

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 DEALINGS IN THE SHARES OF ECO FRIENDLY FOOD PROCESSING PARK LIMITED, ESTEEM BIO ORGANIC FOOD PROCESSING LIMITED, CHANNEL NINE ENTERTAINMENT LIMITED AND HPC BIOSCIENCES LIMITED IN RESPECT OF NIDHI GOEL (PAN: AAJPG3068K)

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1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) vide an *ad interim ex-parte* order dated June 29, 2015 read with Corrigendum dated January 04, 2016 (hereinafter collectively referred to as “*interim order*”) restrained 254 entities including Eco Friendly Food Processing Park Limited (hereinafter referred to as “**Eco**”), Esteem Bio Organic Food Processing Limited (hereinafter referred to as “**Esteem**”), Channel Nine Entertainment Limited (hereinafter referred to as “**CNE**”) and HPC Biosciences Limited (hereinafter referred to as “**HPC**”) [collectively referred to as “*the scrips/the companies*”, listed on the Small and Medium Enterprise (“**SME**”) Segment of the Bombay Stock Exchange Limited (“**BSE**”)] from accessing the securities market and further prohibited them from buying, selling or dealing in securities in any manner whatsoever, till further directions. Nidhi Goel (hereinafter referred to as “**Noticee**”) is one of these 254 entities.
2. The Depositories while giving effect to the interim order also froze two demat accounts jointly held by the Noticee (second holder) with her husband Mr. Chetan Prakash Goel and her daughter Mrs. Priya Agarwal, for credit and debit of securities therein.
3. The above said interim order was passed in view of the following prima facie findings against the entities covered in the interim order.
  - The companies had very small share capital prior to the year 2011. In the year 2011 and 2012 the companies increased their capital base by issuing shares to several entities by way of preferential allotment and later by issuing bonus shares. Certain

*preferential allottees (entities as defined in Interim Order)* transferred their shares in the respective company to *pre IPO transferees (entities as defined in Interim Order)*.

- Thereafter, the companies came out with IPOs and the entities belonging to *Funding Group* funded a substantial portion of the IPOs. IPO proceeds of the respective IPO were immediately routed back to the entities of the *Funding Group (entities as defined in Interim Order)* by the concerned companies and allotted shares without receipt of consideration to the extent they returned the subscription monies to the *Funding Group* from IPO proceeds.
- Once the shares were listed at the exchange, *Trading Group (entities as defined in Interim Order)* entities started pushing up the price of the scrip through manipulative trades and increased the prices of the scrips in a significant way. The funds required for purchase of shares by the *Trading Group* entities had been provided to them through layering of fund transfers from several entities including the entities of the *Funding Group*.
- The trading analysis shows the uniform pattern of repeated placing of buy orders at price above LTP in the companies to push the price up significantly and provide hugely profitable exit to the *preferential allottees* and *pre-IPO transferees*. After the expiry of the lock-in period, *Trading Group* entities purchased shares from *preferential allottees* and *pre IPO transferees* at the artificially increased prices. *Trading Group* entities and *preferential allottees/pre-IPO transferees* traded amongst themselves as substantiated by their matching contribution to net buy and net sell i.e. *Trading Group* are net buyers and *preferential allottees & pre IPO transferees* are net sellers.
- In the whole process, entities of *Trading Group* provided a hugely profitable exit to the *preferential allottees* and *pre IPO transferees*. Consequently, all the *preferential allottees* and *pre IPO transferees* have collectively made a profit of ₹614 crore.
- Given the fundamentals of the companies, such trading behaviour belies economic rationale and indicates existence of premeditated arrangement directly or indirectly among *preferential allottees, pre IPO transferees, Trading Group* and *Funding Group entities*.
- The transactions in the said scrips were with a premeditated understanding, plan, device or artifice. The *preferential allottees, pre IPO transferees acting in concert*

with *Funding Group* and *Trading Group* have used the stock exchange system to artificially increase volume and price of the scrips for making illegal gains and to evade tax. The whole scheme could not have been possible without the involvement/connivance of companies and their promoters and directors.

- The scheme, plan, device and artifice employed in this case, apart from being a possible case of money laundering or tax evasion which could be seen by the concerned law enforcement agencies separately, is *prima facie* also a fraud in the securities market inasmuch as it involves, manipulative transactions in securities and misuse of the securities market.
  - The manipulation in the traded volume and price of the scrip by a group of connected entities in this case, has not only resulted in enabling illegal benefit to a group of entities but also has the potential to induce gullible and genuine investors to trade in the scrip and harm them.
  - As such the acts and omissions of companies, *Funding Group*, *Trading Group* entities, *preferential allottees* and *pre-IPO transferees* are 'fraudulent' 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") and are in contravention of the provisions of Regulations 3(a), (b), (c) and (d) and 4(1), 4(2)(a), (b), (c), (d), (e) and (g) thereof and section 12A(a), (b) and (c) of the Securities and Exchange Board of India Act, 1992.
  - The Noticee, who comes within the ambit of allegations, being one of the preferential allottees, with the premeditated arrangement among *preferential allottees*, *pre IPO transferees*, *Trading Group* and *Funding Group* entities has indulged in the transactions in the said scrip (HPC) with a premeditated understanding, plan, device or artifice in contravention of the provisions of law cited in above para.
4. Out of the 254 entities against whom such restraint order was issued, the directions were confirmed in respect of 19 entities including the Noticee, vide order dated June 14, 2016, as they failed to file replies or avail personal hearing despite the passage of considerable time from the date of interim order.
5. The Noticee herein challenged the confirmatory order dated June 14, 2016 before the

Hon'ble Securities Appellate Tribunal (SAT) in Appeal No. 348 of 2016 alleging that no opportunity of personal hearing was granted to her before passing the confirmatory order. Hon'ble SAT vide Order dated February 17, 2017 disposed of the Appeal with a direction to the WTM of SEBI to pass fresh order in accordance with law after hearing the appellant (Noticee). The Hon'ble SAT recorded in its order that the appellant undertook to file a representation within 3 weeks and the learned WTM shall reconsider the matter as expeditiously as possible and not beyond a period of 3 months.

6. Subsequently, the Noticee vide Misc. Application No. 82 of 2017 in Appeal No. 348 of 2016 before Hon'ble SAT sought extension of two weeks' time to file representation before WTM of SEBI. Hon'ble SAT vide Order dated March 10, 2017 granted Noticee an extension of two weeks' time from the date of its order to make the representation before WTM of SEBI and directed SEBI to reconsider the matter as expeditiously as possible and within a period of 3 months after the Noticee makes representation by March 27, 2017.
7. The Noticee filed her representations vide letters dated March 21, 2017, April 21, 2017 and May 11, 2017. In compliance with the directions of the Hon'ble SAT, an opportunity of personal hearing was granted to the Noticee on June 01, 2017 vide notice of hearing dated May 22, 2017. Mr. Prakash Shah, Advocate, Authorized Representative (AR) appeared on June 01, 2017 on behalf of the Noticee and made oral submissions in line with representations available on record. AR denied all the prima facie findings against the Noticee in the interim order dated June 29, 2015 read with corrigendum dated January 04, 2016. During the course of hearing, the Noticee was advised to submit a summary of period of acquisition of shares by Mr. Chetan Prakash Goel and Mrs. Priya Agarwal that are currently available in their frozen demat accounts and source of income for acquisition of those shares. The Noticee was also advised to submit the details of all shares purchased by her, Mr. Chetan Prakash Goel & Mrs. Priya Agarwal claimed to have been purchased by them on the advice of one Mr. V.K. Tomar. Accordingly, AR was granted one week's time i.e. till June 8, 2017 to submit the aforesaid information and additional written submissions, if any, in the matter. The Noticee vide letter dated June 14, 2017 submitted that on advice of Mr. V.K. Tomar, she had invested in the scrip of Camson Bio Technologies Limited other than HPC, which is still being held by her in her

demat account. Noticee also submitted the statement of holdings of frozen shares held in the demat accounts of Mr. Chetan Prakash Goel and Mrs. Priya Agarwal as on April 08, 2017 and March 31, 2017 respectively. Noticee vide letter dated June 22, 2017 submitted the period/date of acquisition of shares by Mr. Chetan Prakash Goel and Mrs. Priya Agarwal that are currently available in their frozen demat accounts and with respect to the source of income of acquisition of such shares by Mr. Chetan Prakash Goel and Mrs. Priya Agarwal, she had submitted their bank statements, income tax returns, authorized brokers ledger statements and CA certificates.

8. The submissions of Noticee denying all the prima facie findings in the interim order in brief are as under:
  - (a) The Noticee received Ex-parte Ad-Interim Order dated June 29, 2015 along with Corrigendum dated January 04, 2016 on January 11, 2016. The Noticee was suffering from severe knee problem and was not in good health, therefore she could not reply to the said orders.
  - (b) The Noticee had purchased 10,000 shares of Rs. 10 each of HPC in a pre-IPO preferential allotment on December 29, 2012. The said purchase was made out of her accounted funds held in her savings bank account with Punjab National Bank through NEFT.
  - (c) Subsequently, bonus shares in ratio 1:1 was declared by HPC, thus she was holding 20,000 shares of HPC for a period of more than one year;
  - (d) The Noticee had sold 19,800 shares of HPC, through her brokers, Religare Securities Limited and Alankit Assignments Limited, during the period from March 19, 2014 to June 03, 2014, for a price ranging from Rs. 473/- to Rs. 598.90/- per share. The sale consideration was utilized for personal needs;
  - (e) The Noticee had no nexus or dealings with either HPC or its directors directly or indirectly. Further, the Noticee is also not connected to any of the entities/persons mentioned in *interim order* ;
  - (f) There are no specific allegations against the Noticee that she is a part of the funding group or involved in price manipulations. The *interim order* does not refer to any specific role played by the Noticee in any malpractices, thus no ad-interim direction can be issued against her on the basis of surmises and conjectures;

- (g) SEBI failed to establish the urgency in passing ex-parte ad-interim order with regards to the trading done by the Noticee in March, April and June 2014. Further, SEBI lacks the jurisdiction to exercise powers of passing ex-parte ad-interim order as the facts required to justify the same are non-existent and has failed to give any reason to exercise the said powers after a period of approximately one and half year;
- (h) Noticee was not granted with an opportunity of hearing before passing the *interim Order*. Thus, it is in violation of principle of natural justice and on this ground alone the ex-parte *interim order* deserved to be quashed and set aside.
- (i) SEBI had failed to give any reason for selecting entities who had made a profit of 1 Crore or more through their transaction in the scrip of HPC or any other companies. The said classification is arbitrary;
- (j) Assuming that the allegations are true, the entire scheme was aimed at tax evasion and conversion of unaccounted income into legitimate income from stock market to prevent payment of taxes under long term capital gain. Therefore the cause of action arises under the Income Tax Act, 1961 and cause of action does not arise under the SEBI Act i.e. SEBI has no jurisdiction;
- (k) Interim order does not provide any reason for passing the same against the Noticee. Therefore, there is no balance of convenience in favour of passing the injunction. As the reasoning given in the interim order does not apply to the Noticee, the continuance of the interim order against the Noticee would violate the well settled law of 'Reasoned Order'.
- (l) The past conduct of the Noticee is clean and no allegation of any nature was ever levelled against the Noticee.
- (m) The Noticee was also purchasing shares in various scrips for long term investments and had booked profit also.
- (n) As per the interim order, in addition to the demat account where Noticee was the first holder (PAN – AAJPG3068K), the demat account number 11606446 and 10114280 held in the name of Mr. Chetan Prakash Goel (Husband of the Noticee) and Mrs. Priya Agarwal (Daughter of the Noticee) respectively wherein Noticee was the second holder, were also frozen by NSDL for credit and debit of securities.
- (o) Mr. Chetan Prakash Goel is having a demat account with Alankit Assignments Ltd. (DP ID IN300118 Client ID 11606446) wherein he is the first holder. Mrs. Priya Agarwal is having a demat account with Elite Wealth Management Ltd. (IN301670

10114280) wherein she is the first holder. For all the practical purpose, the respective Demat Accounts belong to her husband & daughter only.

- (p) Mr. Chetan Prakash Goel and Mrs. Priya Agarwal are declaring the profit and loss of trading in shares through their demat account in their personal return of income under the Income Tax Act, 1961.
- (q) In view of the above, the proceedings initiated against the Noticee may be dropped and her demat account shall be defrozen and any other relief may be provided as SEBI deemed fit.

9. The Noticee sought a specific relief that that the Demat Accounts of her husband (Mr. Chetan Prakash Goel) and daughter (Mrs. Priya Agarwal) where Noticee is only the second holder for family security purpose should be defrozen by specific directions. The Noticee vide letters dated April 21, 2017, May 11, 2017, June 14, 2017 and June 22, 2017 submitted the following documentary evidences in support of her relief.

- (a) A certificate by Chartered Accountant T S R K & Associates certifying that shares held as on April 08, 2017 in the demat account (DP ID IN300118 A/c. No. 11606446) and as on April 13, 2017 in the demat account (DP ID IN301670 A/c. No. 10114280) held in joint names, are owned and belong to Mr. Chetan Prakash Goel (first holder) and Mrs. Priya Agarwal (first holder) respectively and the payments for purchase of shares have been made by Mr. Chetan Prakash Goel and Mrs. Priya Agarwal from their own sources of funds / accounts.
- (b) Statement of Profit & Loss A/c. and Balance Sheet for the Assessment year 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17 of both Mr. Chetan Prakash Goel and Mrs. Priya Agarwal.
- (c) Copies of Income Tax Return for the Assessment Years 2012-13, 2013 – 14, 2014 – 15, 2015 – 16 and 2016 – 17 of both Mr. Chetan Prakash Goel and Mrs. Priya Agarwal.
- (d) Copy of bank statements of account of Mr. Chetan Prakash Goel held with Punjab National Bank and HDFC Bank and of Mrs. Priya Agarwal held with Punjab National Bank.

- (e) Statement of broker ledger account for the period April 01, 2014 to March 31, 2017 of Mr. Chetan Prakash Goel and for the period April 01, 2011 to March 31, 2016 of Mrs. Priya Agarwal.
- (f) Holding statement of Mr. Chetan Prakash Goel as on April 08, 2017 and of Mrs. Priya Agarwal as on March 31, 2017 and period/date of acquisition of shares by Mr. Chetan Prakash Goel and Mrs. Priya Agarwal that are currently available in their frozen joint demat accounts.
- (g) Copy of NOC given by the Noticee, declaring that the shares lying in the above said accounts are owned by and belongs to Mr. Chetan Prakash Goel & Mrs. Priya Agarwal respectively and Noticee has no objection if the Demat Account (DP ID IN300118 A/c. No. 11606446) and Demat Account (DP ID IN301670 A/c. No. 10114280) are de-frozen and permission is given to transfer the shares lying in the said demat accounts to the account of Mr. Chetan Prakash Goel & Mrs. Priya Agarwal held / to be held in the single name of Mr. Chetan Prakash Goel & Mrs. Priya Agarwal, respectively.

10. I have considered the interim order and prima-facie findings made therein against the Noticee, her replies/written submissions and other documents and material available on record. I note that in the instant case, the directions issued against the Noticee are interim in nature and have been issued on the basis of *prima facie* findings. SEBI had issued directions vide the *interim order* in the matter, in order to protect the interests of investors in the securities market. Detailed investigation in the matter is still in progress. Thus, the issue for consideration at this stage is whether the prima facie findings made against the Noticee are sustainable in view of the reply and submission made by the Noticee. Needless to say, on that basis, it would be considered whether the *interim* directions, issued against the Noticee vide the *interim order*, needs to be confirmed, vacated or modified in any manner, during the pendency of investigation in the matter.

11. Before dealing with the replies/submissions of the Noticee on merits, I deem it necessary to deal with the preliminary issues raised by the Noticee. The Noticee contended that SEBI had failed to establish the urgency in passing ex-parte ad-interim directions and lacks the jurisdiction to exercise the power of passing ex-parte ad-interim order after a period of approximately one and half year. The Noticee also contended that no cause of

action arises under SEBI Act and cause of action arises only under the Income Tax Act. The Noticee also contended that *interim order* is liable to be set aside on the ground that it is in violation of the principles of natural justice as no opportunity of personal hearing was provided to the Noticee 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* evidence obtained during the preliminary examination/inquiry undertaken by SEBI. The facts and circumstances necessitating issuance of directions by the *interim order* have been examined and dealt with in the *interim order*. It is established law that an ad-interim ex-parte order can be passed with an opportunity of post decisional hearing granted to the entities affected by the said ex-parte order. In the instant case, *interim order* has been issued in the nature of show cause notice affording the Noticee a post decisional opportunity of hearing. The legal position on post decisional hearing has been upheld in various judgements of the Hon'ble SAT, the Hon'ble High Courts and the Hon'ble Supreme Court. Relevant portions of a few of such judgments are referred to hereinafter:-

