names were there in interim order.
- vii) He had no financial dealings or nexus with the promoters, directors or employee of Mishka Group and had no connection with respect to any other activity in Mishka Company.
- viii) Had he been aware of or party to any "*scheme*" of alleged manipulation; he would have sold his entire shareholding of Mishka at the highest possible price in the market. He submitted that he was not part of any wrong doing and he genuinely had no idea of any alleged '*modus operandi*' as alleged or otherwise.

- ix) He denied the alleged violation /contravention of the provisions of Section 12 A (a) (b) (c) of SEBI Act, 1992 and Regulation 3 (a),(b),(c),(d) along with Regulations 4(1), 4 (2) (a),(b),(e)and (g) of SEBI (PFUTP) Regulations, 2003.
- x) The Ex-parte Order was totally silent on his specific role in relation to the alleged scheme by the *Mishka* Company. It is untenable for any authority to arrive at a grave finding of *fraud* (even on *prima facie findings*) without demonstrating any connection of whatsoever nature in the order other than that he were Preferential Allottee in *Mishka* Company. They draw attention to case of *Sterlite Industries (India) Limited. V. SEBI (2001) 34 SCL 485 (SAT)*.
- xi) He drawn attention to decision of Hon'ble SAT in Parsoli Corporation vs. SEBI (Appeal No 146/2011 dated 12.08.2011)
- xii) He submitted that he may be allowed to sell the shares and securities held in his portfolio and use at least 25% of the proceeds for his need based requirements. He drawn attention to the Orders of SEBI wherein similar relief was granted to the Noticees, Mr. Amresh Modi & 2 Ors in the matter of Radford Global Limited and Mr. Shrenik Zaveri in the matter of Mishka Finance and Trading Limited.

**3. Naresh Jalan, Naresh Jalan (HUF), Mahabir Prasad Jalan and Mahabir Prasad Jalan (HUF):**

- i) They deny the allegations made against them in the said Order, save and except those, which are specifically admitted herein.
- ii) They had invested in *Mishka* based on advice of Mr. Kishan Khadharia, a Mumbai based financial advisor. Being one of the preferential allottees does not make them accomplice in the alleged scheme.
- iii) They submitted that they cannot be termed to be connected with *Mishka*/ its promoters/ directors solely by the virtue of them being Preferential Allottees.
- iv) They submitted that the *interim order* proceeds on the basis that the preferential allottees who subscribed to the shares of the company, were a part of a *modus operandi*, scheme, plan, devise and artifice employed for the purpose of money laundering and tax evasion. The only case made out in the *interim order* was that they were a part of the purported scheme at the time of subscribing to the shares of the company. The case made out in the interim was that the investment made by them was not genuine. It is further alleged that the preferential allotment was used as a tool for implementation of the purported scheme. It was however pertinent to note that the *interim order* though proceeds on the basis that 46 entities were allotted shares on a preferential basis, the directions in the *interim order* were based only against the 29 preferential allottees. At the time of allotment, they were similarly placed as the other 17 entities against whom, no directions had been passed on account of the fact that the *interim order* proceeds on the basis that the allotment by the company and the subscription to the shares by the preferential allottees were made as a part of a

manipulative scheme and that the financial of the companies did not support the contention of them that the investment was made in a bona fide and prudent manner, there was no reason whatsoever to place them in a position different from the 17 entities against whom no orders had been passed.

- v) They submitted that they were neither related to the promoters or the persons alleged to have manipulated the market, nor were they involved in any manipulation whatsoever. They had not indulged in any activity, which would be in any manner whatsoever contrary to the provisions of law, the SEBI Act or the rules and regulations made thereunder.
- vi) They have also submitted that they have not sold entire quantity of their holding in Mishka and still hold substantial portion of their investments. Had there been any nexus they would have sold their entire shareholding in the scrip of the Company, thereby maximizing their profit. They were not involved in any scheme and/or modus operandi.
- vii) They submitted that the interim order proceeds on the basis that the scrip in question was illiquid scrip. The interim order does not in any manner whatsoever show the purported prejudice caused to the public or the shareholders of the Company.
- viii) They submitted that they had paid the applicable tax in respect of the gains made on account of the sale of shares.
- ix) They submitted that the directions insofar as they are concerned are harsh, penal in nature and go far beyond the nature of offence alleged against them.
- x) The interim order which proceeds on the basis that the funds of the preferential allotment were diverted and mis-utilised does not pass any direction against the three entities viz. C.D. Equisearch Private Limited, Esha Securities Limited and Mr. Jitender Dewookar. If the directions contained in the interim order were continued against them, it would amount to gross violation of the provisions of Article 14 of the Constitution of India.
- xi) Their investment in the Mishka is relatively unsubstantial and of very little consequence when compared to his overall investments in general.
- xii) Their profit made while dealing in the scrip of Mishka is legal.
- xiii) It is submitted that preferential allotment was devoid of any irregularity however interim order alleges that they were hand in glove with the Company and the *promoter related entities*, and that the trades were pre conceived to create fictitious LTCG.
- xiv) They submitted that the increase in the traded volume in the period after the preferential allotment was not abnormal as it can be attributed to several factors, which could be difficult to identify.
- xv) There exists no basis to qualify them with the Promoter related entities and refer to them as "Mishka Group".

- xvi) They submitted that allegations supported by lack of any proof were in gross violation of the principles of natural justice and absolutely uncalled for.
- xvii) They draw attention to the judgments, *Nandakishore Prasad v. State of Bihar* (1978) 3 SCC 366, wherein the Hon'ble Court while considering the appeal against the removal of an employee from service based on the findings of a departmental enquiry and *R.K. Global v. SEBI* (Appeal no. 158/2008 Date of Order: September 16, 2010), wherein it was observed by Hon'ble Securities Appellate Tribunal. It is, therefore, they submitted that there exist several instances including the aforementioned one, wherein the allegation or as such the observation made by SEBI does not corroborate with the corresponding evidence in the matter.
- xviii) They stated that they had absolutely no contribution in the alleged increase in price either directly or indirectly, nor were they a part of any scheme for increasing the price of the scrip.
- xix) They submitted that in the absence of sufficient evidence substantiating the charges framed against them, they ought not to be penalized for baseless allegations. In this regard, attention is invited to the Order dated 22-10-2001 of Hon'ble SAT in the case of *Sterlite Industries Limited vs. SEBI* (2001)34 SCL 485 (SAT-Mumbai); *Mohan Singh v Bhanwarlal* (AIR 1964 SC 1366), *Ramanbhai Nagribhai Patel v. Jasvant Singh Udersingh Dabhi* (AIR 1978 SC 1162); The Hon'ble Supreme Court in the case of *Varanasaya Sanskrit Vishvva Vidyalaya & Anr. vs. Dr. Rajkishore Tripathi and Anr*, (AIR 1977 SC 615). They submitted that above case laws make it quite clear that the party alleging must have clear evidence, which SEBI lacks in the present matter.
- xx) They submitted that the said Order has been passed without considering the fact that an ad interim ex parte Order which is of a temporary nature has the capacity to defame the persons against whom it has been passed and a complete restraint of trading in the securities market may cause great monetary losses to them. They refer the case of *M.G. Capital Services Limited. vs. SEBI and 'Peerless General Finance and Investment Co. Limited and Anr. v. Reserve Bank of India'*.
- xxi) They submitted and requested to exonerate them from the investigation/orders in the present matter.
- xxii) They submitted that they have paid the applicable tax on the sale of shares of Mishika subsequent to *interim order* in no manner, however they have mentioned that it may not be considered as an acknowledgment of any wrongdoing.

#### **4. Ravindra Kumar Gupta HUF**

- i) It is alleged that he is having nexus with *Mishka* and has earned huge profits through undue means and hence has been restrained from accessing securities market till any further directions. He has already filed his reply to SEBI vide letter dated July 14, 2015 denying all the allegations made against him in the said order. He was only

related to *Mishka* in the capacity of an investor and having no other relationship whatsoever.

- ii) He was not given any opportunity of being heard nor any supporting document was produced before him, based on which, such an order has been passed against him.
- iii) He has not indulged himself in any kind of unfair trade practices.
- iv) It has been alleged that he is "having nexus until the *Mishka* and its promoters/directors and the issue of these shares was under a prior arrangement between them". Such allegation made in the said order against him are purely on assumptions and no evidence has been produced based on which such allegations are made. Based on subjective assessment, none can judge the investment behavior of an investor as not being rational.
- v) He invested in the shares of *Mishka* with an object of earning dividends and profits and consideration was paid through banking channel using own funds, shown in his ITR. None of his investments/incomes are unaccounted as alleged in interim order.
- vi) He has not violated any laws, rules and regulations framed in regards to acquisition of shares through preferential allotment.
- vii) In point no. 17 of the said interim order, it has been further alleged that any rational investor would not have dumped a large number of shares without facing the risk of a significant price fall until and unless he was sure of the demand side absorbing the supply ". In this regards, he submits that he has sold only 44,000 equity shares of *Mishka* in the open market through his registered broker at the then prevailing market price. Balance shares are still lying in his DP account as per his investment strategy. As a part of his investment strategy he had sold 44,000 equity shares at such price just to be secured that in case there is a price fall below his invested amount, he could sell the balance shares and make his average return profitable from such sale.
- viii) The interim order has brought defame to his business reputations and he is facing a liquidity crunch due to freezing of his account.
- ix) He pray before SEBI to withdraw his name from the said order and remove all the restraints on him from accessing the securities market and order to defreeze his demat account.

#### **5. Shanker Batra :**

- i) At the outset, he deny the allegations made against him in the said order, save and except those, which are specifically admitted herein.
- ii) He has been made part of the alleged '*Mishka* group' merely on the basis that he had been allotted shares in the preferential allotment of *Mishka*, and later made profits by selling those shares to a certain counter party that is alleged to be part of 'Exit provider' group. He submits that no documentary evidence has been provided to substantiate this allegation. He would like to state that this is preposterous conclusion



drawn by SEBI. SEBI has accused him for having made a wise investment decision by application of his wisdom and making a profit on its sale.

- iii) He is an investor in securities market, and trade in various scripts from time to time.
- iv) He submits that he traded on the anonymous trading platform of the stock exchanges wherein the identity of the counter party is not disclosed and deny the allegation that he sold his shares to any alleged 'Exit provider'
- v) It has further been alleged by the order that he is connected with the 'promoter related entities', 'exit providers' and other 'preferential allottees'. He state that no evidence has been provided to this allegation either, and the same is again a baseless assumption by SEBI.
- vi) The said order was passed without seeking any explanation from him which is in violation of principles of natural justice, equity and fair play.
- vii) He also deny that he is connected with Mishka and/or its promoters/ directors. He was not hand in glove with any person and carried out trading based on his information and analysis. He does not have any nexus with *Mishka*, nor any 'promoter related entities', nor any 'exit providers'.
- viii) Interim order is grossly harsh, disproportionate and excessive in the facts of the instant case.
- ix) He would like to further submit that he is not able to sell the shares kept in his demat account which is valued at Rs. 2.84 crores as on 09.03.2016. He need to trade to maximise his returns from equities as also to meet his expenses towards daughter's marriage.
- x) In view of the fact that the value of investment of his portfolio is reducing on a daily basis, he pray as follows:-
  - a) He may be allowed to access securities market and buy, sell or deal in securities.
  - b) An order lifting the directions issued under ad interim ex parte order dated 17th April, 2015 may be passed on an urgent basis so that his reputation is restored as he is incurring loss on daily basis.
- xi) He also requested SEBI that his above reply may be taken on record and he may be exempted from attending the personal hearing.

#### **6. Brij Bhushan Singal and Brij Bhushan Singal HUF**

- i) They have not received all the information/documents they had sought vide various letters and request SEBI to provide the same.
- ii) This part reply is filed without prejudice to their right to seek and obtain complete inspection of documents referred to and relied upon in the said Order as they have not been furnished the entire material based on which SEBI has come to the alleged findings against them. The said restraint Order though described as ex parte ad *interim*

*order* in effect it is a final order. The same is already in operation, as the order was made effective on the day it was passed.

- iii) They deny the allegations made against them in the said order, save and except those, which are specifically admitted herein.
- iv) They have not indulged in any fraudulent and unfair trade practices relating to the securities so as to warrant any kind of punitive directions.
- v) It is well settled that a discretionary power is not to be invoked arbitrarily devoid of justification, as has been done in the matter under reference.
- vi) In the matter under reference, SEBI has not made out any fact as to what is the eminent danger caused by them or what is the urgency which require SEBI to exercise power under Section 11 and 11 B it is clear that there was no imminent danger or urgency so as to exercise powers under section 11 and 11(B) dispensing with the pre decisional hearing in gross violation of principles of natural justice. Also, granting a post decisional hearing would not cure the defect of not granting a hearing to them before passing a drastic order.
- vii) The directions under section 11 and 11(B) are issued for safeguarding the markets and are not for penalizing the persons and denying their legal rights, on the basis of assumptions and presumptions. The direction issued against them, at this juncture is neither preventive or remedial nor curative, but out and out penal.
- viii) Mr. Singal is currently about 79 years old and more or less now leading a retired life. Given his age and health problems all major decisions including those of investments / disinvestment are taken by his younger son, Mr. Neeraj Singal on his behalf.
- ix) Investment in Mishka was made on the basis of information and feedback received from various Professionals, friends and other persons in the industry who are actively involved and are having adequate knowledge of the securities market. They had paid consideration amount towards subscription of shares of Mishka. The said amount was paid out of their own funds. Complete audit trail of funds is there.
- x) The amount of investment made by them in the preferential issue of Mishka was exceedingly insignificant vis a vis their collective portfolio which was ₹ 758 Crore of 31.03.2012.
- xi) 1, 20,000 shares in the name of Brij Bhushan Singal only were sold in ordinary course and remaining shares i.e. 38, 00, 000 shares in the name of Brij Bhushan Singal and 20,00,000 in the name of HUF are still held by them. It is to be noted that no share was sold by HUF. The entire proceeds received from aforementioned sale, from time to time, were utilized for business and financial purpose and were not transferred, whether directly or indirectly to any of the entities as stated in the Order. Further they were not aware of the identity of counterparties.
- xii) In the said Order adverse inferences qua them have been drawn based on the alleged conduct of others and by clubbing us with other persons/entities. The said clubbing

with others (viz. *Mishka* related entities, other preferential allottees, persons/entities who have traded in the scrip) has resulted in distorted conclusions against them. It is categorically submitted that the entire grouping is erroneous. Unrelated and unconnected entities have been grouped together based on mere surmises and conjectures to draw adverse inferences without any basis. Since the grouping is erroneous, the whole edifice of the Order collapses. Based on the alleged acts of other entities, no adverse inference can be drawn against us and no liability can be saddled on them.

- xiii) They categorically submit that they do not have link/connection/nexus with;
  - a) *Mishka*, its promoters/directors, save and except as a shareholder, by virtue of preferential allotment.
  - b) Other preferential allottees as set out in the Order (save and except Mr. Brij Bhushan Singal Mr. Neeraj Singal, Ms. Uma Singal , Ms. Ritu Singal, and Neeraj Singal HUF )
  - c) Persons/entities who had traded in the scrip during the examination period.
  - d) Persons/entities referred to in the Order.
- xiv) Further, no such inference can be drawn based on documents made available by SEBI.
- xv) They had no role whatsoever to play in the trading done by various entities/ persons (as set out in the Order) in the scrip. They do not have any financial transactions with them.
- xvi) It is denied that the price rise in the scrip was not supported by fundamentals as alleged. In any event, it may be noted that they had no role whatsoever to play in the price rise.
- xvii) Further, financial assessment is exceedingly subjective and may vary from person to person. Therefore, SEBI cannot based on its own subjective assessment, brand the investment behavior as not being rational.
- xviii) After permitting *Mishka* to make preferential allotment and granting listing and trading permission for the shares issued in preferential allotment, now the issuance of the same cannot be questioned and adverse inferences drawn against the allottees.
- xix) They had no role in the decision made by the Company regarding allotting shares of preferential basis at a premium, announcing a stock split.
- xx) It is denied that they had adopted any modus operandi as alleged. It is denied that they had done anything to avoid payment of taxes, further it is denied that they had converted unaccounted income into accounted income with no payment of tax. Since their HUF has not sold even a single share the said allegations cannot sustain. With regard to trading by Brij Bhushan Singal, that their sale was in compliance of extant Regulations. Further, if the law provides for Long Term Capital Gain, if the

shares are sold after a period of more than 1 year, then how he can be faulted and branded as fictitious gains.

- xxi) Crucially, the Order is absolutely silent as to on what basis it has been alleged that he had unaccounted income and what is the evidence/material for the same. It is submitted that they have been a regular and honest tax payer and the allegations in the order are imaginative, speculative and devoid of any substance.
- xxii) It is denied that they had used the preferential allotment as a tool for implementation of the dubious plan, device and artifice as alleged.
- xxiii) It is denied that prior to the trading in its scrip during the Examination Period, Mishka did not have any business or financial standing in the securities market as alleged.
- xxiv) Genuine and independent sale of shares by Brij Bhushan Singal's cannot be held responsible for increasing the price or the volume.
- xxv) It is denied that they were part of any alleged common group or that they were acting in league/concert with others to provide LTCG benefits to the allottees as alleged.
- xxvi) It is denied that they have employed any scheme, plan, device and artifice as alleged. It is denied that there are acts and omissions pertaining to them which are 'fraudulent'. Further, they have not contravened any of the provisions of Regulations 3(a), (b), (c) and (d) and 4(1), 4(2)(a), (b), (e) and (g) thereof and section 12A(a), (b) and (c) of the SEBI Act.
- xxvii) They had nothing to do with the alleged acts and omission of the directors.
- xxviii) All their acts were bonafide and the same cannot be construed in any manner as inimical to the interests of participants in the securities market. Further, it is submitted that they have been erroneously lumped with others and deprived of accessing the securities market and dealing in securities in the market.
- xxix) They have not indulged in any unlawful/forbidden activities and there is no warrant for issuance of any directions qua them pending investigation.
- xxx) There is no case at all for conducting investigation against them. Further, the Order against them, being based on incorrect facts, is devoid of jurisdiction, and ought to be withdrawn. The directions passed against them are unjustified, unwarranted and untenable.
- xxxi) The prohibition from buying, selling and dealing in securities market, directly or indirectly, in any manner whatsoever, till further directions, is an absolute direction, which has throttled their business and crippled our operations.
- xxxii) They have prayed as under:
  - a) The Order to the extent it applies to them be reconsidered and the directions against them be withdrawn.
  - b) While considering our prayers, it may be appreciated that as a result of said Order, they have already unjustifiably undergone/suffered a ban of around

more than 6 months as of now and have also suffered both reputationally and financially. Any further continuance of the directions, in the circumstances, would be hugely detrimental to them.

**7. Tarun Kumar Chandak:**

- i) He bought and sold shares of *Mishka* in normal circumstances and he was completely unaware of the counter party as all the trades were executed on platform provided by the Stock Exchanges.
- ii) The investment in the *Mishka* was made by his own funds without any sort of borrowing from any entity as such. He mentioned that he was no way involved in pushing up the price of the stock.
- iii) The order was issued without providing him an opportunity of being heard on the matter. He was not related/connected to *Mishka*, its promoters/ its directors or any entities as such which would have contributed or played any role towards the price rise of shares of *Mishka*.
- iv) He denied any involvement in such fraudulent activities.

**8. Chirag Maheshkumar Vyas**

- i) The respondent vehemently denies all the allegations cast upon him and raises serious objection to the unilateral, unjust action of SEBI, restraining him from accessing securities markets and attaching the demat accounts without even mentioning it in the order and without the approval of Judicial Magistrate, as required u/s 11 (4) (e).

One might argue that section 11 (4) (e) applies to bank accounts and not demat accounts, but he would like to put forth that it applies to attachment of assets maintained with public infrastructure entities like banks or depositories. At the time when SEBI Act was incorporated, demat accounts were in-existent. After the demat accounts came into existence the said section has not been revisited. Both bank and demat accounts are used to park assets in the favour of beneficial owners and hence demat accounts should be treated at par with bank accounts and all the requirements for attachment of bank accounts should be complied with while attaching demat accounts, which has not been done in this case. As a result the *Interim order* is ultra vires the powers conferred upon SEBI and hence illegal.

- ii) Principles of natural justice should be followed in every case where the circumstances allow parties to be given an opportunity of being heard, especially when the cause of action has been completed much before the time of the disciplinary action. The powers conferred under Section 19 read with section 11(1), section 11(4) and section 11B of SEBI Act should be sparingly used to control current action that might impact immediate future and not to cases dealing with historical matters where there is every

possibility of allowing opportunity of being heard before arriving at a conclusion or taking an action.

- iii) He vide his letter dated July 27, 2015 has informed that he is yet to receive a signed copy of the order. Even after 9 months of the order, he still await the signed copy. Through the same letter he had also demanded documents / material relied upon by SEBI for the charges levied upon him and he still eagerly await the response thereto from SEBI.
- iv) Surprisingly, after a span of 9 months from the order and 5 months after the date of hearing, he has received letter no. SEBI/HO/ISD/OW/P/2016/0000000759/1 dated January 20, 2016, wherein SEBI has referred to his representation / submissions, on account of which he has been granted interim relief, which he never sought. On similar lines of absurd, ad-hock and haphazard working of SEBI's concerned department, he believes that his name has been wrongly included as one of the alleged promoter related entity in spite of the fact that his transaction with *Mishka* was of a commercial nature and was totally independent of any relationship as alleged.
- v) Nothing mentioned in the order shall be deemed to have been admitted on account of non- traverse or otherwise unless specifically admitted herein.
- vi) He was not allowed opportunity to make submissions and hearing in the matter before issuing this Interim order, which is void as it is issued against the principles of natural justice. Further he fails to understand as to how SEBI has achieved protection of interest and re-established integrity in the markets by attaching his demat accounts and suddenly issuing orders allowing sale of these securities after 9 months.
- vii) Further SEBI is requested kindly explain as to how do it plans to compensate him for the unwarranted losses to his portfolio caused by its action of restraining him from accessing securities markets and suddenly reversing its stand after 9 months of the order, even when SEBI still claim to not have completed the investigations. SEBI's actions substantiate that it has now realized that its earlier action was pervasive, invasive, excessive and un-warranted and as he is victim of this, he demands suitable compensation in the form of losses, damages and costs for hardships and mental agony.
- viii) He humbly submits that this act of issuing an order under Sections 11(1), 11(4), and 11B is beyond the powers conferred upon SEBI and attachment of his demat accounts is ultra vires as there are no such powers vested with SEBI. The only section that appears to have some resemblance to freezing / attachment of accounts is Section 11(4) (e), which has also not been complied with before attaching his accounts.

