

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 MATTER OF ADJUDICATION PROCEEDINGS AGAINST DATAMATICS TELECOM LIMITED.

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') vide order dated May 25, 2006 initiated adjudication proceedings against Datamatics Telecom limited (hereinafter referred to as "the noticee"). The undersigned was appointed as the Adjudicating Officer to inquire into and adjudge under Section 15I read with Sections 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act'), the violations alleged to have been committed by the noticee in respect of its dealings in the initial public offerings of some companies.

FACTS OF THE CASE

2. SEBI conducted investigation into the affairs relating to buying, selling or dealing in the shares through initial public offerings (IPOs) during the period 2003 – 2005 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. 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 for 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 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 appeared 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 Infrastructure Development Finance Co. Ltd., the noticee transferred 54,628 shares on August 9, 2005 to Velvet Financial Advisers Pvt. Ltd. (hereinafter referred to as the 'Velvet') . 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.

NOTICE AND REPLY

6. A Show Cause Notice (hereinafter referred to as 'SCN') A&E/BS/69580/2006 dated June 19, 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 violations alleged to have been committed by it. The noticee replied to the SCN vide letter dated July 6, 2006. Subsequently, vide its letter dated November 21, 2008 the noticee forwarded order dated November 19, 2008 wherein SEBI has concluded the proceedings against the noticee for the same violations by exonerating the entity of the allegations levelled against it.

CONSIDERATION OF EVIDENCE AND FINDINGS

7. The allegation against the noticee is that he acted as a financier to a key operator. In this regard noticee submitted that
 - (a) The noticee applied for allotment of shares, in the IPO of IDFC in HNI category and not any fictitious application in the category reserved for Retail investors through the medium of fictitious / benami applications.
 - (b) All applications by noticee in IPOs were in HNI category through one Demat Account bearing DPID IN 301803 and client ID 10019296.

- (c) The noticee never had any dealings with any of the 24 Key Operators. The noticee received allotment of shares in the IDFC IPO from the company directly and there was no transfer of shares from any of the key operators to the account of the noticee.
8. The noticee vide its letter dated November 21, 2008 forwarded the copy of the order dated November 19, 2008 passed by SEBI under sections 11(B) and 11(4) of SEBI Act, 1992 in the matter of IDFC. The Hon'ble Whole Time Member of SEBI made the following observations in the said order:-
- (a) From the perusal of the demat statement of DTL with DP Anand Rathi Securities Ltd. (Client ID: 10019296) in the scrip of IDFC Ltd. for the period July 5, 2005 to August 25, 2005, it is seen that DTL received 1,09,256 shares of IDFC Ltd. on August 6, 2005 through corporate action (i.e. IPO allotment). Subsequently, DTL transferred 54,628 shares each to demat account no. 10148913 of Ashmi Financial Consultancy Pvt Ltd and no. 10148905 of Velvet Financial Advisor Pvt. Ltd. Accordingly, the shares received by DTL from the public issue of IDFC were transferred to the aforesaid two entities a day after receipt of the same in the demat account of DTL.
- (b) Further, from the perusal of the ICICI bank account (no. 000405006893) statement of DTL with ICICI Bank on August 9, 2005, it is observed that DTL transferred Rs.26,26,210 each to Ashmi Financial and Velvet. I note that in terms of the MoU, the borrower i.e. Velvet in the present case had to give margin amount equivalent to 5% of the security deposit at the rate of 14.5% interest on the loan amount of Rs.10 crore which is illustrated as under

Particulars	Amounts
Security Deposit Collected by DTL	50,00,000
Shares Transferred to Velvet (54, 628 shares @ Rs. 34)	18,57,352
Interest @14.5 %	5,16,430
Balance amount transferred to Velvet	26,26,210

(c) From the demat and bank account statement of DTL, as narrated above, it prima facie appears that DTL had transferred 54,628 shares @ Rs. 34 to Ashmi Financial Consultancy in the manner stated above. Apart from the above, it is pertinent to note that DTL had applied for allotment of shares in the IDFC IPO in the HNI category. Further, I observe that they have transferred the shares allotted to the demat account of Velvet as per the terms of MoU. Though the interim order has not mentioned about the shares being transferred to Ashmi Financial Consultancy, from the demat account statement of DTL, it is evident that DTL had transferred 54,628 shares in the same manner as in the case of Velvet. From the copy of Form 16A (Certificate of TDS), it appears that DTL has paid TDS of Rs. 1,15,889 on the interest amount earned by them.

9. Considering the facts and circumstances of the case and evidence available on record, there is nothing to discredit the version given by the noticee. In this regard it is further noted that DTL has made an applications for allotment of shares in the HNI category, however, the allegation is that DTL had cornered the retail portion of shares of IDFC IPO. The said factual conclusion have also been arrived in the order WTM/TCN/64/ISD/NOV/08 dated November 11, 2008 passed by Whole Time Member, SEBI. In view of the facts as stated above, it can not be held that the noticee acted as Financier 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. Considering the above observations of SEBI in the said order, and further considering the submissions of the noticee and the evidence available on record, the violations alleged to have been committed by the noticee are not established and accordingly the present adjudication proceedings against the noticee is disposed of.
10. 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 Datamatics Telecom limited and to the Securities and Exchange Board of India.

Place: Mumbai

Biju. S

Date: November 28, 2008

Adjudicating Officer