

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

ORDER

DIRECTIONS UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF ALLEGED MARKET MANIPULATION USING GDR ISSUES AGAINST ASAHI INFRASTRUCTURE & PROJECTS LIMITED, IKF TECHNOLOGIES LIMITED, AVON CORPORATION LIMITED, K SERA SERA LIMITED, CAT TECHNOLOGIES LIMITED, MAARS SOFTWARE INTERNATIONAL LIMITED AND CALS REFINERIES LIMITED

1. The Securities and Exchange Board of India (hereinafter referred to as SEBI), pending investigation and passing of further orders, vide an interim ex-parte Order dated September 21, 2011 (hereinafter referred to as the Order), amongst others directed, Asahi Infrastructure & Projects Limited, IKF Technologies Limited, Avon Corporation Limited, K Sera Sera Limited, Cat Technologies Limited, Maars Software International Limited and Cals Refineries Limited not to issue equity shares or any other instrument convertible into equity shares or alter their capital structure in any manner till further directions in this regard. Brief background of the matter, as mentioned in the Order, is as follows. SEBI, being alerted by its surveillance systems of the large scale off-market transactions in the companies and a revelation in the preliminary examination that Foreign Institutional Investors (hereinafter referred to as FIIs)/ sub-accounts, namely, India Focus Cardinal Fund, KII Limited, Mavi Investment Fund and Sophia Growth, were converting the Global Depository Receipts (hereinafter referred to as GDRs) underlying the shares of the aforesaid companies held by them into equity shares to sell in the Indian market and that most cancellations happened within a short period of time of the issue and on noticing that a few entities were repeatedly appearing as counterparties

to those shares sold (to the extent of 33% to 75%) by the FIIs/sub-accounts in the scrips, had conducted an examination into the same. The *prima facie* findings of the said examination pointed out to the various aspects of the GDR issues like the large size of the issue vis-à-vis the existing size of the issuing company, unimpressive financials of the company, common initial investors, high proportion of cancellation of GDRs repeatedly by a set of FII/Sub-Accounts, sale in Indian stock exchanges and a major portion being bought by a constant group of clients, the trading amongst the said clients and subsequent off-loading by them. The preliminary findings had pointed towards an elaborate scheme to manipulate the securities market. The entities which were found to have acted as counterparties to the sell transactions of the FIIs were Alka India Limited, Basmati Securities Private Limited, SV Enterprises, JMP Securities Private Limited and Oudh Finance & Investments Limited. The Order had classified the FIIs/Sub-Accounts as "Sub-Accounts" and the clients appearing as their counterparties as "Group". The period taken up for the examination was between January 1, 2009 and May 31, 2010 (hereinafter referred to as the investigation period). Subsequently, an opportunity of hearing was afforded to the aforesaid companies on various dates. It was the common submission of the companies that they had complied with all the requirements pertaining to the GDR issues and that neither the companies nor the promoters/directors were involved in the trading in the shares. All the companies said that they are not connected to any of the persons/entities who had traded in the shares during the relevant period. They also said that they had received funds in respect of the GDR issues through proper banking channel and the same was utilised for the purpose for which it was raised. It was further submitted that the companies had no role to play in the cancellation of GDRs and the allotment /issue of underlying shares to the GDR holders.

2. On behalf of Cals Refineries Limited, Mr. Vinay Chauhan, Advocate appeared and made submissions on November 8, 2011. Mr. D. Sunderajan, Managing Director of the said company along with the company's Chief Financial Officer, Mr. Sridhar K., were also present in the said hearing. The

company had also filed its reply (before the hearing) as well as the written submissions (after the hearing). According to the counsel, the aforesaid company had been grouped with the other companies as it came out with GDR issue at the same time when the other companies had also come out with GDR issues. However, according to him, there are many distinguishing features (as mentioned below) between their case and the case of other companies.

a) In all other cases, the Merchant Banker/Lead Manager/Arranger to GDR issue was M/s Pan Asia Advisors Limited, whereas in their case the Lead Manager was BBS Capital Partners Switzerland and Investment Bank Montenegro, Montenegro.

b) In all other cases, the proceeds of GDR issue were deposited in European American Investment Bank, whereas in their case proceeds have been deposited in Banco Efisa, Portugal.

c) In all other cases, the issue was at a price higher than the market price in domestic market, whereas in their case, the issue price was lower than the domestic market price.

