

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER UNDER SECTION 11B OF SEBI ACT, 1992 READ WITH REGULATION 11 OF SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 1995 AGAINST THE PROMOTERS OF AFTEK INFOSYS LTD.

CO/207/ISD/03/2004

1. Aftek Infosys Limited (hereinafter referred to as 'Aftek') is a company engaged in computer hardware and software engineering. Aftek was incorporated on 25th March 1986 as a private limited company which went public with its initial public offering in 1995. The promoters of Aftek are Shri Ranjit Mohan Dhuru, Shri Pramod Broota, Shri Nitin Kashinath Shukla, Shri Sandip Save, Shri Ashutosh Humnabadkar, Shri Ravindranath Umakant Malekar, Shri Mukul Suryakant Dalal and Shri Charuhas Vasant Khopkar.
2. The share price of Aftek witnessed marked increase during the period April 1999 to March 2000 on the BSE. In particular, the increase in prices was highly pronounced in November/December 1999. The price of share increased from Rs. 477.5 on November 12, 1999 to Rs. 1108.2 on December 3, 1999. This sharp increase of more than 100% in such a short period of time coincided with some significant corporate events during this period.
3. Having been satisfied that there was a prima-facie case for investigation, SEBI conducted an investigation to find out whether there was an attempt by the promoters and others to bail out the issue and to manipulate the price of the scrip.
4. After the submission of the Investigation Report by the Investigating Authority, a show cause notice dated 20.02.2003 was issued to the promoters of Aftek, in light of the facts mentioned therein, to show cause as to why suitable directions under Section 11B of SEBI Act, 1992 read with Regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, including directions for debarring them from accessing the capital market and dealing in securities for a suitable period should not be issued. The allegations against the company and the promoters as laid out in the show cause notice are as under:
 - 4.1 Aftek obtained finance from Ketan Parekh entities for purchase of shares from IDBI and later on transferred the shares to the Ketan Parekh entities pursuant to financing cum option agreement. Through structured arrangement with Ketan Parekh and its entities, the promoters of Aftek enabled him in acquiring large number of shares at a lower price.
 - 4.2 Aftek and its promoters colluded with Ketan Parekh entities to make available to them substantial hold in the scrip at a very low price as compared to market price. This facilitated price manipulation by Ketan Parekh as there was consequential low floating stock during this period. The company also fixed its no delivery period from 15/11/99 to 3/12/99 to coincide with the date of compulsory demat with effect from 29/11/99. This further reduced the floating stock in the market. At this time, Ketan Parekh entities indulged in large purchase and sale transactions which in absence of floating stock led to artificial increase in price. Investigations revealed that Ketan Parekh entities had a substantial net sale position during the no delivery period and fulfilled their delivery obligations in demat form by exercising option to acquire the shares for which they had advanced funds to Aftek.
 - 4.3 Ketan Parekh entities indulged in circular trading, large buy and sell transactions, putting orders at a price much higher than the last traded price. This led to sudden price rise from Rs. 477.75/- to Rs. 1815/- during November 12, 1999 to December 15, 1999 and the price continued to rise thereafter. This could not have been done without collusion with Aftek and its promoters.
 - 4.4 It was alleged that Aftek and its promoters violated clause (a), (b), (c) and (d) of regulation 4 of the SEBI (Prohibition of Fraudulent and Unfair trade practices relating to the securities market) Regulations, 1995 by colluding with Ketan Parekh entities, in creation of artificial market and volumes in the scrip to corner tradable securities in the market, thereby caused artificial shortage of shares to induce investor interest in the scrip. There was an attempt by Aftek and its promoters to artificially increase the price of the scrip. It was alleged that the acts of the promoters of Aftek disturbed the market equilibrium by creating artificial demand thereby distorted the price discovery mechanism which was detrimental to the interest of investors and orderly development of securities market.
5. Shri Nitin K Shukla, on his behalf and on behalf of other promoters of Aftek, vide letter dated 12.03.2003 replied to the above show cause notice making the following submissions:
 - 5.1 Aftek was incorporated on 25th March 1986 as a private limited company which went public with its IPO in 1995. The Promoters of Aftek stated that they are the first generation technocrats with no business background and essentially came from middle class families. The promoters submitted that at the time of the IPO, in order to ensure that they enjoyed majority shareholdings in the Company, IDBI was invited to participate as Venture Capitalist. Accordingly, shares reserved for firm allotment to IDBI were shown as a part of Promoters' equity with a lock-in-period of three years at item no. D(ii) of the Prospectus for the public issue. Thus, IDBI was allotted 10,00,000 equity shares in Aftek under Venture Capital Fund Scheme. The promoters stated that the shares were allotted to IDBI at the face value despite the fact that the IPO was made at a differential premium of Rs.20/- per share to NRIs and Rs.10/- per share to Mutual Funds and Financial Institutions / Banks.
 - 5.2 The promoters submitted that by a Subscription Agreement dated 5th April, 1995 it was agreed that in the event IDBI wanted to sell the shares, the promoters will have first right of refusal. The promoters stated that an undertaking was given by all of them to buy-back the shares as and when so required by IDBI and it was informally assured by IDBI that as and when IDBI intends to sell the shares, it will offload the same in convenient stages and not in one go. They were to buy-back the shares. The shares allotted to IDBI had a lock-in period of three years which expired in 1998. The promoters submitted that ever since the allotment in Public Issue, they never bought or sold their shareholding in the market and maintained their stake in the company despite the fact that the share prices shot up to all lucrative level of Rs.5,000/- in March 2000 when IT stocks all over the world and also within the country experienced unprecedented rising trend.