- ix) Assuming but not accepting that the allegations cast upon him are true, then too there was no reason of passing such an unsubstantiated, drastic, far-reaching restrain order without offering him an opportunity of personal hearing. If SEBI could wait for more than 4 months after his last trade and 3.5 months after the investigation period to issue this order, it could and should have waited for some more time and allowed him an opportunity of presenting his defense in the matter before arriving at such a decision. Further as per Para 22 of the order, SEBI had allowed 3 opportunities to the directors, Company Secretary and promoters of *Mishka* for explaining their stand, but the same opportunity has not been allowed to him before issuing the *Interim order* for the reasons best known to SEBI. SEBI may kindly explain the reason for such favourable treatment of allowing three opportunities to the alleged main culprits to the order and denying him the same.
- x) He is BA in economics and hold a Diploma in Financial Management. He is an agriculturist owning high quality cultivate land and also carry out my family business of Oil & Gas services. Apart from business he also make investments in securities, real estate and agricultural land etc. Investment in *Mishka* was a normal investment carried out by him.
- xi) SEBI will appreciate that Agricultural income is not subject to income tax. There was no reason or motivation to me for undergo such exotic, cumbersome and time consuming procedure for generating fictitious tax-free LTCG as alleged because this could have been achieved by declaring his income as Agricultural Income.
- xii) For ample clarity, it may be noted that he has not purchased a single share in the said Company.
- xiii) He was not party to company's decision of stock split or bonus issue as it was a management decision.
- xiv) With regards to Patch II, he submits that he has only executed sale transactions on 25 days from March 25, 2014 to December 8, 2014 (a period of over 9 months). All these trades were executed at ruling market price and there was hardly any impact on the price of the shares because of his trades. These trades have taken place at various price points from ₹55/- to ₹36/- and if at all he would have been a party to the entire alleged scheme or artifice of Long Term Capital Gain then he would have preferred to sell all his holding at the highest price. The fact that his shares were sold during 9 months at various price points is adequate to dislodge and disrupt the assumption that he was privy to any information or was connected to the Promoters of the Company as alleged.
- xv) He grossly deny having any prior arrangement with any of the directors of promoters of *Mishka* as alleged.
- xvi) He grossly deny that he has been provided a profitable exit by any of the entities including exit providers under a scheme of arrangement of LTCG or otherwise. He

- understand from his consultant that only 15.15% of his trades have matched with the alleged counter parties. Had there been any nexus as alleged, he would have sold the shares at highest price rather than waiting for 9 months to sell his holdings.
- xvii) He never knew his counterparties as the trades were executed on the anonymous trading system of the Exchange where counterparty is not known.
  - xviii) He vehemently object and fail to understand as to why will 59 different parties from multiple locations spread across India, who have matched his orders over a span of 9 months, will provide him an exit at their costs as concluded in interim order. This proves beyond doubt that the entire theory of purchasing shares and selling them to alleged exit providers is based on assumptions, presumptions and surmise as far as it relates to him
  - xix) Further, he is no way connected with the increase in volume or price or otherwise.
  - xx) It is stated that from amongst all related / connected entities, a further classification of 'Shortlisted group' has been created. The entities included in the 'Shortlisted group' are all exit providers, all preferential allottees who sold shares of *Mishka* and those 'Promoter related entities' who sold more than 200000 shares. The inclusion of persons in the 'Shortlisted Group' on arbitrary basis is shockingly based only quantity of shares sold, rather than dealing with the fact as to whether the conduct of parties involved was in violation of SEBI regulations or otherwise.
  - xxi) It is alleged that because the Exit Providers were hand in glove with the preferential allottees and promoter related entities they provided hugely profitable exit to him. No evidence except the un-established corollary of relationship is relied upon for such a conclusion.
  - xxii) As rightly quoted in the orders of the Honorable Securities Appellate Tribunal, it is held that connection / relations can be established on the basis of factors including common address, common directors / shareholders etc. and hence he should not to have been a party to the order on this ground alone as there is no other ground except the assumed relationship with promoters in the eyes of SEBI. It may be noted that there is no commonality of any of the factors, quoted by the Hon'ble SAT in the orders, sighted in the current order.
  - xxiii) He grossly deny being a party to the presumed scheme of SEBI of generating Long Term Capital Gain as alleged and deny that he was related or connected to any of the promoters, directors or any other person for his dealings.
  - xxiv) He grossly deny that he had purchased the shares as a tool for implementation of any dubious plan, device and artifice of Exit Providers, preferential allottees and Promoter related entities or having misused the Stock Exchange System to generate fictitious LTCG as baselessly alleged in the Interim order, without offering a shred of evidence.



- xxv) He has ensured transfer of beneficial interest to the purchaser by way of delivery of shares and hence the allegation of non-transfer of beneficial ownership does not apply to his transactions.
- xxvi) He has not violated the SEBI Act or PFUTP regulations as alleged.
- xxvii) By restraining him from accessing securities markets and attaching his demat accounts, SEBI has deprived him of his fundamental right of accessing his investments, which SEBI has now partially tried to rectify by offering some interim relief, which he never asked for. It seems that SEBI has been following an all inclusive and encompassing policy for allegations, prosecution and even reliefs without going into the merits of each respondent. To his surprise, he has not even responded to Interim order so far as he awaited response to his letters seeking information and documents relied by SEBI for issuing the order, which SEBI seems to have merrily ignore and preferred to sit tight, without bothering to provide him even with a signed copy of the order, which was issued 9 months back.
- xxviii) It is observed many times that such orders have caused huge financial losses to the affected parties and SEBI reverse the order after some time saying that there was no fault. Though there are many such cases, one such case pertains to the matter of Littlestar Vanijya Private Limited. Where SEBI blocked the demat account through a similar ex parte ad interim order on August 3, 2012 and reversed it on November 9, 2012. During this period the holding of the affected company faced severe devaluation.
- xxix) The value of his holdings has also devalued and he has also been deprived of an opportunity of selling his investments at appropriate times, which needs to be compensated by SEBI.
- xxx) He has prayed as under:
  - a. *Interim order* is bad in law and must be set aside;
  - b. Demat accounts attached / frozen because of the order may kindly be defreezed immediately;
  - c. Remove all restraints that he has been subjected to because of the order.
- xxxi) In light of this detailed submission, he humbly request one more opportunity of personal hearing to better explain his stand and submissions.

## 9. Harleen Kaur :

- i) She denied the allegations made against her in the *interim order*.
- ii) She submitted that no documentary evidence had been provided to substantiate this allegation.
- iii) She traded on the anonymous trading platform of the stock exchanges wherein the identity of the counter party was not disclosed and denied the allegation that she sold her shares to any alleged 'Exit provider'.

- iv) She submitted that she is not part of any alleged group namely '*Mishka* group' as stated in the *interim order*. She submitted that she had been included in the '*Mishka* group' solely as she had made an investment in a certain company, and on the sale of its shares, she have managed to make profits. She stated that this was preposterous conclusion drawn by SEBI. SEBI has accused her for having made a wise investment decision by application of her wisdom and making a profit on its sale.
- v) It has been alleged by the *interim order* that she was connected with the 'promoter related entities', 'exit providers' and other 'preferential allottees'. She stated that no evidence has been provided to this allegation either.
- vi) She submitted that the *interim order* was passed without seeking any explanation from her which was in violation of principles of natural justice, equity and fair play.
- vii) She denied that she was connected with Miska and/or its promoters/ directors. She was not hand in glove with any person and carried out trading based on her information and analysis.
- viii) She stated that she do not have any nexus with *Mishka*, nor any 'promoter related entities', nor any 'exit providers'.
- ix) She denied that she was a part of any scheme, plan, device and/or artifice employed either in this case, or any other case of either money laundering, or tax evasion. She submitted and denied that she had carried out manipulative transactions in securities and further that she had misused the securities market.
- x) She denied that the above act of her was fraudulent and further denied that she had violated the provisions of Section 12A (a) to (c) of the SEBI Act, 1992 and/or Regulations 2 (1) (c); 3 (a), (b), (c), (d) and 4(1), 4(2)(a), (b), (e) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.
- xi) She had no connection with any person related to the Company or other preferential allottees, and she is not part of any group.
- xii) She submitted that the direction to restraining her "from accessing securities market and buying, selling or dealing in securities, either directly or indirectly" for the said alleged act of her was grossly harsh, disproportionate and excessive in the facts of the instant case.
- xiii) In view of the fact that the value of investment of her portfolio is reducing on a daily basis, she prayed that she may be allowed to access securities market and buy, sell or deal in securities.
- xiv) An order lifting the directions issued under *ad interim ex parte* order dated 17th April, 2015 may be passed on an urgent basis so that her reputation is restored as she is incurring loss on daily basis.

## 10. Jignesh M Amin and Sheetal Udeshi

- i) Principal of natural justice should be followed in every case where the circumstances allows parties to be given an opportunity of being heard, especially when cause of action has been completed much before the time of disciplinary action. The powers conferred under section 19 read with section 11(1), 11(4) and section 11B of SEBI Act should be sparingly used to control current action that might impact immediate future and not to the cases dealing with historical matters where there is every possibility of allowing opportunity of being heard before arriving at a conclusion or taking an action.
- ii) Sheetal Udeshi vide her letter dated July 27, 2015 she had sought various documents relied upon by SEBI, to which she has not received any response till date. She has even not received the signed copy of the order in spite of informing the same through an email by her authorized representative dated August 6, 2015 and furnished detailed reply in addition to her earlier letters based on the order downloaded from SEBI website.
- iii) They grossly deny having carried out any act or omission thereof in violation of the above regulations as alleged and vehemently object the unilateral act of restraining him from accessing securities market, without allowing them an opportunity to make submissions and hearing this defense in the matter before issuing this *Interim order*, which is void as it is issued against the principles of natural justice.
- iv) Further SEBI has also attached thier demat accounts without even making a mention of this in the order, subjecting their portfolios to a great risk of devaluation. Sheetal Udeshi has stated that she is second holder in the said account and her husband is first holder.
- v) This act of issuing an order under Sections 11(1), 11(4), and 11B is beyond the powers conferred upon you and attachment of her demat accounts is ultra vires as there are no such powers vested with you. The only section that appears to have some resemblance to freezing / attachment of accounts is Section 11(4) (e), which has also not been complied with before attaching her accounts or the account of her husband just because she is the second holder to his account.
- vi) Assuming but not accepting that the allegations cast upon them are true, then too there was no reason of passing such an unsubstantiated, drastic, far-reaching restrain order without offering her an opportunity of personal hearing. If SEBI could wait for more than 4 months after their last trade and 3.5 months after the investigation period to issue this order, it could and should have waited for some more time and allowed them an opportunity of presenting his defense in the matter before arriving at such a decision.
- vii) Jignesh Amin submitted that he bought 2500 shares of *Mishka* from one Mr. Subhash Maheshwari at ₹11/- per share and 11700 shares under preferential allotment at

₹85/- per share using his own funds and effectively ended up with 1136000 shares because of bonus and spilt at different times.

viii) Sheetal Udeshi submitted that

- a) She invested ₹34, 50, 000/- in Santowin Corporation on March 21, 2015 under preferential allotment. On October 17, 2011 her investment in santown rose to ₹1, 58, 92, 500/- pursuant to rise in price of scrip of Santown. Price started falling after that but she did not sell in the hope of increase in price. Price kept falling and on October 27, 2015 value of her investment is reduced from total value of my investment of ₹34,50,000/- to a meager ₹1,38,000/-.
  - b) On account of her disastrous earlier experience in "SANTOWIN" she was afraid of venturing into stock markets again. However on a second thought it seemed that she had erred in her investment strategy because she did not exit at appropriate time and suffered losses because she held on to the investments, rather than booking periodical profits.
  - c) So she decided to invest only about ₹10 Lakhs and see if the markets work in her favour or not and bought 12500 shares of *Mishka* at ₹85/- a piece. Pursuant to bonus issue and stock split as also mentioned in the *interim order* she ended up with 10, 00, 000 shares of *Mishka* in her demat account.
  - d) The price of *Mishka* had risen to more than ₹50/- in mid February 2014 and was remaining stable around that price. The constant increasing trend had stopped as a result of, which she thought that it will be apt for her to exit in a phased manner. Based on the previous learning from the failed investment attempt, she decided to start selling her investments and executed her sale transactions gradually from February 28, 2014 to December 03, 2014 at various price points ranging from ₹38/- to ₹55/-. Further she has only sold shares and has no involvement whatsoever in buying. She sold gradually and have not impacted price or volume of stock by selling heavily.
- ix) Jignesh Amin submitted that around February 2014 end he understood that the price of the shares increased substantially. As a prudent investor, being satisfied with the gains that were accruing to him, he decided to exit from investments gradually through his regular broker M/s Arkadia Shares & Stock Brokers Private Limited. Over a period from March 2014 to December 2014. Further he has only sold shares at various price points ranging from ₹40/- to ₹55/- and has no involvement whatsoever in buying. He sold gradually and have not impacted price or volume of stock by selling heavily.
- x) At the time of sale of shares, they were totally unaware of the counterparties as the shares were sold on the anonymous platform of the Exchange.
- xi) Jignesh Amin submitted that the trade data reflects that only 17.97% of his trades have been executed with the alleged Exit Providers.

- xii) Sheetal Udeshi submitted that the trade data reflects that only 42% of her trades have been executed with the alleged Exit Providers
- xiii) Based on all the above, they humbly submit that they are not involved in any of the alleged violations and have been wrongly restrained from accessing securities markets, without any sufficient cause.
- xiv) For ample clarity, it may be noted that they have not purchased a single share in the said Company from the market.
- xv) They were not involved in stock split or bonus issue and it was *Mishka* management's decision and they were not party to these decisions. They were involved in price rise. In Patch II, All their trades were executed at ruling market price and there was hardly any impact on the price of the shares. Had they been related or connected to the promoters / directors / exit providers, they would have happily sold the shares at the highest price and reaped more benefits. Further, they have not sold their entire shareholding in *Mishka*
- xvi) Jignesh Shah has submitted that he is alleged to be amongst 452 promoter related entities that purchased the shares of the said Company through off market transactions. He is reflected as record no. 460 of "Annexure A" on Pg 57 of the order. The remark against him alleging the relationship quotes "JIGNESH MAHESH AMIN received shares in physical form from TEJAL GALA". Surprisingly "TEJAL GALA" is not mentioned in the order to be a "Promoter Related Entity". Then how can he be categorized as a "Promoter Related Entity" when the person from whom he purchased the shares is herself not a promoter related entity as per the order. Further his investment in preferential shares of the Company was only based on the fact that the claims made by Mr. Subhash Maheshwari regarding the revival of company like relisting etc. came out to be true.
- xvii) They are totally unconnected with the directors / promoters or the company in any manner.
- xviii) They grossly deny that they have been provided any profitable exit by anybody. Further they fails to understand as to why will anybody provide them an exit at their own costs? The only logical reason that one can arrive at is that the purchasers would have purchased the shares in anticipation of further price rise. Further they were not hand in gloves with anybody.
- xix) It is stated that from amongst all related / connected entities, a further classification of 'Shortlisted group' has been created. The entities included in the 'Shortlisted group' are all exit providers, all preferential allottees who sold shares of *Mishka* and those 'Promoter related entities' who sold more than 200000 shares. This seems to be an unfound definition of fraud, which is derived based on quantity / value and not on the acts of persons.

- xx) They grossly deny any and all allegations of conversion of ill-gotten money or money laundering cast against them or any other allegation.
- xxi) If SEBI could call upon *Mishka* for explaining their position on the use of funds and other issues, why have they been deprived of such an opportunity? It is extremely unjust to call a select few to explain their position and deny the same opportunity to them before pronouncing such a far-reaching order.
- xxii) They grossly deny that having purchased the shares of *Mishka* as a tool for implementation of any dubious plan, device and artifice of Exit Providers, Preferential Allottees and promoter related entities or having misused the Stock Exchange System to generate fictitious LTCG.
- xxiii) The beneficial interest in the shares was transferred both at the time of purchase and at the time of sale because the transactions was delivery based and full consideration was paid/received from/in bank account.
- xxiv) They have not violated the SEBI Act or PFUTP regulations as alleged. They are not related to any other entity for their transactions in the said Company.
- xxv) *Interim order* has been passed individually, acting in capacity as the 'Whole Time Member'. Therefore, it is not an Order of the 'Board', the same is unauthorised and untenable till the time it is accompanied by a general or special resolution of the Board, delegating such powers upon the WTM issuing the order. If the Honourable WTM is empowered by the Board, SEBI may kindly provide the resolution for thier records.
- xxvi) From the order it does not appear that approval of Judicial Magistrate was sought before attaching his demat account.
- xxvii) One might argue that section 11 (4) (e) applies to bank accounts and not demat accounts, but I would like to put forth that it applies to attachment of assets maintained with public infrastructure entities like banks or depositories. At the time when SEBI Act was incorporated, demat accounts were in-existent. After the demat accounts came into existence the said section has not been revisited. Both bank and demat accounts are used to park assets in the favour of beneficial owners and hence demat accounts should be treated at par with bank accounts and all the requirements for attachment of bank accounts should be complied with while attaching demat accounts, which has not been done in this case.
- xxviii) They humbly submit that the exercise of powers in the current matter against him is grossly unjust and totally unwarranted.
- xxix) It is observed many times that such orders have caused huge financial losses to the affected parties and SEBI has reversed the order after some time saying that there was no fault. Though there are many such cases, one such case pertains to the matter of *Littilestar Vanijya Private Limited*. Where SEBI blocked the demat account through a similar ex parte ad *interim order* on August 3, 2012 and reversed it on November 9,

2012. During this period the holding of the affected company faced severe devaluation.

xxx) Prayer:

- a) That the *Interim order* is bad in law and must be set aside;
- b) Their Demat Account be de-freezed
- c) Remove all restraints that she has been subjected to because of the order

xxxi) Sheetal Udeshi has requested for one more opportunity of personal hearing to better explain her stand and submissions.

#### **11. Prakash Chand Khatri and Mahesh Kumar Khatri:**

- i) They denied the charges against them made specifically and generally in the *Interim order of Mishka*.
- ii) They are not party to any of the trades alleged to be of fraud, price manipulation, etc. they were not connected, directly or indirectly, whether by way of financial/personal relation or otherwise with the Promoters, preferential allottees or the Exit Providers.
- iii) All their transaction in *Mishka* were carried out in the ordinary course of business.
- iv) Investment in *Mishka* was on the advice of investment consultant and CA after studying brochure received from company partly out of their own funds and partly from a firm where they are partners. Consideration was paid through banking channel.
- v) Shares were sold in small quantities on the prevailing market price through broker in anonymous market electronic trading mechanism over several weeks based on availability of orders in the open market. They had no knowledge of the counter parties. The change of ownership, beneficial as well as legal, clearly got transferred from them.
- vi) The *Interim order* does not refer to any loss caused to any person pursuant to the transactions carried out by the parties. The Order does not give any reason what purpose was sought to be achieved by debarring them from trading, etc. in the capital market.
- vii) They submitted that the criteria for determining whether a transaction is tax evasion are very strict and the onus is on the person alleging to be so to demonstrate whether it is tax evasion. Beyond making some speculative statements about what may have been the intent of the group as a whole, nothing further has been demonstrated. They submitted that the investment has been made out of their owned funds and entire sale proceeds had been utilised by depositing the same with their partnership firm, making repayment of loans and loans to other family members.
- viii) It has been alleged in paragraph 4 of the *interim order* that investment in a company having such poor and meager fundamentals "cannot prima facie be termed as a

rational investment behaviour". Firstly, it is wrongly presumed that the investment has to be made with rational investment behaviour. Investment in shares is not necessarily based on detailed fundamental analysis based on annual reports, etc. In India, it is based on tips, recommendations and word of mouth publicity too. Secondly, it is wrongly presumed that in the present case, it was not rational behaviour. Other than suggesting some criteria on the basis of which from one subjective angle it may not be a wise investment, nothing further has been shown. Thirdly, and most importantly, the amount of investment has not been seen at all, particularly in the context of the capacity of the investor. The amount invested was only ₹10.62 Lakhs. It was a small amount as compared to their total assets. For them, putting such an amount at risk is not a concern at all. Considering that they were expecting a turnaround in the company from the tips and information they received, it was a calculated risk.

- ix) They have not contributed to price rise.
- x) These allegations require a high level of proof and establishment of *mens rea*. They submitted that the Order against them does not meet the well settled standards of law and evidence in such a case and needs to be withdrawn in their case. They refer the decision of the Supreme Court in *Union of India vs. Chaturbhai M. Patel (AIR 1976 SC 712)*, *Parsoli Corporation vs. SEBI (Appeal No 146/2011 order dated 12th August 2011)*, and *Sterlite Industries vs. SEBI (Appeal No. 20 /2001 dated 22nd October 2001)*.
- xi) A common order has been passed against hundreds of people named. The facts of individual cases have not been investigated. It is also evident that one group of people have been alleged to have masterminded the whole alleged scheme of transactions while there are hundreds of others who have apparently dealt with in the shares of the company during that time but no such serious allegations have been levied against them. However, despite that, a common order has been passed against all of such people debarring all of them from certain rights. Such common order is illegal. As the Hon'ble SAT has held in *Sanman Consultants v SEBI (2001) 30 SCL 45*, en masse action cannot be made covering a large number of persons without looking into the actual involvement, if any, in the alleged violations.
- xii) They had asked for documents relied and referred by the SEBI in the *interim order* for inspection so as to enable them to understand the legal implications thereof. But, a CD comprising mostly information available in public domain as documents relied upon by SEBI, provided to them. They emphasise that there was asymmetry of information provided to them in the sense that SEBI referred documents in the order including report of the preliminary enquiry were equally material to them in understanding the factual framework in which SEBI proceeded in the matter. Denial of the same on the ground that it was not relied upon results in asymmetry of



information to the disadvantage of the Noticee, besides causing grave prejudice to their case.

- xiii) On analysis of the Trade Log that more than 75% and 99%, in case of Prakash Chand Khatry and Mahesh Kumar Khatry, respectively, of the shares sold by them on the stock exchange were to persons other than the Exit Providers as listed in the *Interim order*. It was clear, considering such a huge portion of their sales had been acquired by persons other than Exit Providers, the allegations of conspiracy and generally other violations of law in the *Interim order* wholly fail.
- xiv) It can be seen from the data that there are orders which they placed but which did not get executed apparently because there were no counter parties who were ready to buy the quantity and price they offered. This clearly shows that their transactions were not synchronized or in cahoots with any other person.
- xv) They had also attempted to closely link some of the information received of trade and order logs. It is seen that the data provided was not consistent with the theory proposed in the *Interim order* that there were synchronized trades with a premeditated plan in mind. There have been long gaps of time in several instances from the point when their broker entered the order and the time when the buyers entered orders to purchase the shares. The long gap once again was wholly inconsistent with the allegation in the *Interim order* that there was a collusion between them and others and there were synchronized trades. Synchronized trades were by definition trades which were synchronized in time, quantity and price. None of this was present in their facts as per such logs.
- xvi) Their orders had been executed in bits and pieces depending upon the varying quantities over a period of time by several buyers. The trade logs list the names of the counter parties to their trades and its stock brokers.
- xvii) Their transactions had also been at varied prices depending upon the ruling market price. They had not received a maximum price for sale of their shares but depending upon market conditions they had received varying prices. Had a person's intention been to sell shares at a higher price, they would have sold all the shares in one lot at a high price. That was not so in their case.
- xviii) They had no financial or other relations with the company.
- xix) They denied and have refuted each of the allegations made of having violated the provisions of the SEBI Act and the PFUTP Regulations.
- xx) They stated that relevant documents/information referred in the *Interim order* has not been provided to them. I requested to provide the same.

## 12. Nitin Kumar Didwania

- i) The said restraint Order though described as Ex-parte Ad- *interim order* in effect is a final order.

- ii) He deny the allegations made against him in the said Order, save and except those, which are specifically admitted herein. He specifically deny that he has violated any of the provisions of Regulations 3 or 4 of the PFUTP Regulations or provisions of SEBI Act as alleged. He has not indulged in any fraudulent and unfair trade practices relating to the securities so as to warrant any kind of punitive directions.
- iii) The said Order is vitiated by gross violation of principles of natural justice, in as much as no opportunity was provided to explain his version and the circumstances as stated in the said Order do not justify dispensation of pre-decisional hearing.
- iv) The power to issue directions under section 11 and section 11(B) of SEBI Act has to be exercised judiciously and it is all the more necessary in a case having adverse civil consequences as well as reputational adversity. Further, it is well settled that a discretionary power is not to be invoked arbitrarily devoid of justification, as has been done in the matter under reference.
- v) In the instant case, there was no such emergent situation or circumstance warranting such an ex-parte ad *interim order*. The Order does not even remotely give any details of any emergent situation warranting passing of Ex-parte order. The same has been held by the Hon'ble Tribunal in the matter of *Zenith Infotech Limited. v. SEBI, Appeal No. 59 of 2013, decided on July 23, 2013*, and *Pancard Clubs Limited, v. SEBI Appeal No. 254 of 2014, decided on September 17, 2014*.
- vi) In this context, it may point out that it is settled law that even if statute dispenses with pre decisional hearing, the same should be resorted to in exceptional circumstances since post decisional hearing is not a remedial hearing and authority will embark on with a closed mind and there are little chances of getting a proper consideration of the representation and also because once a decision has been taken there is a tendency to uphold it and a representation may not really yield any fruitful purpose. Further, it may be noted that the circumstances under which pre decisional hearing may be dispensed with are wherein the mischief attempted to be cured represents a grave and imminent danger and a personal hearing would preclude the grave and imminent danger from being averted; or in a clear case of public injury flowing from least delay; or possible or supervening public interest; or interest of justice would be better served by denying the opportunity of hearing; or danger to be averted or prevented is imminent. In the matter under reference, it is clear that there was no imminent danger or urgency so as to exercise powers under section 11 and 11 (B) dispensing with the pre decisional hearing in gross violation of principles of natural justice.
- vii) The direction issued against him, at this juncture is neither preventive or remedial nor curative, but out and out penal which restrict his lively hood and the imminent harm that the SEBI is trying to prevent.