It was submitted that in 2006-07, the company was virtually a defunct company and that the current promoters had entered the company for implementing the refinery project and had launched GDR issue for funding the projects. It was further submitted that it had utilized the GDR proceeds for the refinery project and the same had been duly disclosed in all the quarterly and annual reports. According to it, the financials of a company are only one of the parameters based on which prospective investors decide to subscribe to the issue and that there were host of other factors like management of the company, future potential of the business for which funds are sought to be raised etc. It was the submission that the decisions to subscribe to the GDR issue, to trade in the GDRs and to cancel them are all that of the GDR holders, in which the company has no role to play. It was also contended that there was no pre-arrangement with any party in respect of the GDR issue. The company submitted that though, reference has been made to the complaints received by SEBI, the same were not made available to it. The company also requested SEBI to grant permission to proceed with its GDR issue.

3. Mr. Joby Mathew, Advocate appeared on behalf of K Sera Sera Limited on November 18, 2011 and made submissions. Ms. Bharati Dagi, Director of the aforesaid company was also present during the hearing. The said company also filed written submissions, vide letter dated November 23, 2011. The company *inter alia* submitted it had issued GDRs in 2007 and 2009 and that it had satisfied all the conditions for listing on the Luxembourg Stock Exchange, where they were traded prior to conversion and that no complaints were received in respect of its GDR. It was also submitted that in the absence of any findings that the company was connected to the FIIs who had sold the shares and/or the persons/entities who had purchased the same, the company cannot be held responsible for the alleged violations. With respect to the allegation of no clear co-relation between the GDR issue price and the prevailing market price of the scrip, it was contended that the issue price of the GDR depends upon the price that an overseas investor is willing to pay and may not have a co-relation to the price of the scrip in the domestic market. It was also submitted that the only apparent connection appears to be Pan Asia, which acted as the Lead Manager to the GDR issues.

4. In the hearing held on November 18, 2011, Mr. Soumyalarata Bhattacharya, Company Secretary made submissions on behalf of IKF Technologies Limited. Mr. N.V. Simhadri, Director of the said company was also present. IKF Technologies Limited has also filed its reply. It was *inter alia* submitted that 100% GDRs (1st Issue) were cancelled in the first three quarter but in case of 2nd issue, even after 2 years from the issuance of GDR, more than 80% of GDRs are pending conversion. It was argued that the company and its management team were not responsible for any manipulation in the market by the FIIs. It was the contention that it had appointed Pan Asia as the Lead manager for the GDR issue after searching the eligibility among other entities and that it has no relation with Mr. Arun Panchariya.

5. On November 29, 2011, Mr. Zal Andhyarujina, Advocate along with the other authorised representatives appeared on behalf of Avon Corporation

Limited and made submissions. Avon Corporation Limited also filed its reply (before the hearing) and written submissions (after the hearing). It was *inter alia* submitted that the company had decided to raise funds by way of GDR/ADR/FCCB to implement various projects and that the same was done pursuant to the approval of the shareholders. The company in its submissions denied having any connection with Pan Asia, Mr. Arun Panchariya (save and except the relationship of Issuer Company and merchant banker) or any of the entities referred in the Order. According to the company, at the relevant time, Pan Asia was already acting as Lead Manager to various GDR issues and had an impressive and credible track record. With regard to depositing of the proceeds in European American Investment Bank (Euram Bank), it was submitted that same was done in the ordinary course of business as per the advice of Pan Asia. The company also submitted that the initial investors to the GDR issue were attracted based on the project fundamentals and future earning potential of the issuer company and that neither the company nor its directors have any connection with them. It was also submitted that at the relevant time, the company was not aware that the initial subscribers to the GDR issue were arranged with some sinister intent or design, as insinuated in the Order.

6. In the hearing held on November 29, 2011, Mr. Joby Mathew, Advocate appeared on behalf of Maars Software International Limited and made submissions before me. It was *inter alia* contended that the company had no role in the cancellation of the GDRs and that the company had issued GDR in 2007 whereas the other issues were in 2009. Subsequently, the said company vide letter dated December 5, 2011 filed its written submissions, as undertaken by the learned counsel during the hearing. It was *inter alia* submitted therein that the Order does not make any finding regarding the role of the company in the impugned trades or in the movement of price and volume of the scrip. It was also submitted that the said issue satisfied all the conditions for listing on the Luxembourg Stock Exchange where they were traded prior to conversion. As regards the observation in the Order that the GDR issue price was higher than

the prevailing price of the scrip in the domestic market, it was submitted that the issue price of the GDR depends upon the price that an overseas investor is willing to pay and may not have a co-relation to the price of the scrip in the domestic market. The company further stated that the offer document for the GDR issues sets out the financial condition of the company in great detail and there was nothing on record to show that subscription to the GDR issue was irregular or stage managed.

7. Cat Technologies Limited appeared before me on November 29, 2011 through its managing director and submitted that they have not colluded with anybody in respect of the alleged manipulation and that they had complied with the relevant guidelines in respect of the GDR issue.

8. Asahi Infrastructure & Projects Limited appeared before me on November 29, 2011 through its authorised representatives, Mr. Ravi Ramaiya and Mr. Arvind Gawde. They submitted that the company had already filed an appeal against the Order before the Honourable Securities Appellate Tribunal and requested SEBI to treat the appeal memorandum as the submission of the company in respect of the Order. It was contended therein that the Order fails to quote even a single regulation that Asahi Infrastructure & Projects Limited has allegedly violated. It was submitted that the said company had very less debt and therefore its financial position was more strong and stable compared to large players in the industry. It was further stated that Asahi Infrastructure & Projects Limited believed in doing business out of its own capital rather than depending on debt and had issued GDRs of almost eight times its capital to ensure that it would not go into doldrums during the financial crisis the world economy was expected to face at the time of the issue. It was also submitted that the management of Asahi Infrastructure & Projects Limited had generated handsome returns from the capital generated by the GDR issue and the same was reflected in the financial year ended March 31, 2010. It was further stated that the book value of the shares of Asahi Infrastructure & Projects Limited at the time of the issue was ₹13.36/- which was much higher than the price at

which the GDR was issued. It was further submitted that the announcement of GDR was made on April 9, 2009 and the alleged engineered trading activity was carried out from September 2009. It was also contended that 81% of the GDR holders have converted their GDRs and that only the remaining was converted by the group entities, KII Limited and India Focus Cardinal Fund. The company has also contended that SEBI has taken action against the parties who have converted 52.21% of the GDRs and has taken action against the parties who had converted 47.79% of the GDRs. Asahi Infrastructure & Projects Limited also submitted that it had issued warrants worth ₹7,00,00,000/-, which are due for conversion before January 2012 and shall lapse if not exercised within such time and stated that in view of the directions in the Order, the warrants would lapse and the company would be deprived of the much needed capital. It was also submitted that the subscribers to the warrants would lose their initial investment of ₹1,75,00,000/- paid at the time of issue. I note that the appeal filed by the aforesaid company was disposed of by the Honourable Securities Appellate Tribunal vide order dated December 15, 2011 with an observation:

“2. Learned counsel for the appellant states that it (appellant) has issued warrants worth Rs. 7 crores which are due for conversion before January 20, 2012 and shall lapse if not converted by stipulated date. Counsel states that a request has already been made to the Board permitting it to allow conversion of the said warrants into equity shares in accordance with the laid down procedure. Learned counsel for the Board states that the request made by the appellant is under consideration and decision will be conveyed to the appellant by December 31, 2011. In view of the statement made by the learned counsel for the respondent, we are not inclined to pass any order in this regard”.

9. I have considered the aforesaid submissions of the companies. In short, all the companies have contended that

- a. the GDRs were issued in compliance with all the applicable rules and guidelines;
- b. they had received the subscriptions in respect of their GDR issues through proper banking channels;
- c. they had no role either in the conversion of the GDRs or in the subsequent trading in the domestic securities market;

- d. they had no connection or relation with any of the selling FII/sub-accounts or the Indian entities who were found to be the counterparties of the said trades;
- e. except for the issuer company-merchant banker relation, they had no other relation with Pan Asia or with Mr. Arun Panchariya; and
- f. In the matter of Cals Refineries Limited, it has been submitted that Pan Asia/Mr. Arun Panchariya were not the merchant bankers/arrangers for its GDR issue.

From the preliminary findings of the investigation, as also mentioned in the Order, I note that the seven companies had issued GDRs which were hugely in excess of its existing equity size. The size was found to be in the range of 61% (in IKF Technologies Limited) to 13,133% (in Cals Refineries Limited) compared to the equity size at the time of the GDR issues. Such details were mentioned in page 25 of the Order. SEBI had also examined the financials of the issuer companies for the years 2007-2010. A summary of financials of the said companies were provided in the Order at page 26 thereof. The profit after tax (PAT) for the years 2007-2009 (the period of issuance of the GDRs) were in the negative for some of the companies and the highest was ₹4,00,00,000/- for IKF Technologies Limited for the year 2009. It was observed that PAT when compared with the trend of sales during the period leading upto the GDR issue may not generally provide adequate reassurance to an investor to subscribe to the shares of such companies. In such a scenario, the conduct of the companies in issuing large sized GDRs as compared to the existing equity capital and the issues being subscribed, leads to a *prima facie* view that the same could be arranged. The financials of the said companies may not readily attract investors to subscribe to such large sized issues and the successful subscription of these GDR raised possible doubts about the genuineness of subscribing investors or the actual motives of the promoters or directors of companies issuing them. The facts that the same lead manager, Pan Asia (except in the case of Cals Refineries Limited) and the same set of selling FIIs/sub-accounts and a common set of counter parties trading in the shares of such companies, strengthens the *prima facie* observation that issuer companies, the FIIs/sub-accounts who had converted GDRs and sold the underlying

securities in the Indian securities market and the alleged Group entities were involved in the entire scheme of things, as alleged in the Order.

10. Further, there were other similarities in respect of all such GDR issues, like Pan Asia Advisors Limited advising/arranging the issuer companies and the deposit of issue proceeds in European American Investment Bank AG, Austria (Euram Bank), (except for Cals Refineries Limited). The Order had also observed that Euram Bank has a joint venture with Mr. Arun Panchariya led Pan Asia which is known as Euram Bank Asia Limited, located in Dubai. Further, it was also observed “.....According to the website of Dubai International Financial Center, Arun Panchariya and Satish Panchariya are the directors of Euram Bank Asia Ltd.”. This indicates that Mr. Arun Panchariya and Euram Bank are connected to each other.

The Order had also observed the following:

“29. Figura group ltd and Futura Group Ltd are connected to each other as the address of both of these entities is exactly the same. Further, Flagstaff Investment Ltd and Figura Group are connected as the stamp used by them in their letters is same i.e. of Flagstaff Investment. All the names listed as investors for Asahi, Avon, Cat, KSera, IKF, It People (India) Ltd and Proto Developers Ltd in ‘**Annexure F**’ are probably legal entities created only for routing investments since searches on their names on the internet and a broader Google search, returned nil results for them. The website address printed on their letterheads either do not exist or has only one page. Further nearly all of them have nonexistent email addresses printed on their letterheads and emails sent to those addresses have returned undelivered. Most of the websites are hosted at one domain i.e. <http://dompark.dada.net/>.”

11. The Order observed that a substantial portion of the GDRs was cancelled during the period as mentioned in the Order. The Order had also provided the names of certain sub-accounts/FILs who had converted the GDRs of shortlisted companies. It was also observed that the sub-accounts had started to convert their GDRs within two or three months of issuance and sold the shares on the Bombay Stock Exchange Limited (BSE) and/or the National Stock Exchange of India Limited (NSE). Some of the sub-accounts were converting GDRs of almost all the select companies and that the sub-account, India Focus Cardinal Fund was converting GDRs of all the companies (except

Cals Refineries Limited). The percentage of conversion of the GDR holding by India Focus Cardinal Fund was very substantial. It is very pertinent to note that during the relevant period, the only trading activity done by India Focus Cardinal Fund was that of converting GDRs of various companies (including those of the select companies) and selling the underlying shares in the Indian securities market. The Order had also observed

“25. The critical point that emerges for the interest of investors is the large and sudden increase in floating stock due to GDRs converted to shares in the Indian market and the possible effect on the price of the stock. Hence, in the case of Asahi 531,000 GDRs have been cancelled and converted into 53,100,000 shares in Indian markets (1 GDR=100 shares underlying in this case) while total equity base of Asahi was that of 37,196,000 shares before issue of GDRs. Similarly in the case of Avon, IKF, KSera, CAT and Cals, the number of GDRs converted and sold in India is higher than their pre-GDR equity base. The market price of all these scrips is below price at the time of GDR issue. The earlier narration also brought out the sharp fall in price due to large selling by Sub-Accounts when not supported by the Group. When subscribers to GDRs convert them to shares in the Indian market there is a sudden surge in supply of shares, an event that is unknown to domestic shareholders. This surge would be similar to the listing and trading of additional shares after an FPO (Follow-on Public Offer) or QIP (Qualified Institutional Placement) but different to the extent that in an FPO or QIP prior announcement exists in the market and knowledge of inflow of shares is available with shareholders/investors.”

12. The Order had also provided that price-volume chart for the relevant period for the select companies in Annexure D thereof. It is important to note that the prices of the scrips have increased significantly in most of the scrips around and more importantly, immediately after the issue date of GDRs. It is also noted that the average trading volume for the period six months prior to the GDR issue and six months post the GDR issues varied substantially, the details of the same were mentioned in the Order.

13. In the facts and circumstances of the case, as mentioned above as well as in the Order, the role of the companies cannot be viewed in isolation. At this stage, the alleged role played by all the concerned entities should be viewed together. It is noted that the companies did not have strong financials, had a common arranger/advisor for their GDR issues (except in the case of Cals Refineries Limited), had a similar set of subscribers, the same bank where the issue proceeds were credited, same set of FII/sub-accounts who had sold

shares after converting the GDRs of the select companies, a same set of entities who allegedly acted as counterparties to the selling FII/sub-accounts, when seen together does not convince me, at this stage, to see the role of the companies in isolation. None of the companies have denied the facts such as:

- i. their GDR issuances through the same arranger (except in the case of Cals Refineries) Limited,
- ii. a similar set of GDR subscribers,
- iii. similar manner of offloading of the underlying shares by the sub accounts after conversion of GDRs, and
- iv. same set of entities acting as counter parties in the sell trades of the sub accounts having the same arranger

It was their submission that they were not involved in the manipulation and that the facts provided in the Order are insufficient to make out a case against them. SEBI had also observed similar trading activities in the select scrips. The Order was passed based on the preliminary findings. The investigation in the matter is in progress and therefore, at this stage, it would not be possible to decide the case on its merits and to give a finding on the submission that the companies are not in any way involved in the alleged manipulation. The investigation in the matter shall be completed as expeditiously as possible and if the same is not able to arrive at any adverse findings against the companies, appropriate directions would be issued at the relevant point in time. In view of the above observations, I am of the considered view that the interim ex-parte directions ordered against the companies should continue, till further directions. Asahi Infrastructure & Projects Limited has submitted that it had issued warrants worth ₹7 crores prior to the Order and that the same are due for conversion before January 10, 2012 and would lapse if conversion is not exercised within such time. It was also submitted that if the warrants are allowed to lapse, the subscribers would lose their upfront payment of ₹1.75 crores and that the said company would also be deprived of the capital. Taking into consideration such submission, I am of the view that it would be reasonable to allow such conversion. The said benefit would also be available to other companies which had issued warrants, prior to the Order dated September 21, 2011 and are due

for conversion. However, the request of Cals Refineries Limited to permit it to allow GDR issues cannot be accepted as the GDR issue of the said company is under examination by SEBI.

14. The issue before me is to decide whether there are sufficient reasons that the order dated September 21, 2011 may be allowed to continue. The possible modus operandi adopted by all the seven companies follows largely a common pattern; a relatively weak company issues GDRs through an arranger/lead manager in abroad and the issue size is large as compared to their existing paid up capital (in one case it happens to be as high as 130 times). The proceeds are deposited into a relatively unknown foreign bank which has links with the arranger/lead manager. The GDRs are converted in large number and through select FIIs, they are offloaded in the Indian market through certain clients (atleast one of which has got a connection with Mr. Arun Panchariya). In many of the cases, no specific indication has been given as to how the GDR proceeds were used for the projects for which the GDRs were issued. Thus, on the face of it, it appears to be a strategy by which the issuing companies in connivance with certain arranger/lead manager/FIIs/counter parties in India managed to create worthless shares which are sold among Indian investors. This is an extremely serious matter involving the very integrity of the issuance process and the Secondary Market.

15. Some of the counsels for the companies have argued that no specific violation of any SEBI Regulations on the part of the companies, have been alleged in the Order. I do not think that it is necessary, at this stage, to allege violation of any specific Regulation so long as the companies appear to be a part of the scheme which adopts fraudulent and unfair trade practices. I am also of the opinion that, while confirming the interim order it is not necessary that SEBI should prove the specific violations, at this stage. The investigations are still on. The companies have failed either to show a gross error in the interim order or any other circumstances that will make it impossible for them to be a part of the alleged manipulation.

16. In view of the foregoing reasons, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11(1), 11(4) and 11B thereof, while confirming the directions issued vide the ad interim ex-parte Order dated September 21, 2011 against Asahi Infrastructure & Projects Limited, IKF Technologies Limited, Avon Corporation Limited, K Sera Sera Limited, CAT Technologies Limited, Maars Software International Limited and Cals Refineries Limited, allow conversion of outstanding warrants issued by such companies, if any, prior to the Order dated September 21, 2011. The above directions shall continue to remain in force till further directions.

17. The request made by Cals Refineries Limited for allowing the issue of Global Depository Receipts shall stand rejected.

**PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**

PLACE: MUMBAI

DATE: DECEMBER 30, 2011