

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 AND SECTION 11 AND 11B OF THE SEBI ACT, 1992.

AGAINST SHRI D.K. SHAH, IN THE MATTER OF INFOQUEST SOFTWARE EXPORTS LTD.

BACKGROUND

1. M/s Infoquest Software Exports Ltd. (hereinafter referred to as "ISEL") came out with a public issue of 43,18,800 equity shares of Rs. 10/- each for cash at par aggregating to Rs. 431.88 lacs. The public issue opened on April 15, 1996 and closed on April 18, 1996. The shares of the company are listed at the Bombay, Ahmedabad, Jaipur and Madhya Pradesh stock exchanges.
2. SEBI had received several complaints from investors, alleging inter alia that applications had been made after the closure of the issue, the registrar had wrongly rejected the valid applications, the share price of ISEL was being rigged, etc.
3. In view of the above, Chairman SEBI, vide order dated June 28, 1996, ordered investigations into the alleged irregularities in the public issue of ISEL. The alleged role of the company, its promoters, a group of financiers and brokers relating to manipulation of the market was examined. Information was gathered from various investors as well as the brokers, promoter / directors of the ISEL in the course of investigation.

SHOW CAUSE NOTICE

4. Based on the findings thereon, a show cause notice dated June 18, 2004 was issued to D K Shah, a financier who acted as a mediator between the applicants (in so far as the issue of ISEL is concerned) and directors of ISEL, whereby violation of Regulation 3 and clause (a) and (e) of Regulation 4 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 was alleged against him. Vide the said show cause notice, he was also asked to show cause as to why action should not be taken under Regulation 11 & 12 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 read with Section 11 and 11B of SEBI Act, 1992.
5. No reply was received from D. K. Shah.

HEARING AND WRITTEN SUBMISSIONS

6. An opportunity of hearing was granted to Shri DK Shah, before me, on August 18, 2003. Neither Shri D K Shah nor any representative of his appeared for the hearing.

FINDINGS

7. I have carefully examined the investigation report and the contents of the show cause notice issued to D K Shah. My findings with respect to the irregularities in the public issue of ISEL and more specifically the role of D.K. Shah in the said irregularities are as under.
8. During the investigation, statements had been recorded of different parties, including ISEL, its directors, brokers, financiers and also the persons who had arranged the finance, acting as intermediary between the allottees and financiers. All the allottees, I find, had applied in the public issue on the basis of a pre-meditated arrangement entered into, between themselves and persons acting on behalf of ISEL, which led to huge oversubscription in the issue. This in turn created a false and misleading impression on the investors regarding the interest in the public issue, which led to price rise in the scrip after listing, thereby further inducing interest of investors in the scrip of ISEL. I find that the scrip was listed on BSE and ASE at around Rs.50/-. The scrip went up to Rs.64/- in two trading days and fell to Rs.46/- after around 15 trading days. Due to this volatility in price BSE has imposed a special margin of Rs.15/- on June 18, 1996.
9. My observations on the modus operandi adopted in the public issue of ISEL are as follows:-
 - 9.1 One Shri Devendra Kantilal Shah alias Munna (hereinafter referred to as 'D K Shah) of/acting on behalf of one M/s Arihant Finance Corporation, was involved in the business of financing public issues. He has confirmed that he was involved in the financing of the public issue of ISEL and that he was the negotiator between the financiers and the directors of ISEL. In his statement he has submitted that that the practice in cases of such kind was that an agreement is entered into with clients who approach for financing of the issue; the interest rate is agreed upon right at the beginning and the shares allotted are

subject to buy-back, though the interest is received on full amount of application and the interest income is subject to income tax.