- viii) The entire ex-parte ad-*interim order* is silent on what is the mischief or market abuse that the SEBI is trying to prevent which he in the opinion of your Honour was likely to commit.
- ix) SEBI has failed to appreciate that nothing alleged or apprehended can be prevented by passing of the *Interim order* as the alleged transaction is already complete.
- x) All the entities mentioned in the *interim order* cannot be similarly placed and there is discrimination since persons who are unequal.
- xi) SEBI has failed to appreciate that due to *Interim order* the fundamental right of the Appellant to hold, alienate and transfer the property has been curtailed for an indefinite period. This is an unreasonable restriction of the fundamental right of the Appellant and not sustainable under law.
- xii) SEBI has failed to appreciate that the *Interim order* acts as an attachment order. The SEBI has failed to appreciate that the SEBI has specific powers for attachment of property and the SEBI, under guise of powers under Section 11 and 11B of the SEBI Act, have in fact circumvented the provisions for attachment of property.
- xiii) SEBI has failed to appreciate the fact that the shares of *Mishka Finance and Trading* were purchased and sold in the open market through computerized trading at the prevailing market price.
- xiv) The Ex-parte order is to be treated as a show cause notice while the charge in the order itself is not clear, as it does not state the market abuse that SEBI apprehends him to comment. A person cannot be asked to defend a nebulous or ambiguous charge.
- xv) He have been given partial relief without any such prayer, vide order of January 20, 2016 directing that 25% of value of the portfolio can be utilized towards business and / or other exigencies and the balance amount (i.e.75%) to be kept in Escrow Account. he had requested SEBI to provide him the following details though letters:
  - a) Whether this kind of partial relief has been allowed uniformly to all the entities against whom the ex-parte ad-*interim order* No. WTM/RKA/ISD/30/2015 dated April 17, 2015 was passed.
  - b) Whether the partial relief letter signed by the Assistant General Manager level officer has been approved by the Hon'ble Whole Time Member who had passed the Ex-parte Ad-interim order.
  - c) Who is the Authority who has approved this letter of interim relief?
  - d) The reason recorded by the Competent Authority while issuing the partial relief letter dated January 20, 2016 or copy of the relevant order of the Competent Authority.

- e) The reasons recorded by the Competent Authority for allowing 25% to be used for Business and other exigencies in the partial relief order dated January 20, 2016 or the relevant order of the Competent Authority.
- f) The partial relief order of January 20, 2016 directs that 25% of value of the portfolio can be utilized towards business and / or other exigencies and the balance amount (i.e.75%) to be kept in Escrow Account. Kindly clarify the following:
  - What is the purpose of keeping any amount in escrow?
  - What is going to be the application of the amount in the escrow account?
  - What is the market abuse that SEBI seeks to prevent or remedy by keeping the amount in escrow account?
  - How does keeping any amount in escrow account help prevent or remedy the apprehended market abuse, if any.

The hearing on July 27, 2016 has been given without providing him all these details, this a violation of the principles of natural justice.

- xvi) It is submitted that he is the Chairman of Veritas India Limited which is a listed company and also hold about 25% interest in the Company. Due to the Ex-parte Order various operational difficulties are being faced by the Company which in turn is adversely affecting the interest of investors and other shareholders in the company. The company has had plans for expansion into the business of manufacturing of PVC and storage tank terminal facility chemical and petrochemical products. The expansion will come at an approximate cost of \$250 million but due to the Ex-parte Order investors and banks have held back their wallets awaiting for the outcome of these proceedings. SEBI has given no justification for an order that affects fund raising capabilities of the listed company which adversely affects the shareholders and is prejudicial to the interest of shareholders. The order punishes not only him but also the Company Veritas (India) Limited and its shareholders. They have received representations in this regard from shareholders of Veritas India Limited stating that they are adversely affected by your honors ex-parte order. The company has replied to them to take it up with your honor directly if they so desire.
- xvii) This is against the ratio laid down by the Hon'ble Tribunal that Ex-parte order is neither remedial not preventive but punitive in effect as it takes away his right to mobilize funds from the public to carry on business in the matters of:
  - a) *Sterlite Industries (India) Limited v. SEBI, Appeal No. 20 of 2001*, Decided on October 22, 2001.
  - b) *Videocon International Limited. v. SEBI, Appeal No.23 of 2001*, Decided on April 19, 2001.

c) *BPL Limited Vs. Securities & Exchange Board of India*, dated June 20, 2002.

- xviii) In the interest of the investors he is willing to give an undertaking that a) he will not sell his personal holdings other than in the manner as allowed by the partial relief order dated January 20, 2016, b) he will not buy any securities other than Mutual Funds till 31st December 2017.
- xix) He submit that there is not even an iota of evidence to point out any link between him and the purchasing counter party.
- xx) He further submit that there are no allegations or evidence against him of giving any funds to anyone connected to the company or connected in the said transaction or to the purchasing counterparty.
- xxi) He submit that the sale transactions was done in open market i.e. through regular trading method. The sales were done on different dates and there is no allegation of any connected trades with our trades.
- xxii) He submit that the *Interim order* states that the prices were manipulated by parties who were found connected to the companies and / or other parties but there is no such allegation of price manipulation against him.
- xxiii) He submit that he had no role whatsoever to play in the alleged manipulation done by various entities/ persons (as set out in the Order) in the scrip. Further, it is reiterated that he have no connection with the persons/ entities which were trading in the scrip of the Company.
- xxiv) For the price rise in the scrip consequent to trading by others, with whom he is not connected or related, no adverse inferences can be drawn against him.
- xxv) Admittedly, at no point of time either the stock exchange or SEBI had raised any alarm bells as to price movement in the scrip not being in consonance with its financials or fundamentals, despite the price of the scrip rising sharply as alleged. Both SEBI and the Exchange have extremely sophisticated surveillance systems. This can lead to only two possible inferences:
  - a) Either the price movement actually was not abnormal; or
  - b) There was a surveillance failure at SEBI and / or ExchangesIt is the official position of SEBI that there was no surveillance failure at their end.
- xxvi) He vehemently deny that he had any nexus with Miskha and its directors/promoters and or other entities in the alleged transaction. No material has been brought on record to demonstrate any kind of nexus or prior arrangement.
- xxvii) The shares of Miskha were purchased and sold by him in the ordinary course. The sales were carried out by him through his broker on the screen based mechanism of the stock exchanges wherein it is not possible to know the counter party purchaser or the counter party broker.

- xxviii) His sales were independent and had nothing to do with the trading done by any Group entities.
- xxix) It is vehemently denied that he is part of or employed any scheme, plan, device and artifice as alleged. Further, it is denied that there is any case of money laundering or tax evasion against him as alleged. Further, it is denied that there is any fraud in the securities market or there are any manipulative transactions in securities or there is any misuse of the securities market as alleged.
- xxx) It is submitted that all his acts were bonafide and the same cannot be construed in any manner as inimical to the interests of participants in the securities market. It is denied that he was involved in fraudulent, unfair and manipulative transactions as alleged.
- xxxi) Clearly, the allegations are based on incorrect and half-baked facts. Further, it is submitted that he has been erroneously lumped with others and deprived of accessing the securities market and dealing in securities in the market. His continuance in the market would not in any manner shake the confidence of the investors in the market.
- xxxii) He submit that there are other market participants who had also applied to preferential shares and have sold the same in the capital market but SEBI has chosen not to take action against them, this is despite the fact that charge would be for same violations for them as his case. I further submits that SEBI should maintain uniformity while passing orders against all and not vary from its own decisions passed on an earlier occasion.
- xxxiii) He further submit that the Hon'ble Tribunal vide its order dated February 25, 2016 passed in the case of Guinness Securities Limited Vs Securities and Exchange Board of India, Appeal No. 13 of 2016 quashed the Ex-Parte Ad Interim order dated February 17, 2016 against the brokers has emphasized that there should uniformity in the orders of SEBI.
- xxxiv) He submit that SEBI has not taken any action against the brokers who had traded in Mishka. It has been alleged that all the transaction were part of the modus operandi. In such a scenario SEBI should have initiated action against the Brokers also as the transactions as alleged are possible only if there are no genuine transaction are being carried out in the stock. It necessarily means that Brokers were involved in the alleged fraudulent transactions. SEBI has not taken any action against the shares brokers. This is against SEBI has own stand in the same order.
- xxxv) SEBI has recently issued a guidance note which clarifies that the alleged violation of the PFUTP regulation can be settled under the consent mechanism. A matter which can be settled under the consent mechanism can never be a matter that warrants ad-interim ex- parte order.

- xxxvi) As submitted above he has not indulged in any unlawful/forbidden activities and there is no warrant for issuance of any directions qua the noticees pending investigation. In the light of correct facts and circumstances of the matter submitted herein, there is no case at all for conducting investigation against him.
- xxxvii) Further, the Order against him, being based on incorrect facts, is devoid of jurisdiction, and ought to be withdrawn. The directions passed against him are unjustified, unwarranted and untenable. As a result of the order, his entire reputation in financial and business circle has been totally destroyed. The loss of reputation as a result of the said Order would severely impede his business in future which is enormously detrimental to him. The prohibition from buying, selling and dealing in securities market, directly or indirectly, in any manner whatsoever, till further directions, is an absolute direction, which has throttled his business and crippled my operations.
- xxxviii) The ex-parte order was passed on April 17, 2015 on the basis of prima facie evidences available at that time. Whether the directions need to continue now has to be decided taking into consideration any new facts or evidences that have emerged in the last 15 months as was done in the matter of Pyramid Saimira.
- xxxix) He has prayed as under:
- a) Since SEBI's Order has adverse impact, it is humbly prayed that, the Order to the extent it applies to him be reconsidered and the directions against him be withdrawn. He may point out that as a result of passing of the said Order; he is suffering both reputationally and financially.
  - b) In the circumstances, it is most respectfully and humbly submitted that the charges in the Order be dropped and direction issued against him be lifted and he be permitted to deal in securities market.
- xl) While considering my prayers, it may be appreciated that:
- a) He have already given an undertaking above to not to buy or sell securities as indicated.
  - b) Save and except the matter under reference, he has never ever received any Notice from any regulatory body/authority including SEBI;
  - c) As a result of ex parte order, he has already undergone/suffered a ban of around more than Fifteen months as of now
  - d) He, the listed company Veritas India Limited and its shareholders have already unjustifiably suffered immensely and disproportionately as a result of the restraints/directions issued by SEBI.
  - e) Each of the paras above may kindly be treated by the Hon'ble Member as a separate ground and may kindly be treated accordingly the order reviewing the ex-parte order.

- xli) Mr. Didwania vide his letter dated June 15, 2016 has also requested for sharing internal file noting of SEBI while dealing with issuance of internal guidance note on the SEBI (Settlement of Administrative and Civil Proceedings) Regulations 2014 wherein SEBI has for the first time defined as to what is considered as a serious violation, market wide impact and effect of default on investors. In his case SEBI has taken a view that the alleged violation is serious and required urgent intervention by way of ex-parte ad-interim order.
- xlii) Mr. Nitin Kumar Didwania vide his letter dated August 23, 2016 has sought certain reliefs as under:
  - a) That the charges in the Order be dropped and direction issued against him be lifted and he be permitted to deal in securities market. This will help him to response on the reservation of the investors/bankers/ institutions for fresh investment in his company for expansion etc.
  - b) Allow him to transfer the shares of listed companies where he is promoter within promoter group interse as and when required.
  - c) Allow him to increase or decrease / pledge his shareholding in listed companies where he is promoter for QIP/fresh issue/right issue by such listed companies etc, and for raising resources for the listed companies where he is promoter.
  - d) Allow him to subscribe fresh shares /purchase shares of listed companies where he is promoter in open market as and when required.

### **13. Prakash Chand Sharma and Kalawati Sharma:**

- i) They submitted that the *interim order* restraining them from dealing in capital market till final order passed are unjustified, unnatural and against the justice.
- ii) In financial year 14-15, they disposed off all their investment in shares including that of *Mishka*, in a recognized stock exchange through registered broker viz Sharekhan Limited.
- iii) They had no link with any promoter/Director of *Mishka*.
- iv) Like other investors, they made this investment to earn profit and after release from lock in period, when they found the prices has been increased and they could earn profit they disposed off the same through e-trading platform provided by BSE. They did so in other securities held by them.
- v) They stated that before movement in the price of shares of *Mishka*, the adjusted price was ₹49.90 per share, whereas their average sale price was ₹48.44 per share. This is evident that even they sold these shares after release from lock in period at a price lower than the price prevailing during the lock in period. This downfall might be due to availability of stock in the market after release of lock in period.



- vi) Regarding increase in volume of shares, there were very few shareholders before preferential allotment and the ratio of volume would be almost same as it was after release of shares from lock in post preferential allotment and bonus shares.

**14. Ranidevi Agarwal:**

- i) Information provided in the CD does not establish any direct or indirect nexus between her and *Mishka* and its Directors/Promoters. Also the trade log and order log as provided merely show the trading details of the purchase and sale made which does not establish any connection between preferential allottees and *Mishka*.
- ii) She had acquired the shares of *Mishka* only as an Investor and the investment was made out of her own savings and resources. She rationally invest in stocks and securities in capital market with the sole objective of earning dividend and profits.
- iii) That the investment made by her was not at all under any prior arrangement with *Mishka*. She stated that neither she was in a position nor she has acted in concert with *Mishka* and its Promoters or Directors to misuse the Stock Exchange System to generate fictitious LTCCG.
- iv) That being an investor she doesn't have any control on managing the utilization of proceeds of preferential allotment by *Mishka*. That was supposed to be the outlook of the Board of Management of *Mishka* but not the allottees.
- v) That she don't possess any knowledge regarding the control on price volume behavior of the shares of by *Mishka* or its Promoters or Directors or for that matter any other person or group of persons in any manner whatsoever.
- vi) In view of the above, she requested to kindly remove her name from the above order and allow her to access the securities market to buy, sell or deal in securities, either directly or indirectly, in any manner.

**15. Smt Rashmi Jain:**

- i) She denied the allegations made against her in the *interim order*.
- ii) She has been made part of the alleged '*Mishka* group' merely on the basis that she had been allotted shares in the preferential allotment of *Mishka*, and later on she sold the shares to a certain counter party that is alleged to be part of 'Exit provider' group. She stated that this is preposterous conclusion drawn by SEBI. SEBI has accused her for having made a wise investment decision by application of her wisdom and making a profit on its sale. She submitted that no documentary evidence has been provided to substantiate the allegation and she was also not given any chance to offer her explanation.
- iii) She submitted that she is an investor in securities market and invest in the same, with a view to gain profits.

- iv) As regards selling of shares to the alleged 'Exit provider', She traded on the anonymous trading platform of the stock exchanges wherein the identity of the counter party was not disclosed and denied the allegation that she sold her shares to any alleged 'Exit provider'.
- v) She submitted that the said order was passed without seeking any explanation from her which is, in violation of principles of natural justice, equity and fair play.
- vi) She denied that she is connected with *Mishka* and/or its promoters/ directors and this is completely erroneous and baseless observation and no details had been provided in the *interim order* to prove the connection. She was not hand in glove with any person and carried out trading based on her information and analysis.
- vii) She stated that she do not have any nexus with *Mishka*, nor any 'promoter related entities', nor any 'exit providers'.
- viii) She denied that she is a part, of any scheme, plan, device and/or artifice employed either in this case or any other case of either money laundering, or tax evasion. She submitted and denied that she had carried out manipulative transactions in securities and that she had misused the securities market.
- ix) She denied that she had violated the provisions of Section 12A (a) to (c) of the SEBI Act, 1992 and/or Regulations 2 (1) (c); 3 (a), (b), (c). (d) and 4(1). 4(2)(a), (b), (e) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.
- x) She submitted that she is a bonafide and a genuine investor and have no connection with any person related to the Company or other preferential allottees, and she was not part of any group.
- xi) The value of investment of her portfolio is reducing on a daily basis, she prayed that she may be allowed to access securities market. An order lifting the directions issued under *ad interim ex parte* order dated 17th April 2015 may be passed on an urgent basis so that her reputation is restored as she is incurring loss on daily basis.

#### 16. Vimal Kumar Jain

- i) He requested SEBI to condone the delay in submitting the present submission and apologize for the same and requested these submissions on record.
- ii) He has been dealing in shares and securities including shares of Finance companies, trading companies, so-called penny stocks and even unlisted/ private companies since more than last 20 years or so. As on 31st March, 2013, his securities portfolio was more than ₹23 lakhs (at cost), out of which ₹6,37,500 was the amount pertaining to Pyramid Trading & Finance Limited.
- iii) It is submitted that, he had invested in *Mishka* on the hopes of good profit which is always the motive for any investment and it is not correct to say that the profit has resulted because of LTCG benefits only.

- iv) The transactions of sale of securities of *Mishka* was carried out by him through through Stock Exchange mechanism and not through off market transfer. At no point of time he could possibly have had the knowledge as to who the counter-parts for his transactions were. Hence, the premise that there was a nexus between him and the so called exit providers is unfounded.
- v) It is submitted that only being one of the preferential allottee in the alleged manipulative scheme does in no way make him an accomplice in the alleged scheme of manipulation.
- vi) It is submitted that, Ex-Parte Ad-Interim Order is excessively harsh. It is submitted that SEBI has failed to establish any prima facie case against him, upon which the Ex-Parte Ad-Interim Order can be continued against him.
- vii) It is further submitted that the said Ex-Parte Ad Interim order provides a partial analysis of the situation in hand and remains silent about certain important points/aspects/questions, which if considered, would have surely brought out a different dimension to the whole matter at least for him, and SEBI would have been able to adjudicate the instant matter in better manner. Following are the certain pertinent points which he wish to bring to the attention of SEBI and request to consider his submissions in light of these :
  - a. The Ex parte order is in violation of principles of natural justice,
  - b. There is no relationship between him and *Mishka* or with the LTP contributors or with other preferential allottees.
  - c. He has role in channeling the funds in the securities market and in having misused the stock exchange system to generate fictitious LTCCG.
  - d. He has no role in artificially increasing the price and the volume of the scrip, or in any manner abetted any individual/entity in carrying out the aforesaid manipulation in the scrip of *Mishka*.
  - e. He has no role in the alleged fraudulent activities carried out in the scrip of *Mishka*. The said *Ex Parte Ad Interim Order* also has no finding as to the role played by him in the alleged manipulations.
- viii) It is further submitted that the said Ex Parte Ad Interim Order is not substantiated by any evidence or material on record. In so far as he is concerned, the charges are based on surmises and conjectures and on the wild allegation of having carried out collusive trading, the impact of which on securities market have not been shown in the said Order. It is submitted that on such a charge alone no one should be punished by restraining him for doing legitimate investment activities. To make any one liable for any commission or omission to visit adverse consequences, there should be adequate justification and in the absence thereof any punishment meted to him will be unsustainable.

- ix) There is no transaction by him which has been found violative of any provision of law. In view of the same, SEBI should not pass any directions against him.
- x) In view of the foregoing submissions it is respectfully submitted that there is no justification for subjecting him to the directions made in the *Ex Parte Ad Interim Order*. It is submitted that he has not committed any wrong and no charge has been established against him even *prima facie*, to warrant any action. It is humbly prayed that, the said Order to the extent it applies to him, be reconsidered and the directions against him be withdrawn.

## **V) EXIT PROVIDERS**

### **1. Antaryami Traders Private Limited, Dreamlight Exim Private Limited, Duari Marketing Private Limited, Gajgamani Merchandise Private Limited, Ladios Trading Private Limited, Mobixa Distributors Private Limited, Muchmore Vincom Private Limited, Rangan Vincom Private Limited, Rochak Vinimay Private Limited, Rochi Dealcom Private Limited, Sidhiman Vyapaar Private Limited, Trialala Dealers Private Limited, Vishnudham Marketing Private Limited**

- i) Neither any documents nor clarifications were sought for nor were any documents provided to them, which relied upon before passing these orders. These orders has been passed against the principle of natural justice and has brought huge loss to our business.
- ii) They deny all the allegations made in the said order. It is further submitted that they have not violated the provisions of SEBI Act and PFUTP Regulations as alleged in the said order and make following submissions/objections:
- a) They have acquired the shares of the *Mishka* only as an investor and the said investment was made by them out of our own resources. They regularly invest in shares and securities. These investments are made with the sole objective of earning dividend and profits.
- b) They have no knowledge regarding control over price and the volume of the shares of the said company and its Promoters and Directors. They would further like to state that matter any other person or group of persons in any manner whatsoever.
- c) They neither directly nor indirectly related to the said Company or any of its Promoters or Directors. They have stated that neither they were in position nor they have acted in concert with these *Mishka* and its Promoters or Directors to misuse the Stock Exchange System.
- iii) Further they have requested SEBI to provide all the documents relied upon for alleging the charges against them in the Order.
- a. Copy of the Investigation report of SEBI based on which the allegation have been leveled in the order.
- b. Copy of the Statements of various entities recorded by SEBI.

- c. Copies of all correspondence SEBI may have exchanged between SEBI and other entities and the copies of statements recorded by SEBI, if any.
- iv) They have submitted that the documents sought are crucial and critical for filing an effective reply to the Order.
- v) They reserve their rights to request for cross examination of various persons after receipt of the documents requested for.

**2. Amrit Sales Promotion Private Limited, Bazigar Trading Private Limited, Symphony Merchants Private Limited**

- i) They deny the allegations made against them in the said Order
- ii) They do not have any link/connection/nexus with *Mishka* or its promoter/directors or promoter related entities or the alleged preferential allottees.
- iii) The *Interim order* is vitiated by gross violation of principles of natural justice. The power to issue directions under section 11 and section 11(B) of SEBI Act has been invoked arbitrarily devoid of justification. There was no such emergent situation or circumstance warranting such an ad interim ex-parte order, dispensing with the pre decisional hearing.
- iv) The direction issued against them, at this juncture is neither preventive or remedial nor curative, but out and out penal.
- v) Their trading activity in the securities market is huge.
- vi) SEBI has erroneously clubbed them with other entities and branded them as a part of Exit Providers and drawn adverse inferences against them. All their trading in the *Mishka* scrip was independent and had no nexus with or connection with trading done by other entities
- vii) Amrit Sales Promotion Private Limited and Bazigar Trading Private Limited, respectively bought 70000 and 29,500 shares of *Mishka* and are still holding the same. They were trading independently without acting in concert with anybody. They were not aware of the counter parties to their trades.
- viii) Their decision to buy shares of *Mishka* was primarily and majorly influenced by the past price movement of the scrip, the rumours floating in the market about potential takeover by corporate house and also the technical analysis of the scrip.
- ix) Total shares of *Mishka* purchased by them were funded mostly out of own funds.
- x) They do not have any link/ connection /nexus with either *Mishka* or any of its promoters or directors etc, as well with the alleged preferential allottees save and except as a shareholder. They do not have any financial transactions with them.
- xi) That they do not have any link/ connection /nexus with any of the alleged persons /entities who have dealt in the shares of *Mishka* (as set out in the *interim order*) during the impugned Patches.
- xii) The basis for connecting them to the so called *Mishka* Group as set out in Part III of Annexure - A of the said Order the following be noted :

a) **Submissions of Amrit Sales Promotion Private Limited :**

- They are not aware of fund transfers between Blue Circle Services Limited, and Pine animation Limited. Further there are no fund transfers between them and Pine Animation Limited.
- They had purchased 261500 shares of Blue Circle Services Limited through market and ₹ 11,700/- was remitted to their bank account on 2.11.12 as dividend (@ ₹0.05 per share). Apart from above amount, they have not received/given any funds from/to Blue Circle Services Limited.
- In so far as funds transaction between them and Symphony Merchants Private Limited and Burlington Finance Limited is concerned, it may be noted that the same was a normal business transactions and were taken by them as interest bearing loans on various dates from M/s. Symphony Merchants Private Limited and Burlington Finance Limited. And the entire loan was repaid within the stipulated time. These loans were never utilized for purchasing shares of *Mishka*.
- In so far as Common e-mail id [maloo.kol@gmail.com](mailto:maloo.kol@gmail.com) is concerned, it is submitted that since Panna Lai Maloo was the common director, he had given his e mail ID for the sake of operational convenience.

b) **Submissions of Bazigar Trading Private Limited :**

- In so far as funds transaction between them and Amrit Sales Promotion Private Limited. is concerned, it may be noted that the same was taken interest bearing loans on various dates in course of our business activity and the entire loans was repaid within the stipulated time.
- In so far Common E-mail id [maloo.kol@gmail.com](mailto:maloo.kol@gmail.com) is concerned, it is submitted that same was given only for the sake of operational convenience he had given his E-mail id, because one of his nephew, namely Mr. Vinay Kumar Maloo was one of the director of M/s Bazigar Trading Private Limited and most of the time of a year he used to stay out side of the country due business purpose.

c) **Submissions of Symphony Merchants Private Limited :**

- In so far as funds transaction between them and Amrit Sales Promotion Private Limited is concerned, the same was a normal business transaction. Amrit Sales Promotion Private Limited had taken interest bearing loans on from them and the entire loans was repaid within the stipulated time. Loans taken was never utilized for purchasing shares of *Mishka*.

- xiii) No material/ evidence has been brought on record to connect them with other entities. It has not been spelt out how the various entities were acting in concert. And how it was of concern to them that the so called unidentified preferential

allottees should convert their "*unaccounted money*" into "*accounted one*" and how they benefitted by the same.

- xiv) They had started trading in the scrip only on 13.05.2014 and they cannot be held liable for any price increase prior to that. They have no connection with entities who contributed to LTP during that patch (Patch 1).
- xv) At no point of time either the stock exchange or SEBI had raised any alarm bells as to price movement in the scrip not being in consonance with its financials or fundamentals, despite the price of the scrip rising sharply as alleged. Further, there was nothing adverse against *Mishka* in the public domain. The question that begs an answer is why the stock exchange did not act at the relevant time.
- xvi) Furthermore, the preferential allotment made by *Mishka* was also not questioned either by the stock exchange or SEBI, at the relevant time, while granting approval for the same. In any event, they are not the preferential allottee, hence no adverse inferences can be drawn against them.
- xvii) It is denied that they were part of "*the other group of entities*" who were "*acting as buyers in Patch-2 in order to provide exit to preferential allottees/promoter related entities and in the process creating artificial volume*" as alleged.
- xviii) It is denied that they have created any artificial volume as alleged. Admittedly, all their trades were delivery based.
- xix) Their trading was spread over various dates and was intermittent and not continuous. Further the quantum of their trades was also insignificant as compared to the total volume in the scrip.
- xx) The price that a particular scrip would command is very subjective and is contingent upon forces of demand and supply.
- xxi) They have not contravened any of the provisions of Regulations 3(a), (b), (c) and (d) and 4(1), 4(2)(a), (b), (e) and (g) thereof and section 12A(a), (b) and (c) of the SEBI Act
- xxii) They have neither used nor will ever use the stock exchange mechanism in the manner as alleged in the Order.
- xxiii) The loss of reputation as a result of the *Interim order* would severely impede their business in future.
- xxiv) They be allowed to sell their shareholding in scrips other than the impugned scrip, and to utilise the sale proceeds, since the investigation is qua the impugned scrip only.

### **3. Ritesh Projects Private Limited, Ritesh Commercial Holdings Limited, Dynamic Portfolio Management & Services Limited**

- i. Decision of investing into shares of *Mishka* was their own and was calculated on the parameters of risk and was carried out through anonymous electronic trading system of stock exchange. The delivery of said shares were duly taken and due consideration

was paid from their bank account. The source of funds used in making payment of purchase was legitimate and from their own funds which is supported by their Bank Statements.

- ii. With respect to reason behind purchase of shares, it is submitted that there was a positive trend in the scrip of *Mishka*. Ritesh Projects Private Limited, Ritesh Commercial Holdings Limited, Dynamic Portfolio Management & Services Limited purchased miniscule quantity of 72,195, 11545 and 15,955 shares, respectively (only 0.12%, 0.02% and 0.03% respectively of the total market volume).
- iii. They do not hold any shares of Surbhika Vyapaar Private Limited as has been premised in the *Interim order*. They are not related or connected to any of the person who holds any shares of Surbhika.
- iv. Dynamic Portfolio Management & Services Limited has submitted that the *Interim order* has alleged that Mr. Ashok Bothra (Non-Executive Independent Director in their company from 15.01.2010 to 04.12.2014) also held directorship in Blue Circle Services Limited. It is submitted that Mr. Bothra was only the Non- Executive independent director for them and was not involved in their day to day affairs. Further Mr. Bothra was not holding any position in Blue Circle Services Limited at the time of trading done by Dynamic Portfolio Management & Services Limited, as he had resigned from Blue Circle Services Private Limited way back on 25.09.2012. Further, they were not aware about Mr. Bothra's other directorship at the time of his appointment. Neither Mr. Bothra nor Blue Circle Services Limited has been alleged for so called fraud and manipulation
- v. The investment was made by all three entities into the shares of *Mishka* in anticipation of good returns in the interest of each of the entity and its shareholders.
- vi. They are not connected to *Mishka* and other entities mentioed in the order. There is no material for categorizing them as exit providers.
- vii. They are suffering losses due to freezing of their demat accounts by the *Interim order*.
- viii. The *Interim order* has imputed fraudulent behavior to them based on impermissible assumptions. They have cited Hon'ble SAT's order dated September 30, 2003 in the matter of *KSL Industries Limited v. SEBI (appeal no 9 of 2003)* in support of their contention. They have also stated that it is a well settled maxim of law that "*Fraus est odiosa et non praesumenda*" which provides that the fraud is odious and is not to be presumed.
- ix. There is disregard of the principles of natural justice as it has restrained them from accessing the securities market without any cogent reason and aiding facts. No opportunity of hearing prior to the passing of order was provided.
- x. No reasonable evidence is noticed or placed on record against them showing that it was party to the alleged fraud or manipulation.



- xi. The *Interim Order* has infringed their constitutional right to do trade, business and commerce under article 19 (1) (g) of the Constitution of India without following the due process of law.
- xii. Their demat accounts have been freezed for more than 20 months, causing grave prejudice to them.

**4. Apex Commotrade Private Limited, Runicha Merchants Private Limited, Sankalp Vincom Private Limited, Scope Vyapar Private Limited, Signet Vinimay Private Limited, SKM Travels Private Limited, Spice Merchants Private Limited, Winall Vinimay Private Limited**

- i. They stated that they have no connection with promoters/Directors of *Mishka*
- ii. Trading in the above scrip was done in normal course of trading.
- iii. They have not any way involve any price manipulation of the said scrip.
- iv. They are not neither knowing who are the seller brokers nor their clients who have sold the shares.
- v. They have not received any funds from the promoters/directors of the said scrip.
- vi. They deny all the aggregations made by SEBI regarding their trading in above scrip.
- vii. They have requested SEBI to revoke the restrictions imposed on our trading and defreeze the Demat Account.

**Hari Om Suppliers Private Limited**

- i. They have traded in the shares of *Mishka* at the electronic trading terminal of the Bombay Stock Exchange wherein the identity of the buyer and seller is not known and none of the transactions were off market or through any negotiated deal / block deal. None of the buy/sell transactions were made at below or above the prevailing market price.
- ii. They deny that they are part of any of the so called alleged groups as created by SEBI and have invested in the scrip of *Mishka* on the basis of trends available in the market and/ or information acquired from the public domain.
- iii. As per Part III of Annexure A of order, it can neither be inferred prima facie nor otherwise that they are connected to other exit providers or directors/ promoters of *Mishka* or *Mishka*. The word 'prima facie' has been allegedly misused and abused by SEBI.
- iv. Being a shareholder in Surbhika with other entities, it has been alleged that they are connected to Ritesh Commercial Holdings Limited, Ritesh Projects Private Limited, Kalakar Commercial Private Limited, Stardox Vinimoy Private Limited, Raina Vyapaar Private Limited and RC suppliers Private Limited, which is totally an erroneous. If they go by this logic, then all the shareholders of each listed company are connected to each other.

- v. Hari Om was shareholder of Surbhika Vyapaar Private Limited. ('Surbhika') sometime in the FY 2008-09 i.e around 7years back and sold that holding in April 2010 i.e more than 5years back. As they have already sold the shares of Surbhika long ago, hence they deny to have any connection with Ritesh Commercial and/or Ritesh Projects.
- vi. They are neither connected to the promoters/directors of *Mishka* nor to *Mishka* directly or indirectly. The connection is a weird way of connection.
- vii. From detailed analysis of Part III of Annexure A, although it might appear that they are related/ associated to few other entities mentioned in Part III (based on common shareholders or a common director), however, it cannot by any stretch of imagination, be concluded that they are directly or indirectly connected to *Mishka* and/ or its directors/ promoters.
- viii. The table at paragraph 14 of the order clearly shows that the so called 'exit providers' have allegedly bought only 46.47% of the total market bought volume and this clearly establishes that there were other entities who were carrying out trading in that period.
- ix. They deny that they have provided a hugely profitable exit to the preferential allottees.
- x. With reference to contents contained in Paragraph 17 of the order, they submit as under:-
  - a) SEBI has put the horse before the cart since SEBI has first drawn the conclusion in the second last sentence of the paragraph that the exit providers provided a hugely profitable exit to the Preferential allottees/ Promoter related entities and then details the basis that "this could be possible only if the Preferential allottees, Promoter related entities, Exit Providers, *Mishka* and its promoter/ directors were hand in glove with each other". Thus, it has been proved beyond doubt that this is only a possibility and SEBI is not sure of the same prior to passing of said *interim order*.
  - b) SEBI has not clarified as to who are the 'general investors' as stated in the paragraph.
- xi. They do not have any common address, common directors/ shareholders with *Mishka* or with any of the preferential allottees.
- xii. SEBI has taken action against them without giving them a chance to explain their position which is in gross violation of the principles of natural justice, equity and fair play.
- xiii. The *Interim order* has been passed based on the assumptions and presumptions and not on the basis of full investigation or documentary evidence.
- xiv. They have only bought the shares and not sold them and hence not accrued any LTCG.

- xv. They have not traded above LTP and no documentary evidence is provided in this regard.
- xvi. They fail to understand the reason for separate proceedings being initiated against them as they had already been barred for their dealings in the scrip of First Financial Services Limited vide SEBI's order dated December 19, 2014.
- xvii. They frequently deal in the securities market and have traded in many other scrips.
- xviii. They were not given a chance to give our explanation before passing of the order, in gross violation of the principles of natural justice, equity and fair play.
- xix. Had they received any question or caution by SEBI/ stock exchanges about their trading in various scrips including the scrip of *Mishka*, they would have stopped trading in the scrip of *Mishka*.
- xx. They may be allowed to deal in securities.

## 5. Kalakar Commercial Private Limited

- i. They fail to understand the reason for separate proceedings being initiated against them in the scrip of *Mishka* although they have already been debarred from accessing the securities market and dealing in securities market for their dealings in the scrip of First Financial Services Limited vide SEBI's order dated December 19, 2014. The passing of a separate order has resulted in inflating the legal cost being incurred/ to be incurred by them and is in gross violation of principles of natural justice.
- ii. They are regular investors and have dealt in various scrips including *Mishka* during last three years from financial year 2011 -12.
- iii. They deny that they are part of any of the alleged Exit Providers groups or with any other entity or group mentioned in the order.
- iv. No documentary evidence has been provided by SEBI either with the order or otherwise to prove their connection with directors/ promoters of *Mishka* either directly or indirectly to enable them to counter that. A statement has been made in the order which is being considered as truth without any chance being given to them to give explanation. This is in gross violation of the principles of natural justice, equity and fair play.
- v. They submit that their Company, Promoters/ Directors / Shareholders do not have any connection directly or indirectly whatsoever with the Directors/Promoters of *Mishka* and/ or the Preferential Allottees of *Mishka* and they have traded in the scrip of *Mishka* in the regular course of their investment activity based on market trends and/ or information acquired from the public domain, using their own funds on electronic and anonymous trading platform provided by the Stock Exchange and approved by SEBI, through a SEBI registered broker, at the market price existing at that time and none of the transactions carried out by them were off market or through any negotiated deal /block deal.

- vi. They deny that they have acted as counter party to the preferential allottees/ Promoter related entities.
- vii. They have been prima facie found to be connected/ related to *Mishka*/ or its promoters and have been collectively referred to as "*Mishka* group". The dictionary meaning of the word 'prima facie' is on the face of it i.e. on a plain reading of the document, whatever can be inferred is referred to as 'prima facie', we submit that this word has been allegedly misused and abused by SEBI despite being a respected regulatory authority.
- viii. Their connection with *Mishka* is arrived at on the basis that:
  - a) Kalakar Commercial Private Limited ('Kalakar') along with other entities namely, Hari Om Suppliers Private Limited ('Hari Om'), Ritesh Commercial Holdings Limited ('RCHL'), Ritesh Projects Private Limited ('RPPL'), Stardox Vinimoy Private Limited ('Stardox'), Raina Vyapaar Private Limited ('Raina') and RC suppliers Private Limited. ('RC') is shareholder of Surbhika Vyapaar Private Limited ('Surbhika').
  - b) Mr. Bisnwananth Agarwal is a common director between Hari Om and Kalakar
  - c) Being a shareholder in Surbhika with other entities, it has been alleged that Kalakar was connected to RCHL, RPPL, Stardox, Raina, and RC.
  - d) Mr. Ravi Kumar Newatia is one of the common directors among RPPL, RCHL and Dynamic Portfolio Management and Services Limited. ('dynamic').
  - e) Mr. Ashok Bothra was the common director in Dynamic and Blue Circle Services Limited. ('Blue').
  - f) Blue has fund transactions with Pine Animations Limited who has received funds from *Mishka*.

In this connection Kalakar submitted that Kalakar was never a shareholder of Surbhika and hence cannot be alleged to be connected to REPL and/ or RPPL in any manner and therefore cannot be alleged to be connected to Dynamic. In view of the arguments detailed herein, Kalakar is not connected /related to Dynamic and therefore *Mishka* and its promoters/ directors or with the entities which have transactions with *Mishka*.

- ix. From detailed analysis of Part III of Annexure A of *Interim order*, although it might appear that Kalakar is related/ associated to few other entities mentioned in Part III (based on common shareholders or a common director), however, it cannot by any stretch of imagination, be concluded that it is directly or indirectly connected to *Mishka* and/ or its directors/ promoters and put SEBI to strict proof of the same.
- x. With regard to contents contained in paragraph 12 & 13 of *Interim Order*, it is submitted that parameters selected by SEBI are arbitrary, without any basis, unfounded, irrational, subjective and illogical and no reasoning has been given in the order to shortlist the entities on the basis of said criteria. They deny that that have

- acted as counterparty to the Preferential allottees/ Promoter related entities and further deny that we are part of alleged 'exit providers' as being considered by SEBI
- xi. They have not bought the shares from the promoters/ preferential allottees and put SEBI to strict proof of the same and deny that they have provided a hugely profitable exit to the preferential allottees
  - xii. They deny that that are directly or indirectly connected or related to any of the entities shortlisted in '*Mishka* group' and further deny that they are connected or related to the promoters/ directors of *Mishka* directly or indirectly.
  - xiii. They have invested on the basis of the data gathered independently by us, on the anonymous and electronic trading platform of the stock exchange which is approved by SEBI wherein the counter party is not known.
  - xiv. SEBI has not clarified as to who are the 'general investors' as stated in the order, since the shares of *Mishka* were not in demand by general investors.
  - xv. while it might be true that Hon'ble SAT has held in various judgments mentioned in the said paragraph that connection/ relation can be established on the basis of factors including common address, common directors/ shareholders etc., they do not have any common address, common directors/ shareholders with *Mishka* or with any of the preferential allottees.
  - xvi. The said *Interim order*, which has the effect of final order since their demat account has been frozen and they are not able to trade, has been passed based on the assumptions and presumptions and not on the basis of full investigation or documentary evidence. This is against the letter and spirit of the SEBI Act which authorizes SEBI to pass the *interim orders* in the interest of investors and is also gross misuse of power available.
  - xvii. They deny that they are part of any dubious plan, device and artifice. They further deny that they have misused the stock exchange mechanism to generate fictitious LTCG since no LTCG accrued to them since they have not sold shares of *Mishka*.
  - xviii. They deny having traded above LTP and having created artificial volume and put SEBI to strict proof of the same. They further submit that no documentary evidence has been provided by SEBI to prove this allegation and enable us to give thier comments. They submit that documentary evidence needs to be provided before making such a serious allegation.
  - xix. they deny that their act of ours is fraudulent and further deny that they have violated the provisions of Section 12A (a) to (c) of the SEBI Act, 1992 and/or of Regulations 2 (1) (c); 3 (a) to (d) and 4 (1) & (2) (a), (b), (e) and (g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 or any other law in force.
  - xx. They deny that they have ever received funds from *Mishka* and put SEBI to strict proof of the same.

- xxi. With reference to contents contained in Paragraph 33 & 34 of the order, they submit that they were any restrained from dealing in securities, in any manner till further directions in the scrip of First Financial Services Limited vide *interim order* dated December 19, 2014 and no purpose would be served by again restraining us from dealing in securities as they are not allowed to trade and their demat account has also been frozen.
- xxii. In view of the above submissions, they request for interim relief as under:-
  - a) To allow access to buy/sell/deal in securities and allow access to their demat account which has been frozen. The present market value of the securities is ₹6, 77,880/-, and at present they are incurring a loss of 91%.
  - b) Be allowed to redeem their investment in mutual funds and securities.
- xxiii. They undertake that they will fully cooperate with SEBI in the above matter as and when necessary/required. They reserve our right to add, delete or modify their submissions and to refer to and/or rely upon other documents and case laws as and when required.
- xxiv. They further submit that their above reply may be taken on record and they may be exempted from the attending the personal hearing. Further an order lifting the directions issued on April 17, 2015 and allowing them to buy/ sell/ deal in securities may be passed on an urgent basis as they have already suffered a ban of more than five months without any fault.

#### **6. Submissions of R C Suppliers Private Limited, Raina Vyapaar Private Limited and Stardox Vinimay Private Limited**

- i. The grounds on which link has been alleged and connection sought to be established between Them and *Mishka* as given in the above TABLE - (A) of the *interim order* are :
  - a) The Noticees are shareholders of Surbhika Vyapaar Private Limited.
  - b) Biswanath Basak is one of the directors of Stardox Vinimoy Private Limited R C Suppliers Private Limited and Raina Vyapaar Private Limited.
- ii. None of the above is correct.
  - a) None of them is a shareholder of Surbhika Vyapaar Private Limited. And never held any shares in it. Copies of the Annual Return for Annual General Meeting (AGM) of Surbhika Vyapaar Private Limited. Since the year 2010 till 2014 are attached (Anenxure – 3) of the reply.
  - b) Biswanath Basak is admittedly a director of all three but in our humble submission, this no way establishes any connection with the *MISHKA* group.
- iii. None of the other criteria as mentioned elsewhere in the order e.g. Know Your Client ("KYC") details, bank statements, off-market transactions amongst themselves,

information available on the Ministry of Corporate Affairs ("MCA") website, etc. are prevalent or even alleged to be prevalent, in the case of the Noticees.

- iv. It is incorrect to say that the Noticees were trading in the scrip above the LTP their trades created artificial volumes and manipulated the price. In this regard it is submitted that:
  - a. shares were not purchased at Day's High price
  - b. At times the purchases were at day's low price
  - c. Orders were placed during the middle of the session, not at market opening/first trade.
  - d. There is significant time gap between the time order is placed and its execution.
  - e. There were multiple no. of trades to complete an order.
  - f. The shares were purchased over several days.
  - g. Even when the desired quantity given in order was not available at order price, the price was not increased.
  - h. All order were "limit order" not "market order".
  - i. There were orders which could not be executed in full
  - j. All the purchases are lower than the previous days' closing price.
- v. The above factors bear testimony to the fact that The Noticees were purchasing the shares *Mishka* independently .The Noticees were not a participant to any scheme and were not trying to increase the LTP or provide an exit to the Preferential allottees or Promoters etc
- vi. It is not correct to say that there was no change in the beneficial ownership with respect to shares purchased by the Noticees. The Noticees purchased the shares of *Mishka* from their own resources and for the purpose of business. The Noticees have paid for these shares through established legal channel i.e. banks for trades executed on the stock exchange platform. The beneficial ownership cannot be denied to The Noticees. The Noticees are not part of the common group and were not acting in concert to provide LTCG benefits to the preferential allottees and Promoter related entities. The shares of *Mishka* lying in their demat accounts are very much their property. The Noticees humbly pray for liberty and reserve their right to raise the issue of right to property or Beneficial ownership if and as & when the need arises.
- vii. The Noticees to the extent they are referred to as part of "Exit Providers" deny having used securities market system to artificially increase volume and price of the scrip for creating bogus non-taxable profits (i.e. LTCG). From the analysis of the purchase data provided in above, it is very clear that the Noticees did not artificially increase the volume. Their orders were backed with adequate financial resources and the noticees did purchase and pay for such shares purchased. The noticees were

never a part of the *Mishka* group and are not a party to any scheme for creating bogus non-taxable profits (i.e. LTCG).

- viii. They deny having received or paid any funds to *Mishka*. It is incorrect to say that *Mishka* has transferred funds to them. Understandably, the order says *Mishka* transferred funds to 'some' of the Exit Providers. They purchased the shares in the month of May 2014. They have submitted bank statement for the period April, May & June 2014. The statements of one month before and one month after the transaction date, will confirm that there has been no money transaction with *Mishka*. In case further bank statements are also required, the same will be produced when asked for.
- ix. They deny any connection with *Mishka*, They were not acting as counterparty to anyone. In the patch 2 (February 17, 2014 to December 31, 2014), the rapidly rising price and volume induced the Noticees to invest in the shares of Mishka Finance & Trading Limited. It was an independent investment decision. No direct/ indirect relationship has been established between the Noticees and *Mishka* Group through Know Your Client ("KYC") details, bank statements, off-market transactions amongst themselves, information available on the Ministry of Corporate Affairs ("MCA") website, etc.
- x. Their inter-relationship/connection were noted from
  - a. Know Your Client (KYC) details,
  - b. their bank statements,
  - c. off-market transactions amongst them and
  - d. the information available on the Ministry of Corporate Affairs ("MCA") website
- xi. They categorically deny any kind of relation/connection with *Mishka* and or its directors. They categorically deny there is any proof of such connection in Know Your Client (KYC) details. They categorically deny having any bank transaction with *Mishka* and or its directors. They categorically deny having any off market transactions with *Mishka* and or its directors. They categorically deny having created artificial demand for the supply of shares from preferential allottees. They have purchased the shares and paid for the same. Such genuine purchases cannot be termed as "artificial demand".
- xii. No connection between them and *Mishka* group has been alleged.
- xiii. Their names have been incorrectly included in the list of exit providers. They deny any such involvement.
- xiv. They deny they were buying the shares of *Mishka* in order to provide huge profit/gain to preferential allottees/Promoter related entities. They purchased the shares on the stock exchange platform and had no knowledge of the sellers.



- xv. They are NBFCs and purchased the shares during the regular course of business. Such purchases were backed by adequate resources. The objective of such purchase was to earn profit.
- xvi. They are victim of such market hype wherein the price and volume of the shares rose very high inducing them to invest their monies in the shares of *Mishka* and incurred huge losses. The Purchase of shares by them is an independent investment transaction.
- xvii. They deny any connection whatsoever with *Mishka* and /or its directors/promoters. The factors accepted by Hon'ble SAT to establish a relationship, as quoted herein are common addresses, common directors/shareholders etc. None of these factors exist in their case.
- xviii. They categorically deny having common addresses with *Mishka*. They categorically deny having common directors with *Mishka*. They categorically deny having common shareholders with *Mishka*.
- xix. They again repeat and re-iterate and deny that they are entities of *Mishka* Group or connected with its promoters/directors or preferential allottees. They entered the shares only via secondary market. They were not a part of any scheme of generating any fictitious LTCG in fact they incurred losses and are victim of such market hype wherein the price and volume of the shares rose very high inducing them to invest their monies in the shares of *Mishka*. They are not the "exit provider" and did not act in any dishonest manner. They were not involved in converting their unaccounted income into accounted one with no payment of taxes. The Noticees had no access to the funds brought in by way of preferential allotment. The Noticees neither invested such funds in shares of connected companies nor by way of purported loans.
- xx. They again repeat and re-iterate and deny that they are entities of *Mishka* Group or connected with its promoters/directors or preferential allottees. They deny having used securities market system to artificially increase volume and price of the scrip for creating bogus non-taxable profits (i.e. LTCG). They purchased the shares of *Mishka* from their own resources and for the purpose of business. They have paid for these shares through established legal channel i.e. banks for trades executed on the stock exchange platform. They put orders for the no. of shares they intended to purchase and have purchased the shares and paid for the same. Such genuine purchases cannot be said to have created artificial demand
- xxi. They did not indulge in trading above the LTP as alleged.
- xxii. They categorically deny having created artificial demand for the supply of shares from preferential allottees. They put orders for the no. of shares they intended to purchase and have purchased the shares and paid for the same. Such genuine purchases cannot be termed as "artificial demand". They have not employed any kind

of scheme, plan, device and artifice. They are not member of the group identified as "exit provider" and as such none of their acts or omissions are 'fraudulent' as defined under regulation 2(l)(c) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 and are in contravention of the provisions of regulations 3(a), (b), (c) and (d) and 4(1), 4(2)(a), (b), (e) and (g) thereof and section 12A(a), (b) and (c) of the SEBI Act, 1992.

- xxiii. They are neither involved nor have been alleged to be involved in any of the activity as mentioned in these paras and accordingly offer no comments on the same. If by any adverse inference/adverse implication is drawn, the same may also be taken to have been expressly denied. As per the order they are involved in patch 2 only.
- xxiv. They categorically deny their involvement in any of the activity as mentioned in these paras. They have not employed any kind of scheme, plan, device and artifice to manipulate the market. They are not member of the group identified as "exit provider". In the *Interim order* dated December 19, 2014, in the matter of First Financial Services Limited they have been restrained from accessing securities market and have already filed their appeal in the matter. It must be noted that in the case of First Financial Services Limited, The Noticees do not hold any shares of First Financial Services Limited. All the shares purchased were sold during the same year within about 6 months. In the case of *Mishka*, They could not exit the stock are left with no option but to keep on holding the same. However the fact that in two similar cases as quoted in the order, the fact that in the case of First Financial Services Limited, They are not holding any shares, confirms that the holding of *Mishka* shares is only incidental, it is not as per any plan or scheme to which they were a participant.
- xxv. In view of the above submission it is the humble request that their submission made shall be considered sympathetically, reasonably, lawfully and judiciously and the restraining order shall be suitably modified/vacated/varied allowing them to deal with securities.
- xxvi. Order is passed against them in a mistaken belief that they are connected/related to *Mishka*. In the order, their names are included in Table II: List of short listed Entities, under sub heading "Exit Providers".
- xxvii. They are aggrieved by the Ex-parte order without giving any opportunity of being heard. Prima facie there is no adverse finding against them. One Surbhika Vyapaar Private Limited was taken to be a connected/related party to *Mishka* and this connection was extended to them by incorrectly mentioning in the order that they are the shareholders of Surbhika Vyapaar Private Limited and Biswanath Basak is one of the directors of Stardox Vinimoy Private Limited R C Suppliers Private Limited and Raina Vyapaar Private Limited. Therefore they all are related to *Mishka*. This is far from the truth and that they are not shareholders of Surbhika Vyapaar Private Limited.

- xxviii. They have no connection at all with *Mishka* or its promoters etc. They categorically deny that they indulged in any kind of manipulative transactions in securities and misuse of the securities market. They have not indulged in any 'fraudulent' act as defined under regulation 2(1)(c) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('PFUTP Regulations') which are in contravention of the provisions of Regulations 3(a), (b), (c) and (d) and 4(1), 4(2)(a), (b), (e) and (g) thereof and section 12A(a), (b) and (c) of the Securities and Exchange Board of India Act, 1992.
- xxix. Ex-parte order has impacted their business and reputation quite adversely. SEBI is requested to please reconsider ex-parte order and allow them to carry their lawful business which includes dealing with shares, securities, mutual funds etc.
- xxx. They pray that their submission made above be considered sympathetically, reasonably, lawfully and judiciously and the restraining order be suitably modified/vacated/varied allowing them to deal with securities as is lawfully allowed.

## **7. S N Srinivasan**

- i) He denied all the allegation made against him in the said order.
- ii) He has not done trade as per the order passed against him. The true fact is that he had purchased the shares of *Mishka* on the advice of market sources. Subsequently price and volume came down heavily and after realizing the said fact immediately as a last resort he approached the brokers to get exit. Further on brokers' advice, as there was no buyers on the exchange, he had no option but to accept his advice and sell the shares off market to the parties arranged by the share broker.
- iii) The allegations put forth against him is false. He request SEBI to withdraw the order against him and he requested SEBI not to take any action against him for the reasons stated above.
- iv) He further said that he being the victim and thereby humbly requests SEBI to absolve the charges made against him in the order.

## **8. Vibgyor Financial Services Private Limited**

- i) They grossly deny having carried out any act or omission thereof as alleged.
- ii) They were not allowed an opportunity to make submissions and present their defense in the matter before issuing this order, which is against the principles of natural justice.
- iii) There was no emergent situation for passing such an order without giving an opportunity of hearing.
- iv) They have pointed out that SEBI had called upon the directors of *Mishka* and allowed them several opportunities to explain their stand. Such an opportunity was denied to them.

- v) No connection of Vibgyor is shown with *Mishka*, its directors or promoters, or with preferential allottees or purported promoter related entities or with exit providers. None of their trades have matched with that of "preferential allottees or "promoter related entities.
- vi) They have demanded that necessary documents, leading to such a conclusion, if existent, be provided to them to enable them file their response in regards to same. Further they reserve a right to make further submission after having received such information and documents.
- vii) Their dealing with Scope Vyapar Private Limited have nothing to do with thier dealing in *Mishka*. The details of the transaction are as below and bank statements have been submitted reflecting the payments -
  - a. On November 18, 2009, they purchased 67000 equity shares of Rich Universe Network Limited @ ₹172.45/- per share for ₹1, 15, 54,150/-.
  - b. On February 15, 2012, we purchased 30,000 equity shares of Rander Corporation Limited @ ₹153/- per share for ₹45,90,000/-
- viii) Trades done by them with Scope Vypar Private Limited are not in *Mishka*, but other scrips and that these trades have been done 2.5 or more years prior to the trades in the scrip of *Mishka*.
- ix) They have purchased the shares of *Mishka* in normal course of business after evaluating the trend of the security. They purchased shares of *Mishka* on 25<sup>th</sup> June, 2014 and they were forced to sell the shares at a loss on 10<sup>th</sup> November, 2014 as the share price fell. These were the only 2 transactions they did in the shares of *Mishka*.
- x) They were never aware of the counter party. Further, they invested in shares of the company using the genuine money and it has been accounted for in their financial statements.
- xi) Pursuant to the SEBI order, they understand there is a big fraud. The shares were dumped upon them and they became a victim of the false and misleading appearance of trading created by multiple entities mentioned in the order.
- xii) Now that they are enlightened by the order of SEBI that a fraud has been operated upon them, they request SEBI to look into thier genuine trades, recover money from people who have deployed fraudulent schemes and pass it on to genuine investors like them, who invested in the scrip.
- xiii) They further deny that they have "... converted unaccounted income into accounted one with no payment of taxes" or that they have misused the stock exchange system as falsely alleged or otherwise. In fact trading in the said scrip has resulted in substantial losses because of the fraud played upon them.
- xiv) It may be noted that neither the Income Tax Department nor any other revenue departments have ever alleged that they have avoided tax by generating LTCG as alleged upon other parties in the order.

- xv) Their volume is negligible as compared to market volume. Even more pertinent to note is the fact that not a single trade has been executed by them with the counter parties as visible from the "Table IV" of paragraph 15 the order.
- xvi) They fail to understand as to how they have been categorized as an "Exit Provider" without purchasing a single share from the so called "Preferential Allottees" or "promoter related entities.
- xvii) They as genuine investors request SEBI to take remedial actions to collect the funds from the market manipulators and refund them the losses incurred by us of ₹ 6, 35,508.93 due to investment done in the said scrip.
- xviii) None of their act falls under the definition of fraud as mentioned in Regulation 2(1) (c).
  - a) None of their act can be categorized as fraud under Reg. 2(l)(c). They have purchased the shares of *Mishka* in normal course of business after evaluating the price trend of the security. Buying stocks on pre- established trend is an accepted mode of investing and trading. None of their trade matched with preferential allottees or promoter related entities as mentioned in the order itself. As a result they cannot be said to have violated regulation 3(a).
  - b) None of their acts can be said to have been in the form of a manipulative or deceptive device or in contravention to the provisions of the Act, rules or regulations of SEBI. They invested in the Company to earn profits based on their price movement analysis which is a permissible activity. They have in fact been a victim of the manipulation mentioned in the order. Hence cannot be said to have violated regulation 3(b) and section 12A (a).
  - c) The order fails to establish how they have employed any device, scheme or artifice to defraud any one. Further in the said transaction they are the aggrieved party who has been subjected to fraud. Hence cannot be said to have violated regulation 3(c).
  - d) They have not traded in any way which would create false or misleading appearance of trading. Further they purchase volume is a negligible 0.12% of the volume and is incapable of creating any appearance to anybody and so the question of creating false and misleading appearance of trading does not arise. Hence, they cannot be said to have violated Regulation 4(2)(a).
  - e) They have purchased as well as sold the shares on the platform of the Exchange and settled them by delivery ensuring transfer of beneficial ownership at the time of purchase and sale both. They have ensured complete transfer of beneficial interest both at the time of purchase as well as sale and in the process lost ₹6, 35,508.93 to the fraudsters as rightly put forth by SEBI in the order. Hence the allegation that they have violated regulation 4(2) (b) does not hold good.

- f) They have trade in delivery based transactions in the said scrip, hence the question of manipulating the price of the security does not arise. As a result they cannot be said to have violated Regulation 4(2) (e).
- xix) They deny that they have violated the provisions of Regulation 3(a) to (d) and/or Regulation 4(a), (2) (a), (b), (e) & (g) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003 or the provisions of Section 12A (a) to (c) of the Securities and Exchange Board of India Act, 1992 as falsely alleged or otherwise.
- xx) In the said *Interim order*, SEBI has not shown how it has become evident to them that they might now misuse the stock market or defraud investors.
- xxi) It is observed many times that such orders have caused huge financial losses to the affected parties and SEBI reverse the order after some time saying that there was no fault. Though there are many such cases, one such case pertains to the matter of *Littilestar Vanijya Private Limited*. Where SEBI blocked the demat account through a similar ex parte ad *interim order* on August 3, 2012 and reversed it on November 9, 2012. During this period the holding of the affected company faced severe devaluation.
- xxii) Further SEBI has no powers to attach or freeze the demat account of investors. The powers under the sections quoted by you, only allows prohibiting someone from accessing securities markets. The freezing of demat accounts is ultra virus and illegal in law. Attachment of accounts can only be carried out as per the provisions of section 11 (4) (e) of SEBI Act, which has not been adhered to.

## **VI) LTP CONTRIBUTORS**

### **1) Manjulaben Sukhdev Pandya:**

- i) She is a small investor of 66 years of age, widow and homemaker. She had authorized her son. Mr. Sanjay Pandya to carry out trading activity in her account and has executed trades through him.
- ii) Her son is active trader / arbitrageur / jobber in the stock market for more than 20 years. Her son invested independently in various scrips for small profits.
- iii) The power to issue directions under section 11(4) and 11(B) is a drastic power having serious civil consequences and ramifications on the repute and livelihood of those against whom it is directed. Said power is not available for routine and retrospective application and cannot be used for penal action. It is exceptional, extraordinary and discretionary power and SEBI has to justify the need for invocation of the said power after about 9 months of the alleged cause of action.
- iv) She inherited certain shares from her deceased husband in and around September 2005. She then opened a demat account and trading account for the first time.
- v) She had not done any transaction for availing long term gain tax benefits. Since the

scrip was continuously hitting upper circuit, her orders were not getting fully executed and were getting partially executed for insignificant or miniscule quantity of shares. She purchased 5 *Mishka* shares in the range of ₹122 to ₹133 for a total of ₹633.96 and sold them for ₹2,510/- and made profit of about ₹1,876.04.

- vi) She is not connected directly or indirectly to any of the *Mishka* group entities and nor is it shown. Also 'Annexure A of the *Interim order. Mishka* Group & Exit Providers and the basis of connection /relationship amongst them' to the captioned order do not set out any connection between her and the alleged *Mishka* entities.
- vii) Her transactions in *Mishka* shares were delivery based. She had not carried out any off-market transactions in the *Mishka*. She traded in the scrip of *Mishka* using her own funds.
- viii) As per Table I at page 4 of the *Interim order* she had been shown to have traded on 2.4 instances above the LTP. She stated that the scrip was hitting upper circuit on a continuous basis and since as per her strategy she wanted to purchase / acquire shares. She was also placing the Orders at upper circuit price.
- ix) It was a seller driven trades and she had no role to play in the price determination as alleged. There were only buyers and no seller in the scrip. She had no control in determining price and quantity of the trade.
- x) She stated that she had not indulged in any price manipulation activity by way of trading at LTP variation. She clarified that her orders were keyed-in within permissible price limits and impact to the price rise of *Mishka*, if any, was normal and not manipulative as alleged or otherwise. Her trades have not caused any material or significant impact on price of the *Mishka* scrip.
- xi) She submit that her 2 purchase transactions of 5 shares and 1 sale transaction of said shares cannot be termed as manipulative transactions in securities market.
- xii) She had not Violated 3(a), (b), (c) and (d) and 4(1), 4(2)(a), (b), (e) and (g) thereof and section 12A(a), (b) and (c) of the SEBI Act, 1992 as alleged or otherwise.

## 2) **Bharat Bagri Bagri:**

- i) During the period from February 14, 2013 to February 14, 2014, they had purchased a total of 40 shares over 4 days of *Mishka*. Of these 6 shares split into 60 shares thus leading to an acquisition of 94 shares (post split) for a consideration of approximately ₹3,500/-. These shares were subsequently sold off in February and March 2014, yielding a profit of around ₹1,500/-. At no time did their exposure to the securities of the *Mishka* exceeded an amount of ₹3,500/-, which made their transactions in the said security insignificant. The same was miniscule and certainly unlikely to have any significant impact on the price movement.
- ii) They understood that the spirit of the order was to act against the practice of persons claiming incorrect Long Term Capital Gains. They submitted that they had not

claimed any Short Term/ Long Term Capital Gains. Their profit is a small amount of ₹1,500/- which was trading profit, not Capital gains.

- iii) All trades were done in the market, with no off market trades and all trades were a part of their trading strategy with no malafide intentions.
- iv) They submitted that they had no connections or relationship of whatsoever nature with the promoters/directors/key management of *Mishka*, its preferential allottees, any entity against whom order has been passed.
- v) Being market participants, they followed different trading strategies with the sole intention of making trading profits. One of the strategies deployed is to look for securities locked at upper circuits where the number of outstanding buyers at the end of the day is significantly higher than the volumes traded on that day. Such cases were that of unsatisfied demand, i.e. large numbers of buyers were desirous of purchasing the securities and therefore the chances of prices hitting higher circuits in the forthcoming days were bright.
- vi) The list of such securities was compiled by them from the analysis of the BSE touchline data at the end of the day. Based on this data, they attempted to identify such securities and place order the next day to purchase the security at the upper circuit for that day. Usually, there was a single order put at the beginning of the day. No other order was placed. The said order was not modified or updated during the course of the day. The exposure under this trading style was usually capped at ₹1 lakh, and this cap was relaxed on the higher side only in exceptionally buoyant markets.
- vii) The decision was purely a technical decision based on a demand and supply in the momentum style of trading and there was no study of the fundamentals of the company in the same.
- viii) From April 2012 to March 2014, they had traded under this strategy in the name and style of Bharat Bagri HUF, and since April 2014 in the name and style of Uttam Bagri HUF. In March 2014, they had made a proactive declaration of their trading strategies to SEBI and BSE. The fact that they chose to make a proactive disclosures makes their intentions absolutely clear and devoid of any malafide.
- ix) There was a huge demand on the previous day with very low volumes, and the buy quantity far exceeded the volume traded by a factor of more than 100 times and the demand satisfaction percentage therefore was less than 1% in all the instances. That was the single and the only rationale of their orders and consequent trades.
- x) They had never contributed to any increase in price of any scrip as they entered in to trades of buy side only of those securities, which had already hit upper circuits in previous trading day. In all the instances, there were many other buyers at the upper circuit rates. Clearly, even the absence of their order in the system would have led to the same price discovery. Further, there was an average gap of more than a week between two trades. Thus, the presence or absence of their order had no implication



on the price movement of the security which continued to hit upper circuits continually.

- xi) The entire order book of the exchange of that time was not available to them currently. Their order size as a percentage of the order book size of the day or of the period, would be negligible.
- xii) The total trading turnover of Bharat Bagri HUF on BSE from April 2012 to March 2014 was ₹10,08,00,91,465. These trades of ₹1,000 crores were divided over 1125 different securities. The trades in the said-securities forms less than 0.001% of the total turnover of Bharat Bagri HUF at BSE.
- xiii) The BCB group is the financial services group of Bagri family headed by Shri Bharat Bagri. The Bagri family is in the Capital Markets since 1958, when the membership of BSE was taken in the name of CRD Bagri and Sons. Thereafter in 1982, the membership became the individual proprietary concern of M/S Bharat C Bagri and in 2001 was corporatized in BCB Brokerage Private Limited.
- xiv) The BCB group companies are RBI registered Non-Banking Finance Company, members of four major stock exchanges, Depository Participant with Central Depository Services (India) Limited and SEBI Registered Merchant Bankers. Their thousands of clients have an impeccable track record.
- xv) Since 1958, they had an untainted and untarnished reputation. The order had put them into much embarrassment and their image has taken a severe beating. Their name has cropped up in media and concerns have been expressed by their clients, stakeholders and well-wishers. However, they understood that in the fight between the suspected manipulators and the regulator, innocents may sometimes unintentionally get trapped in the crossfire. However, it would only be in the fitness of things that immediate remedial steps be taken for the redressal of the grievance of such affected parties like them who were not involved in any of the manipulation.
- xvi) They submitted that in the exchange matching system, participants place orders. Trade was a function of the counterparty order rate and size. However, the reason for the low trade size was that the counterparty seller(s) seemed to have sold extremely low quantities every day. Since they got such few shares, the same led them to repeat the orders continuously to get the desired stock. It was the behavior of the seller who was selling such small quantity of shares would therefore be suspect which required further investigation.
- xvii) There was absolutely no finding of any wrongdoing by them in the order.

### **3) Shyam Kanhey Lal Vyas:**

- i) He denied the charges made against him in the *Interim order*.
- ii) He has put on record his preliminary objections on *interim order* that he had not received any prior communication, notice or correspondence seeking his explanation or

clarification on the subject matter during preliminary enquiry conducted by SEBI. This is gross violation of cardinal rule of '*audi alteram partem*' and therefore violates basic principles equity, fair play and natural justice.

- iii) The great damage, loss and prejudice had been caused to him since the power under section 11(1), 11(4) and 11(B) of SEBI Act, 1992 is arbitrarily and indiscriminately used against him. The Hon'ble SAT has pronounced that power to issue directions under section 11(1), 11 (4) and 11 (B) is drastic power having serious civil consequences and ramifications on the repute and livelihood of those against whom it is directed. Such a discretionary power is thus not available for routine application and it should be used only in exceptional and extraordinary measure. However, no such need, necessity or rationalization has been delineated in present *Interim order* for use of such severe and drastic power against him.
- iv) He is 51 year senior person residing in a small suburban town, Mira Road, Mumbai (North). He is from a trader family and has been into the trading business since past many years.
- v) He has almost nil educational background; He does not possess the requisite skills to understand the complexities and intricacies of the capital market. It is only through experience, he has been able to survive in the vagaries of capital market and do some business in it.
- vi) He does not know the nitty-gritty of stock market since He is not a registered intermediary and he does not provided any financial service to anyone. Hence the alleged modus operandi' or 'game plan' as delineated in SEBI's *Interim orders* beyond my wildest imagination, comprehension and conception.
- vii) He is a positional as well as intra-day trader in Cash segment, equity futures and commodity futures market. He has been able to build a diversified portfolio of stocks in various sectors of the economy in the past years.
- viii) In the cash segment alone he had traded in almost 72 different stocks during the period from May 15, 2012 to December 31, 2014. He had invested in various sectors of economy and in the stock of different sizes of companies like blue chip, mid-caps and small proportion of penny stocks or small caps.
- ix) He stated that unlike informed Institutional investors, Retail investors like him have limited skill and experience of fundamental and technical research before making an investment decision. Thus the investment decisions are mostly made on the basis of news and rumors in print media, electronic media, grapevines, investment decision of other investors, intuition and psychology of the investors in the market.
- x) He assumed that considering the authority and access to information which the BSE may have over *Mishka* and its management, BSE would have exercised adequate due diligence, enquiry and would have obtained all necessary information before granting permission for commencement of trading of *Mishka* on the exchange.

- xi) In addition to Future and Options in Equity and Commodity, he has also traded in Cash segment. He belongs to that class of retail investors who invest and trade in a diversified portfolio consisting of stocks from different sectors, groups (viz. A, B1, B2, Z) and market capitalization (Large cap/Blue Chips/Mid Cap/small Cap).
- xii) The total turnover of Shyam Kanhey Lal Vyas for the period from 01.04.2009 to 31.12.2014 was ₹10,86,49,583.76 over 177 securities. He has dealt in only 3 penny stocks (small cap stocks) during the period which is just 0.05 % of the total volume.
- xiii) He stated that he has no connection of whatsoever nature with the seller or buyer of his shares of *Mishka*. He does not know who sold the shares as identification of seller and buyer in capital market is not possible.
- xiv) He submitted that he had bought the shares of *Mishka* at the best available price in the market and had taken the delivery of shares.
- xv) During the period of investigation, he had also sold the shares which has not considered by SEBI in its *Interim order*. Hence no charge of increase in price and price manipulation can be made against him.
- xvi) All his transactions were executed through the normal screen based trading system of Stock Exchange and the matching of trades in stock market is extremely advanced computer software driven algorithm process and buy / sell orders in scrip is done by on-line trading module under the robust online surveillance module.
- xvii) It is an undisputed fact that in case of screen based trading, the automated system itself matches orders on a price-time priority basis and hence it is not possible for anybody to have access over the identity of counter party dealing in any transaction. Since the counter party identity is not displayed; one can never have any choice with whom it wants to deal or not to deal.
- xviii) He submitted that in the scrip *Miskha* he has been wrongly roped in for no fault of his. He was not involved in any wrongdoing on his part or not involved in price manipulation in any scrip, as alleged or otherwise.
- xix) He understood that he has been roped into present penal direction plainly because he had dealt in *Mishka*. Additionally, SEBI has erroneously linked him to certain entities with which he has no connection of whatsoever nature.
- xx) He stated that the said Annexure A gives a list of entities *directly* establishing their relationship with each other. However, his name does not appear in the said list.
- xxi) He stated, declared and asserted that he was not connected or related to any person whose names were published by SEBI in the *Interim order* of *Mishka*.
- xxii) He stated and declared that he does not have any common address, telephone number, email id or any such commonality with any of entities mentioned in the *Interim order*.
- xxiii) None of the Companies wherein he was Director has any common directors from the persons mentioned in the *Interim order*.
- xxiv) He was not a Director in any of the Companies (entities) named in the *Interim order*.