- 5.3 The promoters stated that sometime around October 1998, Aftek had plans to raise funds through private placement route for which M/s. Smifs Capital Markets Ltd. ("Smifs") were to act as consultants. The necessary authorization for private placement was obtained from shareholders at the Annual General Meeting held on 30th December 1998. However, since Smifs failed to complete the assignment within the expected time-frame, Aftek appointed M/s. Triumph International Finance India Ltd., Mumbai ("Triumph") as their Lead Managers for the Preferential Issue. Triumph successfully placed 15,00,000 shares of Aftek at a price of Rs.36.50 per share in January 1999 raising the paid up capital to Rs.5,74,07,000/-. In this Preferential Issue, Promoters stated that they were allotted 1,00,000 equity shares to enable them to maintain their shareholding in the increased share capital base.
- 5.4 The promoters stated that at that point of time, it was not at all contemplated by them what had subsequently transpired in the future. With the investors' perception of market and fancy for IT stocks, the market experienced general rise in stock prices and scrips of IT sector in particular to which Aftek was no exception since mid of 1999. It was submitted that Aftek was awarded Gold Certification by Computer Associates, the US Giant in the IT industry around this time. The promoters submitted that the lock-in-period for IDBI shares had already expired, IDBI was in a position to offload its investment in Aftek and realize return on its investment. The promoters stated that IDBI, vide its letter of 26th August 1999, offered to sell 9,00,000 equity shares to the promoters at Market Related Price and other terms to be fixed by mutual agreement. The promoters submitted that they, vide their letter of 31st August 1999, conveyed their interest in buying back the shares pleading therein to IDBI to work out the purchase price on the fair considerations such as Return of Investment at the time of investment in Aftek, safeguarding the promoters from any hostile takeover by granting affordability of price since they are first generation entrepreneurs, negotiations at the time of investment by IDBI and six-month average market price.
- 5.5 The promoters stated that vide letter of September 7, 1999 they offered to buy back shares at a price of Rs.150/- per share, to consider six month's average price on 31st August 1999 which worked out to Rs.110/- per share and to enable the promoters to retain their control. However, IDBI, vide their letter of November 12, 1999, (which was sent to Aftek late evening on the same day after close of working hours) offered to sell all 9,00,000 shares at a price of Rs.477.75 which was the closing price on BSE on Friday, November 12, 1999. The promoters submitted that IDBI asked them to pay Rs.4,29,97,500/- being 1/10th of the aggregate consideration of Rs.42,99,75,000/- by 5.00 pm on November 15, 1999 (Aftek was closed on 13th and 14th for weekend). The balance amount of Rs.38,69,77,500/- was payable by 5.00 pm on November 19, 1999. IDBI also stipulated that the shares would be delivered only after they were dematted. The promoters submitted that it took them with complete surprise and shock since they had never expected such a sudden change in the approach of IDBI. The promoters stated that due to this they feared that it was not the genuine intention of IDBI to sell the shares to promoters but to some other unknown buyer which was further strengthened by the fact that IDBI filed a Caveat in the High Court at Mumbai on 15th November 1999. Promoters stated that they also heard some rumours from market. The promoters alleged that had IDBI been transparent enough to offload the shares in the open market, they would have exercised their right of refusal to enable IDBI to sell shares to the general public. The promoters further alleged that the suspicious manner in which IDBI sought to carry out the deal forced Promoters to put on their guard and take remedial actions purely in the interest of the Company and the shareholders.