- 9.2 In this particular case, Shri D.K. Shah had confirmed on oath before the investigating officials that he was involved in financing the public issue of ISEL. He had submitted that he had financed the subscription to the extent of Rs 9 Crores, at the behest of one M/s Divya Jyoti Securities Ltd. The applications for this amount were made by various groups of financiers, namely D.K.Dalal, Vinod Kumar Jatia, Thakkar Family, Vohra Family, Shah Family, Modi Family, Acharya family and were arranged after the closure of the issue. Shri Shah stated that the financiers who put in the applications had arranged for the stock invests for applying in the issue and they were paid interest at a flat rate from the date of the issue till allotment. Shri D K Shah was himself able to garner allotment worth Rs 57 lacs, for which he had received back the money invested as subscription and interest at the rate of 36% was charged and the remaining amount was refunded.
- 9.3 The aforesaid applications, along with the respective stock invests, were admittedly handed over by Shri D K Shah to M/s Divya Jyoti Securities Ltd. It is also pertinent to note that either these "investors" never received the share certificates for the shares allotted to them or they have, on receipt of the share certificates, signed blank transfer deeds and handed them over to the person/persons who had approached them for the financing of the issue, after receiving the principal and interest amounts owed to them.
- 9.4 The financiers, in their statements, confirmed that they were approached by Shri D.K. Shah alias Munna of Arihant Finance Corporation, a big time financier of public issues, or persons acting on his behalf, to finance the public issue of ISEL.
- 9.5 I also find that the stock invests accompanying the applications of most of these financiers were issued after the closure of the issue. In reply to the investigating team's query as to how is it possible that the stock invests issued on May 18, 1996 could be deposited before the closure of the issue on April 18, 1996, Shri D K Shah had submitted that he had given all the forms and stock invests to Divya Jyoti persons and was not aware how they were deposited after the closure of the issue. In reply to whether all the applicants have received the share certificates, Shri D.K Shah had stated that the allotment money, along with interest, have been paid to the applicants, and till date no one has enquired about the shares.
10. On perusal of the records collected during the investigation, I find that a group of entities, such as Shri Deep Trivedi/ Divya Jyoti Securities Ltd. and Shri D.K. Shah etc, arranged for financing of the public issue of ISEL and in connivance with the promoters of the issuer company, manipulated the public issue allotment of ISEL. Various financiers, as mentioned in the above paragraphs, in the pretext of being genuine investors, had connived along with these entities.
11. I also find that the financing of the issue was done by M/s Divya Jyoti Securities Ltd., on behalf of the promoters/directors of ISEL. The basis of presumption by me, on the relationship between M/s Divya Jyoti Securities Ltd., which sought financing of the issue and ISEL/Sanjay Jhalani, Director, ISEL is as follows:-
- i. The bank account of M/s Top Cassettes in which Shri Sanjay Jalani, the director of ISEL is one of the Directors maintained at Dena Bank, Indore was introduced by M/s Divya Jyoti Industries Ltd. of which Divya Jyoti Securities is a group concern.
 - ii. Perusal of account opening form of Top Cassettes and Divya Jyoti Securities Ltd., maintained at Dena Bank, Navlakha Branch, reveals that the account number of Top Cassettes is 2120 and that of Divya Jyoti Securities is 2121. These bank accounts were opened on the same day and introduced by the same person. The account of Top Cassettes maintained at Dena Bank was introduced by Director of Divya Jyoti Industries and the account of Divya Jyoti Securities was also introduced by the director of Divya Jyoti Industries. The handwriting on the Bank account opening form, especially in the address and the telephone column, appears to be the same for both the accounts. Telephone number 434506 appears in both the account opening forms and both the accounts have been verified by the same officer of the Bank, which means that the accounts were opened at the same time. The office of Top Cassettes belongs to Deep Trivedi and the telephone number of Top Cassettes and Divya Jyoti Securities Ltd., is common.
 - iii. Shri Rajesh Jhaveri, another "financier" of the issue, had stated on oath that he had paid an amount of Rs.60 lacs to D.K. Shah, of/acting on behalf of Arihant Finance Corporation, for the services rendered by him towards financing the public issue of ISEL. This amount was paid by him on behalf of Deep Trivedi, director, Divya Jyoti Securities Ltd. The said amount was subsequently reimbursed to him by two drafts issued by Dena Bank, D.D. No. 805203, dated May 31, 1996 and D.D. No. 805238, dated June 5, 1996, amounting to Rs.30 lacs each, issued to the debit of Divya Jyoti Securities and Top Cassettes Ltd., respectively.
 - iv. The perusal of cash books/ bank books reveals cash withdrawal from the Bank accounts of ISEL even when the company had ample cash balances. In some situations the company has done cash withdrawal of few lacs, without any expenditure in the near future.
 - v. ISEL had made payments to Divya Jyoti Securities Ltd. on April 5, and April 9, 1996 just prior to the opening of the public issue of the company. The perusal of records of ISEL reveal that the company has given money to

Divya Jyoti Industries Ltd. to the extent of Rs. 1,61,30,000, from May 22, 1996 to June 10, 1996. The money was in turn given to Divya Jyoti Securities Ltd., who in turn has utilized this money for purchases of ISEL shares during the aforesaid period, in Grey Market as well as in Secondary Market, as indicated by the bank account statements available with SEBI.

- vi. A payment of Rs.30,00,000/- was made by Divya Jyoti Securities Ltd. towards the purchase of Infoquest shares from Top Cassettes Ltd.
- vii. On perusal of account of Top Cassettes maintained at Dena Bank, Navlakha Chouraha, it appears that Top Cassettes have given financial assistance to Divya Jyoti Industries Ltd., who in turn has passed on the same to Divya Jyoti Securities Ltd. Shri Deep Trivedi of Divya Jyoti Securities Ltd. has used this money for buying the shares of ISEL and Top Cassettes Ltd.

12. The role of the various financiers are examined as under.

13. **Financing by the Jatia family**

13.1 I find that Jatia and his family members were one group of investors/financiers in the public issue of ISEL. Shri Jatia is the promoter/director of M/s Supreme Holdings, a company listed at BSE. It was stated during the investigation, by Shri Purushotham Ladha, the authorized representative of Shri Jatia, as well as the Accounts Executive of M/s Supreme Holdings Ltd., that one Shri Dilip Dalal had approached Shri Jatia around May 10, 1996 (after closure of the issue) for financing the public issue of ISEL. Although the agreement entered into, in pursuance thereof, was between M/s Arihant Finance Corporation and the family members of Shri Jatia, the repayment of loan was done by M/s BK Finance. From the statements of Shri Purushottam Ladha, , I find the deal to be such that Rs.70 lacs was given as a loan @ 20% p.a. for 15 days by Shri Jatia and his family members and the interest earned on the stock invests was to be retained by them. I also find Shri. Jatia to have admitted to the investigating officials, that an amount of Rs 70 lacs had been given by him towards the public issue of ISEL. It was found that the applications were made through stock invests drawn on Bank of India, Cumballa Hill Branch. Shri V.K. Jatia and his family members were found to have signed the account opening forms of Bank of India and handed it over to the broker, Shri Dilip Dalal, who managed to get the stock invest issued from Bank of India, Cumballa Hill Branch. It was also seen that the stock invests were predated as of April 18, 1996, though the accounts from where the stock invests were purchased, were opened only on May 10, 1996. It was seen that on allotment, each applicant received 6,500 shares and an amount of Rs.65,000/- was deducted from the stock invests. The details of the repayment of the interest and the principal are given as under :

Applicant's Name	Application Amount (Rs.)	Allotment Amount (Rs.)	Principal Repayment (Rs.)	Interest Repayment (Rs.)
Subhkaran Jatia	10,00,000	65,000	65,000	8,219
Rampiyari Devi Jatia	10,00,000	65,000	65,000	8,219
Shashi Jatia	10,00,000	65,000	65,000	8,219
Archana Jatia	10,00,000	65,000	65,000	8,219
Vinod Kumar Jatia	10,00,000	65,000	65,000	8,219
Nita Jatia	10,00,000	65,000	65,000	8,219
Smita Jatia	10,00,000	65,000	65,000	8,219

13.2 The principal of Rs.65,000/- per application was found to have been repaid by M/s B.K. Finance, from their account held at the Madhavpura Mercantile Co-op Bank Ltd. vide cheques no.949379 to 949385 on May 22, 1996. It was also found that, the interest of Rs.8,219/- per application was paid by M/s B.K. Finance, from their account at Madhavpura Mercantile Co op. Bank Ltd., vide cheques no.949362 to 949368 on May 15, 1996.

13.3 In addition to the above, I find that on May 14, 1996, one Shri Farookh Pavri of Mumbai had approached Shri V.K. Jatia for a further financing of Rs.50 lacs on behalf of M/s Arihant Finance Corporation of Ahmedabad. This was admitted to, by Shri Jatia. The terms of financing were found to have been agreed on the condition that five joint applications of Rs.10 lacs would be put in by each and that the first applicant would be the persons related to Arihant Finance Corporation and the second applicant would be the family members of Shri V.K. Jatia. It was seen that in order to ensure the repayment of loan, the address of correspondence was given as the address of Shri V.K. Jatia. The details of these joint applications are as follows:

- a. Hemendra Shah
- Nita Jhatia
- b. Jignesh Shah

Smita Jhatia

c. Vishvesh Shah

Shashi Jhatia

d. Sangeeta Shah

Vinod Kumar Jhatia

e. Bharat Shah

Archana Jhatia

- 13.4 These applications were also made through stock invests which were purchased from Bank of India, Cumballa Hill Branch. It was seen that in this case, the stock invests were issued from the bank accounts of the first applicants, which were opened in the last week of April 1996. It was seen that for these five applications, Jhatia and their family members had invested Rs.9,35,000/- per application. It was seen that the balance of Rs.65,000/- was put in by the Arihant Finance Corporation and the payments were found to have been made by Mani Investments, of which Farookh Pavri is the Partner (another financier in the issue), on behalf of Arihant Finance Corporation.
- 13.5 As regards applications being accompanied by pre-dated stock invests, Shri Jhatia had stated that they acted on the advice of their broker, Shri Dilip Dalal, who said that he could manage to get the pre dated stock invests from Bank of India, Cumballa Hill Branch. As mentioned above, although Jhatia and his family members had opened the accounts only on May 10, 1996, the stock invests that accompanied their applications are found to have been purchased from the accounts opened on April 27, 1996 in their name. Thus, I find that the intention behind making applications on behalf of Jhatia and his family members, although stated to be for financing purposes, was not bonafide. In that case, there need not have used predated stock invests. They could have made the applications before the closure of the issue itself.
- 13.6 I find that the applicants had been aware of the allotment to be made in response to their applications, even before they made the applications in the public issue. Further, I also find that on receipt of the principal and interest repayment from the financiers and on receipt of the shares allotted to the applicants from the Registrars, the applicants signed the blank transfer deeds and handed over the share certificates and the transfer deeds to Dilip Dalal and Farokh Pavri, respectively.
- 13.7 In order to look into the use of pre-dated stock invests by Shri Jhatia and his family members, the investigation team approached Bank of India. Shri Kaku, who was the Chief Manager of Bank of India, Cumballa Hill Branch, Bombay, at the time of issue of these stock invests, had deposed before the investigating officials. He confirmed that the stock invests issued to the members of Jhatia family, among others, were predated. On perusal of the bank records, it was observed that the money was debited from the accounts of the holders of these stock invests before the endorsement by the Registrar, thereby making the amount available or the lien fall below the amount for which the stock invests were issued. I also find that Shri Kaku stated that the respective parties showed him the basis of allotment and on that basis proportionate amount was allowed to be released. He also stated that on the presumption that the bank was having the security of the reduced liability, as per the basis of allotment, he allowed the withdrawal of money.

14. **Financing by Shri Ramesh Shah and family**

- 14.1 Shri Ramesh Shah, one of the partners of M/s R.R. Investments was also one of the applicants in the public issue. Shri Ramesh Shah, I find had admitted to the investigating officials, that his family members along with the family members of Rajesh Mehta, the other partner of R.R. Investments had applied in the public issue of M/s Infoquest Software Exports Ltd. The names of the applicants belonging to this group were :-

a. Deepal Mehta

b. Rajesh Mehta

c. Pina Shah

d. Kaushal Mehta

e. Kashmira Mehta

f. Ramesh Shah

g. Deepa Mehta

h. Vipul Mehta

14.2 I find that Shri Ramesh Shah was approached by a broker, Shri Sunil Dalal, to arrange finance for Rs.75 lacs for Arihant Finance Corporation of Ahmedabad in relation to the public issue of M/s Infoquest Software Exports Ltd. I also find that the broker had approached him after the closure of the issue, i.e., sometime in the first week of May. The deal in this case is also identical as in the case of Jatia and his family members. i.e., the applications worth Rs.75 lacs would be put in by the financiers in their name. The loan agreement was signed between the applicants and Arihant Finance Corporation. As per the agreement, Arihant Finance Corporation (borrower) was to pay an interest of Rs.25,753/- for 8 days to Deepa Mehta for the loan amount of Rs.50 lacs and an interest of Rs.12,876/- for 8 days to Vipul Mehta for the loan amount of Rs.25 lacs. , (Two applications in the name of Deepa Mehta and Vipul Mehta for Rs.50 lacs and Rs. 25 lacs respectively were made earlier). In this case, stock invests were drawn on the United Western Bank, Lower Parel Branch, on May 15, 1996. However, the stock invests were pre-dated as April 15, 1996. I find that the repayment of the principal sum as well as interest was done by B.K. Finance from its account of Madhavpura Mercantile Co op. Bank Ltd. on May 22, 1996. Shri Sunil Dalal is again stated to have approached Shri Ramesh Shah around first week of May 1996 asking for a further finance of Rs.60 lacs on behalf of the same borrower for the same purpose. Sunil Dalal is also said to have requested Shri Ramesh Shah to give a loan of Rs.10 lacs to Shri Vishnu Patel. Shri Ramesh Shah, I find has stated that he had no knowledge as to why and where this money was to be utilised. Shri Vishnu Patel is one of the applicants, having put in Rs.10 lacs in the public issue through stock invest which was purchased from the same branch and the stock invest is in the same serial order as that of the family members of Ramesh Shah and Rajesh Mehta. I also find that the family members of Ramesh Shah and Rajesh Mehta had signed the account opening forms of Bank of India and handed it to the broker, on his advice, to Shri Sunil Dalal, who further managed to get the stock invest issued from Bank of India, Cumballa Hill Branch.

14.3 The details of the repayment of the interest and the principal by this group is given as under :

Applicant's Name	Application Amount (Rs.)	Allotment Amount (Rs.)	Principal Repayment (Rs.)	Interest Repayment (Rs.)
Deepal Mehta	10,00,000	65,000	65,000	9,589
Rajesh Mehta	10,00,000	65,000	65,000	9,589
Ramesh Shah	10,00,000	65,000	65,000	9,589
Kaushal Mehta	10,00,000	65,000	65,000	9,589
Kashmira Mehta	10,00,000	65,000	65,000	9,589
Pina Shah	10,00,000	65,000	65,000	9,589

The principal of Rs.65,000/- per application along with interest is found to have been repaid by M/s B.K.Finance.

14.4 In all these cases, the applicants signed the blank transfer deeds and handed over the share certificates and the transfer deeds to the broker, Sunil Dalal, on receipt of the principal and interest repayment from the financiers and after the shares were allotted to the applicants from the Registrars. The reason for purchase of stock invests from Bank of India, Cumballa Hill Branch, Shri Ramesh Shah said was because Bank of Rajasthan, at which they have an account, would not issue predated stock invests, and the broker, Sunil Dalal had said that he could arrange to get the predated stock invests from Bank of India.

15. **Financing by the Pavri group**

15.1 Shri Farookh Pavri and the persons associated to him have applied in the said public issue on behalf of M/s Arihant Finance Corporation of Ahmedabad. Shri Farookh Pavri also had stated that he was approached by Shri D.K. Shah, alias Munna of Arihant Finance Corporation, during first week of May 1996 for arranging a finance of Rs.100 lacs which was to be used for applying in the public issue of Infoquest. Shri Farokh Pavri and the persons associated to him put in 8 applications of Rs.10 lacs each. The names of these applicants, who are friends and relatives of Shri Pavri are as follows:

- a. Sangeeta Shah
- b. Darshana Shah
- c. Tejas Shah
- d. Sanjay Balkiwal
- e. Nazneen Ravji
- f. Delnaz Ravji
- g. Shirin Pavri
- h. Farookh Pavri

- 15.2 I find that the agreement was entered into between Mani Investments, of which Shri Farokh Pavri is a Partner, and Arihant Finance Corporation. These agreements were back dated at April 15, 1996. There were two agreements of Rs.20 lacs and Rs.60 lacs, amounting to Rs.80 lacs. As per the agreement, advance interest was to be paid to Mani Investments @ 30% p.a. for a period of 46 days. The interest earned on the stock invests was to be retained by the applicants.
- 15.3 Shri Farokh Pavri also syndicated a loan of Rs.19 lacs on behalf of Arihant Finance Corporation. There were 4 applications, the details of which are given below:

Sr. No.	Name of the Applicant	Application Amount (Rs.)
1	Radheshyam Chokhani	10,00,000
2	Kishore Chokhani	5,00,000
3	Mona Jhaveri	2,00,000
4	Sona Jhaveri	2,00,000

For the above mentioned loan of Rs.19 lacs, the agreement was entered into between Arihant Finance Corporation and the individual applicants.

- 15.4 In addition to this, I also find that Rs.20 lacs was financed to Shri Muthu Krishnan and Shri Franco Fernandes for their application of Rs.10 lacs each into the public issue of ISEL. This particular financing of Rs.20 lacs was done through one broker, Shri Vivek Bagady. I find that the loan of Rs.10 lacs each given to the two applicants was @ 24% p.a. for 30 days.
- 15.5 I also find that the stock invests of all the above mentioned 14 applicants, except that of Shri Radheshyam Chokhani, were purchased from Bank of India, Cumballa Hill Branch, Bombay. Shri Farokh Pavri and his friends & relatives were already having accounts when they approached the bank in the 2nd week of May, 1996. Shri Farokh Pavri introduced the accounts of Kishore Chokhani, Mona Jhaveri, Sona Jhaveri, Muthu Krishnan and Franco Fernandes. The stock invest of Shri Radheshyam Chokhani was purchased from United Western Bank, Dadar Branch, Mumbai. Shri Farokh Pavri stated that the stock invests and duly filled application forms were handed over to Mr. D.K. Shah of Arihant Finance Corporation in the second week of May 1996.
- 15.6 Apart from the above, Shri Farokh Pavri, I find, had syndicated a loan of Rs.50 lacs from the members of the Jatia family, which has already been explained herein before.
- 15.7 I also find that the loan repayment on the allotment of the applications worth Rs.149 lacs (Rs.80 lacs + Rs.19lacs + Rs 50 lacs) was paid from the account of B.K. Finance from Madhavpura Mercantile Coop. Bank Ltd., Mandvi Branch, Bombay. Shri Pavri also stated that the above payment was inclusive of some other payment which Arihant Finance Corporation owed to him. The interest on this loan was paid separately on dates prior to the date of repayment of principal amount by cheques of Rs.2,46,575/- and Rs.60,000/- and Rs.75,000/- , issued from the same account of B.K. Finance. I also find that this money was subsequently paid by Shri Pavri to the financiers.

16. **Financing by Shri Sunil Dalal and Shri Dilip Dalal**

- 16.1 I find that the brokers, Shri Sunil Dalal and his brother Shri Dilip Dalal (referred to as "brothers") had themselves applied in the public issue of ISEL. Shri Sunil Dalal, I find, had admitted during the investigation that he and his brother did not apply as genuine investors. They had said that they were approached by Shri D.K. Shah alias Munna of Arihant Finance Corporation, who is a big time financier of public issues, to finance the public issue of Infoquest. Shri Dilip Dalal and Shri Sunil Dalal had put in applications for 6 lacs shares each. These applications were applied through stock invests of Rs.30 lacs each, which were issued from United Western Bank Ltd., Lower Parel Branch, Bombay. These stock invests also were pre-dated. As per the agreement between the two applicants and Arihant Finance Corporation, an interest at the rate of 15% p.a. for 30 days was to be paid. The arrangement for the loan also was similar as in the other cases. The interest on the stock invest application was to be retained by the investor. The application forms and the stock invests of the brothers were collected by a nominee of Shri D.K. Shah on May 13, 1996 on receipt of the interest amount, who were paid drafts by B.K. Finance and it is drawn on Madhavpura Mercantile Co-op. Bank Ltd., Mandvi Branch. The brothers were allotted 19,500 shares each. The principal amount of Rs.1,95,000/- for each application was paid by demand drafts. This payment was also done from the account of B.K. Finance from Madhavpura Mercantile Co-op. Bank Ltd. payable at Mandvi Branch, Bombay. Shri Sunil Dalal, I find, has stated that neither he nor his brother received any shares from the Registrar. On being asked if he was instrumental in getting the finance for Munna Bhai from other parties, Shri Dalal stated that Munna Bhai needed financing worth Rs.5 crores. This amount has been financed by Vinod Kumar Jatia and his family members, R.R. Investments (Ramesh Shah), Vijay Kumar Jatia and the associates of Shri Farokh Pavri. I also find that he stated Munna Bhai to be a good friend of Shri Pavri and that he has been introduced to Munna Bhai through Shri Pavri. Shri Pavri is also stated to have financed Munna Bhai on earlier occasions also.
- 16.2 I also find that the financiers mentioned above have stated that Dalal brothers have been the persons who had approached them for financing the issues. Regarding the element of risk involved in this financing, Shri Dalal told that since the issue

would be oversubscribed many times, the allotment would be hardly 10% of the total application.

17. **Financing By Shri Acharya and family**

17.1 Shri Jagdish R. Acharya and his family members had applied in the public issue of ISEL. The following family members of Shri Acharya have applied in the said public issue:

- a. Jaichandbhai S. Acharya
- b. Jayaben S. Acharya
- c. Punamchandbhai R. Acharya
- d. Jagdishbhai R. Acharya
- e. Mukeshbhai J. Acharya
- f. Hareshbhai J. Acharya
- g. Shantaben J. Acharya
- h. Sitaben P. Acharya
- i. Sukhdevbhai R. Acharya
- j. Natvarbhai J. Acharya
- k. Shipaben S. Acharya

17.2 Shri Jagdish Acharya had stated during the investigation that the shares allotted to the applicants at (a) to (f) above were sold to Raysons Capital Finance Services Pvt. Ltd. (Raysons) @ Rs.11 per share. Incidentally, Raysons is promoted by one of the sons of Shri Acharya and is one of their family companies. Shri Acharya stated that since the individual applicants required money, they sold the shares allotted to them to Raysons. Raysons, I find, had further sold these shares to one M/s Stephen Finstock Pvt. Ltd. at different rates. Shri Acharya, I find, had stated to the investigating officials that he had sold the shares on getting a good price. However, I find that the shares allotted to persons mentioned in (g) to (k) above have been sold to Arihant Finance Corporation @ Rs.14/- per share as per the mutual agreement. On receipt of the shares from the Registrars, the applicants mentioned above signed the duly executed transfer deeds and handed over the share certificates and the transfer deeds to Arihant Finance Corporation on May 21, 1996. Here also I find that the pattern of financing was identical as in the other cases. i.e., an amount of Rs.65,000/- per applicant being received for 6,500 shares allotted to each applicant. Further interest is also seen to have been received by each of them. During the investigation, I have found that when being asked as to how the deal materialized, Shri Acharya had stated that his son was in touch with the persons in the market like Munna Bhai (of Arihant Finance Corporation). The deal for buy back of shares was stated to have been arranged by his son at the pre determined rate of Rs.14/- per share on all the shares allotted to the applicants. It was a mutual contract and no Memorandum of Understanding was signed. Shri Acharya and his family members had financed the public issue on the pre condition that the applications shall be made by the financiers in the public issue and on allotment of shares, the same would be handed over to Munna Bhai. He has also stated that it was after they had applied in the public issue that Munna Bhai had approached them for buying the shares allotted to them at a premium of Rs.4/- per share. I also find that there were small investors from Baroda who stated that their applications and allotment were also part of a finance deal according to which they had applied through stock invests and a fixed return was assured irrespective of the allotment on the total amount financed.

18. Shri Kaku, who was the Chief Manager of Bank of India, Cumballa Hill Branch, Bombay at the time of issue of these stock invests had deposed before the investigating officials. He confirmed that the stock invests issued to the members of Jatia family, Mehta family, Shah family and associates of Shri Farokh Pavri were predated. On perusal of the bank records, I have seen that the money was debited from the accounts of the holders of these stock invests before the endorsement by the Registrar, thereby making the amount available or the lien fall below the amount for which the stock invests were issued. I also find that Shri Kaku stated that the respective parties showed him the basis of allotment and on that basis the proportionate money was allowed to be released. On the presumption that the bank was having the security of the reduced liability, as per the basis of allotment, he allowed the withdrawal of money.

19. I find that Shri D.K. Shah was himself able to garner allotment worth Rs.57 lacs for which he had received 36% interest. Shri Shah had stated that the financiers who put in the applications in their names arranged for the stock invest and they are paid an interest at a flat rate from the date of the issue till allotment.

20. Thus, from the above, I find that, D K Shah had financed the public issue of ISEL. I also note that Shri Shah has also admitted to having financed Rs 9 crores, at the behest of Divya Jyoti Securities Ltd. The applications for shares of ISEL were made through stock invest fraudulently obtained, with a view to create an appearance of huge oversubscription. The

applicants had also received assured allotment and cornered the shares. This had been done to circumvent the requirement of minimum subscription and after the closure of the issue, the applicants received back the money from the company.

21. In this regard, I have noted that Regulation 2(c) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to securities market) Regulations, 1995 provides that :

"(c) 'fraud' includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract :-

1) the suggestion, as to a fact, of that which is not true, by one who does not believe it to be true;

2) the active concealment of a fact by one having knowledge or belief of the fact;

3) a promise made without any intention of performing it;

4) any other act fitted to deceive;

5) any such act or omission as the law specially declares to be fraudulent; and 'fraudulent' shall be construed accordingly."

22. I note that D K Shah had acted in such a manner so as to create a false impression of over subscription to the public issue of ISEL in a fraudulent manner, in contravention of the aforesaid regulation and the conduct of Shri D K Shah is detrimental to the interest of investors in the securities market. This was clearly a fraud perpetrated on the investors and therefore in violation of Regulations 3 and 2(c) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to securities market) Regulations, 1995. I note that the above activity of financing the public issue of the company, at the behest of the company, with the intention to circumvent the provisions of the law and thereby giving an unreal impression of oversubscription in the issue to the public is in violation of the aforesaid Regulations.

ORDER

23. In view of the above, 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 D K Shah from buying, selling or dealing in securities for a period of two years.
24. This order shall come into force with immediate effect.

PLACE : MUMBAI

DATE : SEPTEMBER 15, 2004

A.K.BATRA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA