

## SECURITIES AND EXCHANGE BOARD OF INDIA

## ORDER

**UNDER REGULATION 11 OF SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKETS) REGULATIONS, 2003 READ WITH SECTION 11 AND 11B OF THE SEBI ACT, 1992 IN THE MATTER OF V.B. DESAI FINANCIAL SERVICES LTD. AGAINST SHRI KAMLESH J. SHROFF AND CONNECTED ENTITIES.**

1.0 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 M/s. V B Desai Financial Services Ltd. (hereinafter referred to as "VB Desai") for the period October 04, 1999 to May 31, 2000.

1.1 Investigations revealed that Shri Kamlesh Jitendra Shroff, son of Shri Jitendra Ratilal Shroff, promoter of VB Desai and nephew of Shri Pradip Ratilal Shroff, Managing Director of VB Desai was the main person behind the trading activity in the scrip throughout all the settlements during the investigation period. He had used a number of brokers, sub brokers (both registered and unregistered) as well as acquaintances to buy and sell the shares in the scrip of VB Desai in the market, thereby creating illusion of trading, artificial volume and price rise in the scrip.

**SHOW CAUSE NOTICE FOR ALLEGED VIOLATION OF SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 1995.**

2.0 A show cause notice dated July 22, 2003 was issued to Shri Kamlesh J. Shroff, Shri Pradip R. Shroff, Shri M.T. Shroff, M/s Marine Drive Investment & Trading Co. Pvt. Ltd.(hereinafter referred to as 'Marine Drive Investment'), M/s Matunga Investment Trading Co. Pvt. Ltd.(hereinafter referred to as 'Matunga Investment'), M/s Mahim Investment & Trading Co. Pvt. Ltd.(hereinafter referred to as 'Mahim Investment'), M/s Cumulative Investment & Trading Co. Pvt. Ltd.(hereinafter referred to as 'Cumulative Investment'), M/s Desai Investment Pvt. Ltd.(hereinafter referred to as 'Desai Investment') and M/s Maxworth Finlease Pvt. Ltd.(hereinafter referred to as 'Maxworth'). In the said show cause notice, the findings of investigations and alleged violation of Regulation 4(a) to (d) SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 were communicated. Further, violations of SEBI (Stock Broker and Sub Broker) Regulations, 1992 etc., were also communicated to Maxworth, the then registered stock-broker with the Stock Exchange, Mumbai. Further, all the entities were asked to show cause as to why appropriate action under Regulation 11 and 12 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 read with Section 11B of SEBI Act, 1992 restraining them from accessing the Securities Market, and prohibiting them from buying, selling or dealing in the securities market in any manner should not be passed against them.

**SHOW CAUSE NOTICE FOR ALLEGED VIOLATION OF SEBI(PROHIBITION OF INSIDER TRADING) REGULATIONS, 1992**

2.1 In the course of investigation, SEBI had also probed into possible violations of SEBI (Prohibition of Insider Trading) Regulations, 1992. Based on the findings, a show cause notice dated July 28, 2003 was issued to Shri Kamlesh J. Shroff, Shri Pradip R. Shroff, Shri M.T. Shroff, Marine Drive Investment, Matunga Investment, Mahim Investment, Cumulative Investment and Desai Investment whereby they were asked to show cause as to why appropriate action under Regulation 9 and 11 of the SEBI(Prohibition of Insider Trading) Regulations, 1992, restraining them from accessing the securities market and prohibiting them from buying, selling or dealing in the securities in any manner for a particular period should not be passed against them. The alleged violations indicated therein were Regulation 3(i) & 4 of SEBI (Prohibition of Insider Trading) Regulations, 1992.

**REPLIES TO SHOW CAUSE NOTICES.**KAMLESH SHROFF

3.0 Common replies were sent for both the show cause notices by all the individuals / entities. Vide letter dated August 19, 2003 Shri Kamlesh Shroff had replied to both the show cause notices mentioned above. In his reply, he denied having indulged in the alleged acts in violation of Regulation 4 (a) to (d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995. Further, he submitted that during the period from October 04, 1999 to May 31, 2000, he had carried out transactions in respect of buying and selling of shares of 'VB Desai', in the normal course of business. He had stated that on account of financial difficulties, he was trying to raise finance. He further submitted that the transactions in question had been done in his account and no other company was involved in the alleged dealings either as buyer or seller in the nature of 'Badla Financing Transactions'. He also explained the modus operandi involved in selling shares through a broker on one side and purchasing the shares through a sub-broker on the other side for each of the settlements. The 'Badla Financing Transactions' carried out by him, he stated, worked out to be 0.11% of the issued capital of 'VB Desai', the same being 45,46,200 shares. The 'Badla Financing Transactions', he said, were not permitted on the floor of the Stock Exchange and hence, to raise money he had no other alternative, but to do the trades off market with brokers and sub-brokers. He also submitted that the said act had 'unknowingly happened' but it should not be taken as meant to price rigging and insider trading because there was no intention on his part to do so. Therefore, he requested his case to be considered sympathetically and not to penalize him for the same.

PRADIP SHROFF

3.1 A reply dated August 12, 2003 was sent by Shri Pradip Shroff. He said that he was the Managing Director of V.B. Desai and the professional director in Cumulative Investment. It was also mentioned by him that the day to day affairs of V.B. Desai were looked after by him whereas that of Cumulative Investment and Marine Drive Investment were done by Shri. Hemendra Shroff. He also submitted that he was not the promoter of 'VB Desai' but was appointed as the Chief Executive from 1986 to September 1988 and thereafter, he continued as Managing Director of 'VB Desai'. He stated that the contention in the show cause notice of his being the promoter of 'VB Desai' was incorrect. It was also his contention that although Shri. Kamlesh Shroff was his nephew, their relation would not be covered within the definition of 'relative' as per Section 6 of the Companies Act, 1956 read with Schedule IA. Regarding the applicability of Insider Trading Regulations, he said that the mandate for private placement of MKVDC bonds, if informed to the Stock Exchange, Mumbai would have created misunderstanding among the investors, since the issue did not get enough response. He also said that since he was not involved in the day to day operations of the company, he cannot be construed as being involved in price rigging and insider trading. He also submitted that the shares delivered by 'Cumulative Investment' and 'Marine Drive Investment' to Shri. Kamlesh Shroff were purely in the nature of business transactions and had to be sold for raising working capital requirements. Therefore, he denied having violated SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 and stated that nor was he involved in the violation of SEBI (Prohibition of Insider Trading) Regulations, 1992.

SHRI MUKESH T. SHROFF

3.2 Shri Mukesh Shroff replied vide his letter dated August 12, 2003 to both the show cause notices. He submitted that he was a director of 'VB Desai' and also a professional director in Desai Investments. He also said that he does not look after the day to day affairs of 'VB Desai' or Desai Investments. He said that the allegations of price rigging and insider trading, made against him were not sustainable. He denied having violated any of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 and requested to treat his case sympathetically.

MARINE DRIVE INVESTMENT, MATUNGA INVESTMENTS, MAHIM INVESTMENT, CUMULATIVE INVESTMENTS AND DESAI INVESTMENTS.

3.3 I have examined the replies of Marine Drive Investment, Matunga Investments, Mahim Investment, Cumulative Investment and Desai Investments. I have seen that all their replies are more or less similarly worded. Perhaps, the only difference between them was the figure with respect to the holding in the shares of 'VB Desai' by each of these entities and also the names of the directors. All the entities titled above are stated to have been formed and promoted since December 31, 1981. The directors of each of the entities are named below against their name:

| Name of Entity      | Name of Directors                                                                                                        |
|---------------------|--------------------------------------------------------------------------------------------------------------------------|
| Marine Drive        | Shri. Hemendra J. Shroff, Shri. Kamlesh J. Shroff and Shri. Pradip R. Shroff                                             |
| Matunga Investments | Shri. Hemendra J. Shroff, Shri. Kamlesh J. Shroff and Shri. Manoj T. Shroff                                              |
| Mahim Investment    | Shri. Hemendra J. Shroff, Shri. Kamlesh J. Shroff and Shri. Manoj T. Shroff                                              |
| Cumulative          | Shri. Hemendra J. Shroff, Shri. Kamlesh J. Shroff and Shri. Pradip R. Shroff                                             |
| Desai Investments   | Shri. Hemendra J. Shroff, Shri. Kamlesh J. Shroff, Shri. Manoj T. Shroff, Shri. Mukesh T. Shroff and Shri. Raj P. Shroff |

The holdings by each of these entities in the scrip of 'VB Desai' and the percentage of their holding in the total capital in 'VB Desai' as given in their replies are as follows:

| Name of Entity     | Number of Shares | Percentage |
|--------------------|------------------|------------|
| Marine Drive       | 78,462           | 1.7258%    |
| Matunga Investment | 37,429           | 0.823%     |
| Mahim Investment   | 28,719           | 0.63%      |
| Cumulative         | 1,20,575         | 2.652%     |
| Desai Investments  | 10,84,007        | 23.844%    |

Each of them submitted that although Shri Kamlesh Shroff was the nephew of Shri Pradip Shroff, they were not covered within the definition and meaning of 'Relative' under Section 6 of the Companies Act read with Schedule I A. They also furnished their respective figures of the shares delivered(of 'VB Desai') to Shri Kamlesh Shroff, during the period of investigation. (Mahim Investment have mentioned that they have not delivered any shares to Shri Kamlesh Shroff). The respective figures are as follows:

- Marine Drive – 2000 shares
- Matunga Investments – 2800 shares
- Mahim Investment – Nil

- d) Cumulative – 10,700 shares
- e) Desai Investments – 16,000 shares

According to them the shares were delivered for effecting sale in order to meet the working capital requirements. They also said that for the said purpose, they had delivered other shares also. All of them have said that they have not received the proceeds against the shares of 'VB Desai'. They submitted that such delivery of the shares of 'VB Desai' could not be construed as an act of price rigging or insider trading by any of them. They also submitted that no other shares had been delivered by any of them except for the number of shares already stated in their replies. In view of the above, they denied having indulged in the alleged acts mentioned in the show cause notices.

#### MAXWORTH FINLEASE (INDIA) PVT. LTD.

3.4 Reply was received from Maxworth Finlease vide its letter dated August 19, 2003. It was submitted in the said reply that Maxworth had been member of The Stock Exchange, Mumbai from December 1987 and the day to day operations are being looked after by Shri Kamlesh Shroff. In respect of the transactions of 'VB Desai' during the period October 04, 1999 to May 31, 2000, out of the total market volume of 8,58,700 shares on the buying side and 8,53,300 shares on the selling side, they submitted that the transactions of Maxworth were only for 50,200 shares on the buying side through the broker Vidyut Devendra Kumar and there had been no transactions by Maxworth on the selling side. The above stated transactions of 50,200 shares, coming to 5.90% was carried out by Shri Kamlesh Shroff on his own account. Accordingly, payments were made to Vidyut Devendra Kumar from Shri. Kamlesh Shroff. It also submitted that since its inception it had not carried out any transactions which involved manipulation or fraudulent nature i.e. violative of the code of conduct, clause A(3) and (4) of the SEBI (Stock Broker and Sub Broker) Regulations, 1992. It has further stated it was not involved in any speculative transaction and the alleged transactions in 'VB Desai' were of market transactions and hence, cannot be said to be in violation of Clause 3 and 4 of the Code of Conduct as specified in Schedule II of the SEBI Regulations 1992 and also SEBI Circular No. SMD/RCG/CIR/(BKG)/293/95 dated 14<sup>th</sup> March, 1995. Further, it was also said that they have ceased to be the member of The Stock Exchange, Mumbai from August 2002.

#### **HEARING AND WRITTEN SUBMISSIONS**

4.0 Opportunities of hearing were granted by me to the aforesaid parties in adherence to the principles of natural justice. The hearing was initially scheduled on October 01, 2003, which was communicated to them vide letter dated September 22, 2003. The parties had sought for adjournment and finally the matter was heard on October 29, 2003 at 4.30 p.m. All the parties have availed the opportunity of hearing and made their submissions / arguments. Shri Kamlesh Shroff had represented Maxworth. Shri S.S. Vijayakar had represented Marine Drive Investment, Matunga Investments, Mahim Investment, Cumulative Investment and Desai Investments. Shri Mukesh Shroff and Shri Pradip Shroff were also present.

4.1 Written submissions dated October 20, 2003 were also handed over during the hearing. Shri Kamlesh Shroff averred that the investigation by SEBI had failed to disclose the true nature of transactions i.e., badla transactions and that SEBI presumed those transactions comprising of buying and selling of shares as outright purchases and sales, which was incorrect according to him. It was his case that the investigation could not produce any record to show that Shri Kamlesh Shroff alongwith other entities had delivered 8,50,000 shares which was referred to against his name and other entities, in the table annexed to the show cause notice. He submitted that he had received the delivery of the shares from the following companies as stated below :

2000 shares from Marine Drive Investment, 2800 shares from Matunga Investment and 10700 shares from Cumulative Investment.

4.2 Shri Kamlesh Shroff submitted during the hearing that no shares were received from Mahim Investment. It was further stated that 29,500 shares were delivered from his personal holdings and hence, the total delivery constituted 6.66% of the total volume of 9,00,000 shares. Therefore, he submitted that he did not deliver 9,00,000 shares nor could the investigation prove that he delivered as many shares as that. According to him, the delivery of shares shown in the show cause notice was cumulative of the total shares shown from each of the settlement and hence the same cannot be treated to be his total delivery of shares.

4.3 According to him, whatever done by him in the form of badla transactions was not known to his father, Shri Jitendra R. Shroff, his uncle, Shri Pradip Shroff or his co-director in Desai Investments and other directors of Investment companies such as Marine Drive Investment, Cumulative Investment and Matunga Investment. He also said that none of them were involved in the aforesaid badla transactions and for that matter the annexure to the show cause notice of SEBI do not show any of them as either buyer or seller of the shares of 'VB Desai'. He also said that he had delivered the shares in the market through the brokers / sub-brokers mentioned therein. He had emphatically stated that the purchases and sales of shares shown in each of the settlement were not the outright purchases or sales but form the part of badla transactions effected by him in his name and his entities. The sales / purchase price, he said depended on the prevailing price in each settlement and also the interest involved. He also stated that the price in each of the settlement will show on an average improvement because of the element of interest which is in-built in the calculation of buying and selling price. According to him, this was a natural force in price determination and cannot be construed as an effort to jack up the prices artificially. He also clarified that he had received the shares individually 10700 from Cumulative Investment, 16000 shares from Desai Investment, 2800 shares from Matunga Investment and 2000 shares of Marine Drive Investment. He further said that his alleged transactions were not known to any person other than him and even the transfer deeds of the four companies through whom he had dealt, had been signed by him as the director of the four companies. He also quoted the definition of persons 'acting in concert' (from Takeover code) and submitted that the same was not applicable in his place. He also said that the SEBI (Stock Broker and Sub Broker) Regulations, 1992 was not applicable in his case since he was not a member or sub-broker of BSE / NSE. With respect to the show cause notice in respect of SEBI (Prohibition of Insider Trading) Regulations, 1992 he denied the allegations and said that the same was not applicable to him.

4.4 In the written submissions, Shri. Pradip Shroff had mentioned that Shri. Jitendra Shroff, Father of Shri. Kamlesh Shroff had resigned from the promoter-directorship of 'VB Desai' on July 16, 1992, and in support of the same, the Board Resolution was produced. He also said that the show cause notice does not indicate that he was either a buyer or a seller of shares of 'VB Desai' and therefore the observations made in page 3 of show cause notice do not hold good. It was also said that the transfer deeds accompanying the shares delivered by 'Cumulative Investment' and 'Marine Drive Investment' were not signed by him and there was nothing on record to show that the same had been delivered by him on behalf of the said two companies directly to the brokers/sub-brokers mentioned in the show cause notice. He also stated that the alleged transactions done by Shri. Kamlesh Shroff were not known to him. It was also said that there was no evidence to show and establish that the said brokers/ sub-brokers were influenced by him, to put through the deals of Shri. Kamlesh Shroff. He said that provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 was inapplicable. He requested that the proceedings against him be dropped against him. Regarding the mandate for private placement, he said that sensitive information of in principle approval from the government in respect of the bond had spread in the market and they were in constant touch with banks, mutual funds etc. for their support in the issue of MKVDC. For the sake of convenience, the Board of Directors of 'VB Desai' decided to change the accounting year to December 31, 1999 and accordingly informed Secretary, Bombay Stock Exchange. The same was informed to the Registrar of Companies also. He also said that the change of accounting year was informed to the public by the Stock Exchange. Therefore, the allegation of the so-called unpublished price sensitive information only known to the management do not hold good, he said. Thus, he said that he has neither violated SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 nor SEBI (Prohibition of Insider Trading) Regulations, 1992.

4.5 Shri Mukesh T. Shroff, in his written submissions stated October 20, 2003, submitted that the show cause notice neither stated that he was a buyer nor mentioned that he was a seller in the scrip of 'VB Desai'. He also said that the transfer deeds accompanying the shares which had been delivered by the Desai Investments were not signed by him. Further, he submitted that he was not aware of whatever done by Shri. Kamlesh Shroff. He also said that there was no evidence to show that the brokers / sub brokers were influenced by him to put through the deals of Shri Kamlesh Shroff. The applicability of provisions of "acting in concert", he said was not applicable to him. Another point he made was that his name Shri Mukesh T. Shroff was referred to as 'M.T.S.' in the show cause notices confusing the name with Shri Manoj T. Shroff, whose name has also been referred as 'M.T.S.' According to him, the investigation has proceeded presuming that Shri Manoj T. Shroff was also 'M.T.S.', who was assumed to be on the Board of 'VB Desai'. It was stated by him that the provisions of Insider Trading Regulations was not applicable and that he has not committed the violation of any of its provisions.

4.6 Written submissions of Cumulative Investment, Marine Drive Investment, Matunga Investment, Mahim Investment and Desai Investment dated October 20, 2003 are more or less on similar lines. These companies, as stated in the submissions, were formed and promoted since December 31, 1981 with the object of dealing and investing in shares, bonds and debentures. They submitted that they have not been described either as the buyer or seller in the show cause notices. According to them, there was no evidence to show that the particular number of shares had been delivered by them to Shri Kamlesh Shroff. They also said that whatever done by Shri Kamlesh Shroff was not known to them. It was submitted that they cannot be treated to be acting in concert within the meaning of Regulation 2(1)(e) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. They said that they have not violated the provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 and therefore, further proceedings be dropped against them. Mahim Holdings stated that it had not delivered any shares of 'VB Desai', although, the investigation findings communicated to it had stated the figure of its trading volume.

4.7 Maxworth in its written submissions dated October 20, 2003, denied any violation of SEBI (Stock Broker and Sub Broker) Regulations, 1992 and circular dated March 14, 1995. Maxworth had stated that the badla financing by Shri Kamlesh Shroff on behalf of Maxworth, comprised of purchases and sales in each of the settlement. Shri Kamlesh Shroff has however, admitted in the reply given by Maxworth that it was he who had put the name of Maxworth on the buying side in Settlement no.36 as the buyer for 50,200 shares of 'VB Desai' through the broker, Vidyut Devendra Kumar. On the selling side, it was admitted that Shri Kamlesh Shroff had sold through Shilpa Stock Brokers Pvt. Ltd. It was said that the same were the transactions of Shri Kamlesh Shroff rather than transactions of Maxworth. They denied any outright purchase of shares by Maxworth and requested that further proceedings may not be taken against them.

#### **Findings**

5.0 I have carefully considered the findings of investigation, as communicated to the parties and their submissions made in writing and also during the hearing held on October 29, 2000. I find that Shri Kamlesh Shroff was the main person behind all the alleged transactions. His modus operandi for introduction of shares in the market was to sell the shares in off market deals through his broking outfit, Maxworth Finlease, who then acting as ultimate clients of brokers sold the shares in the market which were bought by him on the other end. The brokerwise trading details of Shri Kamlesh Shroff obtained from Shri Kamlesh Shroff himself are given below :