- xxv) At no place any connection has been established between him and any promoter or directors of *Mishka*, nor has it been alleged, that he has been so related to the Companies promoters.
- xxvi) He asserted that he has no financial dealings or nexus with the promoters, directors or employee of *Mishka* Group. He further submitted that he was a shareholder and pure investor in the *Mishka* and he has no connection with respect to any other activity in the Company.
- xxvii) He stated, asserted, confirmed and declared that he has not received a single rupee of the amount invested by him from *Mishka* or any other entity mentioned in *Interim order* or otherwise.
- xxviii) He submitted that he has no financial dealings like giving loan, taking loan or any other dealing with any of the persons or entities mentioned in *Interim order*.
- xxix) He vehemently denied the alleged violation /contravention of the provisions of Section 12 A (a) (b) (c) of SEBI Act, 1992 and Regulation 3 (a),(b),(c),(d) along with Regulations 4(1), 4 (2) (a),(b),(c) and (g) of PFUTP Regulations.
- xxx) He has not employed any manipulative or deceptive device with respect to his purchase or sale of shares of *Mishka* or neither has he acted in contravention of the provisions of SEBI Act or the rules or the regulations made thereunder.
- xxxi) He has not employed any device, scheme or artifice to defraud anyone while dealing in the scrip of *Mishka*.
- xxxii) While dealing in scrip of *Mishka*, he has not engaged in any act, practice, course of business which operates as fraud or deceit upon any person.
- xxxiii) He has not bought, sold or otherwise dealt in *Mishka* securities in a fraudulent manner as alleged or otherwise. He has only bought and sold the shares of *Mishka* in fair and transparent manner on market floor and thus he has not dealt in the scrip of *Mishka* in a manner which is fraudulent in nature.
- xxxiv) While dealing in scrip of *Mishka*, He has not employed any manipulative or deceptive device or acted in contravention of the provisions of the SEBI Act or the rules or the regulations made there under.
- xxxv) He has not employed any device, scheme or artifice to defraud in connection with dealing in or issue of scrip of *Mishka*.
- xxxvi) He has not engaged 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 *Mishka* in contravention of the provisions of the Act or the rules and the regulations made there under.
- xxxvii) He has not bought, sold or otherwise dealt in *Mishka* in a fraudulent manner at all.
- xxxviii) He has not indulged in any act which created false or misleading appearance of trading in scrip of *Mishka*. All his transactions were carried out on the trading terminals of the Exchange in the normal and ordinary course of his trading activities carried out at the

relevant time within the parameters of the Exchange guidelines. He met with all his obligations towards the market and there has been no default on any count.

- xxxix) He has not dealt in the said shares without intending to effect transfer of beneficial ownership as alleged or otherwise. He purchased and owned the shares of *Mishka* by duly paying the amount and placing them in his demat account. He has given delivery of shares of *Mishka* from his demat account. None of his transactions were intended to operate only as a device to inflate, depress or cause fluctuations in the price of the scrip of *Mishka* and were not for wrongful gain or avoidance of loss.
- xl) He has not entered into any transaction in the scrip of *Mishka* with any intent to act or omission amounting to manipulation of the price of the scrip. He has substantiated in his submission that hardly any of his trades had effect on the price leave alone manipulation of the price of the scrip.
- xli) He *has* not entered into any transaction in the scrip of *Mishka* without intention of performing it or without intention of change of ownership of such securities. This charge lacks credentials since nowhere in the Order it is alleged that he has anytime failed in performing his duties or obligations towards anyone including Broker or market.
- xlii) He submitted that he has been *hand picked* randomly and clubbed with entities with whom he has no relation of any nature; solely because he had dealt in the scrip of *Mishka* in ordinary course of his business. The facts of his case have not been examined in its true perspective and a generic order is passed against him.
- xliii) The allegations contained in the *Interim order* smack of mere suspicion rests on conjectures and surmises and cannot be the basis to inflict such drastic restraints on him. The *Interim order* of *Mishka* unfairly has clubbed him along with other entities that have carried out transactions in the scrip of *Mishka* without examining the peculiar facts and circumstances of his case.
- xliv) He requested to allowed to sell the shares held in his demat Account No. 1202570000200831. He submitted that already great harm, loss and damage has been caused to him since an open ended restraint has been imposed on him since the past 10 months.
- xlvi) He submitted that continuation of such an open ended restrain order is of great harm and has wide ramification on his livelihood and business activities carried out by him.
- xlvi) He prayed that he may be allowed to sell the shares held in his portfolio and use at least 25 % of the proceeds for his need based requirements. He would like to draw attention to the following two recent Orders of SEBI wherein similar relief was granted are *Amresh A Modi & 2 Ors in the matter of Radford Global Limited* and to *Shrenik Zaveri in the matter of Mishka Finance and Trading Limited*.
- xlvi) He submitted that the present *Interim order* is harsh and he has been wrongly roped into the present penal proceedings hence humbly request that the *Interim order* as far as it is

applicable to him be made inoperative and the allegation against him and charges *qua* him be quashed and he may be discharged at the earliest.

18. I have carefully considered the allegations in the *interim order* in respect of *Mishka*, its Directors and its Promoters, Preferential allottees, Promoter related entities, Exit Providers and LTP Contributors. The limited issue to be considered at this stage whether, the directions issued vide the *interim order* need to be continued, revoked or modified in any manner. The facts and circumstances as *prima facie* observed in preliminary inquiry in this case need to be seen holistically taking into account the *scheme, artifice* and device employed by the entities.
19. Some of the noticees have contended that no opportunity of hearing was provided to them by SEBI before passing the *interim order*. In this regard, I note that the *interim order* has been passed on the basis of *prima facie* findings observed during the preliminary examination/inquiry undertaken by SEBI. The facts, circumstances and the reasons necessitating issuance of directions by the *interim order* have been examined and dealt with in the said *interim order*. The *interim order* has also been issued in the nature of a show cause notice affording the Noticees a post decisional opportunity of hearing. I also note that the power of SEBI to pass *interim orders* flows from sections 11 and 11B of the SEBI Act which empower SEBI to pass appropriate directions in the interests of investors or securities market, pending investigation or inquiry or on completion of such investigation or inquiry. While passing such directions, it is not always necessary for SEBI to provide the entity with an opportunity of pre-decisional hearing. The law with regard to doing away with the requirement of pre-decisional hearing in certain situations is also well settled. The following findings of the Hon'ble Supreme Court of India in the matter of *Liberty Oil Mills & Others Vs Union Of India & Other* (1984) 3 SCC 465 are noteworthy:-

*"It may not even be necessary in some situations to issue such notices but it would be sufficient but obligatory to consider any representation that may be made by the aggrieved person and that would satisfy the requirements of procedural fairness and natural justice. There can be no tape-measure of the extent of natural justice. It may and indeed it must vary from statute to statute, situation to situation and case to case. Again, it is necessary to say that pre-decisional natural justice is not usually contemplated when the decisions taken are of an interim nature pending investigation or enquiry. Ad-interim orders may always be made ex-parte and such orders may themselves provide for an opportunity to the aggrieved party to be heard at a later stage. Even if the interim orders do not make provision for such an opportunity, an aggrieved party have, nevertheless, always the right to make appropriate representation seeking a review of the order and asking the authority to rescind or modify the order. The principles of natural justice would be satisfied if the aggrieved party is given an opportunity at the request. "*

20. Thus, considering the facts and circumstances of a particular case, an *ad-interim ex-parte order* may be passed by SEBI in the interests of investors or the securities market. It is pertinent to note that the *interim order* in the present case was passed under the provisions of sections 11(1), 11(4) and 11B of the SEBI Act. The second proviso to section 11(4) clearly provides that *"Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned"*. Further, various Courts, while considering the aforesaid sections of the SEBI Act have also held that principles of natural justice will not be violated if an *interim order* is passed and a post-decisional hearing is provided to the affected entity. In this regard, the Hon'ble Bombay High Court in the matter of *Anand Rath & Others Vs. SEBI* (2002) 2 Bom CR 403, has held as under:

*"It is thus clearly seen that pre decisional natural justice is not always necessary when ad-interim orders are made pending investigation or enquiry, unless so provided by the statute and rules of natural justice would be satisfied if the affected party is given post decisional hearing. It is not that natural justice is not attracted when the orders of suspension or like orders of interim nature are made. The distinction is that it is not always necessary to grant prior opportunity of hearing when ad-interim orders are made and principles of natural justice will be satisfied if post decisional hearing is given if demanded. Thus, it is a settled position that while ex parte interim orders may always be made without a pre decisional opportunity or without the order itself providing for a post decisional opportunity, the principles of natural justice which are never excluded will be satisfied if a post decisional opportunity is given, if demanded."*

21. Further, the Hon'ble High Court of Judicature of Rajasthan at Jaipur in the matter of *M/s. Avon Realcon Private Limited. & Ors Vs. Union of India & Ors* (D.B. Civil WP No. 5135/2010 Raj HC) has held that:

*"...Perusal of the provisions of Sections 11(4) & 11(B) shows that the Board is given powers to take few measures either pending investigation or enquiry or on its completion. The Second Proviso to Section 11, however, makes it clear that either before or after passing of the orders, intermediaries or persons concerned would be given opportunity of hearing. In the light of aforesaid, it cannot be said that there is absolute elimination of the principles of natural justice. Even if, the facts of this case are looked into, after passing the Interim order, petitioners were called upon to submit their objections within a period of 21 days. This is to provide opportunity of hearing to the petitioners before final decision is taken. Hence, in this case itself absolute elimination of principles of natural justice does not exist. The fact, however, remains as to whether post-decisional hearing can be a substitute for pre-decisional hearing. It is a settled law that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, the requirement of giving reasonable opportunity exists before an order is made. The case herein is that by statutory provision, principles of natural justice are adhered to after orders are passed. This is to achieve the object of SEBI Act. Interim orders are passed by the Court, Tribunal and Quasi-Judicial Authority in given facts and circumstances of the case showing urgency or emergent situation. This cannot be said to be elimination of the principles of natural justice or if ex-parte*

*orders are passed, then to say that objections thereupon would amount to post-decisional hearing. Second Proviso to Section 11 of the SEBI Act provides adequate safeguards for adhering to the principles of natural justice, which otherwise is a case herein also..."*

22. In view of the above, I find that the *interim order* passed by SEBI was not in disregard of the principles of natural justice since, reasons for passing the *interim order* have been clearly stated in the *interim order* and, in accordance with the settled law, the Noticees were afforded a post-decisional opportunity to file their replies and avail personal hearing. I, therefore, reject the contention of the Noticees in this regard.
23. The noticees have raised a common concern that there was no emergent situation warranting such an order and that there was no urgency for SEBI to pass the *interim order* without providing them an opportunity of personal hearing. In this regard, I note that the time taken to arrive at a decision/action, as in this case, is dependent on the complexity of the matter, its scale and modus operandi involved and other attendant circumstances. The power under sections 11 and 11B of the SEBI Act can be invoked at any stage i.e. either during pendency or on completion of inquiry or investigation. In the present case, the *modus operandi* where suspected entities were misusing the stock exchange mechanism came to light only in April 2015. The *interim order* clearly brings out the reasons and circumstances for issuance of *ex-parte ad-interim* directions. I, therefore, do not find any merit in the contention of the Noticees in this regard.
24. Some of the notices have contended that they had sought certain documents, including preliminary enquiry report, through their letters, which were not provided to them. In this regard, I note that all the documents relied upon by SEBI while passing the *Interim order* and which were relevant to them, were provided when an opportunity of Inspection of documents was granted to them. I, therefore, do not find any merit in their contention in this regard.
25. I note that some of the noticees have contended that the primary allegation in the *ex-parte ad interim order* against them is of conversion of unaccounted income into accounted income and subsequent tax evasion which falls outside the jurisdiction of SEBI and assuming without accepting that SEBI does have jurisdiction to adjudicate upon the same, then also, no case has been made out to establish that their trades in the scrip was with a view to evade tax. In this regard, I note that the *interim order* has reasonably highlighted the *modus operandi* wherein the scheme, plan, device and artifice employed, apart from being a possible case of tax evasion which could be seen by the concerned law enforcement agencies separately, is *prima facie* also a fraud in the securities market in as much as it involves manipulative transactions in securities and misuse of the securities market. Accordingly, I am of the view that SEBI has acted well within its jurisdiction, in the matter.



26. Section 11(1) of the SEBI Act casts the duty on SEBI to protect the interests of the investors, promote development of and regulate the securities market, “*by such measures as it thinks fit*”. Apart from this plenary power, section 11(2) of the SEBI Act enumerates illustrative list of measures that may be provided for by SEBI in order to achieve its objective. One of the measures enumerated in 11(2) (e) is “*prohibiting fraudulent and unfair trade practices relating to securities markets*”. The word ‘*measure*’ has not been defined or explained under the SEBI Act. It is well settled position that this word has to be understood in the sense in which it is generally understood in the context of the powers conferred upon the concerned authority. From the provisions of section 11, it is clear that the purpose of section 11(2)(e) of the SEBI Act is to prohibit all fraudulent and unfair trade practices relating to the securities market and the Board may take any ‘*measures*’ in order to achieve this purpose.
27. On a careful reading of the above provisions of the SEBI Act, I note that the only circumference around SEBI’s powers under sections 11 and 11B is the SEBI Act itself. The ‘*measures*’ and the directions under section 11 and 11B of the SEBI Act can be taken/issued for prohibiting the fraudulent and unfair trade practices relating to securities market and achieving the objective of investor protection, and promotion of and regulation of the securities market. It is also pertinent to mention that the *interim order* has been passed in the course of preliminary inquiry and the investigation in the matter is ongoing. Based on the *prima facie* findings in the matter and in order to protect the interest of investors in the securities market, SEBI had issued directions vide the *interim order*.
28. In this case, as discussed hereinabove, the purpose of the *interim order* is to achieve the objectives of investor protection and safeguarding the market integrity by enforcing the provisions of the SEBI Act. I, therefore, do not agree with the contentions of the noticees with regard to the scope of the *interim order* and the power of SEBI in the matter. I, therefore, reject the contentions of the Noticees in this regard.
29. As regards the common contention of the noticees that pricing of a scrip is a subjective issue and contingent upon forces of demand and supply and at no point of time either the stock exchange or SEBI had raised any alarm bells as to price movement in the scrip, I note that it is a common knowledge that movement in the price of a scrip is driven by various factors. In the instant case, the steep price rise with meagre volume followed by sudden increase in volume at high price at the relevant time cannot be assumed as a normal market trend when the buyers and sellers of Patch-II are connected entities of *Mishka*, i.e., preferential allottees and promoter related entities as seller and entities of *Mishka* group as buyer. It is be noted that whether there is any concern with respect to trading pattern in scrip is a subject matter of examination/investigation in that scrip and its outcome. Any direction or measure, if warranted, based on the outcome of such examination/investigation, is a *post facto* action

taken to safeguard the interest of investors in securities market and protect the market from further damage, as done in the instant case. I, therefore, do not find any substance in the contention of the noticees.

30. The Noticees have contended that after giving permission to make preferential allotment, granting listing and trading permission for the shares issued in preferential allotment, the issuance of shares by way of preferential allotment cannot be questioned. In this regard, it is noted that preferential allotment is like any other corporate action/instrument which is allowed as per the extant regulations for raising funds by corporate bodies for the purpose of business requirements. However, the same becomes questionable/ doubtful when it is used as tool for implementation of any dubious plan or *mala fide* intention as done in the instant case in the manner described in the *interim order*. I, therefore, find no merit in the submission of the noticees.
31. Another contention of some of the Noticees is that the open restraint order is in breach of their fundamental right to carry on business under Article 19(1)(g) of the Constitution of India. In this regard, it is noted that Article 19 (1) (g) guarantees to all citizens the right to practice any profession or to carry on any occupation, trade or business. However, at the same time it is pertinent to mention that this freedom is not uncontrolled as clause (6) of Article 19 authorises legislation which imposes reasonable restrictions on this right in the interest of general public. It is a matter of common knowledge that Securities and Exchange Board of India, 1992 is a special Act enacted by the Parliament conferring on SEBI the duty to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit. In the present case, the restraint order has been passed by SEBI in exercise of the powers conferred upon it by law and towards fulfilment of the duties cast under the SEBI Act. As noted in the *interim order*, the conduct of the Noticees has been found to be *prima facie* fraudulent and the Noticees have therefore been restrained from accessing the securities market and dealing in securities till further directions. It is a settled law that while exercising his fundamental rights a person cannot commit an act which is forbidden by law. In view of the above, I find that the open restraint order against the Noticees is not in violation of Article 19(1) (g) of the Constitution of India.
32. Certain Noticees have also contented that a significant/substantial portion of their sell transactions matched with the entities other than Exit Providers. In this regard, I note that the list of 59 entities labelled as Exit Providers mentioned in the Interim order is not an exhaustive list. Investigation is going on and the role of other entities are also under examination.

33. It is also a common contention of Noticees that they did not have any role in the manipulation of the price of the scrip of *Mishka* or in the entire plan described in the *interim order*. They have further contended that there is no material to prove that their acts were “fraudulent” and that they violated the provisions mentioned in the interim order. In this regard, I note that the facts and circumstances of the instant case discussed hereinabove and in the *interim order* indicate beyond doubt that the transfer of shares in physical form from the promoters of *Mishka* to promoter related entities and allotment of shares to preferential allottees was done with the sole objective of providing LTCG to them. The *interim order* has reasonably highlighted the *modus operandi* wherein the promoters of the company transferred their almost entire holding to promoter related entities and *Mishka* made a preferential allotment and thereafter the promoter related entities and preferential allottees with the aid of the entities of *Mishka* Group misused the stock exchange mechanism to exit at a high price in order to book illegitimate gains with no payment of taxes as LTCG is tax exempt. In view of this background and facts and circumstances, I find that the acts of the Noticees discussed in the *interim order* are *prima facie* fraudulent and in contravention of the provisions of securities laws mentioned therein. I, therefore, reject the contentions of the Noticees in this regard.
34. Some of the noticees have contended that SEBI have attached their demat accounts and the demat accounts of their family members where they are joint holders without making a mention of it in the *interim order*. According to them, such an act of SEBI is beyond the powers conferred on it, as section 11(4)(e) of the SEBI Act requires an approval from the Judicial Magistrate which has not been obtained before attaching the said accounts. In this regard, it is pertinent to mention that section 11(4) (e) of the SEBI Act requires an approval of the Judicial Magistrate of the first class only for the purpose of attachment of “bank account(s)”. It is important to mention that section 11(4)(e) does not apply to demat accounts. I note that vide the *interim order*, the Noticees have been “*restrained from accessing the securities market and buying, selling or dealing in securities, either directly or indirectly, in any manner, till further directions*”. Towards implementation of the said direction, the demat accounts of the Noticees (single and joint) have been suspended for credit and debit. Thus, neither any direction of attachment of the Noticees’ accounts has been issued vide the *interim order* nor have any of the accounts been attached pursuant to SEBI’s order. Therefore, the requirement of prior permission of Judicial Magistrate under section 11(4)(e) of the SEBI Act does not arise. In view of the above, I do not find any merit in the contention of the noticees in this regard.
35. Having dealt with the common contention/submissions of Noticees, I now proceed to deal with the specific submissions of Noticees:
36. *Mishka* has contended that with the new investments it had maximised the shareholders

wealth by properly utilising their funds in line with its business activities and that they have in no way mis-utilised the shareholder's funds. In this regard, I note that as discussed in the *interim order*, from the bank statement analysis of *Mishka*, it was observed that funds received as proceeds of preferential allotment were immediately transferred to various entities including brokers and was never retained in the company for executing its plans as envisaged in the special resolution passed under section 81(1A) of the Companies Act, 1956. Also, *Mishka* has not provided any satisfactory explanation as how the transfer of the proceeds of preferential allotment to various entities, can be associated with utilisation of funds in line with their business activities. I therefore, find no merit in the contentions made by *Mishka* in this regard.

37. *Mishka* has contended that its investors/shareholders are in no way connected/associated with it or its directors under any arrangement or scheme and that they have invested in the shares of the company on their own will and after going through the company's profile and its future plan. It is relevant to mention here, the sharp price rise in the scrip was not supported by fundamentals of *Mishka* or any other external factor as mentioned in the *interim order*, which in my opinion would not entail investments from rational investors unless the company and the preferential allottees are known to each other and there is prior arrangement between them for issue of shares. I note that company has failed to provide sufficient material on record such as how the preferential allottees were arranged, communication between preferential allottees and the company, Information Memorandum, etc. in order to substantiate its said contention. In view of the above, I reject the contentions of the company in this regard.
38. *Mishka* has also contended that neither the company nor its directors have benefitted in any manner with respect to the trading in the shares of the company and that the directors have just acted in their capacity of directors and have done all acts and business transactions within the purview of all rules and regulations applicable to them. As described in the *interim order* clearly the market was manipulated for the benefit of the promoter related entities and preferential allottees to give them an exit at huge profits, and *Mishka* and its directors were involved in the *modus operandi*, since the first step was the large preferential issue. Preferential issues can only be made by pre – negotiation. This itself establishes the connections and the complicity. I, therefore, reject the contentions of the company in this regard.
39. *Mishka* has submitted that the price movement was backed by fundamentals of the Company and its Financials and there was an increase in EPS from -2.4 to 0.12 and the *interim order* wrongly refers to the period when the Company was dormant. . In this regard, I note that it is a common knowledge that movement in the price of a scrip is driven by various factors. The steep price rise with meagre volume followed by sudden increase in volume cannot be assumed as a normal market trend when the buyers and sellers are known

entities of company, i.e., preferential allottees as sellers and entities belonging to the Exit Provider group as buyers. In addition, it was also observed that scrip price started falling during Patch II. If the company had strong fundamentals, as claimed, the scrip price would not have fallen drastically from ₹ 57.00 on September 10, 2014 to ₹29.05 on December 30, 2014 and has been falling ever after. Although scrip price is influenced by various factors, such drastic fall in scrip price is not backed by a fundamentally strong company. I, therefore, do not find any merit in the contention of the noticee in this regard.

40. I note that all the persons who have been holding directorship in *Mishka* at the time of the unfolding of the scheme of operations illustrated in the *interim order* have been indicted in the *interim order*. I further note that the directors have contended that they have no relation with the preferential allottees or any of the other shareholders of the company. The position of a 'director' in a public company/listed company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such director or the director has to face the consequences for any violation or default thereof. The directors therefore cannot wriggle out from liability. A director who is part of a company's board is responsible for all the deeds/acts of the Company during the period of his directorship. From this, I note that the whole scheme of operations starting from issuance of equity shares on preferential basis to exit of preferential allottees at a very high price could not have been fructified without the involvement and co-operation of the directors of *Mishka*. I, therefore, do not find any merit in the contention of the directors in this regard.
41. Some of the promoters have contended that their shareholding in *Mishka* was transferred to M/s. Roongta Rising Stocks Private Limited pursuant to a formal MOU. In this regard, I note that as per the records available with Registrar and Transfer Agent (RTA) of *Mishka*, *promoter related entities* received the shares from the promoters and not from M/s. Roongta Rising Stocks Private Limited. Moreover, they have not submitted any documentary evidence in support of their contention that they had entered into an MOU with M/s. Roongta Rising Stocks Private Limited and have actually transferred the shares to M/s. Roongta Rising Stocks Private Limited. In view of the above, I do not find any merit in the contention of the Noticees that they have transferred the shares to Roongta Rising Stocks Private Limited and not to promoter related entities.
42. Mr. Vijay Jain, a promoter has also admitted that he was the director of *Mishka* till March 30, 2013. Hence, he was one of the directors of *Mishka* when it made a preferential allotment. As aforesaid, the position of a 'director' in a public company/listed company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such director or face the consequences for any violation or default thereof. The directors therefore cannot wriggle out from liability. I, therefore, do

not find any merit in the contention of the directors in this regard.

43. Certain promoter related entities submitted that SEBI has adopted a discriminatory approach in respect of promoter related entities including them since the only basis of connection / relation with *Mishka* is the transfer of shares of *Mishka* from Promoters of *Mishka* to them in physical form, and certain promoter related entities have been left out of the *interim order* because they had not sold more than 2, 00,000 shares in *Mishka*. In this regard, I find it important to mention that the *interim order* clearly mentions that detailed investigation in the matter is in progress. The fact that certain promoter related entities have been left out of the *interim order* does not signify that they are outside the scope of SEBI's investigation or have been exonerated. At the stage of the *interim order*, directions were issued against entities whose role / involvement in the entire scheme was *prima facie* observed in light of the facts and circumstances at that stage. It is pertinent to clarify that appropriate action in accordance with the provisions of law will be initiated against every entity (including the promoter related entities) who has a role in the plan, scheme, design employed in this case. In view of the above, I do not find any merit in the contention of the Noticees that SEBI has adopted a discriminatory approach in the matter.
44. Further, A. K. Roongta (HUF) has submitted that its name has wrongly been included in the order as it has not sold more than 2,00,000 shares in *Mishka*, and, therefore, its name does not reflect in the Shortlisted Group. In this regard, I note that Mr. A. K. Roongta, whose name appears in Shortlisted Group, is the Karta of A. K. Roongta (HUF). Since the account of HUF is operated by its Karta, who, in the present case, has already been restrained from accessing the securities market, it is pertinent to restrain its HUF account also from accessing the securities market. I, therefore, reject the contention of A. K. Roongta (HUF).
45. Certain promoter related entities have also submitted that they have bought the shares from a Stock broker Roongta Rising Stocks Private Limited and not from the promoters of the company. Mr. A. K. Roongta and A. K. Roongta (HUF) have submitted that they have bought the shares of *Mishka* from Mr. Subhash Maheshwari. Further, Mr. Jay Shah, Mr. Navinchandra Shah and Ms. Malti Shah have submitted that they have bought the shares of *Mishka* from Pranjal Trading Private Limited. Be whatever it may, the fact remains that those shares were purchased through off- market transactions from the promoters of *Mishka* and nexus between the Noticees and promoters cannot be ruled out at this stage merely because of involvement of a stock broker as claimed by the Noticees. Further, two promoter related entities namely, Mr. Rupesh Poddar and Ms. Parul Poddar submitted that they have invested in *Mishka* based on advertisement published on September 17, 2012 in Economic Times by Roongta Rising Stocks Private Limited. As regards that, I note that Mr. Rupesh Poddar and Ms. Parul Poddar bought 1,000 shares and 1,300 shares of *Mishka*

respectively on April 24, 2012, which is much earlier than the advertisement published by Roongta Rising Stocks Private Limited. Further, I also note that Mr. A. K. Roongta is one of the directors of Roongta Rising Stocks Private Limited, which, as contended by other Noticees, has facilitated the transfer of shares of *Mishka* from the promoters of *Mishka* to other promoter related entities. In these facts and circumstances, I cannot accept the submissions/ contentions of the above mentioned Noticees in this regard.

46. Mr. A K Roongta, A K Roongta (HUF), Mr. Atul Save and Mr. Pritish Chatterjee have also contended that they are not the part of the *modus operandi* of *Mishka Group* as they started selling the shares of *Mishka* from April 2013, when the price of the shares of *Mishka* was very low. They have also submitted that if they were part of *Mishka Group*, they would have sold the shares of *Mishka* only at the highest price. In this regard, the order book of the scrip of *Mishka* was analyzed for all those days in Patch 1 on which the aforesaid Noticees sold the shares. The summary of the Buy orders *viz-a-viz* the trades executed by the aforesaid Noticees are as under:

Noticee	Date of Transaction	sale order quantity by the entity	No. of Buy Orders in the order book	Buy Order Quantity in order book	Quantity Traded	Selling Price	Purchase Price of Shares Sold (Adjusted to Bonus /Split)	Profit %
A K Roongta (HUF)	13/05/2013	2	36	143701	2	11.87	0.75	1482.67
A K Roongta (HUF)	14/08/2013	2	65	88800	2	42.8	0.75	5606.67
ANIL ROONGTA	12/04/2013	2	48	106290	2	7.69	0.75	925.33
ANIL ROONGTA	09/07/2013	2	32	62599	2	29.85	0.75	3880
ANIL ROONGTA	31/07/2013	2	22	63300	2	39.75	0.75	5200
ATUL SAVE	30/04/2013	2	37	142850	2	9.33	3.75	148.8
ATUL SAVE	20/06/2013	3	30	91700	3	24.7	3.75	558.67
ATUL SAVE	26/06/2013	3	18	86000	3	26.15	3.75	597.33

ATUL SAVE	08/07/2013	5	30	72599	5	29.3	3.75	681.33
ATUL SAVE	30/01/2014	2	9	4101	2	40.35	0.375	10660
PRITISHKUMAR AMITKUMAR CHATTERJEE	15/04/2013	2	41	131408	2	8.07	3.75	115.2
PRITISHKUMAR AMITKUMAR CHATTERJEE	20/05/2013	3	32	130000	3	13.73	3.75	266.13

47. From the above table, I note that on all the days when the aforesaid Noticees traded in the scrip of *Mishka*, there was a good demand by the buyers, but the aforesaid Noticees had placed sell orders of 2 to 5 shares only, even though the aforesaid Noticees were earning a handsome return on their investments. In view of the above, I am of the opinion that the sell transactions by the aforesaid Noticees were a part of *modus operandi* of the *Mishka* Group as a trade, be it of small quantity, not only establishes new price but also becomes a base for new circuit filter. I, therefore, do not find any merit in the above contention of Mr. A K Roongta, A k Roongta (HUF), Mr. Atul Save and Mr. Pritish Chatterjee.
48. The promoter related entities have made another common submission that they are regular investors and have invested in the scrip of *Mishka* from their own funds considering a good investment opportunity with the sole intention of earning profit. They have also denied having any nexus/ connection/ linkage with the promoters of *Mishka* as alleged in the *interim order*. Further, Shri Jay Shah, Shri Navinchandra Shah and Smt. Malti Shah have also contended that, as per the *interim order*, the act by lay investor of buying the shares of a listed company and subsequently selling off is a fraudulent activity if the promoter of the company are found to be manipulating the price of the scrip is absurd. In this regard, I note that the instant case is different from any other case. In the instant case, it is undisputed that trading in the scrip of *Mishka* was suspended from January 07, 2002 to May 09, 2012 on account of non-payment of listing fees and during the financial year 2011-12, *Mishka* had incurred a loss of ₹ 12 Lakh. Further, as on December 31, 2011 there were only 7 shareholders in the company and there was no trading in the scrip of *Mishka* till February 13, 2013. Also the promoter related entities bought the shares of *Mishka* from the promoters of the company. Further, I note that these Noticees invested in the shares of *Mishka* at the time when the promoters of *Mishka* sold off almost their entire holding in the company. It does not appeal to reason that the Noticees, who claim to be regular investors in the securities market, invested their hard-earned money in a company like *Mishka* with such poor fundamentals and background without having any connection / relation with the promoters/directors of



*Mishka*. In view of the above, I do not find any merit in the above contentions of the Noticees in this regard.

49. The above facts and circumstances indicate that *Mishka* and the promoter related entities were acting in concert towards a common objective that has been brought out in the *interim order*. Considering the background of *Mishka*, the investment made by the promoter related entities cannot be termed as a rational investment behavior and such investment, as in this case, could be possible only if the promoter related entities had nexus with *Mishka* and its promoter and the transfer of shares in physical form was under a prior arrangement between them for a sole objective to provide them Long Term Capital Gains. This is further substantiated by the fact that most of the shares sold by the promoter related entities were bought by the entities of *Mishka Group*. In my view, this cannot be termed as coincidence especially when sellers have nexus with the promoters of the company and buyers i.e. entities of *Mishka* group are either connected among themselves or connected to the company directly or indirectly as mentioned in the *interim order*. As brought out in the *interim order*, the ultimate beneficiaries of the whole scheme in question are preferential allottees and the promoter related entities (including the Promoter related entities). It is beyond reason to hold that the company and other entities mentioned in the *interim order*, except the promoter related entities, would devise the impugned plan/scheme for the benefit of the entities who are neither party to the plan/scheme nor have any complicity in the plan with others. Since, promoter related entities are the ultimate beneficiaries, they cannot pretend to be oblivious to the scheme/plan. The facts and circumstances of this case, in my view, strongly indicate that the transfer of these shares in physical form was under a prior arrangement between them for the ulterior motive or the end objective of the scheme that has been brought out explicitly in the *interim order*.
50. The *preferential allottees*, have contended that they had invested in the scrip of *Mishka* from their own funds as genuine investors considering the preferential allotment a good investment opportunity. They have also contended tht they are not connected/ related to the company or its promoters or directors or with any entities mentioned in the *interim order* and therefore, they cannot be said to be involved in any dubious plan are artifice as alleged in the *interim order*. In this regard, it s pertinent to note that *preferential allotment* of shares is an issue of shares by an issuer to select person or group of persons on a private placement basis unlike a public issue where funds are raised by inviting subscriptions from public in general. It is also a matter of common knowledge that a preferential allotment is made to the persons/entities on a one-to-one basis who are acquainted/ familiar with the company and/or its promoters/directors. A preferential allotment is always for the purposes of meeting fund requirements of the concerned company and involves a covert, manifested and planned actions by the concerned parties, i.e.,-
- (a) the company to identify select persons/group of persons who are known to it or its

- promoters/directors for investing in its share capital,
- (b) select persons/ group of persons (preferential allottees) exercise due diligence and then finance the fund requirements of the company and subscribe to its shares issued on preferential basis;
  - (c) The company allots shares to the preferential allottees.
51. The *preferential allottees*, in this case, have failed to substantiate their claim that they only made investment in preferential allotment and were not known to the company or its promoters/directors and/or had no nexus, connection with them. When asked during personal hearings to the respective *preferential allottees* they have failed to give any plausible explanation as to how the company could make allotment to them if they were not known to it or its promoters/directors and if they had no nexus/connection with them. The *preferential allottees* have claimed that they were approached by certain persons with a presentation and were asked to make investment in the preferential allotment but they have failed to explain as to how only they were selected for making presentation to them individually. The fact that such presentations were made to few *preferential allottees*, individually, itself suggests existence of prior understanding and nexus between the company, its promoters/directors and the noticees.
52. It is a well accepted position that a preferential allotment signifies that the allottees agree with the issuer on one-to-one basis to finance its fund requirements and is not an open to general public as an investment opportunity. Such financing pre-supposes nexus and prior understanding amongst the issuer, its promoters/directors and the allottees. A stranger cannot just make investment in a preferential allotment merely on the basis of an advice without having nexus, directly or indirectly, and prior understanding with the company. A preferential allotment is not an *open to all* type of investment opportunity as sought to be contended by the noticees. A company will, in no case, make a preferential allotment to a stranger who just approaches it for allotment of its shares. I, therefore, am unable to accept such explanations made by the *preferential allottees*.
53. Infusion of funds by way of preferential by the *preferential allottees* in a company like *Mishka*, which had hardly any credentials in the market at the time of allotment could only be possible if the preferential allottees had nexus and prior understanding with *Mishka*, its promoter & directors, exit providers with regard to the dubious plan, device and artifice as *prima facie* found in the *interim order*. As brought out in the *interim order* ultimate beneficiaries of the whole scheme in question are the preferential allottees as such they cannot pretend to be oblivious to the scheme/plan/device/artifice in question. It is beyond reason to hold that the company and other entities mentioned in the *interim order*, except the preferential allottees, would devise the impugned plan/scheme for the benefit of the entities who are neither party to the plan/scheme nor have any complicity in the plan with *Mishka* and other

entities mentioned in the *interim order* as sought to be contended by the noticees. The facts and circumstances of this case, in my view, strongly indicate that the issue of these shares was under a prior arrangement between them for the ulterior motive and the end objective of the scheme that has been brought out explicitly in the *interim order*.

54. Some of the Noticees have submitted that they have no nexus with the exit providers as none of the shares sold by them were purchased by exit providers mentioned in the *interim order*. In this regard, I find it important to mention that the *interim order* clearly mentions that detailed investigation in the matter is in progress. The list of exit providers mentioned in the *interim order* is not exhaustive and at the stage of the *interim order*, directions were issued against entities whose role / involvement in the entire scheme was *prima facie* observed in light of the facts and circumstances at that stage. It is pertinent to clarify that appropriate action in accordance with the provisions of law will be initiated against every entity who has a role in the plan, scheme, design employed in this case. In view of the above, I do not find any merit in the contention that they have no nexus with the exit providers as none of the shares sold by them were purchased by the exit providers.
55. Exit providers have contended that SEBI has erroneously named them as exit providers and clubbed them as *Mishka* Group and they have not done any wrong-doing. In this regard, I is relevant to reiterate para 17 of the *interim order* which reads as under:

*"The transactions wherein the Exit Providers bought most of the shares sold by the Preferential Allottees and Promoter related entities cannot be just a coincidence particularly when sellers are connected with Mishka / its promoters/ directors by virtue of being Preferential allottees/ Promoter related entities and other factors mentioned in Annexure-A. It is interesting to note that in Patch 1, the entire share capital of Mishka was with the Preferential Allottees, Promoters and the entities who received shares from the promoters. Hence, during Patch 1 the entities related to Promoter Group sold the shares in very less quantity and certain entities pushed up the price of the scrip by buying these shares from them. It is also observed that during Patch 1 the shares of Mishka were not in demand by the general investors of the market and saw a very low volume on most of the trading days and hence could not have commanded the price as observed in Patch 2. In any market, a sudden supply, if not matched by similar demand, leads to price fall. Considering the same, any rational investor would not have dumped a large number of shares without facing the risk of a significant price fall until and unless he was sure of the demand side absorbing the supply. In this peculiar case, the Exit Providers created the demand against the supply from the Preferential Allottees/Promoer related entities. In the whole process, the principle of price discovery was kept aside and the market lost its purpose. It is evident from the above analysis that the Exit Providers provided a hugely profitable exit to the Preferentail Allottees/ Promoter related entities. This could be possible only if the Preferential Allottees, Promoter related entities, Exit Providers, Mishka and its promoter/ directors were hand in glove with each other".*

56. Exit providers have also contended that they have traded on the anonymous screen based system of the stock exchanges and as such their trades cannot be regarded as having manipulative/fraudulent intent. They have further contended that they have not provided exit to the *preferential allottees* and/or *promoted related entities*. In this context, I note that in the screen based trading, the manipulative or fraudulent intent can be inferred from various factors such as conduct of the party, pattern of transactions, etc. In this context, vide its order dated July 14, 2006, in *Ketan Parekh vs. SEBI* (Appeal no. 2/2004), the Hon'ble SAT has observed that:

*"The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, ....., the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."*

57. Exit providers have contended that they invested in the shares of *Mishka* as a normal investment activity and did not create any artificial volume. I note that considering that the share price as discussed in the *interim order* was not supported by fundamental of *Mishka* or any other external factor, investment by the noticees in the scrip of *Mishka* that has hardly any intrinsic value cannot be termed as rational/normal buying or investment behaviour. This significant increase in the volume appears to be unnatural considering the background of the company and was possible because of the concerted trading between entities forming part of *Exit providers group* on one hand as buyers and *preferential allottees and promoter related entities* on the other hand as sellers. It is further noticed that consequent to purchase of shares at high prices, the noticees sold their shareholding in *Mishka* at an extremely low prices thereby incurring a loss which is similar to the trading pattern of other entities of *exit providers*.
58. Exit providers have contended that establishing any relation/connection between entities as mentioned the *interim order* were flawed. In this regard, it is submitted that the basis of connection as discussed in the *interim order* is based on the KYC and Bank Statement analysis, off market analysis, data available with the exchange and MCA details, exit providers were observed to be dealing in the scrip during the period of examination. The basis of connection was identified to give an indication of connection of them with the other entity/entities of the *Mishka* Group basis. The off-market transaction as discussed in the *interim order* was identified to give an indication of connection of them with the other entity/entities of the *Mishka* Group. Further, the basis of connection as described in the *interim order* is not to be seen selectively but holistically. In view of the above, I reject the contention of the exit providers in this regard.

59. With regard to the contention of entities of *Exit providers* relating to price movement in the scrip, I note that it has been aptly brought out in the *interim order* the manner by which the scrip was traded to influence the price of the scrip. It was observed that the scrip which was suspended for more than a decade and thereafter the price of the scrip was increased exponentially by certain entities through manipulative trading. This abnormal increase in price of the scrip through miniscule trading in patch-1, especially during the lock-in period when seen holistically in the backdrop of the facts and circumstances of this case clearly indicate/envisage that this artificial price increase was done with an intention to take the price to the desired level in order to provide exit to the preferential allottees for enabling them to claim bogus/fictitious LTCG.
60. Some of the exit providers have contended that they had not acted as counterparties to the preferential allottees. In the instant case, exit providers had acted as buyers when the preferential allottees were selling the shares of *Mishka* after the lock-in period. It is apparent from the trading pattern that these noticees had bought shares at high prices and sold it at extremely low prices, during the same time and in the same manner, thereby incurring huge losses when there was no general downturn in the market. Such trading behaviour belies any economic rationale and indicates existence of premeditated arrangement among the *preferential allottees* and these noticees. Moreover, as discussed in the *interim order*, had these noticees not traded/dealt in the scrip of *Mishka* during the relevant time, it would not have been possible for the *preferential allottees* to offload/sell in large numbers at such price in such a stock that has hardly any value.
61. In view of the facts and circumstances, I find that exit providers had acted in concert/league and misused the exchange platform to provide exit to the *preferential allottees* at a high price thereby enabling these *preferential allottees* to reap the benefit of tax exemption available under the Income Tax Act, as discussed in the *interim order*. I, therefore, reject the contention of these noticees in this regard.
62. With regard to the contention of Dynamic Portfolio Management and Services Limited, Ritesh Projects Private Limited and Ritesh Commercial Holdings Limited, it is noted that these three entities are related to each other on the basis of common promoter and director i.e. Late Shri Arun Kumar Agarwal. Further, the fact that Mr Ashok Bothra was a common director in Dynamic Portfolio Management & Services Limited and Blue circle Services Limited cannot be a mere coincidence especially considering the facts and circumstances of this case and the role played by these entities in the said matter as highlighted in the *interim order*. Further, all their trades matched with promoter related entities and preferential allottees during patch-II in *Mishka*. Their trading in *Mishka* at the same time and in similar fashion cannot be a coincidence and *prima-facie* indicates their involvement in the scheme of things. The trading data shows that Dynamic Portfolio Management and Services Limited, Ritesh

Projects Private Limited and Ritesh Commercial Holdings Limited traded in the scrip of *Mishka* in a similar manner as other entities of *Mishka Group* i.e they bought shares at high prices when the preferential allottees and promoter related entities were selling. While the matter is under investigation, the commonality of directors and trading pattern of these entities in the scrip of *Mishka* as exit providers *prima-facie* indicate that these entities are acting in concert under a pre-mediated plan to provide exit to the preferential allottees and promoter related entities. This apart, the fact that Ritesh Enclave Private Limited and Ritesh Properties Private Limited are promoter and group companies of Dynamic Portfolio Management and Services Limited were also shareholder of Surbhika Vyapaar Private Limited and Hariom Suppliers Private Limited who also acted as exit providers with other group companies strongly indicate the complicity of these entities in the *modus operandi* as discussed in the aforementioned *interim order*. Considering the circumstantial evidence and *prima-facie* connections, I find no merit in the contention of Dynamic Portfolio Management and Services Limited, Ritesh Projects Private Limited and Ritesh Commercial Holdings Limited in this regard.

63. As regards the contention of Hariom Suppliers Private Limited, Kalakar Commercial Private Limited, I note that undisputedly these entities have common directors namely Mr Bishwanath Agarwal and Mr Uttam Banerjee. It is also uncontended that all these entities have common phone no i.e 9830041787 and common e-mail id i.e bishwanath1951@gmail.com as per the KYC records. Further these entities have a common address i.e. 4, Synagogue Street, 8th Floor, Kolkata- 700001. Apart from this, it is also noted from the shareholding pattern of Hariom Suppliers Private Limited that Surbhika Vyapaar Private Limited, Ritesh Properties Private Limited, Ritesh Construction Private Limited and Ritesh Enclave Private Limited are shareholders of Hariom Suppliers Private Limited among others as March 2011. Further, it is also noted that shareholding pattern of Surbhika Vyapaar Private Limited that Hariom Suppliers Private Limited, Ritesh Properties Private Limited, Kalakar Commercial Private Limited and Ritesh Enclave Private Limited are shareholders of Surbhika Vyapaar Private Limited among others as on March 2011. It is pertinent to mention here that Ritesh Properties Private Limited, Ritesh Construction Private Limited, Ritesh Enclave Private Limited are promoters of Dynamic Portfolio Management and Services Limited who in turn are also related to other exit providers. Other than these connections, it is also observed that these connected entities have traded in the scrip of *Mishka* as other entities of *Mishka* group wherein they have bought shares at high price at the time when the preferential allottees are selling. Further, almost all of their trades in *Mishka* matched with promoter related entities and preferential allottees during patch-II. Thus trading of these connected entities in same scrip at same point of time and in a similar manner cannot be termed as coincidence or independent decision. In the process, their trading not only contributed to the trading volume in the scrip but also signifies that they are grossly involved in the *modus operandi*. These bases of connections along with their

trading pattern in the scrip of *Mishka* strongly indicate that they are connected to each other and have acted in concert/ nexus for providing exit to the *preferential allottees* thereby misusing the securities market system. Therefore, I find no merit in the contention of the Hariom Suppliers Private Limited and Kalakar Commercial Private Limited.

64. As regards the contention of R. C. Suppliers Private Limited, Raina Vyapaar Private Limited and Stardox Vinimay Private Limited, it is noted that these entities have common directors namely Mr Biswanath Basak and Mr Swarup Kumar Dey. Further it is also observed that R. C. Suppliers Private Limited and Raina Vyapaar Private Limited have common address i.e 161/1, Mahatma Gandhi Road, Kolkata -700007. It is also noted from their submission that they have not disputed their trading in the scrip of *Mishka*. Further, all of their trades in *Mishka* matched with promoter related entities and preferential allottees during patch-II. In view of the same I find that they have not been able to convincingly put forth any material to negate the allegations made against them in the *interim order*. It is observed that they have traded in a similar manner as other entities of *Mishka* group whereby they bought shares at the time when preferential allottees and promoter related entities were selling thereby providing exit to the preferential allottees and promoter related entities. Thus their concerted trading in the scrip of *Mishka* not only contributed to the trading volume but also squarely fit into the modus-operandi. Thus considering the facts and circumstances of this case and their trading pattern in the scrip, I am of the view that these connected entities acting in nexus with other entities of *Mishka* group have misused the stock exchange mechanism for providing exit to the preferential allottees. In view of the same, I find no merit in the contention of the R. C. Suppliers Private Limited, Raina Vyapaar Private Limited and Stardox Vinimay Private Limited in this regard.
65. The noticees namely Symphony Merchant Private Limited, Amrit Sales Promotion Private Limited and Bazigar Trading Private Limited have contended that no adverse inferences can be drawn on the basis of common directorship or common e-mail id as mentioned in the Table –III of Annexure- A in the *interim order*. In this regard, it is noted that the said noticees have not disputed the fact that Mr Panna Lal Maloo is the common director of Amrit Sales Private Limited, and Symphony Private Limited. It is also not disputed that they have common e-mail id which is maloo.kol@gmail.com. Additionally it is also observed from KYC documents that Mr. Vinay Maloo is director in Bazigar Trading Private Limited. This apart, it is noticed that Burlington Finance Limited and Bazigar Trading Private Limited are shareholders of Amrit Sales Promotion Private Limited as per the shareholding pattern as on September 30, 2013 i.e the period when the scheme in question was in operation. Additionally, it is observed from the shareholding pattern furnished with MCA that Symphony Merchants Private Limited is one of the shareholder of Bazigar Trading Private Limited. Apart from this, it is also noticed from the bank statements of Amrit sales promotion Private Limited that there was fund transfers from/to Amrit sales promotion

Private Limited with Burlington Finance Limited, Symphony Merchant Private Limited and Bazigar Trading Private Limited on multiple occasions during the period May 2012 to March 2013. Further, all trades of Symphony Merchant Private Limited and Bazigar Trading Private Limited and 85.71% of Amrit Sales Promotion Private Limited matched with promoter related entities and preferential allottees during patch-II in *Mishka*. Be that as it may, all these evidences put forth strongly that these entities are connected to each other. In addition to their connections, the trading of these connected entities in the same scrip i.e *Mishka* at the same time and in similar pattern as other entities of *Mishka* Group signifies their role in the scheme in question that led to misuse of securities market system. In view of the same I find no merit in the contention of the Symphony Merchant Private Limited, Amrit Sales Promotion Private Limited and Bazigar Trading Private Limited.

