

WTM/MSS/ISD/94/2011

**SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI  
CORAM: M. S. SAHOO, WHOLE TIME MEMBER**

**IN THE MATTER OF IPO IRREGULARITIES - DEALINGS BY M/S. ASHMI  
FINANCIAL CONSULTANCY PVT. LTD. IN THE INITIAL PUBLIC OFFERS OF  
IDFC LTD. AND SHOPPERS' STOP LTD.**

**Date of Hearing:** June 24, 2010

**Appearances:**

**For Noticee:** Mr. R. R. Bhonsale, Advocate  
Mrs. Poonam Gadkari, Advocate  
Mr. Anish Kharidia, Practising Company Secretary, and  
Mr. Nitin Shah, Authorised Representative.

**For SEBI:** Mr. Jai Sebastian, Asstt. Legal Adviser (Presenting Officer)  
Mr. B. J. Dilip, Deputy General Manager  
Mr. Pradip Bhowmick, Assistant General Manager  
Mr. Sisir Mondal, Manager, and  
Ms. Kshama Wagherkar, Asstt. Legal Adviser.

**ORDER  
UNDER SECTIONS 11, 11 (4) AND 11B OF THE SECURITIES AND EXCHANGE  
BOARD OF INDIA ACT, 1992**

1. On noticing certain irregularities in the transactions in the shares issued through initial public offers (IPOs) made during the period 2003-2005, before their listing on the stock exchanges, the Securities and Exchange Board of India (SEBI), pending investigations, vide an ad interim ex-parte Order dated April 27, 2006, which itself was a show cause notice, directed certain persons, including Ashmi Financial Consultancy Pvt. Ltd. (Ashmi / Noticee), not to buy, sell or deal in the securities market, including in IPOs, directly or indirectly, till further directions. The said show cause notice offered opportunities of inspection of documents and personal hearing. After considering the reply to the show cause notice and hearing Ashmi, SEBI confirmed the interim directions against it vide Order dated September 23, 2008.

2. On completion of the investigations, SEBI issued a show cause notice dated April 22, 2009 (SCN) under Sections 11, 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 (SEBI Act). The SCN alleges that Ashmi, in concert with three Key Operators (KOs), namely, Mr. Dhaval Mehta (Dhaval M), Mr. Dhaval Katakia (Dhaval K) and Mr. Dharmesh Bhupendra Mehta (Dharmesh), employed fraudulent, deceptive and manipulative practices to corner the shares meant for retail individual investors (RIIs) in the IPOs of IDFC Ltd. (IDFC) and Shoppers' Stop Ltd. (Shoppers) and made unlawful gains by selling the shares so cornered.

These acts of Ashmi were in violation of Section 12A (a), (b) and (c) of the SEBI Act and regulations 3 (a), (b), (c) and (d) and 4 (1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (PFUTP Regulations). Accordingly, it called upon Ashmi to show cause as to why suitable directions under Section 11(4) read with Sections 11 and 11B of the SEBI Act, 1992, including directions to restrain it from buying, selling or dealing in securities in any manner, disgorge the ill-gotten gains made by it along with interest, and realize the shares in its frozen demat accounts. The SCN also offered opportunities of inspection of documents and personal hearing.

3. While the proceedings were on, vide letter dated on September 1, 2009, Ashmi sought settlement of proceedings through the consent procedure. On conclusion of consent proceedings, SEBI, vide letter dated February 1, 2010, declined to settle the same as the terms offered by Ashmi for settlement were not appropriate. Accordingly, the pending proceedings revived. Ashmi availed the personal hearing on June 24, 2010 and filed reply to the SCN vide its letter dated July 03, 2010. Before the Order could be passed, vide its letter dated January 07, 2011, Ashmi again sought settlement of proceedings through the consent procedure. Vide letter dated March 28, 2011, SEBI similarly declined to settle the proceedings.

4. I have carefully considered the SCN, the reply, the oral submissions and other material on record. Accordingly, I proceed to dispose of the proceedings on merit.

5. The SCN alleges that Ashmi provided finance to KOs, namely Dhaval K, Dhaval M and Dharmesh to enable them to apply for shares under the RII category in the IPOs of Shoppers and IDFC. The KOs transferred all the shares received by them on allotment to Ashmi in off-market at issue price and refunded the balance money. For example, the IDFC IPO opened and closed on July 15, 2005 and July 22, 2005 respectively. Around the closure of the issue, Ashmi provided to a KO (Dhaval K) a sum of Rs.71,40,000, corresponding to subscription money for 150 applications @ Rs.47,600 each, for subscription under the RII category in the IDFC IPO. The KO received 39,900 shares on allotment @ 266 shares on 150 applications. Post allotment, he transferred the entire 39,900 shares in off-market before listing to Ashmi at the issue price of Rs.34, for a total value of Rs.13,56,600 (39,900 \* Rs.34). It refunded the balance amount of Rs.57,83,400 (Rs.71,40,000 – Rs.13,56,600) to Ashmi through a cheque before listing. Thus, before listing, Ashmi received the entire amount; it had extended to the KO, in cash and kind, and thereby cornered the shares in the retail category at the cost of RIIs. It adopted more or less similar modus operandi in respect of other KOs / IPOs, as detailed in the table given below:

Name of IPO	Issue Period / Date of Listing	Issue Price (Rs.)	Name of KO	Finance to KOs		Refund through Shares from KOs			Refund through Cash from KOs	
				Date	Amount (Rs.)	Date	No. of Shares	Value (Rs.)	Date	Amount (Rs.)
1	2	3	4	5	6=(9+11)	7	8	9 ( 3 * 8)	10	11
Shoppers	28.04.05-04.05.05/23.05.05	238	Dhaval K	06.05.05	1,85,93,750	24.05.05 09.06.05	9,250 150	22,01,500 35,700	20.05.05 21.05.05 24.05.05	1,00,00,000 63,00,000 56,550
				<b>Total</b>	<b>1,85,93,750</b>		<b>9400</b>	<b>22,37,200</b>		<b>1,63,56,550</b>
			Dharmesh	06.05.05	2,51,56,250	24.05.05	12,700	30,22,600	20.05.05 28.05.05	2,20,00,000 1,33,650
				<b>Total</b>	<b>2,51,56,250</b>		<b>12,700</b>	<b>30,22,600</b>		<b>2,21,33,650</b>
IDFC	15.7.05-22.7.05/12.08.05	34	Dhaval K	22.07.05	71,40,000	10.08.05	39,900	13,56,600	11.08.05	57,83,400
				<b>Total</b>	<b>71,40,000</b>		<b>39,900</b>	<b>13,56,600</b>		<b>57,83,400</b>
			Dhaval M	15.07.05	2,18,75,000 2,08,25,000	11.08.05	1,46,832	49,92,288	10.08.05	8,00,000
						20.08.05	36,442	12,39,028	10.08.05	6,00,000
						07.09.05	3,990	1,35,660	11.08.05	1,48,00,000
						07.10.05	1,330	45,220	11.08.05	16,00,000
						28.10.05	266	9,044	12.08.05	47,00,000
									14.08.05	78,00,000
									17.08.05	1,00,000
				<b>Total</b>	<b>4,27,00,000*</b>		<b>1,88,860</b>	<b>64,21,240</b>		<b>3,04,00,000</b>

\* Dhaval M to refund Rs.58,78,760 as on October 28, 2005.

6. Ashmi, on receipt of the shares from the KOs, sold the same in the market as well as in off-market and made an unlawful gain of Rs.1,13,24,544, as detailed in the Table hereunder:

IPO	Receipt of Shares from KOs				Sale of Shares received from KOs				Unlawful Profit (Rs.)
	Date of Receipt	No. of Shares	Issue Price (Rs.)	Value (Rs.)	Date of Sale	Market / Off Market	No. of Shares	Sale Amount (Rs.)	
1	2	3	4	5	6		7	8	9 = (8 - 5)
Shoppers	24.05.05	21,950	238	52,24,100	24.05.05	Off Market	20,000	78,74,000	34,40,970
	09.06.05	150		35,700	25.05.05		2,100	8,26,770	
	<b>Total</b>	<b>22,100</b>		<b>52,59,800</b>			<b>22,100</b>	<b>87,00,770</b>	
IDFC	10.08.05	39,900	34	13,56,600	12.08.05	Market	2,00,000	1,36,36,000	78,83,574
	11.08.05	1,46,832		49,92,288	26.09.05		26,000	18,52,500	
	20.08.05	36,442		12,39,028	27.10.05		2,760	1,72,914	
	07.09.05	3,990		1,35,660					
	07.10.05	1,330		45,220					
	28.10.05	266		9,044					
	<b>Total</b>	<b>2,28,760</b>		<b>77,77,840</b>			<b>2,28,760</b>	<b>1,56,61,414</b>	
<b>Total</b>									<b>1,13,24,544</b>

7. Vide its reply dated July 3, 2010 and oral submissions on June 24, 2010, Ashmi has submitted as under:

- It had sought inspection of certain documents vide letter dated May 13, 2009. The same has not been provided and to that extent, it is handicapped to respond to the SCN.
- It is not proper for the investigating authority to unilaterally improvise the findings as contained in the Order dated September 23, 2008.
- It extended loans @ 21% interest per annum to KOs in ordinary course of business to enable them to invest in capital market. The objective of loan was to earn interest and not financing applications in any IPO. Though there was no formal agreement in support of the loan, it collected promissory notes / post dated cheques. Towards security of the loans, Dhaval K

and Dharmesh sold the shares, received by them on allotment in the IPOs, to Ashmi at negotiated rate. Towards security of loan, Ashmi received 1,88,860 IDFC shares from Dhaval M. At the instruction of Dhaval M, it sold the said shares and transferred the entire sale proceeds to him.

- d. The funds provided by Ashmi to Dhaval M would have fetched 2,38,602 IDFC shares. However, Ashmi got only 1,88,860 shares. This implies that there is no relation between funding and cornering of shares in the retail category of IPOs.
- e. The Shoppers IPO was open during the period April 28, 2005 to May 04, 2005, while Ashmi provided funds to Dharmesh and Dhaval K only on May 06, 2005, i.e., after the closure of the issue. Hence the funds were not provided to make applications in the Shoppers IPO.
- f. The ill-gotten gains Rs.1,13,24,544 alleged in the SCN includes gains in respect of IDFC shares made by Dhaval M and transaction expenses. If these are excluded, the net gain is Rs.47,26,801. Thus, through loan transactions with the KOs, it earned a legitimate profit of Rs.47,26,801 and not the unlawful gain of Rs.1,13,24,544, as alleged in the SCN.

**8.** Let me first deal with the contentions raised by the noticee.

(a) The presenting officer for SEBI submitted that Ashmi, vide its letter dated May 13, 2009, has sought a very long list of documents. The list is extremely open-ended. For example, the list includes: *'Copy of Documents, Statements, Reports or Extract of, communication or any other materials relating to reference if any received from various Government agencies like CBI, RBI, SFIO, Parliamentary Standing Committee and other agencies indicating our role or involving our name therein'*. The list includes many such items. Over and above, Ashmi has stated that this list is merely illustrative. There is absolutely no indication why a particular document is needed. Further, Ashmi has asked for various documents which are available in public domain. For example, it has asked for orders, including consent orders, passed by SEBI against certain persons. He further submitted that the proceedings rely mostly on bank and demat statements of the noticee which establish the flow of funds and securities between Ashmi and the KOs and the same have been provided. I agree with the presenting officer. SEBI cannot be obliged to provide the documents which have no bearing on the matter, more so, when there is no dispute about the transactions which form the basis of allegations.

(b) Order dated September 23, 2008 of SEBI was a confirmatory order passed for the limited purpose of confirming the ad-interim order dated April 27, 2006. I note that these orders were issued, pending completion of investigation, based on prima facie findings. If investigation finds that an allegation made in the interim order is not correct, such allegation is dropped in the SCN. Similarly, if investigation reveals a new violation, the same is included in the SCN. I find that the

investigation has been carried out in accordance with the SEBI Act, 1992. Based on the investigation findings, the SCN has been issued. The SCN is expected to be improvement over the interim / confirmatory orders. In fact, if the investigation does not improve upon prima facie findings based on which interim order was issued, it would be an exercise in futility.

