

ORDER UNDER SECTION 15I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 IN THE ADJUDICATION PROCEEDINGS AGAINST SHRI BAGRECHA ASHOK K.

1. I was appointed as the Adjudicating Officer by the Securities and Exchange Board of India (hereinafter referred to as 'SEBI') in terms of an order dated May 25, 2006 to inquire into and adjudge under Section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act'), the violations of the provisions of Section 12 A of the SEBI Act, 1992, Regulations 3, 4 and 6 of the SEBI (Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995 (hereinafter referred to as the 'FUTP Regulations 1995') read with Regulations 3 and 4 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 (hereinafter referred to as the 'PFUTP Regulations 2003') alleged to have been committed by Shri Bagrecha Ashok K. (hereinafter referred to as 'the noticee').

FACTS OF THE CASE

2. SEBI conducted investigation into the affairs relating to buying, selling or dealing in the shares through Initial Public Offerings (hereinafter referred to as 'IPOs') during the period 2003 – 2005. The Investigation mainly pertained to the IPOs offered by the following companies:

1. Amar Remedies Ltd.
2. Datamatics Technologies Ltd.
3. Dishman Pharma & Chemicals Ltd.
4. FCS Software Solutions Ltd.

5. Gateway Disriparks Ltd.
6. Gokaldas Export
7. ILFS Investmart
8. Indraprasth Gas
9. Infrastructure Development Finance Co. Ltd.
10. Jet Airways (India) Ltd.
11. Nandam Exim Ltd.
12. National Thermal Power Corporation Ltd.
13. Nectar Lifesciences Ltd.
14. Patni Computer Systems Ltd.
15. Sasken Communication Technologies Ltd.
16. Shoppers Stop Ltd.
17. SPL Industries Ltd.
18. Suzlon Energy Ltd.
19. T.V. Today Network Ltd.
20. Tata Consultancy Services Ltd.
21. Yes Bank Ltd.

3. In the Investigation Report submitted by SEBI (hereinafter referred to as the 'Investigation Report') it was observed that many entities cornered / acquired the shares in the various IPOs by the above companies during the period 2003 – 2005 by making fictitious applications in the category reserved for retail investors, through the medium of thousands of fictitious / benami applicants in the IPOs. It is alleged that the said entities (hereinafter referred to as the 'Key Operators') had opened many demat accounts in fictitious and benami names and made large number of applications in the IPOs mentioned above in the category of retail investors in fictitious and benami names.
4. On allotment of shares in the category of retail investors in the IPOs, the said shares were transferred to the demat accounts of these key operators. It is alleged that these key operators subsequently transferred the shares through off market deals to ultimate beneficiaries (hereinafter referred to as the 'financiers') who are alleged to be the

financiers in the process. In this regard, it is alleged that the said practice was adopted to corner the quota for retail investors in the IPOs of the companies.

5. It is alleged that the noticee acted as Financier to the key operators in the manner as stated above and received shares through off market deals which were meant for retail investors. Prima Facie it was noted that in the IPO of Jet Airways (India) Ltd. (hereinafter referred to as 'Jet Airways'), the noticee received 2520 shares from Opee Stock-Link Ltd. (hereinafter referred to as the 'Opee'). The said actions of the noticee is alleged to be in violation of Section 12A of SEBI Act and Regulations 3, 4 and 6 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 and Regulation 3 and 4 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.
6. The provisions of Chapter XI of SEBI (Disclosure & Investor Protection) Guidelines, 2000 (hereinafter referred to as the 'DIP Guidelines') demarcate the portion of public issues which has to be allotted to the retail investors. These provisions have been introduced with a view to ensure more participation by individual retail investors in public issues of companies, thus leading to expansion of the securities market and its development. The relevant provision of the DIP guidelines is stated below:

Clause 11.3.5 Allocation/Allotment Procedure

- (i) In case an issuer company makes an issue of 100% of the net offer to public through 100% book building process:
 - (a) not less than 35% of the net offer to the public shall be available for allocation to retail individual investors ;

NOTICE AND REPLY

7. A Show Cause Notice (hereinafter referred to as 'SCN') A&E/BS/69527/2006 dated June 16, 2006 was issued to the noticee in terms of the provisions of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing penalties by Adjudicating Officers) Rules, 1995 (hereinafter referred to as the Rules), requiring the noticee to show cause as to why an inquiry should not be held for the violation alleged to have been committed by him.
8. The noticee replied to the SCN vide a letter dated 23rd June 2006. The noticee denied the allegation of being a financier and that he had bought or sold or dealt in the IPOs in a manner which was violative of the provisions of the Regulations of SEBI Prohibition of Fraudulent and Unfair Trade Practices Regulation, 2003. He denied making any fictitious share application in the IPOs. The noticee stated that he did not have any demat account, nor had he opened any demat account in fictitious names. He stated that he had not made large number of applications in the IPOs in the category reserved for retail investors in fictitious names.
9. The noticee submitted that it was wrongly alleged that he had adopted the practice of cornering shares in the IPOs reserved for retail investors. The noticee denied all allegations of the IPOs shares being received by him from many dematerialized account holders during the said period. He denied having violated Section 12A of the SEBI Act. The noticee stated that he had not employed or used any manipulative device or contrivance in contravention of the provisions of the SEBI Act or Rules and Regulations made there under. He submitted that he had not employed any device, scheme or artifice to defraud, in connection with the public issues or dealings in securities, which were listed or proposed to be listed in the recognized Stock Exchange. He also submitted that he had not acted nor followed practice in course of his business as a fraud or deceived any person in connection with the issue dealing in the security market. The noticee denied violating any Regulation 3, 4, and 6 of the FUTP Regulations, 1995. The noticee stated that it could not be alleged that he had engaged in financing the public issue. He submitted that he was an individual and he engaged in the normal

activity of buying and selling shares in the capital market. He stated that he had acted in good faith in respect of the transactions mentioned.

10. Considering the reply submitted by the noticee, it was decided to conduct an inquiry in the matter. In view of the same, a Hearing Notice A&E/BS/74719/2006 dated August 18, 2006 was sent to the noticee advising him to attend the hearing scheduled on September 12, 2006. The noticee attended the hearing on the said date. He had authorized Shri Rajiv Desai, Chartered Accountant, to represent him. During the course of the hearing, the noticee submitted that he had dealt only in the shares of Jet Airways and that too only for one transaction of 2520 shares through his demat account with M/s Ratnakar Securities Pvt. Ltd (which made the payment of shares on pay –out). He said the shares were purchased on 15th March 2005 from Opee and sold on 16th March 2005. The shares were bought from Opee because it had exhausted its exposure limits and was not able to sell. Hence the noticee was requested by Opee's Director to purchase the same and sell it in the market. The noticee fulfilled the request and paid the consideration by cheque to Opee. The noticee submitted that he had not given any loan to Opee. The noticee submitted that he did not have any arrangement with any individual for purposes of making application in the public issue of Jet Airways or any of the other IPOs mentioned above. Only after selling the shares and receiving the money, payment was made to Opee. The noticee submitted his reply to the Whole Time Member, ledger accounts of the noticee and Opee, statement of transaction and a bill with Ratnakar Securities Pvt. Ltd. as further documents.
11. The noticee forwarded another reply dated September 13, 2006, in which he rectified the mistake in dates as made by him in the hearing. He declared that the 2520 shares of Jet Airways were transferred by Opee to his account in the off-market mode on 15th March, 2005 and he had sold the shares on 14th March, 2005, as requested by Opee. He submitted that he had sold the same at an average rate of Rs. 1250.95. He paid Opee at an average rate of Rs. 1244.23 vide cheque no. 724163 dated March 19th, 2005 and vide cheque no. 724177 dated April 11th, 2005 of HDFC Bank.

12. A notice A&E/BS/84665/2007 dated January 18, 2007 was sent to the noticee advising him to provide:

- i. Transcripts of all his Demat accounts since 1.1.2003 and.
- ii. All the Securities lying in the said Demat accounts since 27.4.2006.