66. Vibgyor Financial Services Private Limited has contended that it cannot be categorized as an "Exit Provider" as it has not purchased even a single share from *Preferential Allottees or promoter related entities*. In this regard it is noted from records that the noticee has bought 6127 shares of *Mishka* from Apex Commotrade Private Limited who is an Exit Provider. I do not find merit in the contention of Vibgyor Financial Services Private Limited and its role in the dubious plan, scheme or devices requires detailed investigation.
67. In any market, a sudden supply, if not matched by similar demand, leads to price fall. Considering the same, any rational investor would not have dumped a large number of shares without facing the risk of a significant price fall until and unless he was sure of the demand side absorbing the supply. In this peculiar case, the Exit Providers created the demand against the supply from the preferential allottees/Promoter related entities. In the whole process, the principle of price discovery was kept aside and the market lost its purpose. It is evident from the above analysis that the Exit Providers provided a hugely profitable exit to the *preferential allottees/ promoter related entities*. This could be possible only if the Preferential Allottees, Promoter related entities, Exit Providers, *Mishka* and its promoter/ directors were hand in glove with each other.
68. All the *LTP contributors* have submitted that they have traded negligible quantity and made meagre profit and thus question of making LTCG doesn't arise in their case. In this regard, it is important to note that it has not been alleged by SEBI in the *interim order* that these noticees claimed LTCG benefit.
69. The *LTP contributors* have also submitted that they have no connections with any of the other entities mentioned in the order and some of them have also contended that they made miniscule investments in the scrip of *Mishka* and subsequently sold off the shares yielding minimal profits. In this regard, I note that the returns earned by these noticees in the scrip of *Mishka* cannot be any means said to be miniscule. Further, the role played by the entities



trading in the Patch I to artificially increase the price during the lock in period in order to give huge profitable exit to preferential allottees as brought out in the *interim order* of April 17, 2015 needs to be seen holistically. This is further strengthened by the fact that restrictions have been imposed on some of the LTP contributors in several *interim orders* issued by SEBI on the same *modus operandi*. Hence, the role played by the trading entities in the Patch 1 need to be seen in the backdrop of scale and size of operations undertaken by helping the beneficiaries (preferential allottees) to generate fictitious long term capital gains by showing that the source of their income was trading at the stock exchange.

70. The LTP contributors have submitted that the price was already touching upper circuit on previous day and there were many buyers at the upper circuit rates, hence their orders had no implication on the price movement of the security. In this regard, it is pertinent to note that on February 14, 2013, the scrip price opened at ₹ 5.50 and closed at ₹ 49.90 (adjusted and ₹499/- unadjusted) on February 14, 2014. During this period, the scrip was traded with an average volume of 390 shares per day and total volume of 73,760 shares in 189 trading days with an average of 1 trade per day. It was observed that price of the scrip was influenced by *certain entities* primarily through first trades during this period. These entities by putting 1 or 2 trades per day with negligible/ very less quantity of buy order contributed significantly to the price rise. From LTP analysis, it was observed that price of the scrip increased from ₹5.50 to ₹49.90 (adjusted and ₹499/- unadjusted) mainly through first trades in 188 such instances. It was observed that during February 14, 2013 to February 14, 2014, out of a total of 188 instances of trades establishing new high price in the scrip, four entities namely, Shyam Kanhey Lal Vyas, Bharat Bagri, Jayesh Narendra Kesharia and Manjulaben Sukhdev Pandya established new high price on 99 instances. The contribution of these four entities in establishing new high price was ₹ 251.61 out of total price rise of ₹ 339/-, which constitutes 74.23% of the total new high price. The details of contribution to price rise by these four entities during February 14, 2013 to February 14, 2014 (Patch 1) are as under:

**Contribution to price rise in Patch 1 by four entities.**

<b>PAN</b>	<b>Name</b>	<b>Name reflected in the <i>Interim order</i></b>	<b>Positive LTP Contribution as a buyer</b>	<b>% to Total Positive LTP Contribution</b>
ACTPV2787Q	Shyam Kanhey Lal Vyas	First Financial Limited	235.46	69.46
AADHB8488A	Bharat Bagri Bagri	Radford, First Financial Limited	8.5	2.51
AAEHJ1610D	Jayesh Narendra Kesharia*	Radford	5.25	1.55
ALVPP7764J	Manjulaben Sukhdev Pandya	Radford	2.4	0.71

<b>Total</b>	<b>251.61</b>	<b>74.23</b>
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\*Interim directions against Jayesh Narendra Kesharia was revoked as mentioned above.

71. The details of order log of the said noticees is given below:

**Order Log analysis of LTP Contributors during price rise period**

<b>SR. NO</b>	<b>CLIENT_NAME</b>	<b>Count of QTY</b>	<b>Sum of QTY2</b>	<b>% of order book</b>	<b>Avg qty per order</b>	<b>buy qty</b>	<b>Trade to Order ratio</b>	<b>LTP in %</b>
1	Shyam Kanhey Lal Vyas	1166	4139500	28.01	3550.17	2908	0.0007	69.45
2	Bharat Bagri Bagri	7	13400	0.09	1914.28	40	0.003	2.51
3	Manjulaben Sukhdev Pandya	545	327000	2.21	600.00	05	0.000015	0.71

72. It was also observed from the order book analysis that during the price increase period i.e. patch 1, there were total of 6711 buy orders for 1,47,77,501 shares placed by 239 buyers. Of these 1,47,77,501 shares, buy orders for 44,79,900 shares constituting 30.31% of the order book were placed by the 3 noticees as brought out in the table above. From the data it is also observed that, they have placed buy orders with average quantity per order in the range of 600 shares to 3550 shares.

73. Shyam Kanhey Lal Vyas appears among top 5 entities placing the buy orders and represents 28.01% of the order book with an average order size of 3550 shares. Many of these orders were placed by and large within minutes of opening of the trading session, ahead of sellers and the price quoted by them was at or around upper circuit. Trading in this manner by Shyam Kanhey Lal Vyas contributed to the price rise of *Mishka* through first trades as detailed in paragraph above. The contribution to price rise by Shyam Kanhey Lal Vyas is individually quite high and above 15%. In view of the above, I reject the submission of Shyam Kanhey Lal Vyas that his trading did not have an impact on the price rise of the scrip of *Mishka*.

74. Shyam Kanhey Lal Vyas also appeared as the top contributor to the buy side order book in the order log analysis as under:

**Order log analysis of top buy-side order book contributors:**

<b>Name</b>	<b>PAN</b>	<b>Count of orders</b>	<b>Sum of Shares placed in all orders</b>	<b>% of Order book</b>	<b>Avg qty per order</b>	<b>Trade /Order ratio (%)</b>
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SHYAM KANHEYALAL VYAS	ACTPV2787 Q	1166	4139500	28.01	2908	0.07%
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75. It is observed from the order book snapshot above, that aforesaid enlisted entity are contributing significantly to the buy side order book (totalling to 28.01% of the buy side order book). Hence, such flooding of buy side order book by above entity appears to be suspicious in nature and may need further investigation on account of irrational exuberance of these entities in placing such huge orders despite their lower Trade to Order ratio.
76. I note that Shyam Kanhey Lal Vyas, at this stage, has failed to give any plausible reason/explanation for the charges as described in the *interim order* and have not been able to make out a *prima facie* case for revocation of the *interim order*. I, therefore, in his case, reject his prayer for setting aside the *interim order* or for complete removal of restraint imposed by it *qua* Shyam Kanhey Lal Vyas.
77. The LTP contributors have submitted that there were large number of other buyers to purchase the securities which enticed them to place their purchase order. They have also submitted that they started buying after observing the price and volume movement in the scrip and the investment was a technical decision based on demand and supply in the momentum style of trading and not on fundamentals of the company. Analysis of the order book showed that during the price increase period i.e. Pre-Patch 1, there were 339 sell orders for 2,68,201 shares as against total of 6711 buy orders from 239 buyers placing buy orders of 1,47,77,501 shares. These orders were placed at or near the upper circuit, average quantity per order ranged from 1 to 16,666 and buyers were many a times placing orders ahead of the sellers. Considering the fundamentals of the company and the long history of no trading at the exchange, the keenness shown by them in placing orders for purchase of this scrip is not explained at this stage, and needs further investigation.
78. I do not find sufficient material at this stage to attribute role of Mr. Bharat Bagri and Manjulaben Sukhdev Pandya in the dubious plan, scheme or devices and to continue the directions issued in the *interim order* against them as they have not contributed to LTP significantly on individual basis, though their role requires detailed investigation. Therefore, the directions issued against Mr. Bharat Bagri and Manjulaben Sukhdev Pandya issued in order dated April 17, 2015 in the matter of *Mishka* stand revoked.
79. This type of trading pattern in an illiquid scrip like Mishka, *prima facie*, indicates that the seller being in control of the tradable shares of this scrip and the persons responsible for the flooding the order book inspite of the fact that only a miniscule quantity is being traded, have played a major role in manipulating the price of the scrip. From the order book it appears that a facade of huge demand at upper circuit was created without which a scrip

like *Mishka* with hardly any credentials regarding its trading history, fundamentals, business or financial standing etc., could not have witnessed a sustained increase in the price (8972% or 91 times) for a continuous period of 12 months. The only way the price of such scrip could have increased is by deploying manipulative trading pattern.

80. While proceeding further, an analysis of the order book revealed that during the price increase period i.e. patch 1, there were 339 sell orders for 2,68,201 shares as against total of 6711 buy orders for 1,47,77,501 shares. From the order book, it appears that a facade of huge demand at upper circuit was created without which a scrip like *Mishka* with hardly any credentials regarding its trading history, fundamentals, business or financial standing, etc., could not have witnessed a sustained increase in the price (8972% or 91 times) for a continuous period of 12 months. As mentioned above, there were 239 buyers during this period who had placed buy order for 1,47,77,501 shares through 6711 orders. These orders were placed at the upper circuit, average quantity per order ranged from 1 to 16,666 and buyers were predominantly placing orders ahead of the sellers. Thus the involvement of entities/ persons in placing large quantity of orders knowing that the scrip is very thinly traded creates doubt on the intent and trading pattern of these entities/ persons. Considering the *modus operandi* deployed in the instant case, the keenness shown by the buyers such as Mr. Shyam Kanhey Lal Vyas (who has contributed more than 15% to the order book) in placing orders for the purchase of the scrip needs further investigation. It is very unusual in the market that in a situation when miniscule quantity is being offered by the sellers in a thinly traded scrip the buyers as discussed hereinabove contribute more than 15% of the order book at the upper circuit price. Such behaviour appears to be self detrimental as seeing so much interest on the buyer side, no seller will offer shares. In a real market situation the buyer and sellers move step by step gauging the interest on the opposite side. Nobody displays such a huge interest which is in complete disconnect with the interest on the other side. Therefore, the order book appears to be spoofed up by the buyers who may be doing the same with an understanding with the sellers. The same needs a detailed investigation to find out such link.
81. In the instant case, the *interim order* has reasonably highlighted the *modus operandi* wherein *Mishka*, its promoters and directors in nexus with the preferential allottees made a facade of preferential allotment ostensibly to raise money and thereafter the preferential allottees with the aid of the noticees misused the stock exchange mechanism to exit at a high price in order to generate fictitious LTCG. Subsequently, pursuant to passing of *interim order*, it is also gathered that this type of *modus operandi* or scheme of operations are devised not only help the concerned entities to claim LTCG and convert their unaccounted money into accounted one but also to accommodate other entities who want to book short term loss in their books of accounts in order to pay less tax. This aspect of booking of short term loss to reduce tax liability can be well envisaged from the trading pattern of the noticees whereby

they purchased shares at high price and sold these shares at very low price within a period of one year using the stock exchange mechanism thereby booking short term loss. While the tax related issues will be looked after by the other law enforcement agencies, SEBI will look into the probable violations of securities market system. Thus, in the instant case, the noticees, while acting under dubious plan, device and artifice, have traded in the shares of *Mishka* that *prima facie* led to the creation of artificial volume in the scrip by misuse of securities market system. Therefore, the acts and deeds of the noticees are fraudulent and are in contravention of the provisions of the Securities Laws so far as it relates to the misuse of securities market system.

82. In my view, the facts and circumstances of the case justify the continuation of the directions passed against the noticees except against Mr. Bharat Bagri and Ms. Manjulaben Sukhdev Pandya vide the *interim order* dated April 17, 2015 subject to the interim reliefs already granted to them. In view of the foregoing, I, in exercise of the powers conferred upon me under section 19, read with sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 hereby confirm the directions contained in the *ad interim ex parte order* qua 99 noticees mentioned hereinbelow subject to the interim reliefs granted to them.

Sr. No.	Entities	PAN
<b>Company:</b>		
1.	<i>Mishka</i> Finance And Trading Limited	AAACP2548R
<b>Directors of Mishka Finance And Trading Limited:</b>		
2.	Amit Kumar Vashishta	AKNPV5025B
3.	Ankit Garodia	ARRPG4567A
4.	Jugalkishore Pralhadrai Sharma	ABLPS6840A
5.	Rameshwar Manohar Wagh	ABLPW8901G
<b>Promoters of Mishka Finance And Trading Limited:</b>		
6.	Embassy Finance & Consultants P Limited	AAACE1313P
7.	Tohee Trading & Agencies Private Limited	AAACT1354P
8.	Vijay Kumar Jain	AAAPJ3197K
9.	Wave Inter Trades Private Limited	AAACW0576A
10.	Pearl Arcade Trading Private Limited	AAFCP6925M
<b>Promoter related entities:</b>		
11.	A K Roongta	ABBPR3992G
12.	A K Roongta Huf	AABHA9528A
13.	Atul Moreshwar Save	ACHPS7762G
14.	Chatterjee Pritish K	ACRPC4740L
15.	Agarwal Gajanand	AAGPA3508D

16.	Parul Poddar	AKKPP3508Q
17.	Rupesh Poddar	AELPP0183N
18.	Seema Jain	ACRPJ3552D
19.	Sunil Kumar Jain	ABYPJ9937E
20.	Sunil Kumar Jain And Sons	AAOHS4973C
21.	Jay Navin Chandra Shah	BHKPS8506F
22.	Malti Navinchandra Shah	AAGPS9498A
23.	Navinchandra Khimchand Shah	AAGPS9497R
24.	Pranit Lalit Agarwal	BEIPA7823N
25.	Lalit Dindayal Agrawal	ACNPA1462H
26.	Dindayal Malchand Agarwal HUF	AAEHD5856M
27.	Jyoti Khanna	AAIPK5106B
28.	Khanna Aadisht	AJVPK5048G
29.	Pankaj Agarwal	AACPA9922H
30.	Ravi Khanna	AFMPK8726N
31.	Ravi Khanna HUF	AAGHR7451A
32.	Bhavya Khanna	ARIPK3181H
33.	Krishan Agarwal	AACPA5733E
34.	Gandotra Bharat	AANPG3179K
<b>Preferential Allottees</b>		
35.	Chowatia Ashokkumar	AADPC6863A
36.	Chowatia Madanlal Babulal	AADPC6859J
37.	Jain Saradkumar	AJGPS8091J
38.	Lumbchand Tarachandlumbchand	ABQPL6153L
39.	Prakash Mangilal Surya	AAGPS6393C
40.	Sadhna Rani	ABHPA9244J
41.	Savita Bansal	AEJPB6903J
42.	Mahabir Prasad Jalan	ACFPJ2428J
43.	Mahabir Prasad Jalan HUF	AACHM0965N
44.	Naresh Jalan	ACUPJ1252F
45.	Naresh Jalan HUF	AABHN4403P
46.	Ravindra Kumar Gupta HUF	AADHR3405B
47.	Shankar Batra	ACSPB5838R
48.	Brij Bhushan Singal HUF	AAAHB6923R
49.	Brij Bhushan Singal	AEFPS6298M
50.	Tarun Chandak	ADGPC1107P
51.	Gokuldharm Enterprises LLP	AALFG1236F
52.	Chirag Maheshkumar Vyas	ABYPV5751G

53.	Harleen Kaur	AECPC7959J
54.	Jignesh Mahesh Amin	AAJPA2349H
55.	Sheetal Sanjay Udeshi	AAAPU2596F
56.	Khatri Mahesh Kumar	AADPK9309F
57.	Khatri Prakash Chand Radhakrishna	AADPK1946Q
58.	Nitinkumar Dindayal Didwania	AACPD7055J
59.	Prakash Chand Sharma	AGMPS2776H
60.	Kalawati Sharma	ACAPS1025K
61.	Ranidevi Agarwal	AGEPA7936K
62.	Rashmi Jain	ABTPS0026N
63.	Vimal Banawarilal Jain	AADPJ5579L
<b>Exit Providers</b>		
64.	Antaryami Traders Private Limited	AALCA7880J
65.	Amrit Sales Promotion Private Limited	AACCA3220D
66.	Bazigar Trading Private Limited	AABCB3052B
67.	Symphony Merchants Private Limited	AADCS5411K
68.	Ritesh Projects Private Limited	AADCR6224M
69.	Ritesh Commercial Holding.Limited	AABCR1974J
70.	Dynamic Portfolio Management & Services Limited.	AAACD9125E
71.	Apex Commotrade Private Limited Limited	AAJCA4459K
72.	Gaigamini Merchandise Private Limited	AAFCG2554B
73.	Mobixa Distributors Private Limited	AAICM4750C
74.	Duari Marketing Private Limited	AAECD9323N
75.	Sanklap Vincom Private Limited	AAMCS1711P
76.	Scope Vyapar Private Limited	AAICS6023N
77.	Signet Vinimay Private Limited	AAMCS1712Q
78.	Triala Dealers Private Limited	AAECT5548F
79.	Vishnudham Marketing Private Limited	AAECV4988P
80.	Hari Om Suppliers Private Limited	AABCH2251E
81.	Winall Vinimay Private Limited	AAACW8004B
82.	Kalakar Commercial Private Limited	AADCK9346B
83.	Ludios Trading Private Limited	AACCL3868N
84.	Muchmore Vincom Private Limited	AAICM6982C
85.	Raina Vyapaar Private Limited	AABCR3482R
86.	Stardox Vinimoy Private Limited	AAECS0352C
87.	RC Suppliers Private Limited	AABCR2904A
88.	Ramya Mercantile Private Limited	AAGCR6009M
89.	Rangan Vincom Private Limited	AAGCR1715E
90.	Dreamlight Exim Private Limited	AAECD5782B
91.	Rochak Vinimay Private Limited	AAGCR8142P
92.	Rochi Dealcom Private Limited	AAGCR7017M
93.	Runicha Merchants Private Limited	AAECR0580M

94.	Sidhiman Vyapaar Private Limited	AATCS3687H
95.	SkM Travels Private Limited	AAICS0688K
96.	Spice Merchants Private Limited	AAPCS7492G
97.	Srinivasan Srinivasan	ACIPS8803M
98.	Vibgyor Financial Service Private Limited	AAACV8378B
<b>LTP Contributors</b>		
99.	Shyam Kanheyalal Vyas	ACTPV2787Q

83. Having dealt with the contentions of the noticees as aforesaid, I note that majority of them have raised concern over challenges in running their activities on account of ban and consequent freezing of their demat accounts. Many of these entities have pleaded for removal of the restraint imposed vide the *interim order* or atleast allow them partial relief of permitting trading in securities other than those involved in this case. It is worth mentioning that the case in hand is peculiar as large number of entities have been restrained and the ongoing investigation in the matter may take time in completion. I have been conscious that the restraint order should not cause disproportionate hardship or avoidable loss to the portfolio of the noticees. That is why several relaxations, such as allowing investment in mutual fund units, permission to liquidate existing portfolio and keep the proceeds in escrow account and even utilize 25% of the proceeds for meeting exigencies, etc. have been made in the past. Now at this stage, considering the facts and circumstances of this case and submissions/oral arguments made before me, I deem it appropriate to make further relaxations so as to address the issues of the personal and business exigencies or other liquidity problems.

84. Considering the above, I, in exercise of the powers conferred upon me under section 19 of the SEBI Act, read with sections 11(1), 11(4) and 11B thereof, hereby confirm the directions issued vide the *ad interim ex parte* order dated April 17, 2015 as against the aforesaid 99 Noticees except that they can:-

- (a) enter into delivery based transactions in cash segment in the securities covered in NSE Nifty 500 Index scrips and/ or S&P BSE 500 scrips;
- (b) subscribe to units of the mutual funds including through SIP and redeem the units of the mutual funds so subscribed;
- (c) deal in Debt/Government Securities;
- (d) invest in ETF
- (e) avail the benefits of corporate actions like rights issue, bonus issue, stock split, dividend, etc.;
- (f) tender the shares lying in their demat account in any open offer/delisting offer under the relevant regulations of SEBI;

85. Further considering business and personal exigencies and liquidity problems submitted by the restrained entities I allow them further relaxations/reliefs as under:-



- (a) They are permitted to sell the securities lying in their demat accounts as on the date of the interim order, other than the shares of the companies which are suspended from trading by the concerned stock exchange, in orderly manner under the supervision of the stock exchanges so as not to disturb the market equilibrium and deposit the sale proceeds in an interest bearing escrow account with a nationalized bank.
- (b) They may deal with or utilize the sale proceeds lying in the aforesaid escrow account under the supervision of the concerned stock exchange provided as under:-
  - i. the sale proceeds may be utilised for investments permitted in para 84;
  - ii. upto 25% of the value of the portfolio as on the date of the *interim order* or the amount\* in excess of the profit made /loss incurred or value of shares purchased to give exit, whichever is higher, may be utilized for business purposes and/or for meeting any other exigencies or address liquidity problems etc.

\* *The amount will include the value of portfolio in the demat account*

Explanation 1 - For the purposes of determining the portfolio value of the entities except Ms. Rohini Vijaysingh Patwardhan and Vimal Banawarilal Jain, the value of portfolio of securities lying in the demat account/s (individual and joint both) on the date of the interim order after excluding the value of shares that have been suspended from trading as on the date of the communication shall be considered. For NBFCs and stock brokers, the value of portfolio shall exclude the value of clients' securities lying in their demat accounts.

Explanation 2 - With respect to Ms. Rohini Vijaysingh Patwardhan and Vimal Banwarilal Jain, it is clarified that *for the purposes of determining the portfolio value of the entities, the value of portfolio of securities lying in the demat account/ s, in which they are the first holder, on the date of the interim order after excluding the value of shares that have been suspended from trading as on the date of the communication shall be considered.*

- (c) The aforesaid reliefs shall be subject to the supervision of exchanges and depositories. The stock exchanges may use the existing mechanism available for implementing the similar interim relief earlier granted to some of the entities.

86. It is, however, clarified that the aforesaid exceptions/relaxation/reliefs shall be available

- (a) To the aforesaid 99 Noticees and those restrained entities in respect of whom the confirmatory orders have already been passed as mentioned in para 10 above.
- (b) The common *interim* reliefs already granted in the matter earlier are subsumed in the aforesaid general relaxations/reliefs. The specific reliefs granted if any, to any of the Noticees shall remain in operation.

87. This order is without prejudice to any enforcement action that SEBI may deem necessary against the aforesaid noticees on completion of the investigation in the matter.
88. This order shall continue to be in force till further directions
89. A copy of this order shall be served on all recognized stock exchanges and depositories to ensure compliance with above directions.

**DATE: August 26<sup>th</sup>, 2016**

**PLACE: MUMBAI**

Sd/-

**RAJEEV KUMAR AGARWAL**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**