(c) I find this submission quite fallacious. It is hard to believe that a professional lender extends such large amount of money without entering into any formal agreement, without knowing the end use of the loans and without maintaining any security. If it was loan, it would have been repaid in cash with interest @ 21%. This did not happen. Neither the return was 21% nor was the amount repaid in cash. If it was loan, the noticee would have used the post dated cheques to recover the loan. This did not happen. It realized the money by selling the securities received from the KOs. If it was loan, the noticee would have received security while granting loan. In this case, as claimed by the noticee, the security was given for last few hours of the duration of loan. For example, the noticee received Shoppers shares from KOs on May 24, 2005. It sold the said shares on May 24, 2005 itself. Further, security is given to secure a loan. It is not given to the lender to sell it within hours of receipt. If the noticee was in the business of money lending, it would have extended loans to others also. It, however, extended finance only to three persons who are KOs. Further, I note from the auditor's report annexed to the written submission dated March 19, 2007 in response to the SEBI's interim order dated April 27, 2006 that the auditors have observed: "As informed to us, the company has granted loans to companies or other parties covered in the register maintained under Section 301 of the Companies Act, 1956. Numbers of such parties are three. The terms and conditions of the repayment and interest are not stipulated." While the auditors have observed that the terms and conditions of the repayment and interest were not stipulated, the copy of board resolution dated June 10, 2005 and copy of promissory notes issued by Dhaval M specifies the interest rate. This raises doubt over the credentials of the documents/ information provided by Ashmi. Moreover, Ashmi is not a registered stock broker/sub-broker to deal in securities on behalf of others. There was no reason as to why Ashmi should sell the shares on behalf of the three borrowers. Hence I find it difficult to believe that Ashmi was a mere money lender.

(d) There is no dispute about the payment / receipt of funds to / from Dhaval M. Ashmi has merely submitted that the funds provided to Dhaval M would have fetched 2,38,602 IDFC shares, whereas Ashmi received only 1,88,860 shares. This only proves that either all the applications made in IPOs did not receive allotment or the investigation has been able to locate transfer of 1,88,860 shares to Ashmi. This is evident from the reply dated July 3, 2010 of Ashmi that it sold on August 12, 2005 the entire 1,88,860 shares received from Dhaval M. As per the

SCN, it had not received the entire 1,88,860 shares from Dhaval M by that time. This means that Ashmi has received some more shares from Dhaval M, which are not reflected in the SCN. In any case, what is important is the attendant circumstances surrounding the transactions, including exact matching in respect of other IPOs / KOs.

(e) I find that while the public issue of Shoppers closed on May 04, 2005, the application money was realized only on May 07, 2005. Money was transferred from Ashmi to the KOs on May 06, 2005, i.e., prior to realization of application money by the issuer. It is a matter of common sense that one parts with money only when it is required and, therefore, natural that the noticee provided money in some cases after the closure of the issue.

(f) I find that the SCN alleges that Ashmi has made unlawful gains through illegal transactions. In case of illegal gains, what is material is the total gain and not net gain. The expenses incurred on making illegal gains and taxes paid on such illegal gains cannot be excluded for the purpose of disgorgement. The issue of gains in respect of IDFC shares made through Dhaval M is discussed in Para 10.3.

**9.** The following issues arise for consideration:

- a. Is Ashmi a mere money lender?
- b. Did Ashmi corner the shares reserved for RIIs in the IPOs of IDFC and Shoppers?
- d. If so, what is the amount to be disgorged by Ashmi?

**10.** I will examine the above issues in seriatim:

**10.1** A money lender lends money against security and proper documentation and receives back money with interest. In the instant case, the noticee provided an aggregate of Rs.9.35 crore without any security and documentation. It received back the money in kind (shares). The striking features of these transactions are: the money was provided to KOs around the closure of the IPOs, the money provided exactly matched the amount payable on a set of applications under the retail category, most of the shares received on allotment were transferred to the noticee, the shares were transferred in lots matching allotments to a certain number of retail applications, the shares were transferred in off-market around the date of listing, the shares were transferred at the issue price, excess money over and above the allotment amount were transferred back to the noticee, etc. The timing and manner of movement of shares and funds from and to KOs, by no stretch of imagination, can be associated with normal lending of money, more so, when Ashmi was neither a registered money lender nor a Non Banking Financial Company.

**10.2** I note that Ashmi provided finance to KOs in lots corresponding to application money for a certain number of IPO applications in the RII category. For example, it extended

Rs.1,85,93,750 to Dhaval K to enable the latter to make 425 applications under the Shoppers's RII category, each application amount being for Rs.43,750. It received all the shares allotted to KOs in response to the applications made under the said IPO. Each lot of shares received by Ashmi corresponded to the allotment to a certain number of applicants in the RII category. For example, Ashmi received 9,400 shares (376x25 shares) from Dhaval K corresponding to allotment to 376 applications. It similarly received 12,700 shares from Dharmesh. Thus it managed to get 22,100 Shoppers shares through two KOs by entering into an arrangement with them. Had it not done so, these shares would have been available for allotment to RIIs. Similarly, in the case of IDFC, Ashmi managed to get 2,28,760 shares following the similar modus operandi. The pattern and timing of movement of money and shares between the KOs and Ashmi leaves no doubt in mind that Ashmi financed the IPO applications in the RII category made by the KOs, cornered the shares meant for RIIs and in the process, deprived RIIs of their rightful share in allotment in these IPOs.

**10.3** Ashmi has submitted that it sold the shares at prices different from those mentioned in the SCN. From the available contract note-cum-bills, I find that the sale prices of shares were indeed as submitted by Ashmi. The illegal gains need to be recomputed by taking these sales prices into account. As regards gains from sale of 1,88,860 IDFC shares acquired through Dhaval M, I find that Ashmi has received the entire sales consideration. It is not clear how the gains from this sale were shared between Ashmi and Dhaval M. In the absence of proper and reliable records, it was presumed in SEBI's Order dated October 31, 2008 passed against Dhaval M that Ashmi and Dhaval M jointly made the ill-gotten gain and shared it in the ratio of 50:50. Accordingly, Dhaval M was directed to disgorge 50% of the illegal gain from sale of such shares and the said Order has been upheld by Hon'ble SAT. Ashmi should, therefore, be liable for 50% of the unlawful gain from sale of 1,88,860 IDFC shares. Taking these into account, the unlawful gain to be disgorged from Ashmi works out Rs.79,71,510 as under:

Name of KO	Name of IPO	Number of Shares	Basis/Remarks	Amount of ill-gotten Gain (Rs.)
Dhaval Mehta	IDFC	1,88,860	1,88,860 * (Rs. 68.18 –Rs. 34) 50 % profit sharing	32,21,000
Dhaval Katakia	IDFC	39,900	39,900*(Rs. 68.18 – Rs. 34)	13,63,780
	SSL	9,400	9,400*(Rs. 393.70 – Rs. 238)	14,63,580
Dharmesh B. Mehta	SSL	12700	10,600*(Rs. 393.70 – Rs. 238) + 1,950*(Rs. 365.5 – Rs. 238) + 150*(Rs. 398.7 – Rs. 238)	19,23,150
<b>Total</b>				<b>79,71,510</b>

**11.** From the above facts and circumstances of the case, I find that Ashmi, in concert with three KOs, manipulated the demand for shares in the RII category and thereby distorted the market

integrity. It deprived the RIIs of their legitimate share in the IPOs of Shoppers and IDFC and made an unlawful gain of Rs.**79,71,510** to the detriment of the RIIs. By these activities, Ashmi has violated Section 12A (a), (b) and (c) of the SEBI Act, 1992, and regulations 3 (a), (b), (c), (d) and 4 (1) of PFUTP Regulations. Such acts of serious irregularities threaten the market integrity and orderly development of the market and calls for regulatory intervention to protect the interest of investors. Accordingly, in exercise of the powers conferred upon me under Section 19, read with Sections 11, 11 (4) and 11B of the SEBI Act, 1992, and after taking into account the period of prohibition already undergone by Ashmi pursuant to the interim order, I hereby issue the following directions:

**a.** Ashmi Financial Consultancy Pvt. Ltd. (PAN:AAECA8167F) shall be restrained from buying, selling or dealing in the securities market in any manner whatsoever or accessing the securities market, directly or indirectly, for a period of three months from the date of this Order; and

**b.** Ashmi Financial Consultancy Pvt. Ltd. shall disgorge the unlawful gain of Rs.**79,71,510**. It shall also pay the interest on this unlawful gain at the rate of 10% per annum for 5.5 years (May / August 2005 – March 2011, i.e. from the date of listing of the IPOs of Shoppers and IDFC till this Order), amounting to Rs.**43,84,330**. Thus, it shall disgorge a total amount of Rs.**1,23,55,840** (One crore twenty three lakh fifty five thousand eight hundred and forty only) within 45 days from the date of this Order by way of crossed demand draft drawn in favour of “Securities and Exchange Board of India”, payable at Mumbai. In case the aforesaid amount is not paid within the specified time, it shall be restrained from buying, selling or dealing in securities market in any manner whatsoever or accessing the securities market, directly or indirectly, for a further period of seven years, without prejudice to SEBI’s right to enforce disgorgement along with further interest till actual payment is made. Further, the demat accounts of Ashmi Financial Consultancy Pvt. Ltd. shall remain frozen till the above amounts are paid.

**12.** The directions issued in this Order shall supersede the directions issued vide the ad interim ex-parte Order dated April 27, 2006 and Order dated September 23, 2008.

**13.** This Order shall be served on all recognized stock exchanges and depositories to ensure that Ashmi Financial Consultancy Pvt. Ltd. is not allowed to undertake transactions, as prohibited in Para 11 above.

**14.** This Order shall come into force with immediate effect.

**DATE: April 7, 2011**

**PLACE: MUMBAI**

**M. S. SAHOO**  
**WHOLE TIME MEMBER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**



**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. Order/SBM/KL/2021-22/12900]**

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

*In respect of*

**Ashmi Financial Consultancy Private Limited  
(PAN: AAECA8167F)  
CIN No: U67190GJ2004PTC054995**

*In the matter of*  
**IPO Investigations**

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**BACKGROUND OF THE CASE**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation into the irregularities observed in connection with the Initial Public Offering ('**IPOs**') of several companies during the period 2003-2005. The investigation observed that several persons/entities had cornered / acquired the shares in various IPOs of the companies during the above period by financing several other entities (hereinafter referred to as 'Key Operators'), who made fictitious applications in the category reserved for the retail investors through the medium of thousands of fictitious / benami applicants for the IPOs of various companies during the period 2003-2005. It was observed that Ashmi Financial Consultancy Private Limited (hereinafter referred to as '**Ashmi**' / '**Noticee**') was one such key financier who had, allegedly, cornered the shares of the IPOs of the companies through the key operators. In view of the same, it was alleged that the Noticee has violated the provisions of Section 12A of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**'), Regulation 3, 4 and 6 of SEBI (Prohibition of Fraudulent and Unfair Trade

Practices relating to Securities Market) Regulations, 1995 (hereinafter referred to as '**PFUTP Regulations, 1995**') read with Regulation 3 and 4 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations, 2003**').

- 2 In view of the above observations, adjudication proceedings were initiated against the Noticee under the provisions of section 15 HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

### **APPOINTMENT OF ADJUDICATING OFFICER**

- 3 The undersigned was appointed as the Adjudicating Officer ('**AO**') in the matter vide communique dated June 22, 2015 to conduct the adjudication proceedings in the manner specified under Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') against the Noticee and impose such penalty on the Noticee, as deemed fit, in terms of Rule 5 of the Adjudication Rules and Section 15HA of the SEBI Act. In this regard, from the records made available, it is observed that, Shri Biju S. was initially appointed as the Adjudicating Officer in the matter under the provisions of the Adjudication Rules to conduct the adjudication proceedings for the alleged violations committed by the Noticee. Pursuant to the transfer of Shri Biju S, Shri Satya Ranjan Prasad was appointed as the Adjudicating Officer vide Order dated May 05, 2009. On transfer of Shri Satya Ranjan Prasad, Shri D. Ravi Kumar was appointed as the Adjudicating Officer in the matter, vide communiqué dated May 22, 2012.

### **SHOW CAUSE NOTICE. REPLY AND HEARING**

- 4 Show Cause Notice ref. A&E/BS/69527/2006 dated June 16, 2006 (hereinafter referred to as '**SCN**') and a Supplementary Show Cause notice ref: EAD-1/SRP/DL/OW/16623/2011 dated May 25, 2011 (hereinafter referred to as '**Supplementary SCN**') were issued to the Noticee under Rule

4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against the Noticee and penalty be not imposed on it under the provisions of Section 15HA of the SEBI Act for the alleged violation of the provisions of Section 12A of the SEBI Act and Regulation 3, 4 and 6 of PFUTP Regulations, 1995, read with Regulation 3 and 4 of PFUTP Regulations, 2003 by the Noticee. In the context of the present proceedings, the SCN and Supplementary SCN which were issued to the Noticee are hereinafter collectively referred to as '**SCNs**'.

5. The details in respect of the violation / non-compliance by the Noticee, as alleged in the SCNs are as under:

- a) *Ashmi- was identified as financier for three Key operators i.e. Dhaval K Katakia, Dharmesh Bhupendr and Dhaval Mehta, in the IPO of IDFC and Shopper Stop Ltd. It is seen that Ashmi provided finances to these key operators around the closure of IPO, which exactly corresponded with the application money in respect of set of applications. Thereafter, corresponding shares in respect of set of applications funded by the financiers along with refund money was received back by financiers.*
- b) *Ashmi extended loan of Rs. 71,40,000/- Dhaval Katakia on July 27, 2005 which exactly corresponds to 150 applications at the rate of Rs. 47,600/- each (150 \* 47,600). The timing of the loan coincides during the currency of IPO (The IPO of IDFC was opened on July 22, 2005 and closed on July 27, 2005.) which suggests that it was specifically given to Dhaval for making 150 IDFC IPO applications in the retail category.*
- c) *Thus, from the above, it is clearly seen that the application money of Rs. 71,40,000 and the corresponding refund money of Rs. 57,83,400 exactly corresponds for 150 applications of Rs. 47,600 each and the timing of the disbursement and repayment also corresponds with the timing of the IPO and also the refund date. Such a coincidence cannot be considered merely accidental as such coincidence can be possible only when it is coordinated and pre-planned or with prior understanding. In light of the two parameters already reconciled, the question would be regarding the allotted shares. As corresponding allotment money has also been paid by the Ashmi as could be seen from the disbursement, it is quite but natural that Ashmi will have right/ claim over such shares and therefore as a part of the scheme, the share will go to Ashmi.*
- d) *You are, therefore, called upon to show cause as to why an inquiry be not*

*held against you in terms of rule 4 of the Rules read with section 151 of SEBI Act and penalty be not imposed under section 15HA of SEBI Act for the aforesaid alleged contravention/ violation of the provisions of the SEBI Act and PFUTP Regulations.*

6. In the context of the present proceeding, I note that pursuant to the SCN dated June 16, 2006, the Noticee had filed an application before SEBI seeking a Consent Order in the matter, which was subsequently rejected by the concerned Department of SEBI and intimation to this effect was also communicated to the Noticee vide letter dated March 28, 2011. On rejection of the aforementioned consent application, the adjudication proceedings were continued against the Noticee. Thereafter, from the material made available on record, it is noted that further examination in the matter was carried out by SEBI and a supplementary examination report was also submitted, which had brought out additional allegations/observations against the Noticee. The supplementary SCN dated May 25, 2011 was issued to the Noticee on the basis of the additional findings/observations against the Noticee. I find that the SCNs were served on the Noticee. The Noticee vide its letters dated March 12, 2007 and May 13, 2009, submitted the reply to the SCN and denied its role in the manipulation alleged against it in the SCN. Further, pursuant to the issuance of the supplementary SCN to the Noticee, it was informed by the concerned department of SEBI that the Noticee had filed a consent application in the matter.
7. Subsequently, pursuant to the appointment of the undersigned as an the Adjudicating officer in the matter, a letter was also issued to the Noticee informing it about the change in Adjudicating Officer and the Noticee was also advised to submit its reply in the matter. It is however observed from the records that Noticee has failed to submit its reply to the aforesaid letter. Thereafter, the concerned department of SEBI was requested to provide the status of the consent application filed by the Noticee in the matter. As per the information submitted by the department, vide its communication dated July 06, 2021, it has been informed that the consent application filed by the Noticee has been rejected. It was further mentioned by the department that as on date no settlement application filed by the Noticee in the said matter is pending with SEBI.

8. During the course of the proceedings, the details of the Noticee were examined from the Ministry of Corporate Affairs (MCA) website. It was observed from the ROC website that vide notice ref. no: ROC/AHMD/248(5)/STK-7/PUB/1/2018 dated 14.08.2018, the name of the Noticee has been struck-off from the list of companies by the Registrar of Companies, Ahmedabad (RoC) as on August 06, 2018. As per the Notice of Striking Off and Dissolution list (Form No. STK-7), which was downloaded from the MCA website, a list of 5408 companies were attached as per the Notification issued by ROC, Ahmedabad in terms of sub-sections (5) of Section 248 of the Companies Act, 2013 and rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016. I find that the name of the Noticee was mentioned in the said list (at sl.no. 527 under CIN No U67190GJ2004PTC054995). The Notification downloaded from the Ministry of Corporate Affairs (MCA), Government of India, ([www.mca.gov.in](http://www.mca.gov.in)) website inter alia, mentioned the following:

*In the matter of Companies Act, 2013 and the following companies in table "A" (List of 5408 Cos.)*

*This is with respect to this Office's Notice No. 248(1)2018 dated 09.05.2018 and notice in the form STK 5 issued on dated 10.05.2018. Notice is hereby that pursuant to sub-section (5) of Section 248 of the Companies Act, 2013 the name of following companies in table "A" have this day of 06th August, 2018 been Struck of the register of companies in table "A" have this day of 06th August, 2018 been Struck off the register of companies and the said Companies are dissolved.*

9. Further, the details of the Noticee as mentioned by it in Form 20B i.e the relevant Annual Returns form submitted by the Noticee to the ROC in terms of section 159 of the Companies Act, 1956 was verified with the details captured in the 'Company Master Data' as available on the website of MCA and the following observations are made :-
- The e-mail ID of the Noticee/company mentioned in Form 20B matched with the 'company master data' i.e [rsparmaar31@rediffmail.com](mailto:rsparmaar31@rediffmail.com)

- The Authorized Capital of the Noticee/company mentioned in both the forms and also in other documents made available on record was 10,000 shares (value of Rs 1,00,000)
  - The address of the company/Noticee mentioned in both the forms matched.
  - The names of the directors that were mentioned in both forms and also in other records made available also matched i.e Rameshbhai Sanabhai Parmar and Arunkumar Kacharalal Mehta.
  - The Directors Identification no. ( DIN) of the above directors mentioned in the above two forms and also in the other records/material made available also matched.
  - The date of incorporation of the Noticee/company mentioned in the various IT filings made by it also matched with the 'Company master data' as per the MCA Website.
10. It is an established fact that when a company's name is struck-off from the RoC list and the company is also dissolved, then it is a non-existing company and the adjudication proceedings against the non-existing company is thus nullity. In this context, I would like to draw reference to a judgment of the Hon'ble Delhi High Court in the case of Commissioner of Income Tax (CIT) vs Vivid Marketing Services (P) Ltd., ITA NO. 273/2009 dated September 17, 2009 in which it was held that - *"When the Assessing Officer passed the order of assessment against the respondent company, it had already been dissolved and struck off the register of the Registrar of companies under Section 560 of the Companies Act. In these circumstances, the Tribunal rightly held that there could not have been any assessment order passed against the company which was not in existence as on that date in the eyes of law it had already been dissolved. We are of the opinion that the view taken by the Tribunal is perfectly valid and in accordance with law."*
11. Further, Black's Law Dictionary explains 'dissolution' as termination or winding up. It further clarifies that the dissolution of a corporation is the termination of its legal existence. Strike off essentially means removing the name of the company from the Register maintained by the Registrar of Companies. It is like closure of the company and the company will not be in

existence after being struck- off and cannot perform any operations.

12. It is pertinent to note that in the context of the alleged irregularities observed in the IPOs of various companies, I find that in exercise of the powers conferred under sections 11(1), 11(4) & 11 B of the SEBI Act, the Noticee along with other entities were already restrained by SEBI vide Order dated April 7, 2011 from accessing the securities market and further, the Order has also directed disgorgement of the ill-gotten gains made by the Noticee in the matter. I note that, vide the said order, the Noticee was prohibited from buying, selling or dealing in securities in any manner whatsoever, for a period of three months and was also directed to disgorge an amount of Rs. 1,23,55,840/-.
13. Therefore, in view of the above facts and circumstances and also considering that the Noticee's name has been struck-off from the RoC list and also 'dissolved' as on August 06, 2018 as per the RoC notification, I conclude that the present adjudication proceedings initiated against the Noticee cannot be proceeded with.

### **ORDER**

14. In view of the above observations/findings and in exercise of the powers conferred upon me under section 15 I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby dispose of the Adjudication Proceedings against the Noticee viz. Ashmi Financial Consultancy Private Limited initiated vide SCNs dated June 16, 2006 and May 25, 2011.
15. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are being sent to the Noticee, viz., Ashmi Financial Consultancy Private Limited and also to the Securities and Exchange Board of India.

**Place: Mumbai**  
**Date: July 30, 2021**

**SURESH B MENON**  
**ADJUDICATING OFFICER**