- (a) Hon'ble Bombay High Court in *Anand Rathi & Others Vs. SEBI* [2002 (2) BomCR 403] upheld the procedure of post decisional hearing in such matters and observed as under:

*"31. 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.*

*32. 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."*

- (b) Hon'ble High Court of Judicature for Rajasthan at Jaipur in the matter *M/s. Avon Realcon Pvt. Ltd. & 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 impugned 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..."*

- (c) Hon'ble Supreme Court of India in the matter of *Liberty Oil Mills & Others Vs Union Of India & Other* (1984) 3 SCC 465 observed as under:

*"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 has, 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. "

12. In view of the aforesaid legal position, I do not find any violation of principles of natural justice while passing the *interim order* as contended by the Noticee. 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, inter alia, in cases of urgent situations, by enforcing the provisions of the SEBI Act. In my view, section 11(1) of the SEBI Act casts the duty on SEBI to protect the interests of the investors, and to promote the development of, and to 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 section 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 of SEBI Act, 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.

13. The '*measures*' and the directions under sections 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*.
14. 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, inter alia, in cases of urgency. I, therefore, do not agree with the contentions of the Noticee with regard to the scope of the *interim order* and the power of SEBI passing interim order in the instant matter.
15. Noticee also contented that there was no urgency existed which warranted SEBI to pass the *interim order*. In this regard, I note that the instant malpractices under investigation involves complexity in view of 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 June 2015. Further the fact that major portion of the shareholding 56.22% in HPC is lying with the preferential allottees, pre IPO transferees, Funding Group, Trading Group and the promoters/directors of these companies and all of them are acting in concert and market manipulations are going on in the scrips with potential to attract the gullible investors clearly indicates the existence of urgency for taking immediate steps. In view of the *prima facie* finding that the Noticee is acting in concert with others, the fact that she has sold major portion of her shares cannot be reason to state that there is no urgency in respect of her. Further, 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 said contentions of the Noticee.

16. Dealing with the contention that the cause of action does not arise under the SEBI Act, therefore, SEBI does not have jurisdiction in the matter, I find that the interim order clearly spells out that the scheme, plan, device and artifice employed in this case is, apart from being a possible case of money laundering or tax evasion which could be seen by the concerned law enforcement agencies separately, prima facie, also a fraud in the securities market inasmuch as it involves manipulative transactions in securities and misuse of the securities market. Therefore, the contention of the Noticee that SEBI does not have jurisdiction on this ground is not sustainable.
17. Having dealt with the preliminary submissions of the Noticee, I now proceed to deal with the specific contentions raised by the Noticee that there is nothing in the *interim order* to allege or demonstrate any wrong-doing on her part. The Noticee further contended that she is not connected/related to HPC, or its promoters or directors or with any entities who are alleged to be indulged in the price manipulation or *Trading Group* entities as mentioned in the *interim order*. The Noticee also contended that she is a regular investor in the securities market and had invested in various scrips for long term investment with the intention of earning profit. At the time of personal hearing, Noticee stated that she had purchased the shares of HPC through preferential allotment on the advice of one of her husband's friend Mr. V.K. Tomar.
18. It is trite to say that the 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. A preferential allotment is not an "open to all" type of investment opportunity. A company will, in no case, make a preferential allotment to a stranger who just approaches it for allotment of its shares. A preferential allotment is always for the purposes of meeting fund requirements of the concerned company and involves discreet or manifested but 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) The select persons/group of persons (preferential allottees) exercise due diligence by contacting the Company/directors for assessment of financial soundness and corporate governance in the Company as the published information about the Company before

listing is not sufficient enough for overall assessment of the Company.