13. Vide a letter dated 31/01/2007 the noticee submitted the following:

- i. Transaction statement and Demat Accounts since 01/01/2003.
- ii. Details of all the securities lying in his demat account.
- iii. An affidavit stating that he doesn't have any transaction after 27/04/2006.

14. Vide a notice A&E/BS/114834/2008, dated January 22, 2008, the noticee was informed about the availability of the guidelines for passing of consent orders vide SEBI Circular No. EFD/ED/Cir-1/2007 dated April 20, 2007, if he should wish to. The noticee was also advised to furnish his Income tax Permanent Account Number (PAN).

CONSIDERATION OF EVIDENCE AND FINDINGS

15. I have taken into consideration the facts and circumstances of the case, the submissions advanced on behalf of the noticee, the material available on record including the documents relied upon by the noticee.

16. The allegation against the noticee is that he acted as a financier to the key operator Opee Stock-Link Ltd. In this regard the noticee submitted that:

- (a) The shares were bought from Opee as Opee had exhausted its exposure limits and was not able to sell. So upon the request of Opee's Director, the noticee sold the 2520 shares and made the payment to Opee. The noticee stated that he had not made any fictitious application in the category reserved for retail investors through the medium of fictitious / benami applications.

(b) The noticee also stated that only one such transaction had taken place and on the basis of this alone he cannot be classified as a Financier.

17. The details of the noticee as an alleged financier and the number of shares received by the noticee from Opee are as given below:

Client Id	Client Name	Company Name	Name Of financier	Dp Name	Client Id	No. Of Shares	Date Of Transaction
10127493	Opee Stock - Link Ltd.	Jet Airways (India) Limited-Eq	Bagrecha Ashok K.	Ratnakar Sec.Pvt.Ltd.	10128206	2520	3/15/2005

18. As per the above details, the noticee received 2520 shares in the IPO of Jet Airways from the account of Opee in an off-market transaction. The said shares were credited to his account maintained with the Depository Participant (DP) Ratnakar Securities Pvt. Ltd. If the Statement of Transaction as submitted by the noticee for the period of 01/01/2003 to 29/01/2007 is seen, it will be noticed that 2520 shares of Jet Airways had been credited and then subsequently debited from his account.

19. As submitted by the noticee the said shares were received from Opee. In this regard it is pertinent to note that the noticee is stated to be a Director of Opee. Hence the facts of the case indicate that he was aware of the shares received by Opee in the IPO from large number of accounts.

20. In the Investigation Report, the gains made by the financier were worked out. It was calculated by comparing the closing price (on National Stock Exchange or NSE) on the first day of listing in respect of the above IPO with the issue price of the respective IPO, it is stated as:

Client Name	Company Name	Name Of Financier	No. Of Shares	Close price on the date of listing (Rs.)	Issue Price (Rs.)	Gains (Rs.)
Opee Stock - Link Ltd.	Jet Airways (India) Limited-Eq	Bagrecha Ashok K.	2520	1304.20	1100.00	514,584.00

21. Hence, from the table above it is seen that the noticee made a gain of approximately Rs.5,00,000/- while dealing with 2520 shares of the Jet Airways IPO, which had been transferred to the noticee's account by the key operator Opee.

22. It is pertinent to note from the submissions made by the noticee, that vide Bill No. 00024 dated 16/03/2005 issued by the DP Ratnakar Securities Pvt. Ltd., it is evident that the total money due to the noticee was Rs.3,152,391.00/- and out of which he would have to pay for the 2520 shares received from Opee. In this context if the noticee's statement that he paid Opee at an average rate of Rs.1244.23/- is taken as correct, then he would have to pay Opee an average amount of Rs.3,135,459.60/-. So the profit which would be left for the noticee amounts to Rs.16,931.40/- (i.e. Rs.3,152,391.00/- less Rs.3,135,459.60/-).

23. On perusal of the copy of the ledger account of the noticee and Opee, as submitted by the noticee, it is seen that the noticee paid Opee Rs.5,00,000/- (Rupees five lakh only) on 21/03/2005 vide a cheque drawn on HDFC Bank (cheque no. 724163 as declared by the noticee and as seen in the ledger account). The noticee had stated that he had paid Opee vide another cheque 724177 dated 11th April, 2005, drawn on HDFC Bank, but no proof validating the same was submitted. It is pertinent to note that the noticee was also a director of Opee at the relevant point of time.

24. Considering the statements, submissions and omissions made by the noticee, it is evident that the noticee was aware of the manner in which large number of shares was transferred to the account of Opee from as many as 553 accounts. The subsequent action of transferring 2520 shares to the account of the noticee implies that he was

aware of the manner in which shares were transferred to the account of Opee and the subsequent transfer of part of the shares to his own account. The submission of the noticee that the transfer to his account was necessitated as the exposure limit of Opee was exhausted, does not appear to be a convincing reason, looking at the facts and circumstances of the case. It is pertinent to note that not all the shares were transferred to the noticee. Only part of the 12039 shares cornered by Opee had been transferred to the noticee. However, considering the fact that his role is evident as 2520 shares were transferred to his account, it is seen that the noticee was acting hand in glove with Opee. This is further evident from the fact that the noticee is stated to have sold the shares on behalf of Opee on 14/03/2005. However the shares were received in his account only on 15/03/2005. Hence the complicity of the noticee acting as per a prior arrangement with Opee is evident from the facts of the case as he was selling the shares even prior to receiving them from Opee.

25. On account of the various commissions and omissions on the part of the noticee, who was acting in concert with opee, which resulted in the cornering of the reserved quota for the retail investors in the IPOs of Jet Airways, the noticee has violated the following provisions of Section 12A of the SEBI Act which state the following :

12A. No person shall directly or indirectly –

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

26. Further, on account of such actions, the noticee has violated the provisions of Regulation 3(a),(b), (c) and Regulation 4 (1) of the SEBI PFUTP Regulations 2003 which state the following :

SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003:

“3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;**
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;**
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;**

4. Prohibition of manipulative, fraudulent and unfair trade practices

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or unfair trade practice in securities.**

27. The violations of the said provisions make noticee liable to the penalty under Section 15HA of the SEBI Act. The text of Section 15HA is stated below:-

Section 15HA of the SEBI Act, 1992:-

15HA. Penalty for fraudulent and unfair trade practices.-“ If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher”

28. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Rules require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely;

- a. the amount of disproportionate gain or unfair advantage wherever quantifiable, made as a result of the default.
- b. the amount of loss caused to an investor or group of investors as a result of the default.

- c. the repetitive nature of the default.

29. As per the mandate of section 15HA of the SEBI Act, the penalty shall be of twenty-five crore rupees or three times the amount of profits made as a result of default, whichever is higher. Considering the actions of the noticee, it is felt that though the exact gain accrued to the noticee is not discernable from the facts of the case nevertheless, the violations committed by the noticee invite imposition of monetary penalty. As stated before, taking into account the submissions of the noticee that he made payment to Opee at an average price of Rs.1244.23 per share, it leads to the conclusion that approximately Rs. 16,931 accrued to the noticee as profit. Considering the facts and circumstances of the present case and taking into account the fact that only a limited role of the noticee as financier is evident from the facts of the case, it is felt that a lenient view may be taken in respect of the penalty in the matter. In view of the same, it is felt that for the violations committed by the noticee, a penalty of Rupees one lakh needs to be imposed, which is commensurate with the violations committed by the noticee.

ORDER

30. In exercise of the powers conferred under Section 15 I of the SEBI Act, 1992, and Rule 5 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I, impose a penalty of Rupees one lakh (Rs.1,00,000/-) on Shri Bagrecha Ashok K in terms of the provisions of Section 15HA of the SEBI Act, 1992 for the violation of the provisions of Section 12 A (a) and (b) of the SEBI Act 1992, and Regulations 3 and 4 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the violations committed by Shri Bagrecha Ashok K.

31. The penalty shall be paid by way of demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this

order. The said demand draft shall be forwarded to Chief General Manager, Integrated Surveillance Department, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

32. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 copies of this order are sent to Shri Bagrecha Ashok K and to the Securities and Exchange Board of India.

PLACE: Mumbai

Biju. S

DATE: December 31, 2008

Adjudicating Officer