

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

AGAINST JERMYN CAPITAL LLC UNDER SECTION 11B AND 11(4) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 21 AND 13(BB) OF SEBI (FOREIGN INSTITUTIONAL INVESTORS) REGULATIONS, 1995 AND REGULATION 3 OF SEBI (CRITERIA FOR FIT AND PROPER PERSON) REGULATIONS, 2004

WTM/GA/44/IVD/01/06

1.0 Background

1.1 Jermyn Capital LLC (hereinafter referred to as 'Jermyn LLC'), having its office at 111, Oud Metha Offices, P.O Box No. 103709, Dubai, is a limited liability company incorporated in the Emirate of Dubai under the provisions of the United Arab Emirates Federal Law. Jermyn LLC is registered with SEBI under SEBI (Foreign Institutional Investors) Regulations, 1995 (hereinafter referred to as 'FII Regulations') as foreign corporate sub-account (bearing sub-account code No. 2004859) of SEBI registered Foreign Institutional Investor Taib Bank E.C. (bearing FII Registration No. IN-UE-FA-0119-93-hereinafter referred to as 'Taib Bank'). The above sub-account had been granted registration by SEBI on July 2, 2004 under the Foreign Corporate category.

1.2 As per information available, at present Jermyn LLC has the following directors:

a. H. H. Juma Muktout Juma Al Maktoum

U.A.E National, Holder of Passport No. A-10882, Born in 1974, residing at P.O. Box: 111567, Deira, Dubai, UAE

b. Mr. Hugh Hamilton Andrews

British National holder of Passport No. 740179555, Born in 1942, residing at P.O. Box: 25922, Dubai, UAE

c. Mr. Mihir D. Kapadia

Indian National holder of Passport No. A-5453851, Born in 1972, residing at Devlin House, 36, St George Street, Mayfair, London W1S 2FW

d. Mr. Amit Shah

Indian National holder residing at P.O. Box 103709, Dubai, UAE

1.3 As per the Memorandum of Association of Jermyn LLC, the capital of the company is 3,00,000 DHS divided into 300 shares, the value of each share being 1000 shares. The capital of the company is divided among the following partners (shareholders) in the following manner:

a. Mr. H. H. Juma Maktoum Al Maktoum, (51 % share)

b. Mr. Hugh Hamilton Andrews, (40 % share)

c. Mr. Mihir Dhirajlal Kapadia, (09 % share)

The capital contribution of the above shareholders is stated to be in kind. The management of company is entrusted to Mr. Hugh Hamilton Andrews who is the Chairman of Jermyn Capital LLC.

2.0 SEBI vide FII Division's communication dated November 30, 2005 addressed to Taib Bank had directed it to stop trading in the Indian securities market on behalf of its sub-account Jermyn LLC with immediate effect and until further notice. In the said communication, it was informed that SEBI was in receipt of credible information which indicated that Jermyn LLC did not meet the criteria for 'Fit and Proper person' which all registrants have to adhere to mandatorily through out the period of validity of their registration under the FII Regulations. Further, SEBI also sought certain information from Taib Bank as specified in the said communication. Taib Bank vide its letter dated December 6, 2005 and also Jermyn LLC vide its letter dated December 8, 2005 have furnished their reply to SEBI. Jermyn LLC in its said letter dated December 8, 2005 also requested SEBI to withdraw the 'stop trading order'. Simultaneously, Jermyn LLC also filed an appeal before the Hon'ble Securities Appellate Tribunal on December 13, 2005. The Hon'ble Securities Appellate tribunal vide order dated December 21, 2005 have directed SEBI to examine the material and information supplied by the appellant and pass a final order in the matter in accordance with law and place a copy of the said order on record on or before January 13, 2006.

3.0 SHOW CAUSE NOTICE

3.1 Pursuant to the above, a show-cause notice dated January 5, 2005 was issued to Jermyn LLC.

3.2 The show cause notice based on the facts and material narrated therein, inter-alia, alleges and sets out that:

3.2.1 There are linkages between Jermyn Capital LLC, Jermyn Capital Partners Plc (hereinafter referred to as 'Jermyn Plc') and Dharmesh Doshi/Ketan Parekh in view of the following commonalities – i) common name of Jermyn Capital, ii) two common directors including Chairman. iii) two common shareholders (accounting for 49% shares in Jermyn Capital LLC), iv) the earlier name of Jermyn Plc being Triumph Securities UK Plc which was a 100% subsidiary of Triumph International Finance (India) Ltd (TIFIL), a Ketan Parekh related entity, v) Mr. Dharmesh Doshi, a co-accused in the Ketan Parekh scam and a person against whom non-bailable warrant has been issued by the Indian Court and Red Corner Notice has been issued by the Interpol, being the Executive Director in Jermyn Plc looking after vital functions, vi) Jermyn LLC being an associate of Jermyn Plc indicating interlacing and interlocking of operations and control and vii) trading/investment in the shares of HFCL by Jermyn LLC which is a K-10 scrip.

3.2.2 Pursuant to the findings of investigation into the 'stock market scam of 2001', SEBI had taken the following actions against entities associated with Mr. Ketan Parekh:

- a. SEBI in an ad-interim order dated April 4, 2001 and April 10, 2001 passed under section 11, 11B of SEBI Act debarred Mr. Ketan V Parekh, Mr. Kartik Parekh and stock broking entities connected/associated with Ketan Parekh viz. Triumph International Finance Ltd. (TIFL), Triumph Securities Ltd. Classic Shares and Stock Broking Ltd. (CSSB) and N H Securities Ltd. (NHS), KNP Securities Ltd. (KNP) and VNP Securities Ltd. (VNP) from undertaking any fresh business as a stock broker or merchant banker till further orders.
- b. SEBI, after conducting enquiry under SEBI Regulations, had passed final order dated May 16, 2002 cancelling the certificate of stock broking registration granted to Triumph International Finance (India) Ltd. (TIFIL).
- c. SEBI vide order dated March 8, 2004 and March 31, 2004, cancelled the certificate of registration granted to other broking entities associated with/controlled by Ketan Parekh viz. Classic Shares and Stock Broking Services (CSSB), Triumph Securities Ltd (TSL), NH Securities Ltd. (NH Sec), V N Parekh Securities Ltd (VNP Sec) and KNP Securities Ltd (KNP Sec).
- d. SEBI filed criminal complaint on July 27, 2004 against Triumph International Finance (India) Ltd (TIFIL) and their following directors vide case no. 233/M/2004 in the court of LD. Additional Chief Metropolitan Magistrate's, 47th Court, Esplanade, Mumbai :

- i. Mr. Dharmesh Hasmukh Doshi, Managing Director
 - ii. Mr. Jatin Rajnikant Sarvaiya, Director
 - iii. Mr. Ketan Vinaychandra Parekh, Director
 - iv. Mr. Kartik Kirtikumar Parekh, Director
 - v. Mr. Abdul Razzak Kapadia, Director
 - vi. Mr. Vipul Dinesh Parekh, Director
 - vii. Mr. Dharmen Bhaskar Shah, Director
- e. SEBI vide order dated December 12, 2003 has prohibited Mr. Ketan Parekh and following entities associated with/controlled by him from buying, selling or dealing in securities in any manner directly or indirectly and also debarred them from associating with the securities market, for a period of fourteen years.

- i. Mr. Ketan V. Parekh
- ii. Mr. Kartik K. Parekh
- iii. Classic Credit Ltd
- iv. Panther Fincap and Management Services Ltd.
- v. Luminant Investment Pvt Ltd.
- vi. Chitrakut Computers Pvt. Ltd.
- vii. Saimangal Investrade Ltd.
- viii. Classic Infin Ltd
- ix. Panther Investrade Ltd.

- 3.2.3 It is seen from the above that pursuant to the findings of investigations, SEBI had debarred the entities associated with Mr. Ketan Parekh from dealing in the securities market. The registration of broking entities including Triumph International Finance (India) Ltd. (TIFIL) and Triumph Securities Ltd., in which Mr. Dharmesh Doshi was a director, were also cancelled by SEBI. Further, SEBI has filed a criminal complaint against Mr. Dharmesh Doshi.
- 3.2.4 Other enforcement agencies namely, Central Bureau of Investigation (CBI) and Enforcement Directorate (ED) have also conducted investigations in the wake of the market scam of 2001 and initiated punitive actions against the above entities. Following investigation by CBI, Mr. Ketan Parekh and three other co-accused directors of TIFIL viz. Mr. Jatin Rajnikant Sarvaiya, Mr. Abdul Razzak Kapadia and Mr. Kartik K. Parekh were arrested in connection with above scam in May 2002. Mr. Dharmesh Doshi, however, evaded arrest and is still absconding. A Red Corner Notice has been issued against him by the Interpol in 2002 at the request of CBI. A non-bailable warrant has also been issued against Mr. Dharmesh Doshi by the Court of Hon'ble CJM, Ahmedabad on October 14, 2005 at the instance of CBI. His Passport has since been revoked.
- 3.2.5 The Enforcement Directorate has found the directors of TIFIL viz. Mr. Dharmesh Doshi, Mr. Ketan V. Parekh, Mr. A. R. Kapadia and Mr. Jatin Sarvaiya to have violated provisions of Section 3(a) and 10(6) of Foreign Exchange Management Act, 1999 read with Regulations 6(1) of Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2000. It has been found by the Enforcement Directorate that during the period October 2000 to January 2001, TIFIL had acquired US\$ 350000 with the permission of RBI for the purpose of investing in its wholly owned subsidiary, International Holdings (Triumph) Ltd, Mauritius (IHTL), which in turn was to be invested by IHTL in Triumph Securities UK Plc which was a fully owned subsidiary of IHTL. However, out of said amount of US\$ 350000, TIFIL had transferred amounts totaling US\$ 338799 to unauthorized persons and failed to utilize the said amounts for the purpose for which it was acquired. It was also found that TIFIL failed to provide the necessary details of expenses in the hands of Triumph Securities UK Plc and failed to produce evidence to prove genuineness of the above expenses to Enforcement

Directorate. TIFIL also did not furnish any details to RBI regarding purported losses incurred by Triumph Securities UK Plc. Accordingly, the Enforcement Directorate has imposed penalty of Rs. 1.00 crores on TIFIL and Rs. 20.00 lakhs each on Mr. Jatin Sarvaiya and Mr. Ketan Parekh and Rs. 10.00 lakhs each on Mr. Dharmesh Doshi and Mr. A. R. Kapadia.

3.2.6 Jermyn Plc was formerly known as Triumph Securities UK Plc which was ultimately a 100% subsidiary of TIFIL. In June 2002, Triumph Securities UK Plc was renamed as Jermyn Capital Partners Plc. and Mr. Dharmesh Doshi who was the Managing Director of TIFIL continues to be a director of Jermyn Plc looking after key functions even after the purported sale of Triumph Securities UK Plc and its renaming as Jermyn Capital Partner Plc. Jermyn LLC has substantially dealt in the shares of HFCL which was found to have been involved in the Stock Market Scam of 2001 and against which show cause notices have been issued by SEBI following investigations. Jermyn LLC is also found to have been allotted substantial quantity of equity shares of the above company (HFCL) on conversion of FCCBs at prices far below the ruling market price.

3.2.7 In order to circumvent the prohibitions imposed by SEBI on Mr. Ketan Parekh and related entities from dealing in Indian securities market directly or indirectly and various other punitive actions initiated by other enforcement agencies in India, a new entity was incorporated in September, 2003 by the name of Jermyn Capital LLC for dealing in the Indian Securities Market. Therefore, it prima facie appears that Jermyn LLC does not satisfy the criteria set out under the Regulation 3 of SEBI (Criteria for Fit and Proper Person) Regulations, 2004 read with Regulation 13(bb) of SEBI (Foreign Institutional Investors) Regulations, 1995. Further, in view of interlacing and interlocking of operations and control between Jermyn LLC and Mr. Dharmesh Doshi/Mr. Ketan Parekh through Jermyn Plc and to ensure that Ketan Parekh related entities do not access Indian stock market either directly or indirectly, urgent orders are required to be passed restraining Jermyn LLC from accessing the capital market and/or buying, selling or dealing in securities for safeguarding the interest of investors and securities market, till investigation and/or enquiry is conducted in terms of SEBI Act, 1992 and the Rules and Regulations made thereunder.

3.3 In view of the above premises, Jermyn LLC was called upon to show cause why the direction in SEBI's letter dated November 30, 2005 should not be continued and further why suitable directions under Section 11(4) and 11B of the SEBI Act, 1992 read with Regulation 21 and 13(bb) of SEBI (Foreign Institutional Investors) Regulations, 1995 and Regulation 3 of SEBI (Criteria for Fit and Proper Person) Regulations, 2004 including direction restraining it from accessing the capital market and/or buying, selling or dealing in securities should not be passed, pending finalization of investigation and/or enquiry.

3.4 Jermyn LLC has replied to the show-cause notice vide its letter dated January 10, 2006.

4.0 Hearing

4.1 Jermyn LLC was been given an opportunity of being heard by me which was communicated to it vide the aforesaid show cause notice. The said hearing was held on January 10, 2006 at 3.00 p.m. in SEBI office, Mittal Court, B-Wing, Nariman Point, Mumbai-400 021. Shri Pesi Modi, Advocate alongwith Shri Shuva Mandal, Shri Rohal Rajadhyaksha and Shri Jaitra Jani of AZB & Partners, Solicitors and Advocates appeared before me on behalf of Jermyn LLC. They handed over a copy of reply dated January 10, 2005 and made oral submission on behalf of Jermyn LLC reiterating the said reply.

5.0 Submissions of Jermyn LLC

5.1 The submissions made by Jermyn LLC in its reply dated January 10, 2006 and during the personal hearing held before me on January 10, 2006 are as under:

- 5.2 Jermyn LLC invests in Indian capital market on proprietary basis and its Memorandum of Association prohibits investment of funds for the account of third parties.
- 5.3 Jermyn Plc is an associate of Jermyn LLC to the extent that both these entities have two common directors including a common chairman and one, not two as alleged in the Show Cause Notice, common shareholder Mr. Hugh Hamilton Andrews, who is the sole shareholder of Jermyn Plc. Mr. Andrews beneficially holds 100% of the shareholdings of Jermyn Plc through Jermyn Investments and Holdings, a British virgin island company.
- 5.4 Mr. Dharmesh Doshi is employed as a director and compliance officer of Jermyn Plc after reference check being made by the FSA to SEBI seeking information on Mr. Doshi.
- 5.5 Jermyn Investments and Holdings purchased 100% of the shares of Triumph Securities UK Plc. (now Jermyn Plc) from International Holdings (Triumph) Ltd. The funds for acquisition were the proprietary funds of Mr. Andrews.
- 5.6 Mr. Dharmesh Doshi manages key functions at Jermyn Plc and does not manage and is not involved in anyway in the business of Jermyn LLC. Merely because Mr. Doshi is a director of a company which is an associate of Jermyn LLC it cannot be said that Jermyn LLC ceases to be a fit and proper person. Also SEBI has had the information of Mr. Dharmesh Doshi at the time of approval of Jermyn LLC as a sub account.
- 5.7 FSA, the regulator in the UK, after undertaking its usual scrutiny and enquiry approved Jermyn Plc and each of its directors including Mr. Doshi and its compliance officer as 'fit and proper' persons under the Financial Services and the Markets Act, 2000. Jermyn UK had kept the FSA informed about the issues between Mr. Doshi and Indian Authorities by a letter dated November 29, 2005.
- 5.8 Jermyn Plc was not allotted any FCCB by HFCL in its public issue in November 2002. Jermyn Plc was not associated with the issue and it did not subscribe to any FCCB as part of public offering. In 2005 Jermyn LLC purchased the FCCBs through Jermyn Plc and converted the said FCCBs into the equity shares as per rules and regulations and sold on BSE and NSE at the prevailing market price.
- 5.9 Neither Jermyn Plc nor Jermyn LLC have any relations with Mr. Ketan Parekh and have not purchased the shares of HFCL from entities related to him. Jermyn LLC is not and never has been funded by HFCL or by Mr. Ketan Parekh or any of his entities. SEBI has not delisted or banned trading in the securities of HFCL. Dealings of Jermyn LLC in HFCL were relatively small as compared to the total portfolio and trading of Jermyn LLC.
- 5.10 Mr. Dharmesh Doshi resigned as the Managing Director of TIFIL on December 31, 2001 and Jermyn LLC is not aware of the rest of the allegations of TIFIL. Neither TIFIL nor Mr. Dharmesh Doshi has been barred by SEBI from dealing in the Indian Securities Market. Order of SEBI dated May 16, 2002 only prevents TIFIL from being a SEBI registered stock broker.
- 5.11 The criminal complaint filed by SEBI against TIFIL and its directors has not been taken cognizance by the relevant courts due to limitation. In any event Mr. Doshi has not been served in the proceedings.
- 5.12 It is incorrect for SEBI to allege that CBI has made Mr. Doshi a co accused along with Mr. Ketan Parekh in the stock market scam of 2001. It is also incorrect that Mr. Dharmesh Doshi evaded arrest or is absconding. With respect to red corner notice issued by CBI Jermyn LLC understands that said notice relates to Mr. Dharmesh Doshi's position as a director of TIFIL pertaining to certain trades by TIFIL with its client European Investment Holdings (EIH). EIH lodged a criminal complaint against Ketan Parekh, Kartik Parekh and the directors of TIFIL, Mr. Jatin Sarvaiya and Mr. Doshi. Jermyn LLC is informed that Mr. Doshi did not sign any of the cheques which were not honored.

- 5.13 Jermyn LLC is informed by Mr. Doshi that the red corner notice issued by CBI is an abuse of process in India and he has approached Interpol in this matter.
- 5.14 The order of the enforcement directorate imposing penalty as alleged in the SCN is the subject matter of the appeal before the Appellate authority under the FEMA Act, 1999. Jermyn LLC is informed that the enforcement directorate has served a notice to Mr. Doshi in UK which indicates that the whereabouts of Mr. Doshi are infact known to the Indian Authorities. It is denied that Mr. Doshi is a co accused or that there is a non-bailable warrant issued against him.
- 5.15 Allegations of serious nature cannot be based on mere surmises and conjunctures in terms of SAT decision in the matters of BPL Ltd., Videocon International Ltd. and Nirmal Bang Securities Ltd.
- 5.16 Jermyn LLC does not incur any of the disqualification criteria under regulation 3(2) of SEBI (Criteria for Fit and Proper Person) Regulations, 2004. Infact the said regulations related only to the disqualification criteria provided in Regulation 3(2). Infact the said regulations related only to disqualification criteria in relation to the entity concerned and its Whole Time Directors and Managing Partners. The SCN does not contain any allegation whatsoever against Jermyn LLC or its whole time directors or managing partner. Disqualification if any of the associates of the party concerned can never result in automatic disqualification of the party under scrutiny.
- 5.17 It is denied that Jermyn LLC was incorporated by Ketan Parekh or his related entities. The shareholding as well as the beneficial ownership of Jermyn LLC clearly indicates that there are no Ketan Parekh related entities who are either shareholders or beneficial owners or in the management of Jermyn LLC. Since the ban of Ketan Parekh was imposed after the incorporation of Jermyn LLC in September 2003 it is not correct to allege that Jermyn LLC was incorporated to circumvent the ban imposed by SEBI on Ketan Parekh and his so called related entities.
- 5.18 Show Cause Notice seeks to pass direction under section 11(4) and 11B but fails to disclose any cogent basis to even apprehend the same. There is no linkage what so ever between any Ketan Parekh related entities and Jermyn LLC and the only so called linkage alleged is that with Jermyn PLC. Such a tenuous linkage can never fall within the purview of the disqualifications. No specific act or omission on the part of Jermyn LLC is impugned by SEBI. It has done nothing which could even remotely be said to in anyway threaten the interests of the investors or the securities market. Further, there is no emergent situation which needs any urgent orders as proposed in the Show Cause Notice nor is there any impending danger to justify the same.
- 5.19 Such global directions or measures would be of a penal nature and would travel far beyond the stated objective of preventing any dealings for/by Mr. Ketan Parekh related entities. Further some such directions are not in anyway preventive or remedial in nature and hence are not sustainable under section 11(4) and 11B of the SEBI Act. Violation of the enquiry regulations are to be dealt with under the enquiry regulations only, thereby excluding the provisions of Section 11 of the SEBI Act.
- 5.20 In the course of hearing certain points were reiterated besides citing Supreme Court cases for interpreting residual clause '(h)' of Regulation 3(2) of SEBI (Criteria for Fit and Proper Person) Regulations, 2004 and for deciding the scope of vicarious liability.

6.0 Consideration of issues and findings:

- 6.1 I have carefully considered the materials available on record, show cause notice issued to Jermyn LLC, the reply of Jermyn LLC and oral submissions made by their Advocates during the personal hearing held on January 10, 2006.

6.2 At the outset, before dealing with the objections raised by Jermyn LLC, it is to be highlighted that the putative averments made by Jermyn LLC with insuppressible volubility of self assertion in their submission and during hearing peters out to mere ipse dixit without any corroboration in material particulars on the strength of authentic proof, whereas SEBI's Show Cause Notice is based upon official verifiable data.

6.3 It is an admitted fact that Jermyn LLC is an associate of Jermyn Plc. Jermyn Plc is a corporate entity based in United Kingdom having its registered office at Devlin House, 36 St. George Street, Mayfair, London, WIS 2FW. Jermyn Plc is a limited liability company registered with Financial Services Authority, UK (FSA). Jermyn Plc is also a member of the London Stock Exchange since the year 2002. I have noted that Jermyn Plc is presently 100% owned by Mr. Hugh Hamilton Andrews.

6.4 Jermyn Plc was formerly known as Triumph Securities UK Plc which was ultimately a 100% subsidiary of Triumph International Finance (India) Ltd. (TIFIL). TIFIL had held 100% stake in Triumph Securities UK Plc through its Mauritius based subsidiary viz. International Holdings (Triumph) Ltd. TIFIL was a SEBI registered member of National Stock Exchange India Ltd. The board of the directors of TIFIL comprises of the following persons:

Name and Address	Date of appointment	Date of Ceasing
1. Ketan V. Parekh	December 16, 2000	March 3, 2001
2. Kartik V. Parekh	January 15, 1998	March 3, 2001
3. Dharmesh Hasmukh Doshi, Managing Director	August 8, 1996	
4. Jatin Rajnikant Sarvaiya, Joint Managing Director.	June 1, 1998	
5. Abdul Razzak Kapadia	July, 29, 1998	
6. Vipul Dinesh Parekh	January 15, 1998	December 16, 2000
7. Dharmen Bhaskar Shah	January 15, 1998	May 2, 2001

6.5 The shares of TIFIL is/was held by the following persons:

- a. 15.84% of the equity share capital held by Mr. Ketan Parekh and his relatives viz. Mrs. Mamta Parekh (7.92%) and Mrs. Ami Parekh (7.92%). (As of year ended March 1999, Mrs. Mamta Parekh and Mrs. Ami Parekh each had held 10.81% aggregating to 21.62% of the equity share capital of TIFIL)
- b. 30.91% of the equity share capital held by Mr. Dharmesh Doshi and his associates.
- c. 41.38% of the equity share capital held by the public.

6.6 The directors of TIFIL viz. Shri Kartik V. Parekh and Jatin Rajnikant Sarvaiya were on the board of Triumph Securities UK Plc. In June 2002, Triumph Securities UK Plc was renamed as Jermyn Capital Partners Plc after TIFIL sold its shareholding in Triumph Securities UK Plc to Jermyn Investment & Holdings Ltd, a company wholly owned by Mr. Hugh Hamilton Andrews. The directors of Jermyn Plc comprises inter-alia of following persons:

- a. Hugh Hamilton Andrews, Chairman
- b. Dharmesh Doshi, Executive Director
- c. Mihir D. Kapadia, Chief Executive Officer

6.7 Mr. Dharmesh Doshi is designated as Executive Director of Jermyn Plc. in charge of the following key functions:

- i. Director
- ii. Compliance Oversight

- iii. Money Laundering Reporting
- iv. Investment Adviser

As can be seen from the above, although Jermyn Plc is wholly owned by Mr. Hugh Hamilton Andrews, Mr. Doshi is in charge of all the vital functions of the company without holding even a single share in the company.

6.8 I find that in September 2003, Mr. Hugh Hamilton Andrews and Mr. Mihir D. Kapadia, who are directors of Jermyn Plc, promoted a new company 'Jermyn LLC' in Dubai, UAE alongwith Mr. H. H. Juma Maktoum Al Maktoum. It is gathered that Mr. Maktoum has been taken as 51% shareholder in Jermyn LLC to meet the requirements of the local law in this regard. But the control over Jermyn LLC vests with Mr. Andrews who is the chairman of Jermyn LLC and to whom the management of Jermyn LLC is entrusted completely as per the Memorandum of Association of Jermyn LLC. I find that Jermyn LLC and Jermyn Plc have two common directors (including the common Chairman) and one common shareholder, the details of which are as given below:

	Jermyn Capital LLC (UAE)	Jermyn Capital Partners Plc (UK)	Commonalities
Directors	a. Hugh Hamilton Andrews, Chairman b. H. Juma Muktoum Juma Al Maktoum c. Mihir D. Kapadia d. Amit Shah	a. Hugh Hamilton Andrews, Chairman b. Dharmesh Doshi, Executive Director c. Mihir D. Kapadia, CEO d. D.I. Guild e. B. Constant	Persons mentioned at Sr. No. (a) and (c) are common directors and the person mentioned at Sr. No. (a) is common Chairman.
Share-holders	a. Hugh Hamilton Andrews (40 % share) b. H. H. Juma Maktoum Al Maktoum (51 % share) c. Mihir Dhirajlal Kapadia (09 % share)	a. Hugh Hamilton Andrews (100 % share)	Person mentioned at Sr. No. (a) is common shareholder. Person mentioned at Sr. no. (c) is shareholder of Jermyn Capital LLC and director of Jermyn Capital Partners Plc

I have also noted that as per the Memorandum of Association of Jermyn LLC, the capital of the company was stated to be in kind, although in its reply dated January 10, 2006 Jermyn LLC has submitted that the actual funding of Jermyn LLC was in cash although no details in this regard have been furnished.

6.9 Before proceeding further, it is pertinent to note that Mr. Dharmesh Doshi, who was the Managing Director of TIFIL, continues to be a director of Jermyn Plc looking after the key functions of Jermyn Plc even after the purported sale of Triumph Securities UK Plc and its renaming as Jermyn Plc. Investigations conducted by SEBI into the Stock Market scam in

the year 2001 had revealed that TIFIL was an entity associated with/controlled by Mr. Ketan Parekh. Pursuant to the findings of investigation into the 'stock market scam of 2001', SEBI had taken a number of actions against entities associated with Mr. Ketan Parekh, as outlined in the Show Cause Notice and I take note of the same.

- 6.10 I find that pursuant to the investigations, SEBI had debarred the entities associated with Mr. Ketan Parekh from dealing in the securities market during April 2001. The registration of broking entities including TIFIL and Triumph Securities Ltd., in which Mr. Dharmesh Doshi was a director, were also cancelled by SEBI in March 2004. Further, SEBI has filed a criminal complaint against Mr. Dharmesh Doshi.
- 6.11 I also note that CBI had made Mr. Dharmesh Doshi alongwith Mr. Ketan Parekh as co-accused in the Stock Market Scam of 2001 involving alleged bogus transactions of shares worth Rs. 83 crores at NSE in December 2000. Mr. Ketan Parekh and three other directors of TIFIL were arrested in connection with the above scam in May 2002. Mr. Dharmesh Doshi, however, evaded arrest and is still absconding. A Red Corner Notice has been issued against him by the Interpol in 2002 at the request of CBI. It is further learnt that a non-bailable warrant has been issued against Mr. Dharmesh Doshi by the Court of Hon'ble CJM, Ahmedabad on October 14, 2005 at the instance of CBI. His Passport has since been revoked.
- 6.12 Further, I take note of the substantial penalties imposed by the Enforcement Directorate on TIFIL and its directors viz, Mr Dharmesh Doshi, Mr Ketan Parekh, Mr Jatin Sarvayia and Mr A R Kapadia for their violations of provisions of Section 3(a) and 10(6) of Foreign Exchange Management Act, 1999 read with Regulations 6(1) of Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2000. It has been found by the Enforcement Directorate that during the period October 2000 to January 2001, TIFIL had acquired US\$ 350000 with the permission of RBI for the purpose of investing in its wholly owned subsidiary, International Holdings (Triumph) Ltd, Mauritius (IHTL), which in turn was to be invested by IHTL in Triumph Securities UK Plc which was a fully owned subsidiary of IHTL. However, out of said amount of US\$ 350000, TIFIL had transferred amounts totaling US\$ 338799 to unauthorized persons and failed to utilize the said amounts for the purpose for which it was acquired. It was also found that TIFIL failed to provide the necessary details of expenses in the hands of Triumph Securities UK Plc and failed to produce evidence to prove genuineness of the above expenses to Enforcement Directorate. TIFIL also did not furnish any details to RBI regarding purported losses incurred by Triumph Securities UK Plc.
- 6.13 I have also gone through the dealings of Jermyn LLC in the Indian securities market. Since its date of registration as a sub-account till October 31, 2005, Jermyn Capital LLC has traded in Indian market in 254 scrips with gross purchases amounting to Rs. 321.35 crores and gross sales amounting to Rs. 281.59 crores. It is also observed that Jermyn LLC has purchased 1,10,52,451 shares of Himachal Futuristic Communications Ltd. (HFCL) valued at Rs 25.29 crores and sold 80,67,622 shares of HFCL valued at Rs 17.14 crores during the period July 01, 2004 to October 31, 2005. Further, Jermyn LLC had purchased a large number of Foreign Currency Convertible Bonds (FCCBs) of HFCL and the same were converted into 43,36,581 equity shares and 29,79,829 equity shares (total of 73,16,402 shares) of Rs 10 each for cash at a premium of Rs 1.70/-. The above shares were listed with Jaipur Stock Exchange on November 23, 2005 and November 28, 2005 respectively. During the aforesaid period the market price of HFCL shares was Rs 21.10 and Rs. 20.00 respectively on November 23, 2005 and November 28, 2005 as against the rate of Rs 11.70 at which the shares were allotted to Jermyn Capital LLC. It is pertinent to mention here that SEBI investigations done during the period October 1999 to March 2001 in the wake of the Stock Market scam of 2001 had revealed the association of Mr. Ketan Parekh and his associated entities with HFCL. It was found that HFCL had funded the dealings of 'Ketan Parekh entities' in the securities market (including dealings in HFCL shares) to the extent of net Rs 448 crores (i.e. Rs. 736 crores advanced to Ketan Parekh entities less Rs. 288 crores returned back by 'Ketan Parekh entities'). Besides, the promoters of HFCL had transferred 82 lac shares of HFCL to Ketan Parekh entities viz. Classic Credit Ltd. and Panther Fincap and Management Services Ltd. without any collateral. Show Cause Notices have been issued to HFCL and its promoters and also to Mr. Ketan Parekh and his associates for violation of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995. It is also pertinent to note that Mr. Dharmesh Doshi was a director in HFCL Infotel Ltd, a HFCL group company during the period of market scam of 2001 and he continued as Director of the above company till April 22, 2003.
- 6.14 In its reply and oral submission, Jermyn LLC has denied any linkage between Jermyn LLC, Jermyn Plc and Mr. Dharmesh Doshi/Mr. Ketan Parekh. It has stated that Jermyn LLC and Jermyn Plc are distinct and separate entities with independent

operation and control. However, the above plea cannot be considered in isolation but has to be appraised in the context of the overall material circumstances of all the relevant developments relating to the case.

- 6.15 It prima facie appears that there are linkages between Jermyn Capital LLC, Jermyn Capital Partners Plc and Dharmesh Doshi/Ketan Parekh in view of the following commonalities – i) common name of Jermyn Capital, ii) two common directors including Chairman. iii) two common shareholders (accounting for 49% shares in Jermyn Capital LLC), iv) the earlier name of Jermyn Capital Partners Plc being Triumph Securities UK Plc which was a 100% subsidiary of TIFIL, a Ketan Parekh related entity and v) Mr. Dharmesh Doshi, a co-accused in the Ketan Parekh scam and a person against whom non-bailable warrant has been issued by the Indian Court and Red Corner Notice has been issued by Interpol, being the Executive Director in Jermyn Capital Partners Plc looking after vital functions, vi) Jermyn Capital LLC being an associate of Jermyn Capital Partners Plc indicating interlacing and interlocking of operations and control and vii) trading/investment in the shares of HFCL which is a K-10 scrip.
- 6.16 SEBI and various other enforcement agencies such as CBI and Enforcement Directorate have conducted investigations and initiated various punitive measures against TIFIL and its directors including Mr. Dharmesh Doshi in the wake of the Stock Market Scam of 2001. Mr. Dharmesh Doshi, an entity associated with Mr. Ketan V. Parekh, is presently the Executive Director of Jermyn Plc (formerly Triumph Securities UK Plc) in charge of very vital functions which tantamount to virtual control of operations.
- 6.17 It was contended by Jermyn LLC that the appointment of Mr. Dharmesh Doshi in Jermyn Plc was approved by FSA vide its certificates dated August 29, 2002 and July 1, 2004, after reference check being made by FSA to SEBI seeking information on Mr. Dharmesh Doshi. It was also contended that SEBI had information of Mr. Dharmesh Doshi and the association of Jermyn Plc with Jermyn LLC at the time of approval of Jermyn LLC as a sub-account. However, on verification of records, I find the above contentions of Jermyn LLC to be paltering with facts. It is seen from the records that SEBI vide its letter dated February 20, 2003 and July 30, 2004 had intimated FSA regarding role of Mr. Dharmesh Doshi in the market scam of 2001 and the various actions initiated against him including launching of prosecution by SEBI. However, SEBI's letter dated July 30, 2004 informing about prosecution launched by SEBI is subsequent to FSA issuing certificate dated July 1, 2004 in the case of Mr. Doshi and hence the facts contained in the above letter of SEBI might not have been taken into consideration by FSA while issuing the said certificate. Further, in the absence of any details with official proof as to what Jermyn Plc disclosed to FSA for getting the said approval, it would be difficult to conclude that FSA was kept informed of developments relating to Mr. Dharmesh Doshi and TIFIL in India by Jermyn Plc. In fact, the circumstances would indicate that full and complete disclosures were not made by Jermyn Plc to FSA in this regard. On the contrary, the 'suppressio veri, suggestio falsi' is evident from the clean chit given by Jermyn Plc in their clarification dated April 26, 2004 to FSA in connection with approval of their application for enhancing the role of Mr. Dharmesh Doshi in Jermyn Plc with a confirmation stating that they had carried out all necessary enquiries in India and were completely satisfied that Mr. Doshi was not subject to any pending investigations or proceedings by SEBI and that Jermyn Plc was completely satisfied as to the integrity and honesty of Mr. Doshi. Obviously, the tenor of such confirmation by Jermyn Plc to FSA smacks of a self-serving statement with an unconcealed intention to project Mr. Dharmesh Doshi as a person with impeccable record and the same gives short shrift to the adverse fallout in India on the role of Mr. Dharmesh Doshi in the course of multi-pronged enquiries by various agencies and emergent findings therefrom. Even after such developments in India in the last couple of years affecting the image and integrity of Mr. Dharmesh Doshi and TIFIL, Jermyn Plc in its letter addressed to FSA on November 29, 2005 has sought to dismiss such developments as a "mistake by Indian Authorities" which is highly objectionable besides seeking to mislead the FSA by dissembling the factual position as transpired in India. The above goes to show in no uncertain terms that Jermyn Plc is all out to defend Mr. Dharmesh Doshi despite the adverse developments staring in the face and such a conduct on the part of Jermyn Plc, wherein Mr. Dharmesh Doshi is not a stake-holder but an employee-Director, leads to the only inescapable conclusion that Jermyn Plc is moved by the invisible strings of Mr. Doshi. Besides, it is seen from the records that at the time of grant of sub-account registration to Jermyn LLC by SEBI, the connection between Jermyn LLC and Jermyn Plc and the involvement of Mr. Dharmesh Doshi was not disclosed by Jermyn LLC to SEBI. This information in fact, was disclosed by Jermyn LLC only on December 8, 2005 in its reply to the communication from FII Division, SEBI raising specific query regarding existence of such relationship. It is pertinent to mention that the above relationship between Jermyn LLC and Jermyn Plc and the questionable role of Mr. Dharmesh Doshi came to the notice of SEBI only in November, 2005 in the context of the ongoing investigation by various agencies in India into the various aspects of the market scam of 2001 and the fallout thereof and involvement of Mr. Ketan Parekh and his related entities in the same. Immediately thereafter SEBI had issued the communication dated November 30, 2005 to Taib Bank seeking specific information on the above matter and directing it to stop trading on behalf of the above sub-account, Jermyn LLC.

6.18 In its submission, Jermyn LLC contended that the criminal complaint filed by SEBI against TIFIL and its directors including Mr. Dharmesh Doshi has not been taken cognizance of by the relevant courts due to limitation. However, I find this submission to be factually incorrect. The complaint filed by SEBI is pending before the court of Additional Chief Metropolitan Magistrate, Mumbai. This version is of a piece with their avowed stand to shore up and buttress Mr. Dharmesh Doshi at any cost and the reason for the same is not far to seek.

6.19 It was found that there is prima facie violation of Regulation 13(bb) of the SEBI (FII) Regulations, 1995 which requires that the Sub Account as an applicant for registration is a fit and proper person according to Regulation 3 of the SEBI(Criteria for Fit and Proper Person) Regulations, 2004, which reads as under;

3. (1) *"For the purpose of determining as to whether an applicant or the intermediary seeking registration under any one or more of the relevant regulations is a 'fit and proper person', the Board may take account of any consideration as it deems fit, including but not limited to the following criteria –*

(a) financial integrity;

(b) absence of convictions or civil liabilities;

(c) competence;

(d) good reputation and character;

(e) efficiency and honesty; and

(f) absence of any disqualification to act as an intermediary as stipulated in these regulations.

(2) A person shall not be considered as a "fit and proper person" for the purpose of grant or renewal of certificate to act as an intermediary or to continue to act as an intermediary under any one or more of the relevant regulations, if he incurs any of the following disqualifications –

(a) the applicant or the intermediary, as the case may be or its whole time director or managing partner has been convicted by a Court for any offence involving moral turpitude, economic offence, securities laws or fraud;

(b) an order for winding up has been passed against the applicant or the intermediary;

(c) the applicant or the intermediary, or its whole time director, or managing partner has been declared insolvent and has not been discharged;

(d) an order, other than an order of suspension of certificate of registration as an intermediary, restraining, prohibiting or debarring the applicant or the intermediary, or its whole time director or managing partner from dealing in securities in the capital market or from accessing the capital market has been passed by the Board or any other regulatory authority and a period of three years from the date of the expiry of the period specified in the order has not elapsed;

(e) an order canceling the certificate of registration of the applicant or the intermediary has been passed by the Board on the ground of its indulging in insider trading, fraudulent and unfair trade practices or market manipulation and a period of three years from the date of the order has not elapsed;

(f) an order withdrawing or refusing to grant any license / approval to the applicant or the intermediary, or its whole time director or managing partner which has a bearing on the capital market, has been passed by the Board or any other regulatory authority and a period of three years from the date of the order has not elapsed;

Provided that the Board may for reasons to be recorded in writing, allow the applicant or the intermediary, to seek registration before the lapse of three years as specified in clauses (d), (e) and (f).

(g) the applicant or the intermediary, is financially not sound;

(h) any other reason, to be recorded in writing by the Board, which in the opinion of the Board, renders such applicant or the intermediary, or its whole time director or managing partner unfit to operate in the capital market."

6.20 Jermyn LLC submitted that the Show Cause Notice was issued under Regulation 21 of FII Regulations, which prescribes the liability for action in case of default under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty)

Regulations, 2002. Therefore, Jermyn LLC contented that the aforesaid Regulations shall be invoked and the violation has to be dealt under the said Regulations. I find no infirmity in proceeding under Section 11(4) and 11 B of SEBI Act, 1992 as Enquiry Regulations can be invoked, if necessary on the completion of a detailed investigation in the matter. There cannot be any doubt about the availability of such powers with SEBI in view of the series of judgements passed by the Hon'ble High Courts. A regulatory agency like SEBI, entrusted with the duty to protect the interest of its investors must have the capacity to move quickly to curb further mischief and to take action that, in its opinion, is necessary to instill and maintain public confidence in the integrity of capital markets. The proposed direction is not by way of punishment or penalty but only by way of emergency measure, pending detailed investigation into the whole matter.

- 6.21 Urgency of the matter or public interest at times require flexibility in application of the rule as the circumstances of the case and the nature of the matter require to be dealt may serve the interests of justice by putting temporary restrictions on the rights of market participants in the overall interest of the market and the investors. It has to be kept in mind that SEBI is vested with statutory powers to regulate securities market with the object of ensuring investors protection, orderly and healthy growth of securities market so as to make SEBI's regulatory function over the capital market effective and meaningful. Further, in view of clear provisions of Section 11(4) read with Section 11B of SEBI Act, and in light of series of judgments of various High Courts, there can be no doubt that SEBI, in view of the exigencies of the matter has power to pass appropriate orders. For a prima facie case, it is necessary that the information which is available with the authority is more than a mere rumor, gossip or hunch and should be specific information, rather than vague information. The opinion has to be formed in a subjective manner on which a reasonable and prudent person would act. Further, in this case the requisite information has come to the notice of SEBI only recently.
- 6.22 In view of the above I am of the view that the case laws presented by the learned counsel has no application in the context of the instant matter and finds that this is a fit case to invoke Section 11(4) and 11B of the SEBI Act, 1992 and pass the following order in view of the exigencies of the matter in the facts and circumstances set forth above.
- 6.23 The purpose of this order as directed by SAT is to determine whether Jermyn LLC is a fit and proper person on the basis of details furnished by them. Definitely such a determination becomes very vital and imperative lest the Indian securities market should be exposed to the shenanigans of persons/ entities tainted in the market scam and the fall out thereafter which is being probed by various agencies in India. It is the felt concern of the regulator to ring_fence and insulate the Indian securities market from such entities whose bonafides are suspect in this country, though they might have misrepresented the factual position to the foreign regulator for getting certain approvals. As would be evident from the precursor developments leading to the present order, SEBI was directed to pass the present order within a short span of time. Though every effort has been made to collect information and give opportunity, the nature of enquiry by itself is vast, not confined within the domain of SEBI, but encompassing other enforcement agencies who are simultaneously probing the conduct of Shri Dharmesh Doshi and related entities during the market scam and thereafter. In that view of the matter, SEBI has endeavored to collect all material details that are available and relevant for the purpose of finalizing this order, in deference to SAT directions within a short span of time. However, it needs to be mentioned that investigations by other agencies are still progressing and it may take some time before further material facts and other incriminating details bearing upon the case are unraveled for necessary action. Having regard to the complex nature of the case wherein the dominant players are outside India beyond the jurisdiction of SEBI, and also taking into account the ongoing investigation by various agencies in co-ordination with related foreign copuunterparts, SEBI is in constant liaison with these agencies to update the case for appropriate action. Pending that, which is likely to take time and for the purpose of this order, SEBI is taking a prima facie view of the material developments bearing upon the case, keenly alive to the sensitivities of the market environment, so that the integrity of the market is in no way impaired by any entity of doubtful and dubious antecedents.
- 6.24 Regulation 3 of SEBI (Criteria For Fit And Proper Person) Regulations 2004 in clauses (1) and (2) enumerates the various attributes which would render a person fit and proper. The criteria as spelt out in Regulation 3(1) is an inclusive one and not limited to whatever that has been enumerated therein. Similarly under 3(2) which defines negatively as to who will not be considered as fit and proper person for the purpose of grant/ renewal of certificate to act as intermediary covers a number of negative qualifications including a residuary sub clause (h) which leaves the judgment to the Board to be recorded in writing on the basis of any other reason not specifically mentioned earlier.

- 6.25 In the course of hearing, the learned counsel contended that the attributes mentioned under Regulation 3(1) would not be relevant in the context of Regulation 3(2) which is for renewal. I find such a distinction to be a case of pure petti-foggery. If a person does not have any of the qualities as mentioned in the inclusive definition of 3(1) at the time of renewal, then it would make a travesty of those requirements which in my view are applicable in all circumstances. Everybody would agree that good reputation and character, competence etc would be required for registration and thereafter, and therefore to suggest that they would be one_time requirement at the entry level makes a mockery of what is expected of a fit and proper person, at all times.
- 6.26 The residual clause in (h) prescribing any other reason to deem an intermediary as not fit to operate in capital market is really of an omnibus nature, but has to be definitely hedged in within the representative range of qualities that are expected under Regulation 3(1) and the disqualification cited in Regulation 3(2) including the omnibus clause (h). Further it is not to be lost sight of that Regulation 3(1) contains an inclusive definition and accordingly it empowers the Board to prescribe all other qualities/ requirements that would make the person fit and proper. Accordingly the determination of fit and proper person would be guided by 3(1) and 3(2) and would not be limited to what is sought to be canvassed by the learned counsel, so long as the parameters applied are in line with the inclusive definition and disqualification as appearing in Regulation 3.
- 6.27 The determination of fit and proper person so evaluated on a scale as above, definitely involves subjectivity; for example good reputation and character depends upon the standing of person in society and his associations as well. It is also an acknowledged fact that reputational risk may be direct as well as in direct arising from a conduct with the related party but having a bearing on the person concerned. Several such instances can be multiplied but suffice it to say that the entire exercise would depend upon an over-all appraisal of the material circumstances bearing upon the entity directly or indirectly.
- 6.28 In the instant case there is an overwhelming burden of material evidence to strongly indicate that Jermyn LLC being an associate of Jermyn PLC under the common Chairman is very much under the control of Jermyn PLC. Further in a case like this, the decision would rest only on what is probable in the materiality of circumstances, rather than on strict proof. For instance in the case of smuggling, no direct evidence of illicit importation of the goods can be adduced, as the same would be impossible, but there would be several circumstances of probable character which coupled with the inference arising from the conduct of the parties which could lead to the conclusion that the seized articles are smuggled goods. In this connection attention is invited to Supreme Court decision in Collector of Customs v/s D. Bhoomull, wherein the Hon'ble Supreme Court (AIR 1974 SC 859) held that :

smuggling is clandestine conveying of goods to avoid legal duties. Secrecy and stealth being its covering guards, it is impossible for the preventive department to unravel every link of the process. Many facts relating to this illicit business remain in the special or peculiar knowledge of the person concerned in it. The prosecution or the department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and as Prof. Brett felicitously "all exactness is a fake". El Dorado of absolute proof being unattainable the law, accepts for it, probability as a working substitute in this work-a-day world. The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus legal proof is not necessarily perfect proof often it is nothing more than a prudent man's estimate as to the probabilities of the case. The other cardinal principle having an important bearing on the incidence of burden of proof is that sufficiency and weight of the evidence is to be considered to use the words of Lord Mansfield in *Blatch V. Archar* (1774) 1 Cowp 63 at p.65 "According to the Proof which it was in the power of one side to prove and in the power of the other to have contradicted". Since it is exceedingly difficult, if not absolutely impossible for the prosecution to prove facts which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as part of its primary burden.

- 6.29 The case history of the instant case with international ramifications has already amply been brought out and in that back drop and also for the purpose of this order, any decision would have to rest on what is probably and not what can be put to strict proof. The detailed investigation / enquiry in co-ordination with other agencies which are already probing would necessarily unravel the tangled skein. It would take some time, pending that a prima facie view of the things would be most appropriate, given the circumstances of the case. Accordingly the information sought to be relied upon must be something

more than a mere rumor or a gossip and the opinion is to be formed in a subjective manner on which a reasonable and prudent person could act.

6.30 Based upon "probability" as the test and the prima facie view as the application, the information available in this case, taking due note of the total denial by Jermyn LLC is examined. Already I have mentioned Jermyn PLC has a interest in retaining Dharmesh Doshi and such interest is not spelt out, but indicated very clearly in all their actions. It is also a matter of record that Jermyn LLC is an associate of Jermyn PLC with a common Chairman in the person of Mr. Andrews with whom control is vested as per Memorandum of Association. Though in the reply to show cause notice Jermyn LLC denied any commonality between Jermyn PLC and Jermyn LLC, during the hearing common control between two companies by Andrews who is common chairman who is entrusted with the management of Jermyn LLC by Memorandum of Association was admitted by counsel appearing on behalf of Jermyn LLC. Common control is an admitted position. Even otherwise also the various developments leading to the complete transfer of Triumph Securities PLC to Jermyn PLC and subsequent incorporation of Jermyn LLC to invest in Indian market clearly indicate the underlying control. This control may be unobtrusive and not explicit; but cannot be lost sight of in appraising the various developments as delineated supra. I have indicated earlier even at the cost of repetition that Mr. Dharmesh Doshi has become indispensable for Jermyn PLC and such a vinculum may not be vinculum juris but definitely vinculum facto. The very fact that Mr. Dharmesh Doshi continues as a director holding full time portfolios like compliance oversight, money laundering, investment advisory etc. in Jermyn PLC speaks volumes about his control over the important operations of Jermyn PLC, though Mr. Andrews is the Chairman, who also happens to be the Chairman of Jermyn LLC. Without speculating as to what could be the reason for such subsumed control exercised by Mr. Dharmesh Doshi, it would appear that such leveraged control has come to stay despite Mr. Dharmesh Doshi not having a single share in Jermyn PLC. Since Jermyn LLC is an associate company of Jermyn PLC and since the common Chairman Mr. Andrews appears to be under the leading strings of Mr. Dharmesh Doshi, as far as de facto control is concerned it would be reasonable to expect that the said control would permeate the operations of Jermyn LLC. It is learnt from website that the said firm is a trading, brokerage and investment advisory firm regulated by FSA. It provides following services to high networth individuals, corporates and institutions viz. Trading and Brokerage, Corporate Finance and Advisory services. Further the role of Mr. Dharmesh Doshi as a person in charge of compliance oversight is crucial and predominant so it should be kept in view that Mr. Dharmesh Doshi is very familiar with Indian market due to his past association and the very fact that Jermyn LLC has been floated for the purpose of investing in Indian market carries its own undertones of Dharmesh Doshi's indirect interest in Jermyn LLC through Jermyn Plc.

6.31 The question of common control set out above is a logical inference from information available in this case. Even in a case based on proper examination including collection of material facts, the courts have held that for testing the issue of common control, the intention of the partners will have to be decided in the context of the surrounding circumstances including all material evidence as to the interlocking of management, finance etc.

6.32 The very fact that Mr. Dharmesh Doshi continues in such a crucial position despite Mr Andrews having 100% ownership and being Chairman of Jermyn Plc shows Mr. Doshi's grip over Jermyn Plc for reasons not disclosed but quite evident on the face of it. Despite being aware of the developments in India in relation to Mr. Darmesh Doshi, strangely the board of Jermyn Plc has expressed confidence in his integrity while continuing with him. Definitely such a conduct on the part of a FSA regulated company is unusual and raises serious questions regarding the nature of relationship of Jermyn Plc with Mr. Darmesh Doshi. There is definitely some thing more to it than what meets the eye. There seems to be an untold connection either pecuniary or otherwise between Mr Darmesh Doshi and Jermyn Plc and it is quite likely that the reach of such control, unexpressed and subtle, may permeate the operations of Jermyn LLC. The investment by Jermyn LLC in the shares of HFCL has its own portents since Mr. Dharmesh Doshi as a Director of the associate company HFCL Infotel Ltd had always a preference for HFCL. Accordingly, in view of the detailed reasons cited as above, Jermyn LLC is not a fit and proper person.

7.0 Order

Therefore, in view of the grave emergency and with a view to protect the interest of investors and securities market, in exercise of the powers delegated to me by the SEBI Board in terms of Section 19 of the Securities and Exchange Board of India Act 1992 read with Section 11B and 11(4)(b), pending investigation and/or enquiry, I hereby direct that the restriction imposed on Jermyn LLC by SEBI vide communication dated November 30, 2005 be continued and further restrain Jermyn LLC from accessing the Indian securities market and from buying, selling and dealing in securities in the Indian market.

This order shall come into force with immediate effect.

Place: Mumbai

Date: January 13, 2006

**G ANANTHARAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**