

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

[ADJUDICATION ORDER NO.: - SRP/RK/AO: 13-17/2009]

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UNDER SECTION 15 I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

*In respect of*

Mr. Netanand Bhambu	PAN: ACVPB8753A
Netanand Surajram Bhambu – HUF	PAN: AADHN2778P
Anand Netanand Choudhary – HUF	PAN: AAEHA7368H
Ms. Vinita A Choudhary	PAN: AEFPC1369F
Ms. Sarvani Choudhary	PAN: ACSPC7691P

In the matter of IPO Investigations

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**FACTS OF THE CASE IN BRIEF**

1. The Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigations into the affairs relating to buying, selling and dealing in the shares of certain companies during their Initial Public Offerings (hereinafter referred to as ‘**IPOs**’) covering the period from 2003 to 2005.
2. The investigations revealed that certain entities had opened a number of demat accounts and bank accounts which were benami or were in the name of non-existent persons or name lenders and they acquired shares of

various companies in the IPOs by making applications in fictitious or benami names with each of the application being of such a value so as to make it eligible for allotment under the retail category. These entities were referred to by SEBI as 'key operator' or 'master account holder'. It was also observed that, subsequent to the allotment of IPO shares, the shares from the demat accounts of fictitious/benami allottees were transferred in the demat account of the key operators / master account holders. The key operators subsequently transferred these shares through off market transactions to ultimate beneficiaries, who were allegedly the financiers of this scheme or arrangement to corner shares from the quota for retail investors in the IPOs of various companies.

3. Mr. Netanand Bhambu, Netanand Surajram Bhambu - HUF, Anand Netanand Choudhary - HUF, Ms. Vinita A Choudhary and Ms. Sarvani Choudhary (hereinafter referred to as "**Noticees**"), were identified by SEBI to be financiers to a key operator, namely, Ms. Roopalben Panchal and beneficiaries in the scheme/arrangement of cornering of shares in the IPO of Nandan Exim Ltd. (hereinafter referred to as '**Nandan**') and FCS Software Solutions Ltd. (hereinafter referred to as '**FCS**') during the aforesaid period.

### **APPOINTMENT OF ADJUDICATING OFFICER**

4. Shri Biju S. was appointed as the Adjudicating Officer (**AO**) vide order dated May 25, 2006 under section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**the Act**') read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Rules**') to inquire into and adjudge under section 15HA of the Act, the alleged violation of the provisions of section 12A of the Act, regulations 3, 4 and 6 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995, and regulations 3 and 4 of the SEBI

(Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market), Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**') by the Noticees.

5. Consequent upon proceeding of Shri Biju S. on study leave, the undersigned was appointed as the AO vide order dated May 05, 2009.

### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

6. Show Cause Notices dated June 15, 2006 (hereinafter referred to as "**SCN**") were issued to each of the Noticees under rule 4 of the Rules to show cause as to why an inquiry should not be initiated against them in terms of rule 4 of the Rules read with section 15 I of the Act for the alleged violation of the provisions of section 12A of the Act and regulations 3 and 4 of the PFUTP Regulations and penalty be not imposed under section 15HA of the Act.
7. Noticees have submitted reply to the respective SCNs vide their letters dated June 26, 2006 and have, inter alia, denied that they had cornered the shares in IPOs from the category reserved for retail individual investors. They have also submitted that they had neither funded any key operator nor were they aware of the modus operandi of key operators. The submissions of each of the Noticees are similar and are to the following effect:
  - a) They are small investors who regularly subscribe to IPOs.
  - b) They were unable to subscribe to the IPO of Nandan and FCS, and hence, when Mr. Deepak Panchal (brother-in-law of Ms. Roopalben Panchal), who had an office in the same building as theirs, offered to sell them the shares of Nandan at the rate of Rs.20/- per share, and FCS at the rate of Rs.130/- per share, they purchased it in off market deals and the consideration for the same was paid by cheques from their respective accounts to Ms.

Roopalben Panchal. These shares were retained for some time and sold thereafter in the market.

- c) The details of purchases, sales and the tax paid etc. have been furnished by the Noticees.

8. An opportunity of hearing was granted to the Noticees by Shri Biju S. on August 31, 2006 vide separate notices each dated August 10, 2006. Mr. Ravi Kapoor, Company Secretary, appeared as authorized representative of all the five Noticees. He made submissions before the erstwhile AO, which were recorded. He also submitted a letter dated August 24, 2006 and sought seven days' time to submit the details of payment made to Ms. Panchal. The details have been submitted by the Noticees vide letter dated September 8, 2006. The Noticees have also submitted transcripts of their demat accounts vide letter dated January 29, 2007.

9. The Noticees were granted opportunity of hearing before the undersigned on August 21, 2009. Mr. Nayan J Rawal, Advocate, appeared on behalf of the Noticees and sought adjournment of the hearing. Accordingly, another opportunity of hearing was granted to the Noticees on September 8, 2009. Mr. Rawal appeared on the said date and requested not to proceed further in the matter on account of the following:

- The matter in issue in the present proceedings has been decided by Whole Time Member (WTM), SEBI in a different proceeding by his order dated May 7, 2009 and hence the current adjudication proceedings are repeat inquiry of the same issue.
- The matter is sub-judice, as an appeal against the aforesaid order of WTM has been filed in Securities Appellate Tribunal.

10. While these issues have been discussed in detail in the later part of the Order, it would be appropriate to decide the matter on merit.

11. A common Adjudication Order is being passed against the Noticees as material on record shows that the Noticees have acted together in acquiring shares through Ms. Roopalben Panchal. They share the same common address and they are related to each other in the following manner:

i) Mr. Netanand Bhambu - Self
ii) Netanand Surajram Bhambu – HUF- Family HUF of Mr. Netanand Bhambu
iii) Anand Netanand Choudhary – HUF- Family HUF of Anand Netanand Choudhary (Anand Netanand Choudhary is son of Mr. Netanand Bhambu)
iv) Ms. Vinita A Choudhary( Wife of Anand Netanand Choudhary – Daughter in law of Mr. Netanand Bhambu
v) Ms. Sarvani Choudhary – Wife of Mr. Netanand Bhambu

Further, the Noticees have submitted similar replies and time and again have represented themselves as one entity in the proceedings.

### **CONSIDERATION OF ISSUES AND FINDINGS**

12. I have perused the oral and written submissions made by the Noticees and other materials available on record.

13. It is alleged that the Noticees acting in concert with Ms. Roopalben Panchal, cornered/acquired shares in the IPO of Nandan and FCS through the medium of benami /fictitious applications in the category reserved for retail individual investors (RIIs). As per prior understanding such cornered shares of Nandan and FCS were received by the Noticees from Ms. Roopalben Panchal in off market transactions at issue price or at a price substantially lower than the market price and they thereafter sold these shares in the market making substantial profits. Thus, Noticees were the beneficiary of these transactions. In this process, the Noticees, acting in concert with others, deprived the RIIs of their legitimate share in allotment in the IPOs of Nandan and FCS. Thus, it is alleged that the Noticees, acting in concert with others, employed fraudulent, deceptive and manipulative device to corner

the shares meant for RILs in the IPOs of Nandan and FCS and made unlawful gains. The dealings of the Noticees in the shares allotted in the IPOs of Nandan and FCS, as culled out from the available documents are as under:

Name of IPO	Date of Listing,	Issue price	Noticee	Date of purchase	No. of Shares	Purchase Price	Date of Sale	No. of Shares sold	Sale price	Profit
Nandan	13.06.05	20.00	Netanad Bhambu	16.06.05	2000	20.00	04.07.05	2000	59.45	78904.18
			Netanand Surajram Bhambu – HUF	10.06.05	5000		07.07.05	5000	59.45	197261.46
			Anand Netanand Choudhary – HUF	10.06.05	5000		15.07.05	5000	63.02	215141.85
			Sarvani Choudhary	08.06.05	5000		15.07.05	5000	65.02	225075.40
FCS	21.09.05	50.00	Vinita A. Choudhary	21.09.05	2200	130.00	23.09.05	2200	240.25	242576.32

14. The shares of Nandan were listed on June 13, 2006 and on this day the price of the scrip ranged between Rs.48.00 and Rs.64.90 per share on BSE. It is observed that three of the Noticees received 5,000 shares each from Ms. Panchal at issue price, i.e., Rs.20/- on June 10, 2005, i.e., three days prior to the date of listing. I find that one of the Noticees, namely, Netanand Surajram Bhambu –HUF received in off market transaction 2,000 shares of Nandan at issue price i.e., Rs.20/- on June 16, 2005 when the market price of the share was between Rs.38.70 and Rs.44.80. During the period from June 13, 2005 to June 16, 2005 the price of the scrip moved in the range of Rs.38.70 and Rs.64.90.

15. The shares of FCS were listed on September 21, 2005. As per available information the listing price of the scrip on BSE was Rs.150/- and it closed at Rs.179.10 on the day of listing i.e. September 21, 2005. I find that one of the Noticees, namely, Vinita A Choudhary, received 2,200 shares of FCS from Ms. Panchal in off market deal at Rs.130/- per share on the day of listing.

16. The Noticees have not disputed the above transactions. However, they have disputed the allegations based on these facts. Noticees have contended that they were neither financier of the key operator nor did they have knowledge of the fraudulent nature of any of the transactions. Mr. Deepak Panchal, brother-in-law of Roopal Panchal, who had his office in the same building as the Noticees, approached them and offered to sell shares of Nandan and FCS. As the Noticees had been unable to subscribe to the shares in IPO of these companies they bought the shares from Ms. Roopalben Panchal on payment by cheque to her. Noticees have also stated that they are small investors who normally invest in IPOs and that they had dealt with the said key operator only on this one single occasion.

17. In the facts and circumstances, the following issues arise for consideration:

- a) Whether there was any prior understanding between the key operator and the Noticees?
- b) Did the Noticees acquire/corner shares to the detriment of RIIs?
- c) Did the Noticees make unlawful gain in the process?

18. With regard to the first issue, I find that the Noticees, in all, purchased in off-market transactions 17,000 shares of Nandan and 2,200 shares of FCS at the issue price or at a price substantially lower than the market price. During the course of hearing, the representative of the Noticees was specifically asked to explain the rationale for purchasing of 2,000 shares of Nandan from Ms. Panchal at issue price i.e., Rs.20/- on June 16, 2005 when the market price of the share was between Rs.38.70 and Rs.44.80 and 2,200 shares of FCS on September 21, 2005 at the rate of Rs.130/- per share when the listing price of the scrip on BSE was Rs.150/- and it closed at Rs.179.10 on the date of listing. There was no satisfactory explanation. It was stated to the effect that *the shares were bought without any hint that it will result into fraudulent transactions and also because of the fact that the deal was*

*profitable*. I am unable to find a reason as to why Ms. Panchal would sell the shares of Nandan and FCS to the Noticees at much lower price when she had option to sell the shares at market price and make substantial profit. Further, I find that Ms. Panchal sold the shares at a loss, as she realized only the issue price and not even the transaction costs, including the carrying cost. The Noticees have contended to the effect that they were unsuspecting investors who were not aware of the modus operandi of the key operator in the said cornering of shares. In this regard, I am of the view that any buyer of a property would undertake due diligence to verify the antecedents and ownership of the property he is trying to buy. Here, I find from the details furnished by the Noticees that they are not the first time investors but are seasoned ones who are making frequent subscription to IPOs. It was not possible for Ms. Panchal to have so many shares in possession before listing in normal circumstances. If she had so many shares, any person of prudence would have smelled some irregularity, particularly when she was offering the shares at a much lower price. The Noticees must have known that there is no sound reason as to why a normal investor would sell shares at the issue price before listing or at a price lower than the market price.

19. I fail to understand how any person would sell shares at issue price or at the price much below the prevailing market price, through off-market deals, unless there was a prior understanding/arrangement between them. The only inference I can draw from all this is that the Noticees acted in collusion with the key operator.

20. With regard to cornering of shares from the quota of RIIs, it is observed that in all the Noticees received 17,000 shares of Nandan and 2,200 shares of FCS. These shares acquired correspond to the allotment of a certain number of applicants in the RII category. Had the Noticees applied in their individual capacities in this category, at the most each would have got an



allotment of 250 shares of Nandan and 100 shares of FCS. However, they could get 17,000 shares of Nandan and 2,200 shares of FCS by acquiring the same through Ms. Panchal in off market deal. Had they not acquired these shares in collusion with Ms. Panchal, these shares would have been available for allotment to RILs. Thus, the Noticees have played a key role in cornering of the shares meant for RILs and in the process, deprived RILs of their rightful share in allotment of shares in these IPOs. Further, I note that the Noticees have made a profit of Rs.9, 58,950/- by way of such transactions.

21. In the light of the above, I am of the view that there was prior understanding between the Noticees and the key operator and Noticees cornered shares meant for RILs in collusion with the key operator. None of the Noticees have retained their shares in Nandan or FCS for a period longer than 36 days. Shares were sold off within 2, 17, 27, 34, 36 days of purchase by the Noticees. They made huge profits as these shares were acquired at a very low price in off market deals. Thus, it is clear that the only intention of the Noticees in acquiring large number of shares of Nandan and FCS in collusion with Ms. Panchal, was to make some quick and easy money at the cost of RILs. In this process, they received 17,000 shares of Nandan and 2,200 shares of FCS which they would not have received in the normal course and thereby made an unlawful gain of Rs.9,58,959/-.

22. Proof of manipulation almost always depends on inferences drawn from a mass of factual details. Findings must be gathered from patterns, nature of the transactions etc. The evidence, direct or circumstantial, should be sufficient to raise a presumption in its favour with regard to the existence of a fact sought to be proved. As pointed out by Best in "Law of Evidence", the presumption of innocence is no doubt *presumptio juris*; but everyday practice shows that it may be successfully encountered by the presumption of guilt arising from circumstances, though it may be a presumption of fact. It

is exceedingly difficult to prove facts which are especially within the knowledge of the parties proceeded against and in that view the findings would be inferential from the conduct of the parties. The legal proof in such circumstances partakes the character of a prudent man's estimate as to the probabilities of the case. The Hon'ble SAT has observed in the matter of Ketan Parekh Vs. SEBI:

*“..... Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. ....”*

23. It was alleged that the Noticees have acted as a financier to the key operators. However, I do not find any evidence on record to support this allegation against the Noticees. But at the same time, the issue whether the Noticees have financed the purported applicants or key operator in making IPO applications is not of much relevance. The consideration should be as to whether the Noticees have cornered or played a role in cornering of shares to the detriment of retail investors; and this was the case as has been stated above.

24. During the hearing the representative of the Noticees had objected that the matter in issue in the present proceedings has already been decided by WTM - SEBI by his order dated May 7, 2009 and hence the current adjudication proceedings are repeat inquiry of the same issue. Further, the matter is sub-judice as an appeal against the aforesaid order of WTM has been filed in Hon,ble SAT therefore, further inquiry may not be conducted.

25. With regard to these issues, it is observed that the Securities and Exchange Board of India Act, 1992 authorizes the Board, acting through the Whole Time Member to take measures and pass directions under sections 11, 11(4) and 11B of the Act in the interests of investors or securities market. On the other hand, Chapter VI of the Act deals with adjudication and

imposition of monetary penalties only. The object, purpose and result of the two are vastly different. The representative of the Noticees has not shown any provision which bars any of these proceedings if conducted simultaneously.

26. The representative had also drawn attention to Article 20(2) of the Constitution of India which mandates that “No person shall be prosecuted and punished for the same offence more than once.”

27. In the case of *S.A. Venkataraman v. Union of India* AIR 1954 SC 375 the Hon’ble Supreme Court of India observed that the word offence under Article 20(2) must take the meaning as given in section 3(38) of the General Clauses Act, 1897, “an act or omission made punishable by any law for the time being in force”. In the case of *Chairman, SEBI v. Shriram Mutual Fund & Anr*, Civil Appeal No. 9523-9524 of 2003 the Supreme Court held that proceedings under Chapter VI of the Act are civil in nature. The Hon’ble Supreme Court stated that:

*“Chapter VI nowhere deals with criminal offences. These defaults for failures are nothing, but failure or default of statutory civil obligations provided under the Act and the Regulations made thereunder. It is pertinent to note that Section 24 of the SEBI Act deals with the criminal offences under the Act and its punishment. Therefore, the proceedings under Chapter VI A are neither criminal nor quasi-criminal. The penalty leviable under this Chapter or under these Sections, is penalty in cases of default or failure of statutory obligation or in other words breach of civil obligation.”*

28. Thus, I am of the view that the prohibition of Article 20(2) is not applicable to the present proceedings. Article 20(2) also does not prohibit provision for two penalties for the same offence and therefore, whether monetary penalty needs to be imposed concurrently with penalty of cancellation or suspension

or debarment has to be decided according to the facts and circumstances of each case.

29. In light of the above, I am of the view that the Noticees have employed manipulative and deceptive device in cornering of the shares in the retail individual investors category of the aforesaid two IPOs for the purpose of making unjust gain and thereby violated the provisions of section 12A(a), (b) and (c) of the Act and regulations 3 and 4(1) of PFUTP Regulations, which states as under:

***“Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities and control.***

*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;*

*(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

*... ..  
... ..”*

***“Prohibition of certain dealings in securities***

***3. 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;*

*(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

**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.*

30. The violations of the said provisions make Noticees liable to the penalty under Section 15HA of the Act, which reads as under:

***“Penalty for fraudulent and unfair trade practices.***

*15HA. 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.”*

31. In this regard, the provisions of Section 15J of the 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.

32. It is noted from the facts and circumstances of the case that the Noticees had cornered shares meant for retail investors by acting in concert with others and making unlawful gains. The details of the unlawful gains made by the Noticees are as under:

Sl. No.	Noticees	No. of Shares	Purchase price (in Rs.)	Sale price (in Rs.)	Unlawful gain (in Rs.)
1	Netanad Bhambu	2000	20	59.45	78,904.18
2	Netanand Surajram Bhambu – HUF	5000	20	59.45	1,97,261.46
3	Anand Netanand Choudhary - HUF	5000	20	63.02	2,15,141.85
4	Sarvani Choudhary	5000	20	65.02	2,25,075.40
5	Vinita A. Choudhary	2200	130	240.25	2,42,576.32
	<b>Total</b>				<b>9,58,959.21</b>

33. It is noted that the Noticees have made unlawful gains to the tune of Rs.9,58,959/- (Rupees nine lakh fifty eight thousand nine hundred and fifty nine only). I am of the opinion that such profits made by the Noticees are naturally a loss to other retail investors. I am also of the opinion that apart from the monetary loss to investors, incidences of this nature definitely compromise the securities market regulatory framework to the detriment of investors at large. It lowers the investors' confidence and distorts market integrity. It is noted that the Noticees adopted the scheme of cornering of shares meant for retail investors in respect of two IPOs. Therefore, the lapse is of repetitive nature.

34. As per the mandate of section 15HA of the 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 that the Noticees played a key role in the whole process, it is felt that the violations committed by the Noticees, attract penalty of Rs.26,50,000/- (Rupees twenty six lakh fifty thousand only) which approximately amounts to three times the profit made by the Noticees.

### **ORDER**

35. In exercise of the powers conferred upon me under Section 15 I of the Act and rule 5 of the Rules, I impose penalty of (1) Rs.2,00,000/- (Rupees two lakh only) on Netanand Bhambu, (2) Rs.5,50,000/- (Rupees five lakh fifty thousand only) on Netanand Surajram Bhambu – HUF (3) Rs.6,00,000/- (Rupees six lakh only) on Anand Netanand Choudhary – HUF (4) Rs.6,00,000/- (Rupees six lakh only) on Sarvani Choudhary and (5) Rs.7,00,000/- (Rupees seven lakh only) on Vinita A. Choudhary (these penalty amount totals to Rupees twenty six lakh fifty thousand only) in terms of the provisions of Section 15HA of the Act for the violation of the provisions of section 12A of the Act and regulation 3 and 4 of PFUTP Regulations. In the facts and circumstances of the case, I am of the view

that the said penalty is commensurate with the violations committed by the Noticees.

36. 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 (East), Mumbai – 400 051.
37. In terms of the provisions of rule 6 of the Rules copies of this order are sent to the Noticees and to the Securities and Exchange Board of India.

**Date: September 30, 2009**  
**Place: MUMBAI**

**SATYA RANJAN PRASAD**  
**ADJUDICATING OFFICER**