Shri Kamlesh J Shroff has been represented below as KJS:

| S.No. | Broker                                      | Sub-broker                       | Client                                                  | Buy(Client Vol.) | Sell(Client Vol.) |
|-------|---------------------------------------------|----------------------------------|---------------------------------------------------------|------------------|-------------------|
| 1     | Madhukar sheth                              | -                                | Tupis Finance(Dir: KJS)                                 | 0                | 15000             |
| 3     | Kaushik shah shares & sec.ltd               | Leo securities                   | KJS (thru Sai Dhwani invt.)                             | 0                | 10000             |
| 4     | Naman sec. & Finance Pvt.Ltd                | H R Investment                   | KJS                                                     | 342800           | 13300             |
| 5     | Vidyut Devendrakumar                        | -                                | Maxworth Finlease(Dir:KJS)                              | 50200            | 0                 |
|       |                                             | -                                | KJS                                                     | 88300            | 0                 |
| 6     | Kamal kumar Jalan securities pvt.ltd        | -                                | Tupis Finance(Dir:KJS)                                  | 0                | 25000             |
| 7     | Shilpa stock broker pvt ltd                 | Jalaram Enterprises              | KJS                                                     | 296200           | 115200            |
| 8     | Techno shares & stocks ltd.                 | Richie Rich Fincorp              | KJS                                                     | 0                | 43300             |
|       |                                             | Surtaj Assets & Cap mgmt pvt ltd | KJS (thru Sai Dhwani Invt.)                             | 0                | 5000              |
| 10    | Mehta Vakil & Co. Pvt Ltd.                  | Akshay Dalal                     | Tupis Finance(Dir:KJS)                                  | 19400            | 800               |
| 12    | Opulent Broking Pvt.Ltd.                    | Patel Finance                    | KJS                                                     | 60800            | 0                 |
| 14    | Lallubhai Ranchoddas Share Brokers Pvt.Ltd. | -                                | KJS                                                     | 0                | 15000             |
| 15    | KBS Capital Management Ltd.                 | -                                | KJS (thru Sai Dhwani, RS Associates and Cartier Leafin) | 0                | 31600             |
| 16    | Pawankumar Parmeshwarlal                    | -                                | KJS (thru Kanchan Singhania)                            | 0                | 163500            |

| S.No. | Broker                | Sub-broker       | Client                         | Buy(Client Vol.) | Sell(Client Vol.) |
|-------|-----------------------|------------------|--------------------------------|------------------|-------------------|
|       |                       | -                | KJS (P.L.Choudhary)            | 0                | 75500             |
|       |                       | -                | KJS (Sarita Choudhary)         | 0                | 78900             |
|       |                       | -                | KJS (Kanta Singhania)          | 0                | 63400             |
|       |                       | -                | KJS (S.D.Choudhary)            | 0                | 134200            |
|       |                       | -                | KJS (Pawankumar Choudhary-HUF) | 0                | 15000             |
| 17    | Angel Securities Ltd. | Prime Securities | KJS (Sai Dhvani Invt.)         | 1000             | 16000             |
| 18    | Bhupendra M Bheda     | -                | KJS (Hema Manoj Sadarangani)   | 0                | 32600             |
|       |                       |                  | <b>Total</b>                   | <b>858700</b>    | <b>853300</b>     |

5.1 The Settlement-wise Trading Details of Kamlesh Shroff are as follows:-

| sett.no. | buying client                  | Broker                             | qty           | selling client         | Broker                                     | qty          | Volume |
|----------|--------------------------------|------------------------------------|---------------|------------------------|--------------------------------------------|--------------|--------|
| 31       | Kamlesh J shroff               | Naman securities & finance pvt.ltd | 1600          |                        |                                            |              | 5500   |
|          |                                | <b>Total</b>                       | <b>1600</b>   |                        |                                            |              |        |
| 36       | Maxworth Finlease              | Vidyut Devendrakumar               | 50200         | Kamlesh J shroff       | Shilpa stock broker pvt ltd                | 50000        | 51100  |
|          | Kamlesh J shroff               | Shilpa stock broker pvt ltd        | 100           |                        |                                            |              |        |
|          |                                | <b>Total</b>                       | <b>50300</b>  |                        |                                            |              |        |
| 37       | Kamlesh J shroff               | Shilpa stock broker pvt ltd        | 65500         | Kanchan Singhania      | Pawankumar Parmeshwarlal                   | 30000        | 71200  |
|          |                                |                                    |               | P.L.Choudhary          | Pawankumar Parmeshwarlal                   | 35500        |        |
|          |                                | <b>Total</b>                       | <b>65500</b>  | <b>Total</b>           | <b>65500</b>                               |              |        |
| 38       | Kamlesh J shroff               | Naman securities & finance pvt.ltd | 14400         | Sarita Choudhary       | Pawankumar Parmeshwarlal                   | 20000        | 50900  |
|          | Kamlesh J shroff               | Shilpa stock broker pvt ltd        | 10300         | Kamlesh J shroff       | Shilpa stock broker pvt ltd                | 5500         |        |
|          |                                | <b>Total</b>                       | <b>24700</b>  | <b>Total</b>           | <b>25500</b>                               |              |        |
| 39       | Vaishali V Shah                | Vidyut Devendrakumar               | 12000         | Tupis Finance          | Kamal kumar Jalan securities pvt.ltd       | 25000        | 154800 |
|          | Kamlesh J shroff               | Shilpa stock broker pvt ltd        | 26200         | Kamlesh J shroff       | Techno shares & stocks ltd.                | 43300        |        |
|          | Kamlesh J shroff               | Naman securities & finance pvt.ltd | 300           | Kanta Singhania        | Pawankumar Parmeshwarlal                   | 20000        |        |
|          |                                |                                    |               | Kamlesh J shroff       | Shilpa stock broker pvt ltd                | 26200        |        |
|          |                                |                                    |               | Kamlesh J shroff       | Dushyant Dayaldas                          | 7500         |        |
|          |                                | <b>Total</b>                       | <b>38500</b>  | <b>Total</b>           | <b>122000</b>                              |              |        |
| 40       | Kamlesh J shroff               | Naman securities & finance pvt.ltd | 23700         | Kamlesh J shroff       | Naman securities & finance pvt.ltd         | 6700         | 118500 |
|          | Kamlesh J shroff               | Vidyut Devendrakumar               | 10000         | Sarita Choudhary       | Pawankumar Parmeshwarlal                   | 18900        |        |
|          | Kamlesh J shroff               | Shilpa stock broker pvt ltd        | 10000         | Vaishali V Shah        | Vidyut Devendrakumar                       | 6800         |        |
|          | Vaishali V Shah                | Vidyut Devendrakumar               | 2500          | Blue Chip Leasing      | IKAB Sec. Investment                       | 5000         |        |
|          |                                | <b>Total</b>                       | <b>46200</b>  | <b>Total</b>           | <b>37400</b>                               |              |        |
| 41       | Kamlesh J shroff               | Naman securities & finance pvt.ltd | 4800          | Vaishali v shah        | Vidyut Devendrakumar                       | 3500         | 65100  |
|          | Kamlesh J shroff               | Shilpa stock broker pvt ltd        | 2700          | Kanta Singhania        | Pawankumar Parmeshwarlal                   | 5400         |        |
|          |                                |                                    |               | Kamlesh J shroff       | Naman securities & finance pvt.ltd         | 4800         |        |
|          |                                |                                    |               | Kamlesh J shroff       | Shilpa stock broker pvt ltd                | 2200         |        |
|          |                                | <b>Total</b>                       | <b>7500</b>   | <b>Total</b>           | <b>15900</b>                               |              |        |
| 42       | Kamlesh J shroff               | Naman securities & finance pvt.ltd | 40100         | Kanchan Singhania      | Pawankumar Parmeshwarlal                   | 38500        | 150332 |
|          | Kamlesh J shroff               | Vidyut Devendrakumar               | 30000         | Sarita Choudhary       | Pawankumar Parmeshwarlal                   | 25000        |        |
|          | Vaishali V Shah                | Vidyut Devendrakumar               | 500           | Vaishali v shah        | Vidyut Devendrakumar                       | 1500         |        |
|          | Kamlesh J shroff               | Shilpa stock broker pvt ltd        | 16700         | Kamlesh J shroff       | Shilpa stock broker pvt ltd                | 5000         |        |
|          | Tupis Finance                  | Mehta Vakil & Co. Pvt Ltd.         | 14400         |                        |                                            |              |        |
|          | Ace Finance(Kamlesh J Shroff)  | RBK Share Broking Ltd.             | 7000          |                        |                                            |              |        |
|          |                                | <b>Total</b>                       | <b>108700</b> | <b>Total</b>           | <b>70000</b>                               |              |        |
| 43       | Kamlesh J shroff               | Naman securities & finance pvt.ltd | 14600         | Vaishali V Shah        | Vidyut Devendrakumar                       | 3700         | 47500  |
|          | Vaishali V Shah                | Vidyut Devendrakumar               | 2800          |                        | <b>Total</b>                               | <b>3700</b>  |        |
|          | Kamlesh J shroff               | Vidyut Devendrakumar               | 6900          |                        |                                            |              |        |
|          | Kamlesh J shroff               | Shilpa stock broker pvt ltd        | 4200          |                        |                                            |              |        |
| sett.no. | buying client                  | Broker                             | qty           | selling client         | Broker                                     | qty          | Volume |
|          | Tupis Finance                  | Mehta Vakil & Co. Pvt Ltd.         | 5000          |                        |                                            |              |        |
|          | Ace Finance(Kamlesh J Shroff)  | RBK Share Broking Ltd.             | 5000          |                        |                                            |              |        |
|          |                                | <b>Total</b>                       | <b>38500</b>  |                        |                                            |              |        |
| 44       | Kamlesh J shroff               | Naman securities & finance pvt.ltd | 6200          | Kamlesh J shroff       | Naman securities & finance pvt.ltd         | 1800         | 18600  |
|          |                                |                                    |               | Tupis Finance          | Mehta Vakil & Co. Pvt Ltd.                 | 800          |        |
|          |                                | <b>Total</b>                       | <b>6200</b>   | Vaishali V Shah        | Vidyut Devendrakumar                       | 500          |        |
|          |                                |                                    |               | <b>Total</b>           | <b>3100</b>                                |              |        |
| 45       | Kamlesh J shroff               | Naman securities & finance pvt.ltd | 16600         | Kanchan Singhania      | Pawankumar Parmeshwarlal                   | 50000        | 63600  |
|          | Kamlesh J shroff               | Shilpa stock broker pvt ltd        | 33000         | Vaishali V Shah        | Vidyut Devendrakumar                       | 800          |        |
|          | Ace Finance(Kamlesh J Shroff)  | RBK Share Broking Ltd.             | 8000          |                        |                                            |              |        |
|          |                                | <b>Total</b>                       | <b>57600</b>  | <b>Total</b>           | <b>50800</b>                               |              |        |
| 46       | Kamlesh J shroff               | Naman securities & finance pvt.ltd | 50000         | Sai Dhvani Invt.       | Kaushik shah shares & sec.ltd              | 10000        | 101900 |
|          | Kamlesh J shroff               | Shilpa stock broker pvt ltd        | 36600         | R S Associates         | KBS Capital Management Ltd.                | 31600        |        |
|          | Vaishali V Shah                | Vidyut Devendrakumar               | 3000          | Vaishali V Shah        | Vidyut Devendrakumar                       | 3300         |        |
|          | Sai Dhvani Investment Pvt.Ltd. | Angel Securities Ltd.              | 1000          | Sai Dhvani Invt.       | Angel Securities Ltd.                      | 16000        |        |
|          |                                | <b>Total</b>                       | <b>90600</b>  | Kamlesh J shroff       | Shilpa stock broker pvt ltd                | 16900        |        |
|          |                                |                                    |               | <b>Total</b>           | <b>77800</b>                               |              |        |
| 47       | Kamlesh J shroff               | Naman securities & finance pvt.ltd | 30000         | Kanta Singhania        | Pawankumar Parmeshwarlal                   | 38000        | 73500  |
|          | Kamlesh J Shroff               | Vidyut Devendrakumar               | 5000          | Kamlesh J shroff       | Shilpa stock broker pvt ltd                | 900          |        |
|          | Kamlesh J shroff               | Shilpa stock broker pvt ltd        | 13200         |                        | <b>Total</b>                               | <b>38900</b> |        |
|          |                                | <b>Total</b>                       | <b>48200</b>  |                        |                                            |              |        |
| 48       | Kamlesh J shroff               | Naman securities & finance pvt.ltd | 50000         | Kamlesh J shroff       | Lalubhai Ranchoddas Share Brokers Pvt.Ltd. | 15000        | 68700  |
|          | Kamlesh J shroff               | Shilpa stock broker pvt ltd        | 1800          | S D Choudhary          | Pawankumar Parmeshwarlal                   | 39400        |        |
|          |                                | <b>Total</b>                       | <b>51800</b>  | <b>Total</b>           | <b>54400</b>                               |              |        |
| 49       | Kamlesh J shroff               | Naman securities & finance pvt.ltd | 10400         | Kanchan Singhania      | Pawankumar Parmeshwarlal                   | 30000        | 65700  |
|          | Kamlesh J shroff               | Shilpa stock broker pvt ltd        | 25300         | P.L.Choudhary          | Pawankumar Parmeshwarlal                   | 10000        |        |
|          |                                |                                    |               | Kamlesh J shroff       | Shilpa stock broker pvt ltd                | 6900         |        |
|          |                                | <b>Total</b>                       | <b>35700</b>  | <b>Total</b>           | <b>46900</b>                               |              |        |
| 50       | Kamlesh J shroff               | Naman securities & finance pvt.ltd | 22300         | S.D.Choudhary          | Pawankumar Parmeshwarlal                   | 30000        | 45200  |
|          | Kamlesh J shroff               | Shilpa stock broker pvt ltd        | 14200         |                        | <b>Total</b>                               | <b>30000</b> |        |
|          |                                | <b>Total</b>                       | <b>36500</b>  |                        |                                            |              |        |
| 51       | Kamlesh J shroff               | Naman securities & finance pvt.ltd | 10000         | S.D.Choudhary          | Pawankumar Parmeshwarlal                   | 25000        | 33500  |
|          | Kamlesh J shroff               | Shilpa stock broker pvt ltd        | 17600         |                        | <b>Total</b>                               | <b>25000</b> |        |
|          |                                | <b>Total</b>                       | <b>27600</b>  |                        |                                            |              |        |
| 52       | Kamlesh J shroff               | Naman securities & finance pvt.ltd | 5700          | Sai Dhvani Invt.       | L.K.Pandey                                 | 5000         | 22500  |
|          | Kamlesh J shroff               | Shilpa stock broker pvt ltd        | 10800         | S.D.Choudhary          | Pawankumar Parmeshwarlal                   | 14800        |        |
|          |                                |                                    |               | Vaishali V Shah        | Vidyut Devendrakumar                       | 700          |        |
|          |                                | <b>Total</b>                       | <b>16500</b>  | <b>Total</b>           | <b>20500</b>                               |              |        |
| 53       | Kamlesh J shroff               | Naman securities & finance pvt.ltd | 42100         | Pawan Kumar Choudhary  | Pawankumar Parmeshwarlal                   | 15000        | 54600  |
|          | Kamlesh J shroff               | Shilpa stock broker pvt ltd        | 7500          | Hema Manoj Sadarangani | Bhupendra M Bheda                          | 32600        |        |
|          |                                | <b>Total</b>                       | <b>49600</b>  | <b>Total</b>           | <b>47600</b>                               |              |        |
| 4        | Ace Finance                    | Opulent Broking Pvt.Ltd.           | 60800         | Kanchan Singhania      | Pawankumar Parmeshwarlal                   | 15000        | 60900  |
|          |                                | <b>Total</b>                       | <b>60800</b>  | P.L.Choudhary          | Pawankumar Parmeshwarlal                   | 30000        |        |
|          |                                |                                    |               | Sarita Choudhary       | Pawankumar Parmeshwarlal                   | 15000        |        |
|          |                                |                                    |               | <b>Total</b>           | <b>60000</b>                               |              |        |

|   |                  |                      |              |                  |                             |              |       |
|---|------------------|----------------------|--------------|------------------|-----------------------------|--------------|-------|
| 7 | Kamlesh J Shroff | Vidyut Devendrakumar | 36400        | Tupis Finance    | Madhukar sheth              | 15000        | 42500 |
|   |                  |                      |              | S.D.Choudhary    | Pawankumar Parmeshwarlal    | 25000        |       |
|   |                  | <b>Total</b>         | <b>36400</b> | Kamlesh J shroff | Shilpa stock broker pvt ltd | 500          |       |
|   |                  |                      |              | <b>Total</b>     |                             | <b>40500</b> |       |

While examining the above details, which includes the names of sub brokers and other persons whom Shri Kamlesh Shroff had used to put through the transactions, I find that Shri Kamlesh Shroff had bought and sold in the same settlement through different brokers. The total number of shares bought and sold by him is approximately 9 lacs on either side and in the process, the price of the scrip had moved from a low of Rs.5.30 in Settlement 31 to a high of Rs.31 in Settlement 41, across a period of two and half months(i.e., 18<sup>th</sup> October, 1999 to 30<sup>th</sup> December, 1999) . He is also found to have continued to deal in the scrip thereafter, creating artificial volumes.

5.2 I have also perused the statement given by Kamlesh Shroff during the investigation. He stated that he had defaulted in payment obligations to

|                      |            |                |
|----------------------|------------|----------------|
| Jalaram Enterprise   | Sub-broker | Rs. 48,00,000  |
| H R Investments      | Sub-broker | Rs. 22,00,000  |
| Vidyut Devendrakumar | Broker     | Rs. 30,00,000. |

The reason given by Shri Kamlesh Shroff was that he was not able to raise money from financiers. It was noticed that when Shri Kamlesh Shroff stopped trading, the price of the scrip after moving in the range of Rs.20 to Rs.28 till March 2000, started falling. He could no longer arrange finances to buy back the shares at the other end of the market, as had been stated by him.

5.3 I have examined inward / outward details in the register of M/s Pawan Kumar Parmeshwarlal, BSE member, who had introduced part of the shares involved in the alleged transactions, in the market. I have found that the share certificates were in the name of various investment companies of Shri Kamlesh Shroff. Shri Pawan Kumar Parmeshwarlal had also accepted, during his statement on oath before the investigating officials, that these shares sold by his clients in the market were earlier purchased by them from Shri Kamlesh Shroff. The investment companies such as Marine Drive Investment, Matunga Investments, Mahim Investment, Cumulative Investment and Desai Investments are found to belong to promoters of VB Desai and are grouped as "persons acting in concert", under shareholding pattern filed by VB Desai. The names of said investment companies which had delivered the shares in the market along with names of directors, as obtained during the investigation are given below:

| Cumulative Invt & Trading Co. Pvt. Ltd.** | Marine Drive Invt & Trading Co. Pvt. Ltd.** | Matnga Invt & Trading Co. Pvt. Ltd. | Mahim Invt & Trading Co. Pvt. Ltd. | Desai Invt Pvt. Ltd.**      |
|-------------------------------------------|---------------------------------------------|-------------------------------------|------------------------------------|-----------------------------|
| 1. Pradip R Shroff*                       | 1. Pradip R Shroff*                         | 1. Manoj Thakorlal Shroff*          | 1. Manoj Thakorlal Shroff*         | 1. Manoj Thakorlal Shroff*  |
| 2. Kamlesh J Shroff                       | 2. Kamlesh J Shroff                         | 2. Kamlesh J Shroff                 | 2. Kamlesh J Shroff                | 2. Kamlesh J Shroff         |
| 3. Hemendra J Shroff                      | 3. Hemendra J Shroff                        | 3. Hemendra J Shroff                | 3. Hemendra J Shroff               | 3. Hemendra J Shroff        |
|                                           |                                             |                                     |                                    | 4. Mukesh Thakorlal Shroff* |
|                                           |                                             |                                     |                                    | 5. Raj Pradip Shroff        |

\* Shri. Pradip R Shroff and Shri. M T Shroff are directors of V B Desai.

\*\* PAC – Persons acting in concert holding > 1% as per filing made by the company with BSE.

5.4 From the details of directors given above, it can be seen that Shri Pradip R Shroff, Managing Director of V B Desai is also director in two investment companies, i.e., Marine Drive Investments and Cumulative Investments. The shareholding patterns of these investment companies clearly show that they are closely held by the promoters through cross holdings and both Shri Kamlesh Shroff and Shri Pradip Shroff had accepted in their statements given on oath during the investigation that these companies belong to their group. This would be sufficient to establish the involvement of promoter group in the trading in the scrip which are alleged to be in violation of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 .

5.5 I have perused the statement of Shri Kamlesh Shroff, recorded on September 23, 2002, during the investigation. Shri Kamlesh Shroff, therein has accepted that between settlements 36-53 of 1999-00 and also 4 & 7 of 2000-01 he had entered into a number of transactions as ultimate client of various brokers and sub brokers by selling on one side and buying the same shares at the other end in the same settlement to raise money as he was in financial difficulties which required him to liquidate whatever holdings he had. This is evidenced by the details of transactions at para 5.1. For the purpose he had raised money from various brokers and sub brokers as he could not pledge the shares of V B Desai as there was no liquidity for the scrip.

5.6 Shri Kamlesh Shroff is also seen to have accepted that he had introduced the shares of V B Desai in the market through Maxworth operating in off market transactions and that the shares which were delivered in the market mostly were in the name of Marine Drive Investment, Mahim Holdings, Matunga Investments, etc., his own investment companies. The names Mahim Holdings and Mahim Investments have been used interchangeably, in the findings of investigation, Show Cause notice and Replies/written submissions. I find that Mahim Holdings had sent the reply in response to the show cause addressed to Mahim Investments. Although, Mahim Holdings had submitted during the hearing that they had not delivered any shares of 'VB Desai', the investigation findings show that among the shares delivered by Pawankumar Parmeshwarlal, Member, BSE, in the market, 11,400 shares were in the name of Mahim Holdings.

5.7 Statement of Shri Pradip R Shroff had also been recorded during investigation in which he was found to have accepted that shares delivered in the market belonged to their group investment companies and the purpose of trading was to raise finance because of liquidity problems. While accepting that buying and selling on both sides on continuous basis do lead to creation of artificial volume and price rise, he maintained that he was not aware that Shri Kamlesh Shroff was doing so and that he did not check up how and where the sale proceeds were used even though he had delivered shares of group companies.

5.8 Regulation 4(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 prohibits as follows:-

"No one shall effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person"

The necessary ingredients to constitute a violation of regulation 4(a) as explained by Hon'ble Securities Tribunal in Videcon International Vs SEBI (Appeal No:23/2001),

(i) a person should have effected, taken part in, or entered into directly or indirectly, transactions in securities

(ii) the transactions must have been with an intention

(iii) such transactions must be to artificially raise or depress the prices of securities

(iv) result of the action must be to induce the sales or purchase of securities by any person.

It is undisputed that Shri Kamlesh Shroff along with his investment companies had entered into sale and purchase transactions in the scrip of 'VB Desai'. As far as intention is concerned, same is manifest from the trading pattern itself. In this connection, it is relevant to note the observation of the Administrative Law Judge of US Securities Exchange Commission in the case of Carole.L.Haynes, that manipulative intent may be inferred from circumstantial evidence.

He had further observed that:

"Proof of a manipulation almost always depends on inferences drawn from a mass of factual data. Findings must be gleaned from patterns of behaviour, from apparent irregularities and from trading data. When all of these are considered together, they can emerge as ingredients in a manipulative scheme designed to tamper with free market forces."

I have seen that the trading pattern employed by Shri Shroff and his group companies. It was such that the shares held in his name as well as that in entities' name were sold through the broking entity Maxworth, of Shri Kamlesh Shroff to other brokers in off market deals. I find that these shares had been purchased back by Shri Kamlesh Shroff. The shares delivered by Shri Kamlesh Shroff (through Maxworth in off-market deal to client of Pawan Kumar Parmeshwarlal/Sai Dhvani/Hema Sadrangani) in the market were found to be in the names of the investment companies owned and controlled by Shri Kamlesh Shroff. Shri Pawan Kumar Parmeshwarlal had accepted that the shares sold for his clients in the market were earlier purchased by the clients from M/s Maxworth. Also, I find that the representative of M/s Saidhwani, Shri Pramod Kadam had accepted, in the statements given before the investigating officials, that the shares which he delivered in the market were received by him in advance from Shri Kamlesh Shroff. This pattern, that too, sale of 8,58,700 shares and purchase transaction of 8,53,300 in the market, which constitutes gross volume of 17,12,000 shares accounting for 61.83% of the gross market volume in the scrip on BSE, could not have been done by Shri Kamlesh Shroff and all the investment companies where he was a director, for any purpose other than manipulation. There is increase in the price in the scrip which was quoting around Rs.4/- in October 1999 to a high of Rs.30/- in December 1999. The admitted reason for this kind of activity was 'making profits'. However, I find that the same has been done by cheating the general investors, who are taken by the volume and prices, both being hiked up artificially due to the trades of Shri Kamlesh Shroff and the investment companies where he was a director. Having thus found all the ingredients to attract the provision of Regulation 4(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, I find Shri Kamlesh Shroff and the investment companies where he was a director, guilty of violating the said regulation.

5.9 I have noted that Shri Kamlesh Shroff has raised the contention that he has delivered only 29,500 shares as against the alleged 9,00,000 shares. As noted at para 5.0, the trading details of Kamlesh J Shroff reveal that he has done gross purchases of 9,00,000 shares and gross sales of 9,00,000 and not a net delivery of 9,00,000 as stated by Kamlesh J Shroff.

5.10 To prove violation of Regulation 4(b) requires indulging in any act, which was calculated to create a false and misleading appearance of trading on the Securities Market. In the instant case, Shri Kamlesh Shroff and the investment companies, have indulged in activities which were carried out for no other reason but for creation of false and misleading appearance of trading in the Securities Market. Admittedly, the intention of Shri Kamlesh Shroff and the investment companies, through which he had acted, in conducting the transactions described above, was to carry out financing transactions. This in itself suffice to conclude that the ulterior motive of Shri Kamlesh Shroff and the investment companies where he was a director, was to create artificial volumes by

misusing the stock exchange mechanism, thereby misleading the investors, in order to make undue gains. Violation of Regulation 4(c) of the aforesaid regulation require indulging in any act which had resulted in the reflection of prices of securities based on transactions that were not genuine trade transactions. Here also, the non-genuine trade transactions carried out by Shri Kamlesh Shroff and the investment companies where he was a director, had resulted in the reflection of prices of scrip based on transactions which were not genuine trade transactions in V B Desai which was otherwise not very liquid.

5.11 Therefore, Shri Kamlesh Shroff acting in concert with investment companies belonging to the promoter group, namely, Mahim Investment, Matunga Investment, Cumulative Investment, Marine Drive Investment and Desai Investment had indulged in acts which were calculated to create a false and misleading appearance of trading in the scrip of V B Desai and resulted in increasing the price of the scrip based on transactions which were not genuine trade transactions.

5.12 Shri Pradip Shroff, having indirectly indulged in the manipulative transactions is guilty of violating Regulation 4(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995. He is found to have aided and abetted Shri Kamlesh Shroff and the investment companies in manipulating the price of the scrip of VB Desai. As observed in Carole Haynes Case by the ALJ, in order to establish the liability for aiding and abetting, one has to establish

(1) the existence of primary violation;

(2) a "knowledge" requirement. i.e., the aider and abetter had general awareness that his role was part of overall activity that was improper and

(3) that the aider and abetter had substantially assisted the principal violation.

I find that Mr Pradip Shroff, being the Managing Director of VB Desai and also being the director for the investment companies i.e., Cumulative and Marine Drive, was well aware of the manipulative intent of Shri Kamlesh Shroff and was very much a party to the manipulation. These transactions had induced others to sell / purchase of shares in the scrip of VB Desai, which is evident from the increased trading volume subsequent to their trades and the modus operandi employed by Shri Kamlesh Shroff, Shri Pradip Shroff and the others. The shares in the name of those companies where Shri Pradip Shroff was a director were found to have been used by Shri Kamlesh Shroff to inflate the price of the scrip. I find that being the managing director in V B Desai, Shri Pradip Shroff cannot claim ignorance about the price manipulation. By the standards of reasonable and prudent man, Shri Pradip Shroff should have exercised minimum care and diligence to see that the companies where he was a director, and especially of VB Desai, where he was the Managing Director and also looking after the day to day affairs of VB Desai, to see that the company is not being made a party to any manipulative activities detrimental to the large number of investors/public. The manipulative intent of Shri Kamlesh Shroff in artificially effecting the price rise in the scrip of V B Desai, would not have been fulfilled had Shri Pradeep Shroff not agreed to the same, he being the managing director.

In the case of Shri Mukesh Shroff, I do not find concrete evidence to prove that he has indulged any manipulative activities or violation of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995.

5.13 Shri Kamlesh Shroff, and Shri Pradip Shroff and the investment companies such as 'Marine Drive Investment', 'Matunga Investment', 'Mahim Investment', 'Cumulative Investment', 'Desai Investment' are thus guilty of violating Regulation 4(a) to (d) of SEBI (Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995. The acts of above individuals / entities are detrimental to the safety and orderly development of the securities market and violative of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995. The corporate entities that are floated by the promoter group in the instant case have been used to perpetrate fraudulent acts such as creation of artificial volume, inflation of prices of the securities by entering into non-genuine trade transactions.

5.14 Shri Kamlesh Shroff is also the Executive Director of M/s Maxworth Finlease, which had put through all the off market transactions in the scrip and issued bills. Therefore, Maxworth is found to have entered into sale transactions on behalf of its director, Shri Kamlesh Shroff with the intention of inflating the price of scrip thereby inducing the sale/purchase of the shares of V.B. Desai. Intention is attributed to M/s Maxworth in artificially inflating the price of the scrip, for the reason that whatever shares sold by Shri Kamlesh Shroff and the investment companies where he had been a common director, were sold by M/s Maxworth in the off market deals. The sale of such shares in off market by M/s Maxworth was followed by subsequent offloading in the market by the purchasers again to Shri Kamlesh Shroff. I therefore find that these transactions resulted in manipulation was facilitated by M/s Maxworth and therefore, the fraudulent intent of Shri Kamlesh Shroff could not have been fulfilled without the aid of M/s Maxworth. I find that M/s Maxworth have taken part in the transactions of securities with an intention to artificially raise the price, which induced the sale of securities. I note that shares held in the name of investment companies which were sold in off market by M/s Maxworth that had formed part of the manipulative transactions of Shri Kamlesh J Shroff. Hence, I find, M/s Maxworth guilty of violating Regulation 4(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995.

Under the SEBI (Stock Broker and Sub Broker) Regulations 1992, at A(3) and (4), it has been provided that :

#### **Code of Conduct for Stock Brokers (Regulation 7)**

##### **A. General**

(3) Manipulation : A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.

(4) Malpractices : A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads interference with the fair and smooth functioning of the market. A stock-broker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

Thus, apart from being guilty of violating Regulation 4(a) of SEBI (Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995, Maxworth has also violated Clauses A (3) and (4) of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.

According to SEBI Circular No. SMD/RCG/CIR/(BKG)/293/95 dated March 14, 1995, brokers have to report all the transactions done on spot basis / off the flow transactions the same day. Shri Kamlesh Shroff himself has accepted that none of these transactions were reported to the exchange and that his terminal was deactivated by the exchange for margin payment defaults. Therefore, Shri Kamlesh Shroff had violated the circular dated March 14, 1995. I also found that the BSE broking card held by Maxworth had been sold off. Thus, Maxworth has ceased to be an entity registered with SEBI.

5.15 Regarding the applicability of SEBI (Prohibition of Insider Trading) Regulations, 1992, I have gone through the charges as alleged in the show cause notice and the replies/ written submissions of parties. The information relating to the mandate giving an income of Rs.2 crores cannot be called a price sensitive information, since at the particular stage, it was only a mandate which was obtained in the normal course of business of the company and was not expected to be reported to the Stock Exchange or made public, so as to be called "price sensitive information" as meant by SEBI(Prohibition of Insider Trading) Regulations, 1992. No one could predict since such information, even if published would not have materially affected the price of the scrip. Since the mandate did not succeed, even if the same had been disseminated among the public, it would have created misunderstanding amongst the investors. It was pointed out by Shri Pradip Shroff that if information relating to private placement of MKVDC bonds had been informed to the Stock Exchange, Mumbai, the same would have created misunderstanding among the investors, since the issue did not get enough response. Regarding the mandate for private placement, he had stated in his written submissions that the sensitive information of in principle approval from the government in respect of the bond had spread in the market and they were in constant touch with banks, mutual funds etc. for their support in the issue of MKVDC. It was further stated by him that for the sake of convenience, the Board of Directors of 'VB Desai' had decided to change the accounting year to December 31, 1999 and accordingly informed Secretary, Bombay Stock Exchange. The same was informed to the Registrar of Companies also. He also said that the change of accounting year was informed to the public by the Stock Exchange. Therefore, the allegation of the so-called unpublished price sensitive information only known to the management do not hold good, he said. The above point raised by Shri Pradip Shroff that the news being spread already, is irrelevant as such information was circulated amongst those who were connected to the issue. In view of the fact that the mandate of Rs 2 Crores was only an event in the normal course of business of V B Desai and the same not being a price sensitive information, no violation is noticed against the parties in respect of SEBI(Prohibition of Insider Trading) Regulations, 1992. During the period 22 November to 30<sup>th</sup> December, 1999, the price of VB Desai had gone up from Rs7.50 to Rs 31.50, during which Shri Kamlesh Shroff had sold shares of VB Desai in the off-market at lower rate and purchased the same in the market at higher rates. Hence, considering the pattern of trading, these transactions are more of manipulative nature rather than that of 'Insider Trading'.

6.0 It is the duty of the regulator to safe guard the interest of investors as also to ensure that unscrupulous and deceitful players in the market are kept at a distance from the market. Therefore, in exercise of the powers conferred upon me in terms of Section 19 of SEBI Act, 1992 read with Regulation 11 of SEBI (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Markets) Regulations, 2003 and Section 11 and 11B of the SEBI Act, I hereby prohibit Shri Kamlesh J. Shroff, from dealing in securities for a period of three years. I hereby also prohibit Shri Pradip R. Shroff, Marine Drive Investment, Matunga Investment, Mahim Investment, Cumulative Investment, Desai Investment and Maxworth from dealing in securities for a period of one year.

6.1 This order shall come into force with immediate effect.

**A.K.BATRA**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**Place : Mumbai**

**Date : February 11<sup>th</sup>, 2004**