(c) Thereafter, they invest their funds in the company against subscription of shares on preferential basis;

19. It is matter of common knowledge that in a private placement, wherein allotment is made to select persons or group of persons on one to one basis, the issuer and their promoters/directors have connection on account of acquaintance and familiarity. Such inference of connection becomes stronger in case of private placement by the unlisted companies whose shares are not listed for trading in the stock exchange. Thus, it has to be inferred that in the case of preferential allotment by the aforesaid companies, the companies, their promoters/ directors and preferential allottees had prior understanding, arrangement and purpose.

20. The shares of HPC was listed on March 19, 2013. Prior to the listing of the shares of HPC, the trading in its shares could have happened only between the entities on a one to one basis. As explained in the *interim order*, the infusion of funds/purchase of securities of an unlisted company which lacked credentials suggests that the *preferential allottees* had nexus with the companies and their management. On a specific query during the personal hearing, the Noticee failed to give any plausible explanation as to how the company could make allotment to the *preferential allottees* if they were not known to it or its promoters/directors. Therefore, the finding in the interim order that financing of a company by way of preferential allotment, as found in this case, pre-supposes a nexus and prior understanding amongst the issuer, its promoters/directors and the allottees is sustainable.

21. The ultimate beneficiaries of the whole scheme in question are the *preferential allottees* and as such they cannot pretend to be oblivious to the scheme/plan/device/artifice in question which involved different players to facilitate the ultimate beneficiaries. The facts that Noticee had purchased 10,000 shares of Rs. 10 each of HPC in a pre-IPO preferential allotment which resulted into 20,000 shares in view of later bonus issue, the Company expended the capital by 228 Times, the price of HPC was manipulatively hiked from Rs. 39.10/- to Rs. 735.90/-, and subsequent sale of most of the shares while acting in concert with others, reaping a profit of Rs. 1,10,99,484/- show that she was aware of the entire

device and the specific roles played by others in furtherance of the scheme. The interim order has observed *prima facie* as to how the stock exchange mechanism has been misused and manipulated for the purposes of giving profitable exit (*where the Trading group had already pushed the prices up through manipulation*) to the *preferential allottees/pre IPO transferees* for availing exemption on LTCG tax gains and /or for converting unaccounted income into accounted income. In view of the above reasons, I, hereby reject the contention of the Noticee that she does not have any connection/nexus with the entities mentioned in the *interim order*.

22. The Noticee further contended that there are no specific allegations against the Noticee to the effect that she is a part of the funding group or involved in price manipulations. It was contended that the *interim order* does not refer to any specific role played by the Noticee in any malpractices and no ad-interim direction can be issued against her on the basis of surmises and conjectures. In this regard, I find that the interim order clearly demonstrates how different categories of entities, in concert with each other, in the larger scheme of fraud in the securities market has played different roles to perpetuate the fraud. It goes without saying the individual role of every one including the Noticee is inbuilt in the categorisation of such roles in perpetuation of the fraud. The linkages of the various categories of entities including preferential allottees with the others forming part of the scheme have been discussed in the *interim order*. Accordingly, I do not find merit in the said submission of the Noticee.

23. Further, I note the facts and circumstances of the instant case discussed hereinabove and in the *interim order* indicate that the preferential allotment was an essential and important act in the whole scheme of things and the need to make such preferential allotment to achieve the end objective of the scheme has been amply brought out in the *interim order*. The *interim order* has reasonably highlighted the *modus operandi* wherein the company in nexus with the preferential allottees made a façade of preferential allotment ostensibly to increase the share capital base and thereafter listed the company with the aid of entities belonging to *Funding Group*. Once the shares of these companies were listed on the SME platform of the BSE, the *preferential allottees/ pre IPO transferees*, with the aid of the entities of *Trading 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.

Further, paragraphs 25 to 33 of the *interim order* specifically discuss the manner in which *preferential allottees and pre IPO transferees* sold their shares pursuant to abnormal increase in price in a manipulative way and made huge illegitimate profit in the whole process. The Noticee herself as a beneficiary of scheme, bought shares of HPC for Rs. 10 per share sold 19,800 shares of HPC during the period from March 19, 2014 to June 03, 2014 for a price ranging from Rs. 473/- to Rs. 598.90/- per share. The entire scheme of activities points to an inference that the preferential allotment, manipulation and resultant price rise was done only to favour the preferential allottees/pre IPO transferees to book profits which are tax exempt. In view of this background and facts and circumstances, the submission of Noticee that she had purchased the shares of HPC through preferential allotment on the advice of one Mr. V.K. Tomar, in order to drive home the point that she was an innocent investor, does not lend credence. I find that the acts of the Noticee discussed in the *interim order* are *prima facie* fraudulent and in contravention of the provisions of securities laws mentioned therein.

24. The Noticee have contended that SEBI had failed to give any reason for selected entities who had made a profit of Rs. 1 Crore or more through their transaction in the scrip of HPC or any other companies and the said classification is arbitrary. In this regard, I find it important to mention that the *interim order* clearly mentioned that a detailed investigation in the matter is in progress. The fact that certain *preferential allottees* have been left out in 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 are issued against entities on the basis of *prima facie* role/involvement in the entire scheme which was under investigation at that stage. SEBI's power is not curtailed in initiating appropriate action in accordance with the provisions of law against any entity if investigation unearths incriminating evidence against such entities.
25. Considering the above observations in the light of the facts and circumstances of the case and the material on record indicate that Noticee was acting in concert with others while perpetrating the fraud. The same has been brought out in the *interim order*. The investment made by the Noticee as a *preferential allottee* cannot be termed as a rational investment behaviour since the Noticee had nexus with the company, their promoter /directors and the issue of such shares was under a prior arrangement between them and

others for the purpose of effectuating the fraud and not for an objective of providing equity capital to the company. The trading data also reveals that most of the shares sold by the *preferential allottees and pre IPO transferees* were bought by the entities of the *Trading Group*. In my view, this cannot be termed as a coincidence especially when sellers have nexus with the company, as mentioned in the *interim order*. As brought out in the *interim order*, ultimate beneficiaries of the whole scheme in question are the *preferential allottees and Pre IPO Transferees*. It is beyond reason to hold that the company, its promoters/directors, *Trading group* and *Funding group* 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. These circumstances *prima facie* indicate that the Noticee being the ultimate beneficiary is party to the plan/scheme and has nexus in the whole scheme.

26. Accordingly, the *prima facie* findings that the Noticee as preferential allottee acting in concert with the Company and its directors, *Funding Group* and *Trading Group* has used the stock exchange system to artificially increase volume and price of the scrip for making illegal gains and to evade tax is sustainable. Therefore, the fact that the Noticee was purchasing shares in various scrips for long term investments and had booked profit also does not help her case.
27. In view of this, the further *prima facie* finding that the scheme, plan, device and artifice employed in this case, apart from being a possible case of money laundering or tax evasion 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, also stands sustained.
28. In view of these findings, I proceed to deal with the specific relief sought by the noticee as mentioned in para 9 above. SEBI vide said interim order dated June 29, 2015 read with corrigendum dated January 04, 2016 restrained 254 entities, including Noticee (Mrs. Nidhi Goel) (AAJPG3068K) 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.

29. While implementing the directions, the demat account number 11606446 with Alankit Assignments Ltd. (DP ID IN300118) held in the name of Noticee's husband Mr. Chetan Prakash Goel with Noticee as a joint holder and demat account number 10114280 with Elite Wealth Management Ltd. (DP IN301670) held in the name of Noticee's daughter Mrs. Priya Agarwal with Noticee as a joint holder, had been frozen by the depositories for credit and debit of securities therein.
30. Noticee, *inter-alia*, submitted that the demat accounts of her husband and daughter were frozen due to the fact that her name appears as the second holder in the said demat accounts. It is submitted by her that her name is there as a second holder merely for family security purpose. In support of her said claim, Noticee had submitted the documents as mentioned at para 9 above.
31. I note that Mr. Chetan Prakash Goel and Mrs. Priya Agarwal have not been restrained by the aforesaid *interim order*. From the documents submitted by the Noticee, I also note that:
- (a) Mr. Chetan Prakash Goel is the first holder of the demat account number 11606446 held with Depository Participant Alankit Assignments Ltd. (DP ID IN300118).
  - (b) Mrs. Priya Agarwal is the first holder of the demat account number 10114280 held with Depository Participant Elite Wealth Management Ltd. (DP IN301670).
  - (c) Mr. Chetan Prakash Goel did not hold any shares of HPC as on April 08, 2017 (i.e. as per the demat holding statement submitted to SEBI).
  - (d) Mrs. Priya Agarwal did not hold any shares of HPC as on March 31, 2017 (i.e. as per the demat holding statement submitted to SEBI).
  - (e) Chartered Accountant has certified that shares held as on April 08, 2017 in the demat account (DP ID IN300118 A/c. No. 11606446) held in joint names are owned by and belong to Mr. Chetan Prakash Goel (First Holder) and the payments for purchase of shares have been made by Mr. Chetan Prakash Goel from his own sources of funds / accounts.
  - (f) Chartered Accountant has certified that shares held as on April 13, 2017 in the demat account (DP ID IN301670 A/c. No. 10114280) held in joint names are owned and

belong to Mrs. Priya Agarwal (First Holder) and the payments for purchase of shares have been made by Mrs. Priya Agarwal from her own sources of funds / accounts.

32. As the prima facie case against the Noticee stands established and the investigation in the matter is in progress, there is no ground to revoke the restrictions imposed on the Noticee vide the *interim order* dated June 29, 2015 read with corrigendum dated January 04, 2016. At the same time, I find no good reason as to why partial reliefs or permissions may not be granted to the Noticee, at par with the reliefs granted to several other similar entities vide confirmatory order dated August 25, 2016 which was passed in respect of similar violations committed by other entities in respect of other scrips.
33. 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 *ad interim ex parte* order dated June 29, 2015 read with corrigendum dated January 04, 2016 as against the Noticee except that she can:-
- (a) Carry on 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 / sell the shares (other than the shares of the companies which are suspended from trading by the concerned stock exchange and the shares of the four scrips in the SME segment covered under this order) lying in her demat account or in any open offer/delisting offer under the relevant regulations of SEBI, as on the date of the interim order, with the condition that the sale proceeds should be deposited in an interest bearing Escrow account with a nationalized bank.
  - (g) Deal with or utilize the sale proceeds lying in the aforesaid escrow account under the supervision of the concerned stock exchange as provided under:-

- i. the sale proceeds may be utilised for investments permitted in para 33 (a) to (e) above;
- 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 whichever is higher, may be utilized for business purposes and/or for meeting any other exigencies or address liquidity problems.

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

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.

34. 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.

35. In addition to the above reliefs and considering the aforesaid submissions and documents brought on record as discussed in para 31, I am of the view that adequate evidence is adduced to the extent that the shares held in the joint demat accounts 11606446 (Mr. Chetan Prakash Goel and Noticee) and 10114280 (Mrs. Priya Agarwal and Noticee) have been purchased with the funds of Mr. Chetan Prakash Goel and Mrs. Priya Agarwal, respectively, and the Noticee has no objection for transfer of securities from the above mentioned joint accounts. Accordingly, liberty is granted to:

- (a) Mr. Chetan Prakash Goel to transfer the securities from the demat account number 11606446 held jointly with Mrs. Nidhi Goel with Depository Participant Alankit Assignments Ltd. (DP ID IN300118) to another demat account exclusively held by him in his individual name.
- (b) Mrs. Priya Agarwal to transfer the securities from the demat account number 10114280 held jointly with Mrs. Nidhi Goel with Depository Participant Elite Wealth Management Ltd. (DP IN301670) to another demat account exclusively held by her in her individual name.

(c) The aforesaid reliefs at Para 35 (a) and (b) shall be subject to the supervision of exchanges and depositories and shall be without prejudice to the findings of pending investigation in the matter.

36. Accordingly, the directions issued against the Noticee in its interim order dated June 29, 2015 read with corrigendum dated January 04, 2016 are modified and this order shall be in force till further orders.

37. A copy of this order shall be served on all recognized stock exchanges and depositories to ensure compliance with above directions.

-Sd-

**DATE: JUNE 23, 2017**

**PLACE: MUMBAI**

**MADHABI PURI BUCH**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**