- 5.6 The promoters contended that they were left with no choice but to somehow manage to get financial help in a short span of a day or two in the face of the fact that the normal lending avenues would not extend adequate funds necessary to buy-back the entire quantity of 9,00,000 shares. The promoters further argued that even if finance could have been arranged, they (excepting Mr. Dhuru) did not have sufficient security to offer nor they had the shares in question available for security since they were to be delivered to the promoters only after demat was done and price was paid. The promoters alleged that not only IDBI failed to fulfill its verbal assurance given to them at the time of Investment into Aftek's shares, but also placed them in a situation in which they had hardly any options available. The promoters submitted that the preliminary steps for arrangement of funds had been initiated on the basis of a price of Rs.150/- as recommended by them to IDBI but in the renewed circumstances, much larger amount was required to be raised which could not be expected out of routine lending mechanism. The promoters submitted that under the circumstances, the only option before them was to approach some sympathizer to exploring the possibility of arranging finance of such magnitude without proper and tangible security arrangements. The promoters stated that they had earlier experience of associating with Triumph who had never interfered with the management of the company. The promoters submitted that it was safe and sure to raise funds with the help of Triumph and JDP. However, it never occurred to them that this action on their part could be viewed in other context as has been done now.
- 5.7 The promoters submitted that with the upward trend of IT prices all over the world and also within the country to which Aftek was no exception, the share price continued to rise until in March 2000 when it reached its peak at Rs.5,000/-. Further, they stated that the share price prevailing during the period from November 12, 1999 to December 3, 1999 should not be singled out in isolation so as to link it up with any corporate events which might have occurred at the same time purely as a matter of co-incidence having no correlation. The promoters contended that there was no out of the routine, special corporate event to which any significance could be attached. The promoters stated that holding of AGM in December 1999 was in accordance with requirement of law which is routine in the corporate world and both these events, namely, holding of AGM and price rise coincided but were not correlated.
- 5.8 The promoters stated that they had only indicated their willingness to buy-back the shares and in the absence of price fixation and other terms and conditions, it cannot be said that they agreed to buy back. The promoters alleged that in fact it was open for them to exercise their right of refusal without agreeing for buy-back of shares if IDBI had been transparent and offered to offload the shares in the open market. The promoters contended that as against the price of Rs.150/- indicated by them, IDBI offered the shares at Rs.477.75 per share and that too in abnormal circumstances explained above. The promoters submitted that this forced them to take the decision of buying back the shares to avoid possible hostile take over in the interest of the company and the shareholders.
- 5.9 The promoters submitted that it was not completely true that they approached only Ketan Parekh but in fact one of them i.e. Mr. Ranjit Dhuru knows Mr. Jayesh Parekh of JDP Shares and Finance Ltd. (JDP) and dialogue had been initiated on the basis of likely price of Rs.150/- per share suggested by promoters to IDBI. The promoters contended that the sudden offer of IDBI to sell at a whopping price of Rs.477.75 in a suspicious manner had put the promoters on alert and forced the

arrangement of funds which resulted in provision of funds in the form of identical transactions. The promoters stated that the statement given by two of them i.e. Mr. Nitin Shukla and Mr. Promod Broota to SEBI should not be taken to conclude that the lending parties belonged to Ketan Parekh though they believed it to be this way. The promoters contended that whether or not the lending parties belong to Ketan Parekh is a matter of technical investigation and cannot be decided on the basis of someone's perceptions. The promoters further contended that the financing-cum-option agreements quite naturally had to be identical since they were drafted by same consultant and were to be signed at a very short notice and it is also to be appreciated that as a matter of fact the financiers were private commercial parties whose sole objective it is to make profits on business considerations. Secondly, any other party lending funds of that magnitude would in the first place like to secure their position in their best interest. The promoters stated that they had not viewed provision of such terms in the financing-cum-option agreements as anything abnormal.

- 5.10 The promoters stated that it is not correct to say that the real purpose of the agreements entered into between them and the financiers was to transfer the shares to Ketan Parekh entities. They stated that these arrangements were purely forced upon the promoters by the manner in which IDBI acted in the whole episode and the sole objective before them was to avoid a possible hostile takeover of the company in their interest and interest of shareholders and the Company itself.
- 5.11 The promoters submitted that they are first generation entrepreneurs who have nurtured the company since its inception and they had at no point of time indulged in trading in company's securities on the stock market. They never had any intentions of reaping profits by selling their holdings in rising share market. The promoters contended that even by mistake had they sold any of such shares, they would have been charged with the allegations of having manipulated or abetted manipulation of the stock market for their personal gains by artificially increasing the price. The promoters stated that they have not in any manner neither taken part in artificially increasing the share prices of Aftek's scrips nor taken any benefit from the buoyant market conditions. The promoters contended that instead of the act of promoters of not reaping profits like ordinary shareholders, it is being viewed as anti-capital market.
- 5.12 The promoters submitted that they had positive experience of dealing with Triumph and they had reasonable level of comfort to make financial arrangements in this case also. The promoters contended that there was no question of any pre-arranged strategy in selling shares to the financiers at a rate of Rs.477.75 in place of the ruling price of 1292.50 as alleged. The whole of the situation was created due to the actions of IDBI and desire of promoters, shareholders and the Company to avert any possible threat of hostile takeover of the Company. It is purely an after thought and an attempt to put the pieces together and to link up the issues to obtain an altogether different and imaginary conclusion. The promoters submitted that there is no reason and no purpose is served by them seeking to immensely benefit the financiers to take advantage in the rising market. The fixation of price of Rs.477.75 per share for sale to financiers was just commercial compulsion and not a voluntary act on their part because by making financiers immensely benefit in the rising market, no purpose of the promoters is served. The promoters contended that it was only compromise forced upon them by the circumstances which were largely created by IDBI and they were left with no choice.
- 5.13 The promoters contended that there is no question of any collusion with Ketan Parekh entities or any other person and that the whole deal was a fall out of the circumstances brought about by IDBI and promoters were forced to make arrangements to avert possible hostile takeover of company in the best interest of promoters, shareholders and the company itself. The promoters stated that neither they nor their relatives and friends have at no point of time attempted to trade in the company's scrip to take any unfair advantage for them. The promoters further stated that colluding with any one has to have some motive of personal gain which is absent in their case. The promoters contended that if the Ketan Parekh or his entities have taken advantage of the situation, it was purely their own action for which they alone were responsible and promoters have no active contribution to this. The promoters stated that they were forced into the arrangements and others have utilized this as opportunity to meet their own private ends they are in no way responsible for the alleged price manipulation. Further, they stated that it is wrong to say that the no delivery period was fixed by the company at their instance and in fact fixation of No Delivery period is the prerogative of stock exchanges. The promoters submitted that the date of compulsory demat was decided by SEBI and Company has no control over the same and it is totally wrong to say that promoters saw to it that company fixed the no delivery period from 15/11/99 to 3/12/99. The promoters stated that they had fixed the book closure dates from 6th December to 15th December 1999 after consultations with SEBI and Stock Exchange officials and that there was no secret agenda and no reason for any manipulation. The promoters submitted that there has been no discrimination in the process of dematerialization which clearly establishes that at no point of time, the promoters of the Company have ever sought to reduce the level of floating stock of the Aftek scrip in the stock market.
- 5.14 The promoters stated that the acts of the promoters were in the best interest of themselves, the shareholders and the company itself and were forced upon them by the circumstances created by IDBI in selling the shares and it is a different matter that some party has taken undue advantage of the situation as alleged over which promoters have no control. The promoters stated that in the total stock of 60 lacs shares 9 lacs shares are not material to have any substantial impact on the market and those whose business it is to deal in the stock market know the ins and outs and would surely take advantage of the situation which is not abnormal. The promoters contended that since they are not at all any party to the alleged manipulation, they cannot be held responsible for the actions of the others.
- 5.15 The promoters stated that the fixation of book closure and holding of AGM was in compliance with the legal requirements and listing agreements executed with the stock exchanges. As per Companies Act, AGM must be held within 6 months of the last date of the financial year of the Company for which accounts have been made out. Aftek's financial year 1998-1999 ended on 30th June 1999 accordingly Aftek was required to hold Annual General Meeting latest by 31st December 1999. Also, under the provisions of listing agreement, the share transfer books of the Company must be closed once in every year at the time of AGM if they are not otherwise closed. The promoters submitted that in compliance with these requirements the AGM and the book closure was fixed not for any other purpose as alleged and the preferential issue was planned to meet the financial requirements of the Company and any other event such as generating investors' interest is germane to the issue. The promoters contended that any alleged fluctuation in the share price was not within the control of the promoters or the Company and they never indulged in provision of funds or any other assistance for such alleged purposes as manipulation of market price and generation of artificial investors' interest.

5.16 The promoters contended that the allegations that the Promoters colluded with Ketan Parekh have no basis at all as there has been no attempt on their part nor their relatives and friends to sell their shares in the booming market and thus had no motive to indulge into unethical and unfair trade practices as alleged. The whole exercise of buy-back of shares and raising of funds through identical financing-cum-option agreements was forced upon them due to the unusual circumstances created by the actions of IDBI and was not volunteered by promoters at all. The promoters contended that they have neither provided any funds nor ever intended to manipulate market price nor made any profit out of the situation which was not created by their own actions and that they are just victims of the circumstances and whatever they did was in the best interest of the Company and the Shareholders with a motive to avoid any possible hostile takeover of the company.

6. An opportunity of personal hearing was given on 12.6.2003. All the promoters of Aftek attended the hearing and made submissions before me. The promoters were given two weeks time to file their written submissions, if any. Shri Ranjit Dhuru, on his own behalf and on behalf of other promoters, vide letter dated 24.06.2003 filed written submissions reiterating the submissions made by them vide letter dated 12.03.2003.

7. I have carefully considered the facts and circumstances of the case and also submissions made by the promoters 12.03.2003 and 24.06.2003 and the submissions made by the promoters during the course of personal hearing. On perusal of aforesaid submissions my findings are as under:

7.1 I find that the share price of Aftek witnessed marked increase during the period April 1999 to March 2000 on the BSE. In particular, the increase in prices was highly pronounced in November/December 1999. The price of share increased from Rs. 477.5 on November 12, 1999 to Rs. 1108.2 on December 3, 1999. This sharp increase of more than 100% in such a short period of time coincided with some significant corporate events during this period.

7.2 I find that IDBI was holding 9,85,000 shares of Aftek which it got allotted when Aftek came out with IPO in 1995 as a venture capital funding. At the time of the allotment, there was an agreement between the promoters of Aftek and IDBI with a provision that when IDBI wants to sell the shares, they had to give the promoters the right of first refusal. The aforesaid shares allotted to IDBI were locked in for a period of 3 years from the date of allotment. In August 1999, IDBI offered to sell 9,00,000 shares to the promoters and indicated, inter alia, that the sale would be at market related prices and that the payment would have to be made within a short period of time i.e. from the date of offer. The promoters of Aftek expressed their keenness to acquire the shares offered by IDBI. Thereafter, discussions and negotiations took place between the promoters of Aftek and IDBI on 12/11/99, wherein IDBI offered to sell 9,00,000 shares to Aftek at prevailing market price of Rs. 477.75 and called upon the promoters of Aftek to pay 10% of the amount by 15/11/99 and remaining 90% by 19/11/99.

7.3 I find that earlier in August, 99, IDBI and the promoters had engaged in a discussion when the promoters were informed about IDBI's plan to sell part/entire holding at the ruling market price. On 29th September, 99, the promoters suggested the price of Rs. 150/- per share. I find that the price of the shares moved from Rs 304/- on 26th August, 99 (the day IDBI issued its first letter to promoters) to Rs. 477.75 on 12th November, 99 (when IDBI demanded that this price be paid).

7.4 I find that the promoters of Aftek approached Ketan Parekh and Jayesh Parekh for obtaining finance to acquire the shares from IDBI and Ketan Parekh provided finance through three of his entities – Classic Credit Ltd., Panther Investrade Ltd., Mividha Investments Ltd. and through Jayesh Parekh. Accordingly, financing- cum- option agreements were entered into between the promoters of Aftek and the aforementioned three entities. It was also observed that the 10% amount which was to be paid initially to IDBI was paid on promoters behalf and other financiers by one of the entity only namely – JDP shares and Finance Ltd. It was also seen that the said agreements for providing finance were structured in such a manner that these entities could acquire the shares of the company from the promoters on the very next day of providing funds. The aforesaid agreements were entered in such a manner that the financiers did not have to await default by the promoters in payment of funds advanced and the financiers had the unfettered right to acquire the shares for finance at anytime they wished to even on the next day of advancing the funds.

7.5 I find that Classic Credit Ltd., Panther Investrade Ltd., Mividha Investment Ltd. and JDP Shares and Finance Ltd, entered into structured financing cum option agreement with the promoters of Aftek in November 1999 in terms of which they first financed the purchase of 9,00,000 shares from IDBI. A summarised statement in this regard is as under.

SrNo	Promoter	Financier	Entitlement of Promoters	Amount (Rs.) to IDBI	No of shares financed	option loan asst (no of shares)	Type	option loan asst (Rs)	Type
1	Sandip Save	Classic Credit Ltd.	151500	72800000	151500	135500	option	66000000	option
						16000	loan	6800000	loan
2	R Malekar	Classic Credit Ltd.	151500	72682500	151500	135500	option	65882500	option
						16000	loan	6800000	loan
3	A Humnabadkar	Panther Investrade Ltd.	151500	72632727	151500	135500	option	65832727	option
						16000	loan	6800000	loan

4	C Khopkar	Classic Credit Ltd.	47500	22925000	47500	42500	option	20800000	option
						5000	loan	2125000	loan
5	R Dhuru	Panther Investrade Ltd.	151500	19375000	41500	30500	option	14700000	option
						11000	loan	4675000	loan
6	R Dhuru	JDP Shares and Finance Pvt. Ltd.	—	52825000	110000	100000	option	48575000	option
						10000	loan	4250000	loan
7	N Shukla	Panther Investrade Ltd.	151500	72517500	151500	135500	option	65717500	option
						16000	loan	6800000	loan
8	M Dalal	Mividha	47500	22925000	47500	42500	option	20800000	option
						5000	loan	2125000	loan
9	P Broota	Mividha Investments Ltd.	47500	22925000	47500	42500	option	20800000	option
						5000	loan	2125000	loan
	Total		900000	431607727	900000	900000		431607727	

8. I find that the real purpose of the agreements entered into between the promoters and the financiers was to transfer the shares being offered by IDBI to the Ketan Parekh entities. This is evident from the following:
- 8.1 In a statement on oath dated 10.05.01 Shri Pramod Broota and Shri Nitin K Shukla have categorically stated that the promoters of Aftek had never contacted anybody except Ketan Parekh for financing and that the promoters knew Shri Ketan Parekh very well. In their statement they have stated that the financier would be exercising the option at the time of entering into financing cum option agreement and there was no possibility of hostile takeover with Mr. Ketan Parekh acquiring these shares. They had not met or approached anyone else other than Ketan Parekh in this regard and that the money was given by Ketan Parekh entities to IDBI directly.
- 8.2 A major component of the finance (8,00,000 shares out of 9,00,000 shares financed) was in the form of option i.e. the financiers had the option to receive the shares in lieu of the monies advanced at any time they so desired.
- 8.3 The option could be exercised the very next day of advancing the funds. The financier did not have to await default by the promoters.
- 8.4 When the prices of shares of Aftek were in upward movement, the promoters could sell them in the market immediately and make profits after repaying amounts borrowed. However agreements were so worded that financier could acquire shares at a price at which these shares were offered to the promoters by IDBI and not at the market price. The shares were acquired by financiers i.e. Ketan Parekh entities at Rs. 477.75 per share when the market price on the date of acquisition (date when the option was exercised) was Rs. 1292 per share.
- 8.5 All the financing cum option agreements entered into by each of the financiers with the promoters have the stamp paper of the same date i.e. 15/11/99. All the Financing cum Option Agreements entered into by each of the financiers with the promoters for financing 9,00,000 shares are all worded very similarly. They were all drafted at the office of one M/s Pravin V Shah.
- 8.6 The letters from the said financiers addressed to the promoters dated 7/12/99 and 16/12/99, *inter- alia*, indicated exercise of the option by the said financiers simultaneously in pursuance of prior understanding. This is further evident from the fact that letters are similarly worded.
9. I find that the promoters of the company admitted that they approached Ketan Parekh whom they knew since they had lead managed the company's first preferential issue. It was further admitted by the promoters that Ketan Parekh knew that Aftek did not have the funds to repay the amount borrowed and also that shares would ultimately go to Ketan Parekh or his group entities. Further, the promoters also stated that they felt comfortable because the person who was acquiring these shares was known to them and that they would not have disturbed their existing management team and there was no possibility of hostile takeover with Mr. Ketan Parekh acquiring these shares.
10. I find that Ketan Parekh entities acquired a major chunk of shares – 8,00,000 shares (13.4 % of the paid up capital of the company) from the promoters in November / December 1999 through structured financing arrangement as discussed above. In other words, the promoters first obtained finance from Ketan Parekh entities for purchase of shares from IDBI and later on they transferred the shares to the Ketan Parekh entities pursuant to financing cum option agreement. Thus, through structured arrangement with Ketan Parekh the promoters enabled him in acquiring large number of shares at a lower price i.e. the price at which they acquired shares from IDBI (Rs. 477.75) when market price was at Rs. 1292.50. Therefore, it becomes clear that the promoters intentionally gave to Ketan Parekh entities shares worth Rs. 1,03,40,00,000 at Rs. 35,82,00,000. Hence it is evident that there was a pre arranged strategy to make available large chunk of shares to Ketan Parekh entities at discounted price. In this regard there was no tangible reason for the promoters to enter into such agreements with Ketan Parekh entities which would put them at a marked disadvantage and on the other hand immensely benefited the financiers in a rising market which was prevalent at that point of time. The Investor's fancy for software /technology stocks at that point of time would have enabled the promoters to obtain finance at terms and conditions advantageous to them.
11. I find that the promoters colluded with Ketan Parekh entities to make available to them substantial hold in the scrip at a very low price as compared to the market price. This cornering facilitated price manipulation by Ketan Parekh as there was

low floating stock during this period. Further, I also find that the promoters also saw to it that the company also fixed its no delivery period from 15/11/99 to 3/12/99 to coincide with the date of compulsory demat with effect from 29/11/99. This further reduced the floating stock in the market. At this time, Ketan Parekh entities indulged in large purchase and sale transactions which in absence of floating stock led to artificial increase in price. Investigations revealed that Ketan Parekh entities had a substantial net sale position during the no-delivery period and fulfilled their delivery obligations in demat form by exercising option to acquire the shares for which they had advanced funds to the promoters. Thus, the promoters entered into the financing cum option agreements with the financiers prior to the commencement of the no delivery period in such a way that it enabled the financiers to indulge in transactions which gave them a net sale position at the end of the no delivery period. The agreements also made the financiers confident that their obligations of giving delivery in demat form at the end of the no delivery period would be met by acquiring shares from the promoters.

12. I find that Ketan Parekh entities indulged in circular trading, large buy and sell transactions, putting orders at a price much higher than the last traded price. This led to sudden price rise from Rs. 477.75/- to Rs. 1815/- during November 12, 1999 to December 15, 1999 and the price continued to rise thereafter. This could not have been done without the promoters above stated collusion.
13. Additionally, I find that the manipulation by Ketan Parekh entities was further facilitated since the company vide notice dated 15/11/99 to its shareholders had further fixed 15/12/99 (the last date of the book closure date) as date of AGM and also for making further preferential allotment of shares. The fact that the company was making preferential allotment of shares plus the investor fancy for computer stock at that point of time further generated artificial investor interest and contributed to price rise. Ketan Parekh entities - Classic Credit Ltd. and Panther Investrade Ltd. thus disturbed the market equilibrium and created artificial market by rigging the scrip. The transactions by these entities in the shares of Aftak Infosys Ltd. were undertaken with an intention to artificially raise the price and / or cause fluctuations of the prices of the shares and as a result induced other investors to trade in the scrip.
14. The promoters contended that these arrangements were purely forced upon the promoters by the manner in which IDBI acted in the whole episode and the sole objective before them was to avoid a possible hostile takeover of the company in their interest and interest of shareholders and the company itself. I find that the promoter's allegations against IDBI have no merit as the promoters were very well aware as long back in 1995 itself that as per the Subscription Agreement dated 5th April, 1995 it was agreed that in the event IDBI wanted to sell the shares, the promoters will have first right of refusal. It would be preposterous to hold that the financial institution had forced them to act in the manner they have acted in this case. It is well known that the primary concern of any Bank or Financial Institution for that matter would be to recover its loan amounts. The actions of IDBI in this matter have to be seen in the said perspective. The promoters cannot blame IDBI to get away with their tacit understanding with Ketan Parekh Group entities and the subsequent manipulation of the price of the scrip of Aftak to come out of the crisis of any possible hostile takeover of the company by outsiders.
15. I find it difficult to agree that the acts of the promoters were in the best interest of themselves, the shareholders and the company itself and were forced upon them by the circumstances created by IDBI. Further, the promoters stated that in the total stock of 60 lacs shares 9 lacs shares are not material to have any substantial impact on the market and those whose business it is to deal in the stock market know the ins and outs and would surely take advantage of the situation which is not abnormal. I find the submission of the promoters not tenable in light of the facts and circumstances of the case particularly when the company fixed its no delivery period from 15/11/99 to 3/12/99 to coincide with the date of compulsory demat with effect from 29/11/99 and further facilitated KP entities since the company vide notice dated 15/11/99 to its shareholders had further fixed 15/12/99 (the last date of the book closure date) as date of AGM and also for making further preferential allotment of shares. I also find that the promoters themselves have admitted that those whose business it is to deal in the stock market know the ins and outs and would surely take advantage of the situation which is not abnormal. I find the manipulation of the scrip of Aftak by KP entities is abnormal and also the promoters were aware of this and facilitated the KP Group by finance cum option agreement. Therefore, the promoters can be termed as a party to the alleged manipulation as they aided and abetted KP entities in manipulation of the scrip of Aftak.
16. Further, in addition to the above, when the allegations of the promoters of Aftak against IDBI were cross checked with IDBI, I find that IDBI vide letter dated 29.07.03 stated that there were no intention of offering shares to any third party and even after the refusal by the promoters, they would have sold through exchanges in small lots. This runs contrary to the stand of the promoters that they were afraid of a takeover threat or their shares would fall into wrong hands if the shares were not acquired by them.
17. I find that as per the finance cum option agreement, in the event of default by the borrower (Promoters), the financier could sell or dispose off the shares without notice. Clause 6(h) of the agreement incorporates that in the event of default the financier shall also have the right to adjust or apportion the said security shares or part thereof towards outstanding financial assistance and interest thereon without any recourse to the borrower. As per the agreement, the principal amount of the loan alongwith interest @ 18% per annum shall be payable on or before 31.3.2000. However, the financier had an option to purchase shares upto the 15th December, 99. I find that on 15.12.99, the share price of Aftak hit a high of Rs. 1967/- on BSE. Purportedly, the price has been going up right from the time agreement was entered into. Any person of ordinary prudence would have either asked for adjustments of the loan towards the market price or asked for the difference and release of pledge even if he was unable to repay the loan. He could have even made alternative arrangements for repayment of the loan and taken possession of the shares which commanded much higher price over what acquirers had paid to IDBI. I am not able to persuade myself to believe that promoters of Aftak did not possess such prudence. In view of the aforesaid facts and circumstances, there appears to be sufficient preponderance of circumstances that the promoters of Aftak colluded with the KP Group entities in creation of artificial market and volumes in the scrip to corner tradeable securities in the market, thereby caused artificial shortage of shares to induce investor interest in the scrip. The acts of the promoters can be said to have disturbed the market equilibrium by creating artificial demand thereby distorting the price discovery mechanism of the exchange which would be detrimental to the interest of investors and orderly development of security market.
18. In view of the above findings, I find that the promoters have violated clause (a), (b), (c) and (d) of regulation 4 of the SEBI (Prohibition of Fraudulent and Unfair trade practices relating to the securities market) Regulations, 1995.

Regulation 4 (a) (b) (c) and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, provides that,

No person shall -

(a) 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, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person;

(b) indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market;

(c) indulge in any act which results in reflection of prices of securities based on transactions that are not genuine trade transactions;

(d) enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress, or cause fluctuations in the market price of securities;

19. Therefore, in the interest of the investors and safety and security of the capital market, in exercise of powers conferred on me under section 4(3) read with section 11B of SEBI Act and regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995, I, hereby, prohibit the promoters of Aftek, Shri Ranjit Mohan Dhuru, Shri Pramod Broota, Shri Nitin Kashinath Shukla, Shri Sandip Save, Shri Ashutosh Humnabadkar, Shri Ravindranath Umakant Malekar, Shri Mukul Suryakant Dalal and Shri Charuhas Vasant Khopkar from buying, selling or dealing in securities for a period of one year from the date of this order.

DATE : 08.03.2004

PLACE: MUMBAI

G. N. BAJPAI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA