

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: G. ANANTHARAMAN, WHOLE TIME MEMBER

ORDER

WTM/GA/129/NRO/1/07

[UNDER SECTION 11B OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 10 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003]

AGAINST PADMINI TECHNOLOGIES LIMITED AND ITS WHOLE TIME DIRECTORS, SHRI VIVEK NAGPAL, SHRI VISHNU SARUP GUPTA AND SHRI PRAVEEN KUMAR JAIN IN THE MATTER OF PADMINI TECHNOLOGIES LIMITED.

Date of Final Hearing: September 22, 2006

Appearances:

For Noticee : **: Shri. S. Ganesh, Sr. Advocate**

Ms. Divya Kapur, Advocate

Shri. V S Gupta, Executive Director, Padmini Technologies Ltd.

For Securities and Exchange Board of India: Shri. Amarjeet Singh, General Manager

1.0 BACKGROUND.

- 1.1 M/s Padmini Technologies Ltd. (hereinafter referred to as 'Padmini') was originally incorporated as a private limited company on February 02, 1990 under the name Padmini Packaging Pvt. Ltd. The name of the said company (Padmini Packaging Pvt. Ltd.) was changed to Padmini Technologies Ltd. in the following manner (**Table 1**).

Old name	New name	Effective Date
Padmini Packaging Pvt. Ltd.	Padmini Polymers Pvt. Ltd	December 23, 1992
Padmini Polymers Pvt. Ltd	Padmini Technologies Ltd.	June 14, 2000

- 1.2 The shares of Padmini were inter alia listed at the Stock Exchange Mumbai, now known as The Bombay Stock Exchange Ltd. (hereinafter referred to as 'BSE'), Delhi Stock Exchange Association Ltd. (hereinafter referred to as 'DSE') and National Stock Exchange of India Ltd. (hereinafter referred to as 'NSE'). It was noticed that the price of the shares of Padmini had increased from Rs. 60.95/- on December 13, 1999 to Rs.266/- on March 09, 2000/- at DSE. Thereafter, the price of the shares of Padmini had moved as stated below (**Table 2**):

Date	Price (Rs.)
May 15, 2000	47/-
June 05, 2000	60.25/-
July 06, 2000	118.10/-
August 8, 2000	55.65/-
August 29, 2000	201.55/-

It was observed that the increase in the share price of Padmini was coupled with the increase in the traded volume at DSE. Similar pattern of trading was observed in all other stock exchanges. The trading in the shares of Padmini thereby witnessed price fluctuations and unusual price movement at the stock exchanges.

- 1.3 In view of the unusual price movement as mentioned above, Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted investigations to look into the possible price manipulation in the shares of Padmini and inter alia the role of Padmini, its directors and others in respect of the said alleged manipulation. The investigation conducted by SEBI inter alia found that the Padmini (erstwhile Padmini Polymers Ltd.) had made preferential allotment of 2,00,00,000 equity shares for cash at par to the persons/entities in the year 1999, the details of which are mentioned below (**Table 3**) :-

Sl. no	Allotment Date	Name of allottees	Shares allotted	Paid up value (Rs/share)
1	31.5.1999	Unit Trust of India	2000000	10
2	20.6.1999	Contessa Commercial Co. P Ltd.	900000	2.5

3	-do-	Billumenfeld Ltd.	900000	10
4	-do-	Jiwansagar Promoters Pvt. Ltd.	900000	2.5
5	-do-	Bhagwandas Sagarmal	900000	2.5
6	-do-	Raj Kumar Kishorepuria	900000	2.5
7	-do-	Pramod Kumar Kishorepuria	900000	2.5
8	-do-	Alok Khetan	900000	2.5
9	-do-	Savara Tie-up P Ltd.	900000	2.5
10	-do-	Royal Bengal Exports Pvt. Ltd.	900000	2.5
11	-do-	S Beriwal	900000	2.5
12	-do-	Prakash Kumar Damani (HUF)	900000	2.5
13	-do-	Prakash Kumar Damani,	900000	2.5
14	-do-	Cama Enterprises P Ltd.	900000	2.5
15	-do-	Zinga Chemicals P Ltd	900000	2.5
16	-do-	Hermonite Consultants P Ltd.	900000	2.5
17	-do-	Cherry Marketing P Ltd.	900000	2.5
18	-do-	HT Ferro P Ltd.	900000	2.5
19	-do-	Hermonite Surgicals P Ltd.	900000	2.5
20	-do-	V B Impex P Ltd.	900000	10
21	-do-	J P Promoters P Ltd.	900000	10
		Total	2,00,00,000	

1.4 For the sake of convenience, the aforesaid allottees (except Unit Trust of India) are broadly categorized into the following two groups:

- a) entities at Sr. no.2 to 13 - Kolkatta based allottees.
- b) entities at Sr. no.14 to 21 - Delhi based allottees.

1.5 The investigations conducted by SEBI found that Shri Vivek Nagpal, (promoter/director of Padmini) had made a presentation at Hotel Taj Bengal, Kolkata around March-April 1999 about the prospects of Padmini and its aforesaid preferential allotment. The said presentation was attended by all the Kolkata based allottees amongst others. It prima facie appeared that, in the presentation made by Padmini at Kolkata, one Shri Sunil Kishorepuria represented the entities/persons listed at Sr. nos. 2 to 7 in Table 3 above. It further transpired that Shri Sunil Kishorepuria was known to Padmini and Shri Vivek Nagpal since 1993-94, as he had business dealings with them and that Shri Sunil Kishorepuria had served as the main contact point for facilitating preferential allotments to other Kolkata based allottees. It has been further alleged that the aforesaid allottees were mere name-lenders. Further, it appeared that Padmini had agreed that the cheques of the allottees would be presented for collection only after obtaining their consent.

1.6 It was found that the preferential allottees of Padmini were shown in the category of "other than promoter group" and therefore, the said preferential shares were not subject to lock-in. It was further observed inter alia that Padmini had not submitted the copy of the Board Resolution to the Stock Exchanges in respect of the aforesaid preferential allotment, and thereby, prima facie violated the provisions of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the 'Takeover Regulations'). Therefore, SEBI had issued a notice dated July 24, 2002 to Padmini asking it to show cause as to why appropriate directions should not be issued against it for the alleged violations as mentioned in the said show cause notice.

1.7 In the course of investigation, it was found that Padmini had allotted preferential shares to the Kolkata Based and Delhi based allottees without the actual receipt of the application/allotment money. Subsequent to the allotment, the said allottees had sold the preferential shares allotted to them, in off-market transactions to various entities including Ketan Parekh group consisting of Classic Credits Ltd., Panther Fincap & Management Services Ltd. & Triumph International Finance India Ltd. who had later introduced the said shares in the secondary market. The aforesaid entities are collectively referred to as 'KP entities' for the sake of brevity. The funds received from the KP entities and other buyers against the sale of the aforesaid preferential shares were paid back by the original allottees towards the application/allotment money. Thereafter, the cheques given by the allottees for payment towards the application/allotment money were presented and realised by Padmini.

1.8 The examination of the bank account of Kolkata based and Delhi based allottees revealed that, in most of the cases, cheques issued by them towards the application/allotment money (for the preferential shares of Padmini) were cleared for payment only after they had sold their preferential shares in the manner mentioned above. Further, as a matter of fact, the cheques issued by majority of the Kolkata Based and Delhi based allottees were cleared or payments were made to Padmini much after the listing of the aforesaid preferential shares at DSE (Regional Stock Exchange for Padmini) on December 23, 1999. However, Padmini got its preferential shares listed for trading at DSE on the said date on the strength of certain certificates

(which showed the receipt of funds against the allotments) issued by Padmini, promoter director (Shri Vivek Nagpal) and Shri Kailash Chandra Agrawal, partner of M/s Ashok Amar & Associates, Chartered Accountants (statutory auditors of Padmini). BSE had given the listing approval for the said preferential shares on December 30, 1999. The aforesaid certificates facilitated Padmini to obtain the listing approval and the shares thus listed were off loaded in the market by KP entities and thereby they had manipulated the price of the shares of Padmini to the detriment of the genuine investors.

- 1.9 The unusual financial accommodation provided by Padmini to the said Delhi and Kolkata based allottees indicated that they did not have their own financial standing to acquire such a large quantity of shares. This was also corroborated from their bank statements that they did not have requisite funds at the time of issue of cheques for purchase of shares. As such, the said allottees had served as a temporary parking point and later as a conduit for channelising the shares to KP entities. It has been alleged that there was nexus between KP entities and the promoter of Padmini and that Padmini and its promoters played a major role in the manipulation of the share price of Padmini. SEBI had also found that there were delay in transfer / demat of shares of Padmini.
- 1.10 The aforesaid acts of Padmini and its whole time directors were prima-facie in violation of regulation 3, 6(a), (c), (d) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulation, 1995 (hereinafter referred to as the FUTP Regulations) and the provisions of Section 113 of the Companies Act, 1956.

2.0 SHOW CAUSE NOTICE, REPLIES AND HEARING

- 2.1 In the facts and circumstances, a notice dated February 20, 2004 to Padmini and its Whole Time Directors, Shri Vivek Nagpal, Shri Vishnu Sarup Gupta and Shri Praveen Kumar Jain asking them to show cause as to why proceedings under section 11B of the Act read with regulation 12 of the FUTP Regulations should not be initiated against them for inter-alia debarring them from associating with the capital market related activities, dealing in securities, accessing the capital market in any capacity whatsoever and associating with any of the intermediaries in the capital market for appropriate period, for the aforesaid alleged violations as mentioned above.
- 2.2 In the above show cause notice a reference was also made by SEBI in respect of its earlier show cause notice dated July 24, 2002 issued to Padmini. Padmini filed its reply to the said show cause notice vide letter dated February 19, 2003 and the same would be dealt with separately and independent of the present proceedings.
- 2.3 In respect of the show cause notice dated February 20, 2004, Padmini vide letter dated February 28, 2004 inter alia sought from SEBI a copy of all documents, correspondences, depositions, press cuttings and any other information based on which the captioned show cause notice had been prepared and all other documents which were being relied upon by SEBI to frame charges against them, in order to give para wise and specific reply of each and every averments. Further they sought inspection of the same.

Some of the documents sought for inspection are as under :-

(a) *"Copy of the inspection report*

(b) *Depositions, statements and all correspondence with*

- i) *Ketan Parekh*
- ii) *Classic Credit Ltd.*
- iii) *Panther Fincap & Management Services Ltd.*
- iv) *Triumph International Finance Ltd.*
- v) *Delhi Stock Exchange*
- vi) *Bombay Stock Exchange*
- vii) *NSDL*
- viii) *Punjab National Bank*
- ix) *Banks*
- x) *ROC*
- xi) *Hotel Taj Bengal*
- xii) *Sunil Kishorepuria*

- xiii) *Prakash Kumar Damani*
- xiv) *Sanjay Kumar*
- xv) *Cherry Marketing P. Ltd.*
- xvi) *Hermonite Surgicals P. Ltd.*
- xvii) *Zinga Chemicals P. Ltd.*
- xviii) *Hermonite Consultants P. Ltd.*
- xix) *HT Ferro P. Ltd.*
- xx) *Cama Enterprises P. Ltd.*
- xxi) *Arun Goenka*
- xxii) *Umesh Goenka*
- xxiii) *Kishan Goenka*
- xxiv) *SBI Mutual Fund including the research report if any*
- xxv) *VB Impex P. Ltd.*
- xxvi) *JP promoters P. Ltd.*
- xxvii) *Vinod Kumar*
- xxviii) *Pradeep Kumar*
- xxix) *Churuwala Exports P. Ltd.*
- xxx) *DKG Buildcon P. Ltd.*
- xxxi) *Iris Infrastructural P. Ltd.*
- xxxii) *Mikona Impex & Traders P. Ltd.*
- xxxiii) *Ashok Amar & Associates*
- xxxiv) *Kailash Chand Agarwal*
- xxxv) *Copies of complaints of 320 investors*
- xxxvi) *Inspection Report of transfer/ demat records of Padmini taken by SEBI on 2.8.2001.*
- xxxvii) *VS Gupta*
- xxxviii) *Ex-president of DSE"*

2.4 It was also stated in the said letter that it reserved the right to cross-examine all the persons whose statements, depositions and information had been relied upon by SEBI in respect of the charges framed against them. Despite providing a detailed show cause notice with annexures which contained details of the allegations, Padmini and its whole time directors had not filed their submissions on merits. Instead, they had sought for various correspondences/statements/information as specified above. In the circumstances, as no reply was received from Padmini and its whole time directors to the aforesaid show cause notice (dated February 20, 2004), a reminder was sent by SEBI vide letter dated March 15, 2004. Shri Vijay Sarup Gupta and Shri Praveen Kumar Jain, vide their letters dated March 22, 2004 reiterated the request made by Padmini for the inspection of documents. Further, in their aforesaid letters, there was an encore of the very same request made in the earlier letters.

2.5 They further added that they were neither in charge of the affairs of Padmini nor involved in its day to day management. It was clarified that Shri Vivek Nagpal, the promoter/ director of Padmini was solely in charge of the affairs and day to day management of the Padmini. It was stated that they could not be held guilty and liable for any act of Padmini only on account of their fiduciary relationship with it. They further clarified that in terms of Section 27 of the Act, a person shall be liable for an alleged offence by the company only if the same was committed with his knowledge and he had failed to exercise due diligence to prevent the commissioning of such an alleged offence. It was urged that they had no knowledge of the alleged offence and that they had exercised the required due diligence on their part and that the alleged offence has not been committed with their consent or connivance and could not be attributed to any neglect on their part. Except the

submissions with respect to the provisions of Section 27 of the Act, the rest of the contentions made by them were nothing but a reproduction of the reply of Padmini dated February 28, 2004. It was also not clear as to why they required the inspection of various documents, when their contention was that they were not in charge of the affairs of Padmini and it was Shri Vivek Nagpal who was in charge of the said affairs and the day today management of Padmini. Shri Vivek Nagpal vide letter dated March 25, 2004 made similar submissions as that of Padmini (vide letter dated February 28, 2004).

2.6 However, the aforesaid requests for the inspection of documents made by of Padmini and its aforesaid whole time directors were examined by SEBI and the same was granted by SEBI. The said opportunity was availed by them on August 11, 2004. Pursuant to the aforesaid inspection, Padmini and its aforesaid whole time directors vide letter dated August 13, 2004 further requested for the copies of the following documents:-

(a) "copy of investigation report

(b) deposition made, statement recorded and all correspondences exchanges with parties:-

i) Contessa Commercial Co. P. Ltd., Kolkatta

ii) Blumenfeld Ltd., Kolkatta

iii) Jiwansagar Promoters P. Ltd., Kolkatta

iv) Bhagwandas Sagarmal, Kolkatta

v) Raj Kumar Kishorepuria, Kolkatta

vi) Pramod Kumar Kishorepuria, Kolkatta

vii) Alok Khetan, Kolkatta

viii) Savera Tie-up P. Ltd., Kolkatta

ix) Royal Bengal Exports P. Ltd., Kolkatta

x) S. Beriwal, Kolkatta

xi) Prakash Kumar Damani (HUF), Kolkatta

xii) Prakash Kumar Damani, Kolkatta

xiii) Cama Enterprises P. Ltd.,

xiv) Zinga Chemicals P. Ltd., Delhi

xv) Hermonite Consultants P. Ltd., Delhi

xvi) Cherry Marketing P. Ltd., Delhi

xvii) HT Ferro P. Ltd., Delhi

xviii) Hermonite Surgicals P. Ltd., Delhi

xix) VB Impex P. Ltd., Delhi

xx) JP Promoters P. Ltd. Delhi

xxi) Ketan Parekh

xxii) Classic Credit Ltd.

xxiii) Panther Fincal & Management Services Ltd.

xxiv) Triumph International Finance Ltd.

xxv) Delhi Stock Exchange

xxvi) Bombay Stock Exchange

xxvii) NSDL including data regarding deterialisation

xxviii) Punjab National Bank-including letters dated January 14, 2002 & November 21, 2001

xxix) Banks referred to in the show cause notice

xxx) Sunil Kishorepuria
 xxxi) Prakash Kumar Damani
 xxxii) Sanjay Kumar
 xxxiii) Arun Goenka
 xxxiv) Umesh Goenka
 xxxv) Kishan Goenka
 xxxvi) Correspondence, if any, exchanged with SBI Mutual Fund, seeking details in the manner.
 xxxvii) Vinod Kumar
 xxxviii) Pradeep Kumar
 xxxix) Churuwala Exports P. Ltd.
 xxxx) DKG Buildcon P. Ltd.
 xxxxi) Iris Infrastructurals P. Ltd.
 xxxxii) Mikona Impex & Traders P. Ltd.
 xxxxiii) Ashok Amar & Associates
 xxxxiv) Kailash Chand Agarwal
 xxxxv) Ex-president of DSE referred to in the SCN

- (c) copies of 320 investor complaints,
- (d) copies of contract notes issued by Triumph to SBI Mutual Fund
- (e) copy of written presentation made by Padmini to SBI MF
- (f) copies of media reports regarding delay in transfer and
- (g) copy of inspection report of transfer/ demat records of Padmini taken by SEBI on August 2, 2001."

2.7 Pursuant to the above letter of Padmini and its whole time directors, SEBI vide letter dated September 27, 2004 forwarded the copies of the following documents to them:-

- (a) Copy of letter dated February 9, 2002 issued by DSE regarding non-compliance of Regulation 3 of the Takeover Regulations by Padmini.
- (b) Copy of letter dated September 20, 2001 received from SBI Mutual Fund. The enclosures to the letter includes
 - (i) Datewise details of delivery received/ given along with dates these shares were sent for transfer/ demat and their receipt from Padmini.
 - (ii) Date-wise details of Padmini shares purchased by SBI Mutual Fund from Triumph International Finance Ltd., member NSE and other brokers.
 - (iii) Copy of letter dated February 18, 2000 from Triumph International Finance Ltd., member NSE making offer for purchase of Padmini shares along with other internal notes.
 - (iv) Data showing that Fund Manager's report was based on presentation made in writing by Padmini.
 - (v) Fund Manager's report dated February 12, 2000 and January 30, 2001 along with copy of discussion sheet for purchase/ sale.
 - (vi) Copy of contract note issued by Triumph International Finance Ltd., member NSE to SBI Mutual Fund.
- (c) Copy of statement of Shri DK Jain dated 1.4.2003.
- (d) Copy of statement of Shri Kailash Chandra Agarwal, CA dated 11.4.2003.

- (e) Copy of statement of Shri BB Sahny (ex-president of DSE) dated 20.11.2002.
- (f) Copy of report of SEBI official visiting the premises of Delhi based entities involved in preferential allotment & its purchase.
- (g) Copy of statement of Shri RK Verma dated 21.3.2003.
- (h) Copy of statement of Shri Jitendra Agarwal dated 3.4.2003.
- (i) Copy of statement of Shri Alok Khetan dated 3.4.2003.
- (j) Copy of statement of Shri Parkash Kumar Damani dated 4.4.2003.
- (k) Copy of statement of Shri Sunuil Kishorepuria
- (l) Copy of statement of Shri Sanjeev Beriwal.
- (m) Copy of statement of Shri VS Gupta.
- (n) Copy of statement of Shri Sanjay Kumar Gupta dated 4.2.2002.
- (o) Copy of statement of Shri Surender Verma dated 10.4.2003.
- (p) Copy of statement of Shri Arun Goenka dated 10.4.2003.
- (q) Copy of statement of Shri Kishan Goenka dated 11.4.2003.
- (r) Copies of discharged cheques issued by VB Impex P. Ltd., JP Promoters P. Ltd. & DKG Buildcon P. Ltd. utilized in preparation of demand drafts in favour of various Kolkatta based allottees.

2.8 Further to the above letter of SEBI, Padmini vide letter dated October 11, 2004 informed that SEBI had not sent the complete documents relied upon by it in the show cause notice dated February 20, 2004 and certain documents (as mentioned below) were yet to be furnished by SEBI :

- (a) Correspondence of SBI Mutual Fund with SEBI referred to in the SEBI's report annexed to in the company's petition No.3/2003 filed by DCA with Hon'ble CLB.
- (b) Copies of SEBI's correspondence, which have been referred to by SBI Mutual Fund in their replies to SEBI.
- (c) Details of presentation allegedly made by company to SBI Mutual Fund.
- (d) Replies of Ketan Parekh to SEBI in the matter.
- (e) Replies and statement of Triumph International Finance Ltd. in the matter.
- (f) Replies and statement of Panther Fincap & Management Ltd. in the matter.
- (g) Replies and statement of Classic Credit Ltd. in the matter.

2.9 It was added in the said letter that "*... in the absence of vital documents such as those referred to above, we are not in a position to prepare reply to the show cause notice and send the same to SEBI*".

2.10 In the facts and circumstances, Padmini & its whole time directors were further advised to file their reply, by SEBI vide letter dated October 13, 2004. However, Padmini vide letter dated October 20, 2004 informed SEBI that it had been denied inspection as well as copies of the documents as requested by it vide letter dated October 11, 2004. Padmini further requested SEBI to grant time upto November 10, 2004 for filing its reply to the show cause notice of SEBI dated February 20, 2004. In view of the above, an opportunity of hearing was granted by SEBI to Padmini and its whole time directors to appear for a hearing on November 11, 2004 before SEBI. Shri Vivek Nagpal, the Managing Director of Padmini, vide letter dated November 10, 2004 filed his reply to the show case notice dated February 20, 2004.

2.11 In the said reply Shri Vivek Nagpal had inter alia submitted that Padmini had got more than 40000 share holders. With regard to the definition of fraud, it was stated that the Act or the Regulations made thereunder had not declared any act or omission to be fraudulent, at the relevant point of time. In the absence of such declaration, SEBI could not proceed against a person on the ground that the person had acted fraudulently. Therefore, it could not be held that Padmini indulged in any activities, which attracted Clause 5 of Regulation 2(c) of the FUTP Regulations. It was further stated that the impugned show cause notice related to the transactions pertaining to the year 1999 and therefore, the FUTP Regulation which was applicable to the transaction was the one, which was in force in the year 1999, and not the Regulations which came into force, subsequently (the Regulation notified in the year 2003). It was further clarified that from the definition of the expression "fraud" in Regulation 2(c) of FUTP Regulations, the fraud referred to therein was related to a contract and its

reach was restricted to the parties to the contract. It was further clarified that, if the allottees had indulged in any alleged fraudulent activities related to the shares, which they got in allotment from Padmini, Padmini could not be held responsible, as the contract between Padmini and the allottees concluded on issuance of the share certificates to the allottees. Further he added that, in any case, Padmini was not a party to the developments subsequent to the allotment of shares in the hands of the allottees and transferees thereafter.

2.12 In respect of the presentation made by Padmini at Kolkata, it was submitted that same was done as a matter of business prudence and in the normal course of business. It was urged that, negative inference could not be drawn against the management of Padmini as it had made presentation in the normal course to the various prospective allottees. It was further submitted that such pre allotment presentation was a normal practice followed by companies and further that there has been no legal prohibition on making such presentation. In this context, it was submitted that in the absence of any complaint from the said allottees, to which the alleged presentation was made, the said charge could not survive. It was urged that the making of presentation by Padmini to the said Kolkata based entities on the contrary suggested its genuine intentions enabling the prospective allottees to take an informed decision and that, if the said Kolkata based allottees were only name-lenders as alleged in the show cause notice and were acting in nexus with Padmini, then there was no need for such presentation to such allottees. It was further submitted that Padmini came to know about acting in concert by the above parties for the first time only on June 10, 1999 when Contessa Commercial Co. Pvt. Ltd. made a disclosure under regulation 7 of the Takeovers Regulations to it regarding their acting in concert with other companies. Contessa Commercial Co. Pvt. Ltd. had made a disclosure that it was acting in concert with Bllumenfield Ltd. Jiwan Sagar Promoters Pvt. Ltd., Promod Kr. Kishorepuria, Raj Kumar Kishorepuria and Bhagawandas Sagarmal.

2.13 It was claimed that Padmini had received cheques from the Kolkata based allottees along with the application forms as per the details given below:-

S.No	Name of the Allottee	Shares allotted	Cheque No./ date	Amount (Rs.)
1.	Contessa Commercial Co. Pvt. Ltd.	900000	175826 21.05.1999	90,00,000
2.	Bllumenfield Ltd.	900000	307471 17.05.1999	90,00,000
3.	Jiwan Sagar Promoters Pvt. Ltd.	900000	671542 07.06.1999	22,50,000
4.	Promod Kr. Kisorepuria	900000	915595 25.05.1999	22,50,000
5.	Raj Kumar Kishorepuria	900000	931394 01.06.1999	22,50,000
6.	Bhagawandas Sagarmal	900000	155361 28.05.1999	22,50,000

2.14 In view of the above, it was stated that the allegation that without receiving the consideration amount the shares were allotted by Padmini was baseless. It was submitted that only on receipt of the cheques towards the allotment money, the shares were allotted to the various allottees on June 20, 1999. It was clarified that as per section 69 of the Companies Act 1956, the requirement of receiving cash as a precondition for allotment was applicable only to public issues and there were no such restrictions in the case of a preferential allotment. He further urged that the only requirement was that the consideration against the allotment had to be received and that there was no stipulation that only on encashment of the cheques the shares could be allotted. It was claimed that in the instant case, the allottees had forwarded the applications for shares along with the cheques and the allotment was made only thereafter. In this context he had placed reliance on the judgement of the Hon'ble Calcutta High Court in the matter of P. Khaitan Vs. Atlas Works Ltd. He had also submitted the copy of the opinion given by Mr. Justice P N Bhagwati (former Chief Justice of India) wherein it was interalia mentioned that "*there is no provision either in the Negotiable Instruments Act, 1881 or in the Companies Act, 1956 that cheques received by a person must be presented for payment within a particular period of time or that failure to do so will be an offence.*"

2.15 It was further added in the said reply that Padmini had been accounting for the receipt of cheque as the receipt of payment pertaining to the date on which the cheque was received. It was stated that the same was like every bank giving credit in account of a client on receipt of a cheque sent for clearing even before knowing that the cheque has been cleared or not and that in consonance with the aforesaid accounting practice followed by the company, the company allotted the shares to the allottees on receipt of cheques from them towards consideration amount. It was further explained that however, after receipt of cheques for allotment of shares, the allottees requested for withholding the cheques for presentation on some grounds. Having made the allotment, the company was left with no other option but to consider their request for delayed

presentation, particularly when the market price of the share was ruling below par. In the said compelling circumstances, company was left with little choice but to hold on to the cheques as desired/ requested by the allottees.

- 2.16 He further denied the allegation that at the instance of Kolkata based allottees Shri Sanjay Kumar was deputed by the management of Padmini. He had also sought for the cross examination of Shri Sanjay Kumar. He had also claimed that no material was furnished in the show cause notice to establish the nexus between Padmini and the Kolkata based allottees. He further requested for the cross examination of the said Shri Sanjay Kumar. It was stated in the reply that the show cause notice was silent with respect to the connection of the management of Padmini with the VB Impex Group. It was also contended that the nexus theory with Kolkata based allottees was baseless. He further claimed that the turn over of the said allottees was around Rs. 250 crores. In his reply, Shri Vivek Nagpal had also stated that the details about preferential allottees were circulated at the Extra Ordinary General Meeting held on March 24, 1999 and that the details regarding allottees could be obtained from Padmini by any shareholder. In view of the above, it was stated that the inference to the effect that Padmini had conveyed the details of allottees was erroneous. As regards the sale of shares of Padmini to KP entities, it was submitted that the allottees were independent entities and not its part. Further it was stated that the fact that the KP entities had dealt in the shares of Padmini by itself was not a ground to form an opinion that there was a nexus between KP entities and Padmini. In respect of sale of shares to SBI Mutual Fund in an off market deal by KP entities, it was stated that it had no role to play in the buying and selling decision of the said parties.
- 2.17 It was urged that KP entities were not connected to Padmini and that Padmini had nothing to do with the business of the said KP entities. It was also stated that the details of the preferential allottees were circulated at the Extra Ordinary General Meeting on March 24, 1999. As regards the sale of shares of Padmini to SBI Mutual Fund, it was contended that neither SBI Mutual Fund nor KP entities were under its control. It was clarified by him that from March 03, 2000 onwards, SBI Mutual Fund purchased 12,450 lacs shares of Padmini from the open market and the same reflected the genuine interest of SBI Mutual Fund in the shares of Padmini.
- 2.18 It was also stated that "without prejudice to above, even if, for arguments sake it was presumed that there was any alleged influence or nexus, after the purchase of 22.045 lac shares of Padmini by SBIMF at an approximate price of Rs.164.50 per share in a "trade for trade" deal through stock exchange from KP entities, its share price had gone up from about Rs.165/- on 21st Feb 2000 to Rs.264/- on 8th March 2000 i.e. appreciation of 62.5%". In this context, he added that had SBIMF purchased the shares of Padmini under any influence or consideration, it could have booked the profit on its investment by that time. It was claimed that, if the said shares, had been sold by SBIMF on 8th March 2000 @ Rs.264.00 per share, SBIMF could have booked a profit of approximately Rs.22.00 crores. On the other hand, SBIMF made further purchases in the company's share. As regards, the out of turn demat of shares lodged by KP entities with Padmini, it was submitted that the said shares were dematerialised in the normal course of business and there was nothing abnormal in the said dematerialisation. It was also stated that KP entities were a large shareholder and as such they would have pursued the matter of transfer of shares vigorously with depository participants.
- 2.19 In the context of the out of turn demat of shares lodged by KP entities with Padmini, he claimed that the shares were dematerialised in normal course and that there was nothing abnormal in the dematerialisation of the said shares. He further clarified that "K.P. entities were a large shareholder and as such they would have obviously pursued the matter of transfer of shares rigorously with its DP etc. to get the transfer done expeditiously".
- 2.20 In respect of the allegation of the issue of false certificate for listing, it was stated that Padmini had not indulged in falsification of books and records as alleged and the certificates furnished to the stock exchanges were based on its records. It was also submitted that in so far as the consideration for allotment of shares was concerned Padmini had been accounting for the receipt of cheque as the receipt of payment pertaining to the date on which the cheque was received. As regards the price movement in the shares of Padmini, it was stated that it was in line with the general trend and that there was no manipulation as alleged by SEBI. It was also contended that to hold the charge of violation of regulation 6 (c) of the FUTP Regulations, it had to be proved that the party had intentionally delayed the transfer and also contravened, the provisions of any law. Further in the said reply, the examination of various persons from whom the statements had been taken by SEBI was sought for. It was stated that Padmini had neither intentionally delayed the transfer of securities nor acted in contravention of any law to attract regulation 6 (c) of the FUTP Regulations. He also stated that the provisions of regulation 6(d) of the FUTP Regulations would not be applicable in the present case.
- 2.21 In respect of the media reports it was stated that "SEBI can not be unaware of the practice of the Company Executives reacting to queries from the press relating to their business prospects and that the statements attributed to CMD of the company are nothing but statements normally made by such executives". As regards the delay in transfer/demat of shares it was clarified that "it is submitted that Padmini had been maintaining share transfer records for lodgement & dispatch on its computer system, in line with the current trend and paper less system being practiced by companies having a large investor base. The record for lodgement & dispatch of the shares, which were being maintained on the computer system, could, however, not be produced as the system got afflicted with an acute virus." It had further denied that it had given false certificates for getting listing approval from DSE for the preferential shares. It was clarified that whatever certificates

submitted to the stock exchanges were based on the records of Padmini. It was also submitted that due to the book closure, there was heavy rush of transfer during the period July 28, 2000 to August 24, 2000 and that the compulsory demat mode (for Padmini's share) was made effective from August 28, 2000. It was stated that due to the increase in work load, there was some delay in clearing the receipts for transfer/demat. It was clarified that Padmini put cancellation stamp after the completion of the demat process and that no share certificates were left without putting the cancellation endorsement or stamp. It was also stated that there was no intention on the part of the company and therefore, regulation 6 (c) of the FUTP Regulations was not applicable.

- 2.22 As regards, the non co-operation and non submission of information by Padmini, it was stated that Padmini was undergoing a crisis situation as it was facing non co-operation from its staff due to the non payment of salary. It was clarified that Shri Vivek Nagpal was travelling and his request for adjournment was not considered by SEBI and the available information was provided to SEBI by him on April 17, 2003. He had also stated that an appeal was preferred against the order of adjudicating officer against SAT and the same was pending. He denied that Padmini facilitated manipulation. He also claimed that Padmini was not benefited from the price increase.
- 2.23 As regards the price movement, Padmini stated that the same was in tandem with the increase in the price of the scrips in the same field. As regards the media reports, it was urged that for everything appearing in the press, the company could not be held responsible. Shri Vivek Nagpal further contended that " ... It is further submitted that since this part reply itself demolishes the charges, it is humbly prayed that the Show Cause Notice be set aside and the charges as leveled against me dropped".
- 2.24 The opportunity of hearing granted to Padmini and its whole time directors was adjourned to November 30, 2004 from November 11, 2004 as per the request of Padmini. In the hearing Shri Dushyant Dave, Sr. Advocate inter alia appeared on behalf of Padmini and its directors. Shri Dushyant Dave made a preliminary submission that his clients had not received the entire documents and in the absence of the said documents, it would not be possible for him to make submissions on behalf of his clients. As all the relied upon documents were furnished to Padmini, SEBI had advised the learned Sr. Advocate to make his submissions on the merits of the case. However, he had opted not to make any submissions on merits. As the entire documents which were relied upon by SEBI had already been furnished to Padmini and its directors, a further opportunity of hearing on December 15, 2004 was granted by SEBI. Shri. T N Subramaian, advocate appeared and submitted on behalf Padmini and its directors that his clients require cross examination as sought by them earlier.
- 2.25 SEBI vide letter dated August 29, 2005 inter alia informed (Padmini and its directors) about the details of the documents which were relied upon by SEBI while issuing the show cause notice. SEBI had also forwarded the submissions made by various persons whose statements were taken by SEBI.
- 2.26 Subsequently, an opportunity of hearing was granted to Padmini and its directors by SEBI on December 15, 2005. However, Padmini and its directors had sought for the adjournment of the said hearing. Accordingly, another opportunity of hearing was granted to Padmini and its directors on August 25, 2006. Shri Ganesh Sr. Advocate appearing on behalf Padmini and its directors, however, sought for the adjournment of the hearing on personal grounds. Accordingly, another opportunity of hearing was granted to Padmini and its directors on September 22, 2006. Shri Ganesh, Sr. Advocate appeared and reiterated the request of his clients to cross examine the persons from whom statements had been taken by SEBI. Excepting for the said request, the sr. advocate did not make any submissions on the merits of the case, in spite of specifically conveying to them that their prayer for cross-examination would be dealt with in the final order and that the same should not come in the way of adducing arguments on merits.
- 2.27 I note that sufficient opportunities were provided by SEBI to Padmini and its whole time directors in compliance of the principles of natural justice, so that they could make their submission/explanation, if any, against the show cause notices issued to them. SEBI had also provided all the documents / information as sought by them except those mentioned in the letter of Padmini dated October 20, 2004. Nothing prevented them from making their submission rebutting the said statements / information. Though they had filed their replies (as mentioned above) to the show cause notices issued by SEBI, they had also requested for the cross examination of all the persons from whom statements had been taken by SEBI. In view of the above, as sufficient opportunities were provided to Padmini and its whole time directors to explain their case against the show cause notices, I consider that no purpose will be served in giving another opportunity of hearing to them. In the sequence of events as adumbrated above, it becomes evident that the party was buying time under some pretext or other; while the successive requests for additional information or inspection were nothing but a ploy in a scheme of dilatory tactics to smother the quasi judicial process in frivolous and vexatious delay. The plea for cross-examination is nothing but a necessary, logical extension of the said ruse to delay and procrastinate. The refusal to adduce arguments on merits despite being told that their plea on cross-examination would be dealt with on merits in the final order is demonstrative of a deliberate cussedness on their part which appears to be a part of a design to delay finality on the substantive issues at this stage. Therefore, there is a strong case to decide on all the issues on the basis of all materials available on record, the letters / reply filed by Padmini and its whole time directors and the material circumstances bearing on the case in the exercise of best judgment, lest the case should be mired in interminable delay, without finality, which would be subserving the parties interests.

2.28 In the above facts and circumstances, I, proceed further with the matter on the basis of the show cause notice issued to Padmini and its directors, the reply dated March 22, 2004 received its whole time directors, reply dated November 10, 2004 received from Shri Vivek Nagpal, other letters received by SEBI (as mentioned above) and other materials available on record.

3.0 CONSIDERATION OF ISSUES AND FINDINGS.

3.1 In the facts and circumstances of the case and taking into account the replies / letters received from Padmini and its whole time directors, the following issues are framed for consideration.

- a) whether the request of Padmini and its whole time directors to cross examine the persons from whom the statements had been taken by SEBI should be allowed ?
- b) whether Padmini and its whole time directors had committed irregularities as mentioned in the show cause notice of SEBI dated February 20, 2004?.

3.2 At the outset, I would like to examine the request made by the learned senior advocate on behalf of Padmini and its whole time directors to cross examine those persons whose statements had been taken by SEBI. The present proceedings against Padmini and its whole time directors are initiated under Section 11B of the Act and under the provisions of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulation, 2003 (hereinafter referred to as the 2003 Regulations). Section 11B of the Act is quoted below for the sake of convenience:

Section 11B of the Act:

"Power to issue directions.

11B. Save as otherwise provided in section 11, if after making or causing to be made an inquiry, the Board is satisfied that it is necessary,-

- (i) in the interest of investors, or orderly development of securities market; or*
- (ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or*
- (iii) to secure the proper management of any such intermediary or person, it may issue such directions,-*
 - (a) to any person or class of persons referred to in section 12, or associated with the securities market; or*
 - (b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market"*

Section 11B of the Act uses the word 'inquiry'. It does not specifically mention about the detailed procedure to be followed while passing a direction, thereof. Further, the provisions of the Act do not provide for an opportunity to cross examine the persons from whom the statements have been taken by SEBI during the course of investigation or otherwise. However, generally, a direction/order under Section 11B of the Act is passed against an entity/person, after providing the following opportunities, in compliance of the principles of natural justice:-

- (a) Notice in which the charges/allegations leveled against are specified
- and
- (b) An opportunity to submit his case.

However, in grave and emergent situations wherein ex-parte interim orders are passed in the interest of investors in securities market a post decisional hearing pending investigation/enquiry is granted for the purpose of either confirmation or revocation of the ex parte order. Thereafter, a regular show cause notice with charges/allegations is issued after investigation /enquiry.

3.3 Further, in terms of regulation 10 of the 2003 Regulations, SEBI is empowered to issue directions after giving an opportunity of hearing to the person concerned. The relevant extracts of regulation 10 of the 2003 Regulation is quoted below:

"The Board may, after consideration of the report referred to in regulation 9, if satisfied that there is a violations of these regulations and after giving a reasonable opportunity of hearing to the persons concerned, issue such directions or take such actions as mentioned in regulation 11 and regulation 12".

3.4 Therefore, on a plain reading of section 11B of the Act and regulation 10 of the 2003 regulations as stated above, it can be seen that SEBI is empowered to pass directions as mentioned therein after giving a reasonable opportunity of hearing. However,

how far this 'reasonable opportunity of hearing' can be extended is a matter of fact and depends upon the facts and circumstances of each case.

3.5 Therefore, proceeding on the basis that the powers under Section 11B are to be exercised in accordance with the principles of natural justice, the contention of Padmini and its whole time directors have to be examined as to what will be the scope and ambit of principles of natural justice in exercise of powers under Section 11B of the Act and as to whether the opportunity of cross-examination would be the very core of the principles of natural justice with an universal application or a case specific adjunct. The provisions of the Act and the Regulations as mentioned above do not recognize the concept of cross examination of the persons from whom the statements have been taken by SEBI, during the course of investigation or otherwise. Generally, the show cause notice and the reply received to the said show cause can be considered as the sufficient compliance of natural justice. It is a settled principle that the technical rules of evidence and pleadings are not a part of the audi alteram partem rule and the principles of 'natural justice' can not be fit into a straight jacket formula. The Hon'ble Supreme Court in the matter of **Union of India Vs Anand Kumar Pandey [(1994) 5 SCC 663]**, had inter alia observed that "This Court has repeatedly held that the rules of natural justice cannot be put in a strait-jacket. Applicability of these rules depends upon the facts and circumstances relating to each particular given situation". Therefore, the requirements of natural justice depends on the circumstances of the case, the nature of the inquiry, the rules under which the concerned authority is acting, the subject matter that is being dealt with, etc. Hence, it has a variable content, and is not an inflexible rule having a fixed or rigid connotation.

3.6 Generally, the question whether an opportunity of cross examination is to be given or not, depends upon the circumstances of each case and the statute under which the hearing is being held. SEBI in its show cause notices mentioned above explained in detail the allegations leveled against Padmini and its whole time directors and further provided them an opportunity to submit their reply. Alongwith the said show cause notices, necessary explanations/materials substantiating the charges were provided to them in the form of annexures. However, Padmini and its whole time directors had initially sought for the inspection of various documents vide their letters as mentioned in para 2.3 and 2.4 above. It can be seen that though most of the documents / details sought by them were not required in the context of filing a reply to the said show cause notices, they had also sought for the copies of various documents. The said requests made by them were allowed by SEBI and the said opportunity was availed by Padmini and its whole time directors.

3.7 Subsequently, vide letters dated August 13, 2004, Padmini and its whole time directors requested SEBI to provide copies of various documents as mentioned in para 2.6 above. Taking into account the requests made by Padmini and its whole time directors, SEBI vide letter dated September 27, 2004 forwarded the copies of various documents as requested by them (para 2.7). I note that Padmini vide letter dated October 20, 2004 requested for certain documents as mentioned therein (para 2.8). In the said letter it was specifically stated that "*.....in the absence of vital documents such as those referred to above, we are not in a position to prepare a proper reply to the show cause notice and the send the same to SEBI*". This categorical statement made by Padmini would lead to a conclusion that all the documents required for the purpose of replying the show cause notice issued by SEBI were received by Padmini except those mentioned in the above letter dated October 20, 2004. It is to be mentioned that Padmini, vide its above letter, sought for documents mentioned at serial nos. 1 to 7 therein.

3.8 On a perusal of the said request, it is noticed that documents at Sr. No. 1 to 3 were correspondences pertaining to SBI Mutual Fund and 4 to 7 were with respect to KP entities. Coming to the relevancy of the said documents sought by Padmini, it is to be mentioned that the said documents were not specifically referred to by SEBI in its aforesaid show cause notice. Triumph International Finance Ltd. had acquired 24 lakh shares in an off market deal from the following entities on February 18, 2000 as mentioned below :

Shares acquired from	Quantity	Rate (Rs.)	Amount (Rs.)
Cama Enterprises P Ltd.	2,00,000	162.75	3,25,50,000
Cherry Marketing P Ltd.	2,00,000	162.75	3,25,50,000
HT Ferro P Ltd.	3,00,000	162.75	4,88,25,000
Zinga Chemical P Ltd.	3,00,000	162.75	4,88,25,000
Iris Infrastructurals P Ltd.	7,00,000	162.75	11,39,25,000
Mikona Impex & Traders P Ltd.	7,00,000	162.65	11,38,55,000
Total	24,00,000		39,05,30,000

I note that out of the said 24 lakh shares 22 lakh shares were sold in off market deal by Triumph International Finance Ltd. to SBI Mutual Fund on February 21, 2000. Total purchase by SBI Mutual Fund amounted to 34,47,500 shares of Padmini including 22,00,000 shares acquired through Triumph. Comparison of the distinctive numbers of the total shares acquired by the Fund with that of the distinctive numbers of shares allotted to preferential allottees reveals that 23,64,900 shares acquired by the Fund had same distinctive numbers as that originally allotted to preferential allottees. Out of the said 23,64,900 shares, the break-up of transferors for 22,11,100 shares is as under:

Transferors of shares	Number of shares transferred
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acquired by SBIMF	
Cama Enterprises P Ltd.	1,99,500
Cherry Marketing P Ltd.	1,76,900
HT Ferro P Ltd.	3,00,000
Zinga Chemical P Ltd.	2,21,100
Iris Infrastructurals P Ltd.	6,07,100
Mikona Impex & Traders P Ltd.	7,06,500
Total	22,11,100

The details of above transactions were already sent to Padmini by SEBI, vide letter dated September 27, 2004 and therefore, Padmini can not take a plea that no documents were given to it. In the facts and circumstances, I find that all the documents/information germane to the present proceedings was furnished to Padmini and its whole time directors by SEBI. As already observed by me earlier, the successive requests of Padmini for additional information/ data were part of a design to delay the proceedings while traversing beyond the scope of show cause notice.

- 3.9 I further note that, SEBI vide letter dated August 29, 2005 explained in detail, the relevance of the documents and submissions which were relied upon by SEBI in support of its charge mentioned in the show cause notice (in respect of issue c). I would like to quote the relevant portion of the above letter for the sake of reference :

*"In this regard, we have prepared a table at **Annexure 1**, which provides in detail the documents relied in support of every charge mentioned in SCN issued to you. While, most of these documents were already provided to you earlier (as indicated in the Annexure), rest of these are now enclosed. Another table at **Annexure 2** highlights the important submissions made by persons whose statements were relied by SEBI for issuance of SCN. As shown in this table, we are making out the charges not only on the basis of statements but also independent documentary evidences. These documents are referred in Annexure 1."*

- 3.10 In Annexure I to the above letter, SEBI had specifically spelt out in detail, the charges, contentions made against Padmini and its whole time directors in the show cause notice, documents relied and also whether the statement of the parties were used as evidence etc. In the said annexure it was explained (in respect of the contention of the sale of shares to SBI Mutual Fund) that SEBI had relied upon the information provided by SBI Mutual Fund, the copy of the letter of Triumph (KP entities) and the copies of Form 32 of certain entities. In so far as the nexus between KP entities and the promoters of Padmini SEBI had relied upon copy of the debit notes issued by Delhi based allottees, copy of bank statement of KP entities and Delhi based allottees and the letter sent by one of the entities to KP entity.
- 3.11 Therefore, it is fairly established that all the documents relied upon by SEBI and relevant for present proceedings had been provided to Padmini and its whole time directors. Therefore, no prejudice has been caused either to Padmini and its whole time directors. No documents are considered by SEBI without giving a copy of the same to Padmini & its whole time directors. Though the copy of investigation report was not provided, the extracts of the investigation report relating to Padmini and its whole time directors for the purpose of these proceedings were communicated to them by way of show cause notices dated July 2, 2002 and February 20, 2004. Further, documents/ information which were issued by Padmini or expected to be in possession of Padmini/ its directors were also not provided.
- 3.12 Therefore, it can be seen that the information and documents which were gathered by SEBI during the course of investigation were provided to Padmini and its whole time directors. They had given their explanation against the said show cause notice and none had disputed the veracity of third party statements which were recorded by SEBI. They had also not disputed the bank entries of the allottees (in respect of the preferential allotment.) In the absence of any rebuttal to the statements made by the persons or the entries made in the official documents the request for cross examination cannot pass muster. Further, cross examination will not be part of the natural justice in view of the existence of documentary evidence to prove the charges otherwise, while the statements were merely of corroborative value. In this context, I would like to note that, one of the charges against Padmini and its whole time directors was that they had committed irregularities while allotting shares on preferential basis. One of the irregularities was that it had allotted shares to Kolkata based and Delhi based allottees without the receipt of application / allotment money from them. The fact that the preferential shares were issued for cash may be valid as an observation, but non receipt of cash in most of the accounts before listing is incontrovertible.
- 3.13 The question whether Padmini had received the cash from the Kolkata and Delhi based allottees can be ascertained from the bank statement of Padmini or even from the allottees to whom the preferential shares were allotted. Admittedly, it is the case of Padmini that it had not received cash at the time of the allotment but received cheques from the aforesaid

allottees. However, the said cheques were not presented for encashment immediately as per the requests of the said allottees which is only a cover-up for channelising the sale proceeds at a latter date as per the modus operandi established by investigation. Shri Vivek Nagpal in his reply had inter alia stated that *"However, after receipt of cheques for allotment of shares, the allottees requested for withholding the cheques for presentation on some grounds. Having made the allotment, the company was left with no other option but to consider their request for delayed presentation, particularly when the market price of the share was ruling below par. In the said compelling circumstances, company was left with little choice but to hold on to the cheques as desired/ requested by the allottees"*. I also note that the application /allotment, pursuant to a colourable device as established by investigation money from the majority of the Kolkata and Delhi based entities were received much after the aforesaid allotment, pursuant to a colourable device as established by investigation.

3.14 Further, the requirement of granting cross – examination depends on the facts of the case, and is not an absolute right, particularly in strict liability offences. However, whatever standard is adopted, one essential requirement in terms of the principles of natural justice is that the person concerned should have a reasonable opportunity of presenting his case. This is based on the basic concept of "fair play" in actions pertaining to administrative, judicial or quasi judicial. As aforesaid, the basic concept of "fair play" depends upon the specifics of a particular case. In this context, the decision of the Hon'ble Supreme Court in the matter of State of Kerala Vs K T Shaduli (AIR 1977 SC 1627) is relevant. The Hon'ble Supreme Court had inter alia observed that *".....It is, therefore, not possible to say that in every case the rule of audi alterem partem requires that a particular specified procedure to be followed. It may be that in a given case the rule of audi alterem partem may import a requirement that witnesses whose statements are sought to be relied upon by the authority holding the inquiry should be permitted to be cross-examined by the party affected while in some other case it may not. The procedure required to be adopted for giving an opportunity to a person to be heard must necessarily depend on the facts and circumstances of each case"*.

3.15 The learned senior advocate on behalf of Padmini and its whole time directors had placed reliance on the following judgments in reference to the issue of cross examination :

a) Kishinchand Chellaram Vs CIT (1972) 84 ITR 485(Bom).

b) State of Kerala Vs K T Shaduli (AIR 1977 SC 1627)

3.16 I have considered the above case laws cited by the senior advocate. In the first case, the issue for consideration was that whether there was any material evidence to fortify the finding that a sum of Rs.1,07,350 was remitted by the assessee and that it represented the undisclosed income. In the said case there was a dispute in respect of the facts and the concerned authority had failed to prove the fact that the undisclosed income was remitted by the assessee. Further some of the documents (letters written by the authorities to the Bank) were not brought on record. It was observed in the said judgment that "The primary evidence before the Tribunal in regard to the remittance of the amount of Rs. 1,07,350 was the application signed by Tilokchand and this application clearly showed that it was Tilokchand and not the assessee which remitted the amount of Rs.1,07,350 from Madras. There can be no doubt that the amount had been remitted by Tilokchand on behalf of the assessee and would have signed the application on behalf the assessee and not in his own name. We fail to appreciate how, in the face of this primary evidence showing Tilokchand as the person who remitted the amount of Rs.1,0,350, the Tribunal could possibly accept the unsupported statement of the manager of the bank, based on hearsay, that the amount was remitted by the assessee." In the said case there was no material evidence to justify that the amount remitted was undisclosed income whereas in the present case, the bank documents (accounts of Padmini) shows that it had not realized the cheques received from the Kolkata and Delhi based allottees before the allotment. Therefore, the principle laid down in the above case is not applicable. Further, the case does not proceed on any ipse dixit, but on well – documents, facts as assist the case cited wherein the undisclosed income was brought to tax on the basis of a statement of the manager of the bank.

3.17 In the second case relied upon by the senior advocate, the relevant Act was the Kerala General Sales Tax Act, 1963. In the said Act, as noted by the Hon'ble Supreme Court, there was a provision which empower the concerned person to prove the correctness or completeness of the return. The issue was that reliance was placed on the books of accounts of a third party while assessing the tax. The facts of the said case are entirely different from the present case. The said provision was already quoted by the Hon'ble Court in the said order at para 4 at page 1630 and the same is reproduced below for the purpose of brevity.

"....Provided that before taking action under this sub - section the dealer shall be given a reasonable opportunity of being heard and where a return has been submitted, to prove the correctness or completeness of such return" The said judgment was passed in the context of the existing provisions of law empowering the party to prove the correctness or completeness of the document. However, in the context of the present case it has to be noted that such similar provisions are not recognized either explicitly or implicitly in the Act. In any event, the case is not on all flows with the case as above.

3.18 Further, in order to establish that cross examination is necessary, the party (whoever pleads) has to make out a case for the same. Merely stating that the statement of a person is being utilized for the purpose of adjudication would not be sufficient

in all cases. When no prejudice is caused to the person concerned, denial of cross examination will not vitiate the entire proceedings. It has to be proved, by the said denial that, the party was prejudiced. If the entity is able to controvert or effectively present its case based on the material made available to it as well as the facts and circumstances of the case, then mere denial of right to cross examination shall not vitiate the proceedings. In this context, I note that Shri. Vivek Nagpal replied upon all the charges mentioned in the show cause notice. Further, Padmini vide letter dated October 20, 2004 had asked for certain documents which were not referred to in the show cause notice. In the present case, one of the prime allegations leveled against Padmini and its directors was that Padmini had allotted preferential shares to various persons / entities without the actual receipt of cash. The said fact has not been disputed by Padmini and its directors. Further, the said non receipt can be ascertained from the bank statements of Padmini or the allottees. Not only the said non receipt, Padmini and its whole time directors have not disputed the factum of presentation made to the Kolkata based allottees in Taj, Kolkata, delay in transfer of shares, delay in demat of shares etc. In this regard, I would like to note the judgment of the Hon'ble Supreme Court in the matter of K L Tripathi Vs State Bank of India {(1984) 1SCC 43}, wherein it was inter alia observed that "when on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross examination per se does not invalidate or vitiate the decision arrived at fairly". Whenever there is no dispute as to the existence of a particular fact a party against whom proceedings are taken cannot seek for the cross examination of persons.

- 3.19 Following the principle laid down by the Hon'ble Supreme Court in the above case, the Hon'ble High Court of Gujarat in the matter of Hindustan Finstcok Ltd. Vs SEBI vide its order dated May 06, 2002 had inter alia observed that " If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified is in dispute, right of cross-examination must inevitably form part of fair play in action, but where there is no lis regarding the facts but certain explanation of the circumstances, there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, that no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision aggrieved at fair play". It was also observed by the Hon'ble Court that " In the facts and circumstances of the present case, however, no case is made out by the petitioner from the averments made in the petition as well as from the proceedings of the appellate authority or before the first authority namely the S.E.B.I. that on account of denial of cross-examination any prejudice is caused to the petitioner". In the present case also, Padmini and its whole time directors have not made out a case to the effect that they were prejudiced by denying cross examination.
- 3.20 I further note that, Padmini and its directors have not explained as to why they require cross examination of various people when the factum of the non receipt of cash for the preferential allotment made in the year 1999 was borne out in the bank statements of the company (Padmini) and the allottees. In this context, I would like to refer to the judgment of the Hon'ble Supreme Court in the matter of **Transmission Corporation of AP Ltd. and ors Vs Sri Rama Krishna Rice Mill** (decided on February 20, 2006). It was held "In order to establish that the cross examination is necessary, the consumer has to make out a case for the same. Merely stating that the statement of an officer is being utilized for the purpose of adjudication would not be sufficient in all cases.As has been rightly noted by the High Court in the impugned judgment where the reliance is only on accounts prepared by a person, cross examination is not necessary. But where it is based on reports alleging tampering or pilferage, the fact -situation may be different.The applications for cross-examination are not to be filed in routine manner and equally also not to be disposed of by adjudicator in casual or routine manner. There has to be application of mind by him. Similarly, as noted above, the consumer has to show as to why cross examination is necessary".
- 3.21 When the present case is examined in the context of the above judgments. I note that one of the main allegations leveled against Padmini was that it had allotted preferential shares to various persons / entities as mentioned in the preceding paras without the actual receipt of price. The consideration for the said allotment was received by Padmini after the said shares were sold by the allottees to third parties through off market transactions. Padmini has not denied the fact that it had not received the cash at the time of allotment.
- 3.22 The claim of Padmini was that it had received cheques from the allottees and the said cheques were not presented at that time upon the request by the allottees. The said cheques were presented for encashment by Padmini after the allottees received cash subsequent to the sale of the said shares to KP entities. I note that in terms of the provisions of Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines 2000, the issue of shares on a preferential basis has to be made at a price which is calculated as per the method specified therein. The facts of the instant case as above clearly establish a marked departure from normal commercial practice where cheques are presented for encashment immediately, as any prudent business man would do. On the contrary holding the encashment in abeyance till the sale proceeds are received from KP entities into the accounts of Delhi/ Kolkata allottees and revalidating the original cheques in August 1999 to December 1999/ January 2000 are very unusual features indicating a close nexus between Padmini, the allottees and KP entities in the course of well orchestrated plan of action. When the transaction, as established above, is vitiated by fraud and collusion, it will not be open to the party to claim the benefit of a normal business transactions and the accounting practice followed therein.

3.23 Neither Padmini nor its directors have rebutted the contents in the statements made by various people. Without citing any reasons and without showing the prejudice caused to them, they had simply sought for cross examination of the aforesaid people. Even otherwise the fact that Padmini had not received the cash at the time of the preferential allotment was borne out of the banks statements of Padmini and the allottees. I also note that Padmini furnished its reply to the show cause notice dated February 20, 2004. Therefore, I note that no prejudice has been caused to Padmini in the absence of cross examination. Further in his entire reply he had categorically sought for the cross examination of Shri. Sanjay Kumar except making a vague request that "It is submitted that this is only a part reply and I take the liberty to modify and add additional grounds in my reply on your making available to meall the material relied on by the Investigating Officer and also after all allowing the cross examination by me of all the persons, whose statements have been relied upon by you in the Show Cause Notice".....

3.24 I further note that Padmini and Shri Vivek Nagpal had not cooperated with SEBI during the investigation proceedings and thereby SEBI had initiated adjudication proceedings against them. Though the orders (monetary penalty of Rs. 5 lakhs and Rs.3 lakhs respectively) passed by the Adjudicating Officer was challenged by Padmini and Shri Vivek Nagpal before the Hon'ble Securities Appellate Tribunal (SAT). The SAT in its order dated June 28, 2005 had inter alia observe that

"5. When a serious case of alleged fraud with respect to allotment of preferential shares has taken place, it is the duty of the respondent to get to the information that is necessary and the appellant did not cooperate with the respondent by not responding to the show cause notice primarily.

6. Legal semantics cannot be an answer for genuine investigation with respect to alleged fraud since the preamble of the SEBI Act clearly states that the primary duty of SEBI is to protect the interest of investor in securities and to regulate the securities market and for matter connected with or incidental thereto.

7. The adjudicating officer was fully justified in holding that the appellant did not cooperate with the adjudicating officer in furnishing information. It appears to us that the appellant took an intransigent attitude in the matter of furnishing information and the non-compliance of the appellant to the summons issued to him is far violation of Section 15A of the SEBI Act.

8. In these circumstances, we have no hesitation in confirming the order passed by the adjudicating officer".

3.25 The SAT while dismissing the appeal filed by them, modified the order of the Adjudicating Officer in respect of the quantum of penalty. It is not open to a person who had not co operated with the authority to allege that the authority has violated the principles of natural justice, when he is solely responsible for the impasse he has created and when the entire legal tangle is his own making, to frustrate investigation and to derail the quasi judicial procedure through a labyrinth of legal cavils with an air of injured innocence. Further In the facts and circumstances of the case, I do not consider this as fit case to allow the request of Padmini and its directors for cross examination. Since factual position (including the presentation made by Padmini in Kolkata, non receipt of application/allotment money from the Delhi based and Kolkata based allottees, delay in transfer of shares, delay in demat etc.) are not disputed by Padmini and since, on a conspectus of the Judgments cited supra, it is established that Padmini and its whole time directors have not been prejudiced in the absence of right of cross examination, I am of the considered view that the request for cross examination of the persons is not tenable and the same is liable to be rejected. In my view the present case is otherwise conclusively established by documents alone. Further, SAT in the matter of Jimmy Jal Gazdar Vs SEBI, vide order dated June 12, 2006 had observed that " The appellant should plead its case before the Board on merits as well and let a final order be passed. In case the said order goes against the appellant, it would be open to him to challenge the same on all grounds available to him in accordance with law including the one that the Board did not have the jurisdiction to initiate the proceedings. We are taking this view in the facts and circumstances of the case because we are of the opinion that all the disputes between the parties should be comprehensively decided by the Board and that they should not be allowed to have them adjudicated piecemeal".

3.26 In respect of the second issue with reference to the show cause notice dated February 20, 2004, I note that various allegations have been levelled against Padmini and its whole time directors. One of the allegations was that it had allotted preferential shares to Kolkata and Delhi based allottees without the actual receipt of cash. At the outset, it is to be mentioned that Padmini has not disputed the fact that the preferential shares were issued against cash and that shares were allotted to the Kolkata and Delhi based allottees. Admittedly, Padmini had not received the cash from majority of the allottees before the said preferential allotment of shares. Shri Vivek Nagpal in his reply had stated that after the receipt of the cheques, the allottees had requested for withholding the said cheques for presentation on some or the other grounds.

3.27 However, I note that Shri Vivek Nagpal had given a certificate dated June 30, 1999 stating that Padmini had already received the share money in respect of the preferential allotment. The extracts of the said certificate are mentioned below:

"This is to certify that the Company had already received Rs.8,52,50,000/- Share money in respect of Preferential Issue of 2,00,00,000 new Equity Shares of Rs.10/- per share aggregating Rs. 20,00,00,000/-, as per details given below:

Number of shares	Amount (Rs.)- per share	Total Amount (Rs.)
47,00,000	10.00	4,70,00,000/-
1,53,00,000	2.50	3,82,50,000/-

“

3.28 In addition to the above certificate regarding the receipt of the share money, Shri Vivek Nagpal had also given a certificate dated September 17, 1999 to the effect that Padmini had complied with all the legal and statutory formalities as mentioned under SEBI guidelines for preferential issue dated August 4, 1994. Further, Shri Vivek Nagpal vide letter dated December 06, 1999 certified that a sum of rupees 9.2 crores had been received by Padmini and that the cheques received against the said issue had been deposited and duly credited to its account with the following banks:

Names of the Bank	Branch	Amount deposited
State Bank of Hyderabad	Park Street, Calcutta	40500000
ICICI Bank *	Nariman Point Mumbai	2,00,00,000
Punjab National Bank	Okhla Industrial Estate, New Delhi	18000000
Vijaya Bank	Ansari Road, New Delhi	13500000
Total		92000000

*pertaining to the receipt from UTI with respect to the preferential allotment.

3.29 I also note that the statutory auditor of Padmini, Shri Kailash Chandra Agrawal had also issued various certificate as per the details mentioned below. Certificate dated June 30, 1999 certifying that Padmini had already received Rs.8,52,50,000/- share money in respect of the above preferential allotment. The extracts of the said certificate are mentioned below:

"..... On the basis of our verification, we certify that the Company had already received Rs.8,52,50,000/- Share money in respect of Preferential Issue of 2,00,00,000 new Equity Shares of Rs.10/- per share aggregating Rs. 20,00,00,000/-, as per details given below:

Number of shares	Amount (Rs.)- per share	Total Amount (Rs.)
47,00,000	10.00	4,70,00,000/-
1,53,00,000	2.50	3,82,50,000/-

3.30 Shri Kailash Chandra Agrawal had also issued a due diligence certificate dated June 30, 1999, certifying that all legal requirements connected with the said preferential allotment had been duly complied with and the disclosures made are true, fair and adequate. The extracts of the said due diligence certificate are mentioned below:

"DUE DILIGENCE CERTIFICATE

Re: Padmini Polymers Limited

Preferential Allotment of 2,00,00,000 Equity Shares of Rs. 10/- each aggregating to Rs. 20,00,00,000/-.

- i) *We have examined various documents and materials facts/papers in connection with the Preferential Allotment.*
- ii) *On the basis of such examination and discussion with the Company, its Directors and other Officers, Other Agencies, independent verification of the statements concerning the objects of the Preferential Allotment, Price justification and the contents of other Documents and papers furnished by the Company.*

We confirm that:

- (a) *The Preferential Allotment of Shares is in conformity with the documents/materials and papers relevant to the Preferential Allotment.*
- (b) *All legal requirements connected with said Allotment as also the guidelines and instructions etc. issued by SEBI, the Government and any other competent authority in this behalf have been duly complied with".*

3.31 Shri Kailash Chandra Agrawal had also issued a certificate dated November 30, 1999 certifying the receipt of share application money. The said certificate signed by Shri Kailash Chandra Agrawal is reproduced below:

"TO WHOMSOEVER IT MAY CONCERN

This is to certify the detail of receipt of Share Application Money aggregating to Rs. 8,52,50,000/- realised & credited to the account of M/s Padmini Polymers Limited is given as under:-

SL. No.	NAME OF ALLOTIES	CHQ.NO.	CHQ.DT	DRA WN ON	AMOUNT
1	Contessa Commercial Co Pvt. Ltd.	175826	21.05.99	State Bank of Hyderabad	90,00,000.00
2	Bhumenfeld Ltd.	307471	17.05.99	State Bank of Bikaner and Jaipur	90,00,000.00
3	Jiwansagar Promoters Pvt. Ltd.	671542	07.06.99	State Bank of Hyderabad	22,50,000.00
4	Bhagwandas Sagarmal	155361	28.05.99	State Bank of Hyderabad	22,50,000.00
5	Cherry Marketing P. Ltd.	43662.	01.06.99	Vijaya Bank	22.50,000.00
6	Alok Khelan	149653	25.05.99	HDFC Bank	22 50.000.00
7	J P Promoters P. Ltd	780801	21.05.99	Canara Bank	90,00,000. 00
8	Hermonite SurgicaJs P Ltd.	19870	03.06.99	Vijava Bank	22.50,000.00
9	Royal Bengal Exports P. Ltd.	750970	03.05.99,	The Federal Bank Ltd.	22,50,000.00
10	Prakash Kumar Damani (HUF)	612294	01.06.99	Vijava Bank	22.50.000.00
11	Carna Enterprises P. Lid.	43565	01.06.99	Vijava Bank	22,50,000.00
12	Raj Kumar Kishorcpuria	931394	01.06.9	State Bank of Hyderabad	22,50,000.00
13	Zinga Chemicals Pvt. Ltd.	22985	02.06.99	Vijaya Bank	22,50,000.00
14	Hennonile Consullanls P LId	42454	02.06.99	Vijaya Bank	22.50.000.00
15	Savara Tic-up Pvt. Ltd.	739153	03.06.99	The Federal Bank Ltd.	22,50,000.00
16	HT Ferro P Ltd.	596160	03.06.99	Bank of Baroda	22,50,000.00
17	Pramod Kumar Kishorcpuna	915595	25.05.99	State Bank of	22,50,000.00
18	Prakash Kumar Damani	92047	01.06.99	Vijaya Bank	22.50,000.00
19	VB Impex P. Ltd.	651401	21.05.99	Vi java Bank	22.50,000.00
20	S. Benwal	413113	28.05.99	Union Bank of	22,50,000.00
21	Unit Trust of India	445867	25.05.99	UTI Bank Ltd.	200.00.000,00
	Total				8,52,50,000

“

3.32 However, contrary to the above certificates, as a matter of fact Padmini had received the cash from the Kolkata and Delhi based allottees much after the allotment of preferential shares. It is also observed that cheque no. 307471 dated May 17, 1999 of Blumenfeld (towards the application/ allotment money) was revalidated to January 04, 2000 by the said entity The payments towards the preferential allotment is can be established from the bank statements of Padmini. The details of the credits received into the bank account of Padmini from the aforesaid allottees in respect of the preferential allotment are mentioned below:

a) Kolkata Based allottees (revealed from the bank account of Padmini maintained in State Bank of Hyderabad, Kolkata)

Name of Allottees	No. of Shares Allotted (on 20.6.99)	Amount due to Padmini (Rs.)	Cheque Date	Clg. Date
Contessa Commercial	9,00,000	90 lacs	21.5.99	5.1.00
Blumenfeld	9,00,000	90 lacs	17.5.99	6.1.00
Jeevan Sagar	9,00,000	22.50 lacs	7.6.99	19.1.00
Bhagwan Das Sagarmal	9,00,000	22.50 lacs	28.5.99	14.1.00
Raj Kumar Kishorepuria	9,00,000	22.50 lacs	1.6.99	14.1.00
Pramod Kumar Kishorepuria	9.00.000	22.50 lacs	22.5.99	18.1.00
Alok Khetan	9,00,000	22.50 lacs	28.5.99	19.1.00

Royal Bengal Exports	9,00,000	22.50 lacs	3.6.99	18.1.00
Savera Tieup	9,00,000	22.50 lacs	3.6.99	16.3.00
Sanjeev Beriwal	9,00,000	22.50 lacs	28.5.99	18.1.00
Prakash Kumar Damani	9,00,000	22.50 lacs	25.6.99	14.3.00
Prakash Kumar Damani(HUF)	9,00,000	22.50 lacs	25.6.99	14.3.00

I note from the above bank details that the cheques of the above allottees were realised and credited into the bank account of Padmini long after the allotment and even after the listing approval given by DSE (December 23, 1999)

b) Delhi Based allottees : (revealed from the bank account of Padmini maintained in Vijaya Bank, Ansari Road Branch, New Delhi)

Name of Allottees	Shares Allotted On 20.6.99	Amount due to Padmini (Rs.)	Cheque Date	Clearing Date
Cherry Marketing P Ltd.	9,00,000	22.50 lacs	1.8.99	27.12.99
Hermonite Surgicals P Ltd	9,00,000	22.50 lacs	3.8.99	27.12.99
Zinga Chemicals P Ltd.	9,00,000	22.50 lacs	2.8.99	27.12.99
Hermonite Consultants P Ltd.	9,00,000	22.50 lacs	2.8.99	27.12.99
HT Ferro P Ltd.	9,00,000	22.50 lacs	3.8.99	28.12.99
Cama Enterprises P Ltd.	9,00,000	22.50 lacs	1.8.99	27.12.99
M/s VB Impex P Ltd.	9,00,000	90 lacs	21.5.99	11.10.99
M/s JP Promoters P Ltd.	9,00,000	90 lacs	21.5.99	7.3.00

3.33 I note from the bank statements of Padmini (maintained with Vijaya Bank, Ansari Road Branch, New Delhi) that the cheques of Cama Enterprises (cheques no. 43565), Hermonite Consultants Pvt. Ltd. (cheques no. 42454), Zinga Chemicals Pvt. Ltd. (22985), Cherry Marketing Pvt. Ltd. (cheques no. 43226), Hermonite Surgicals Pvt. Ltd. (cheques no. 19878) and H T Ferro Pvt. Ltd. (cheques no. 596160) were cleared only on December 27, 1999 except the cheques of H T Ferro Pvt. Ltd. which was cleared on December 28, 1999. Similarly, from the bank statement of Padmini maintained with the State Bank of Hyderabad, Kolkata it is observed that the payments from the Kolkata based entities were received in the month of January 2000. Further, the return of allotment filed by Padmini (dated December 01, 1999) with the Registrar of Companies projecting that allotment was made against consideration received from various allottees was apparently false. Actually the consideration was received from the majority of the Delhi and Kolkata based allottees long after the said date. Therefore, inter alia the certificates given by Shri Vivek Nagpal were not only false but also misleading. The said certificates facilitated Padmini to obtain listing approval from DSE for the shares allotted on preferential basis.

3.34 I further observe that the nexus between the Kolkata based allottees and Padmini can be inferred from the reply of Shri Vivek Nagpal that ".....it is further submitted that the company came to know about acting in concert by the above parties for the first time only on June 10, 1999 when Contessa Commercial Co. Pvt. Ltd. made a disclosure under Regulation 7 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 to the company regarding their acting in concert with other companies. Contessa Commercial Co. Pvt. Ltd. had made a disclosure that it was acting in concert with Billumenfiled Ltd. Jiwan Sagar Promoters Pvt. Ltd., Promod Kr. Kishorepuria, Raj Kumar Kishorepuria and Bhagawandas Sagarmal".

3.35 Despite the receipt of the said information, well in advance of the preferential allotment, Padmini had opted to allot preferential shares to the said allottees on June 20, 1999. Further, the Goenka Group companies (belonging to the category of Delhi based allottees) namely Cama Enterprises, Hermonite Consultants Pvt. Ltd., Zinga Chemicals Pvt. Ltd., Cherry Marketing Pvt. Ltd. Hermonite Surgicals Pvt. Ltd. and H T Ferro Pvt. Ltd. were managed by the common directors as mentioned below:

Name of Allottee company	Name of directors
Cherry Marketing P Ltd.	Shri Arun Goenka

	Shri Umesh Goenka
	Shri Ashok Sood
Hermonite Surgicals P Ltd	Shri Arun Goenka
	Shri Umesh Goenka
	Shri Shiv Prasad Agarwal
Zinga Chemicals P Ltd.	Shri Arun Goenka
	Shri Umesh Goenka
	Shri P. Ratna Rao
Hermonite Consultants P Ltd.	Shri Arun Goenka
	Shri Umesh Goenka
	Shri Himangshu Bhadra
HT Ferro P Ltd.	Shri Arun Goenka
	Shri Umesh Goenka
Cama Enterprises P Ltd.	Shri Arun Goenka
	Shri Umesh Goenka
	Shri Ashok Sood

The above table will establish that the said allottees belonged to the same group. Similarly, VB Impex Pvt. Ltd. and M/s J P Promoters Pvt. Ltd. also belonged to the same group and the name of the directors of the said companies are mentioned below:

Name of allottee company	Name of directors
M/s VB Impex P Ltd.	Shri Vinod Kumar
	Shri Vinay Bansal
M/s JP Promoters P Ltd.	Shri Anurag Gupta
	Shri Pradeep Kumar

3.36 I note that the investigation conducted by SEBI revealed that Shri Vinod Kumar of VB Impex Ltd. and Shri Pradeep Kumar of JP Promoters P Ltd. have the same address as D-323, Nawada Housing Complex, Vipin Garden, New Delhi. These companies apparently belonged to the same group. This coupled with the fact Padmini had not received the cash before the allotment would establish without any doubt that there was a nexus between the Kolkata based allottees and Padmini. The preferential shares which were allotted to Kolkata based allottees were subsequently sold to KP entities through off market deals and were used for manipulating the market by KP entities.

3.36 The fact that Padmini had not received the cash for the preferential allotment is not disputed. Padmini and its directors placed reliance on the judgment of the Calcutta High Court to the effect that "once a cheque is encashed, the date of payment is the date of delivery of the cheques, the payment relating back to the date when the cheques is delivered". The facts of the said case and that of the present case are entirely different in the sense that though Padmini had received cheques from the Delhi and Kolkata allottees in the month of May 1999 the same were revalidated to January 2000, after the listing approval granted by DSE. Not only the cheques were realized after the listing approval but also Padmini and its statutory auditors had given various certificates to the effect that the same were credited and the money was in fact realized into the account of Padmini before the dates on which certificates were issued, which were found to be false. The Compliance of statutory obligation cannot be postponed so as to defeat its purpose. This is contrary to the normal commercial practice where cheques was presented for encashment on receipt. It may also be noted that there was a well established nexus between the allottees and the issuer (Padmini), as detailed above. By giving such certificates Padmini got its preferential shares listed at DSE and the preferential shares allotted to Kolkata and Delhi based allottees were manipulated by KP entities to the detriment of the genuine investors. Therefore it can be said that Padmini had committed fraud on the securities market by defrauding the genuine investors. Further, it is a case of collusive fraud to ensure that cheques are encashed after the sale proceeds were received.

3.37 Though Padmini had not received the cash in the preferential allotment it had filed a false certificate through its statutory auditors claiming that it had received the cash and thereby obtained the listing approval for trading of the said shares from DSE. The contention that Padmini was not a party to a contract so as to attract Regulations 6 (c) of the FUTP Regulations cannot be accepted. In this context, I note that Shri Vivek Nagpal in his reply had stated that the contract between Padmini and its allottee concluded on the allotment. If that be so, it had a duty to see that consideration (cash) for the said allotment was received at the time of allotment. It failed to do so. On the other hand it had opted to file false certificates to DSE and claimed the receipt of application / allotment money and DSE on the basis of the said certificates listing approval

and the said shares were subsequently used for manipulation by the KP entities to the detriment of the genuine investors. Therefore in the entire facts and circumstances as discussed earlier, it cannot be believed that Padmini was not a party to such a contract. All these are valid arguments in a normal allotment process, but when the same is vitiated by collusion as established, such arguments cannot past muster.

- 3.38 Shri Vivek Nagpal has been contended that the applicable regulation in respect of the alleged violation is the provisions of FUTP Regulations and not 2003 Regulations. I note that Padmini and its whole time directors have been charged for violating the provisions of FUTP Regulations (95 Regulations) and not the provisions of 2003 Regulations. Only proceedings are continued under the provisions of 2003 Regulations for the violations of 1995 Regulations, as specified in regulation 13 of 2003 Regulations. The contention that it is not a party to contract for attracting regulation 2 (c) of the FUTP regulations is not tenable as it has been discussed in detail above that by aiding the allottees (by way of unusual financial accommodation), not only it had violated the provisions relating to preferential allotment but also it had become a party to the subsequent manipulation of the shares of Padmini made by the KP entities. Therefore it is fairly established that by issuing certificates which were found to be false Padmini and its whole time directors have committed the violations of the provisions of 6 (a) (d) of the FUTP Regulations.
- 3.39 The fact that Padmini had made a presentation at Hotel Taj Bengal, Kolkatta around March-April 1999 has not been disputed. The contention of Padmini that there was nothing illegal in conducting such presentation. I note that all the Kolkatta based allottees amongst others had appeared in the said presentation. Shri Sunil Kishorepuria represented the entities listed at sr. nos. 2 to 7 in Table 3 above. Padmini & its promoter namely Shri. Vivek Nagpal were known to Shri Sunil Kishorepuria since 1993-94, as he had business dealings with Padmini It appeared that Shri Sunil Kishorepuria had served as the main contact point for facilitating preferential allotments to other Kolkatta based allottees and that Padmini had agreed that the cheques of the allottees would be presented for collection only after obtaining their consent. It appears that the financial accommodation as above might have been mediated by Shri Sunil Kishorepuria to the Kolkatta based allottees and accordingly, preferential shares were allotted on June 20, 1999 to the said allottees without the actual receipt of consideration and the allotment letters were also issued to the allottees. The investigations conducted by SEBI further revealed that at the instance of the Kolkatta based allottees for exiting out of the allotment, one Shri Sanjay Kumar was deputed by the management of Padmini to Kolkatta based allottees. Shri. Sanjay Kumar, Chartered Accountant approached the allottees and offered to purchase allotments of all the allottees at their cost price. The said move is an indication of the fact that the Kolkatta based allottees were used to channelise the transactions. That apart, the fact remains that the Kolkatta based allottees ultimately sold to KP entities and paid back allotment money on realization of such sale proceeds and in that view, the role of Shri Sanjay Kumar is purely indicative, providing necessary insights into the whole colorable arrangement. In that perspective, when the case turns on established facts, there is no need to allow cross examination of Shri Sanjay Kumar. The fact that the application/allotment money was not received at the time of the allotment, especially when such allotment was made after knowing that the Kolkatta based allottees were persons acting in concert will lead to the conclusion that the presentation was made for driving the entire game plan.
- 3.40 I note that there was nexus between Padmini and Goenka Group as 54 lacs shares were allotted on preferential basis to various companies forming part of Goenka group and that unusual financial accommodation was given by Padmini to Goenka group by way of late acceptance of cheques as mentioned in the preceding para. It was found that the companies belonging to Goenka Group did not have the required funds at the time of allotment. It was only after consideration was received from KP entities towards shares that payment was made to Padmini. I also note that Goenka Group also sold shares through M/s Triumph International, Member, NSE (KP entity) to SBI Mutual Fund, which had decided to acquire the shares in pursuance to a presentation made by Padmini. I also note that the director of VB Impex Pvt. Ltd. namely Shri Vinod Kumar and director of JP Promoters namely Shri Pradeep Kumar the same address as D-323, Nawada Housing Complex, Vipin Garden, New Delhi. I also note that the said companies apparently belonged to the same group and Shri Sanjay Kumar, Chartered Accountant was also associated with the said companies as he mediated and arranged payment from the said companies to various Kolkatta based allottees for acquisition of preferential allotment shares. In light of the allotment of shares on preferential basis, unusually generous financial accommodation extended by Padmini to the allottees with regard to payment against these shares; purchase of shares of some of the Kolkatta based allottees by JP Promoters and payment to various Kolkatta based allottees by VB Impex, it becomes evident that Padmini, its management and the VB Impex group entities were in league in crafting together the whole deal under the guise of preferential allotment wherein the beneficiaries turned out to be name – lenders beguiling the true purport of the transactions.
- 3.41 As per the Notice for the Annual General Meeting of Padmini held on March 24, 1999, the stated purpose of the preferential issue was to meet the urgent need for long term working capital. However, the manner in which the issue was gone about gives the lie to the purported objective, with the allotment ultimately landing up with KP entities for market manipulation. I also note that a large quantity of the said preferential shares (i.e. 72 lacs shares) reached Ketan Parekh entities (50 lacs shares were acquired by Classic Credits & Panther Fincap and 22 lacs shares were sold through Triumph International Finance to SBI Mutual Fund), will undoubtedly prove that the main objective of the irregular preferential allotment was to use substantial chunk of such shares later for market manipulation through KP entities. The transfer of shares of Padmini from the allottees to Classic Credits & Panther Fincap (KP entities) are mentioned below:

Name of the buying KP entity	Name of seller to KP entity	Date of purchase	Date of payment	No. of shares	Amount (Rs. in crores)
Classic Credits	VB Impex	12.10.99	24.12.99	9,00,000	1.80
Classic Credits	JP Promoters	12.10.99	24.12.99	9,00,000	1.80
Classic Credits	Churuwala Exports	12.10.99	N.A.	7,00,000	1.40
Panther Fincap	Cama Enterprises	12.10.99	24.12.99	9,00,000	1.80
Panther Fincap	Cherry Marketing	12.10.99	28.12.99	9,00,000	1.80
Panther Fincap	Hermonite Consultants	12.10.99	24.12.99	7,00,000	1.40
Total				50,00,000	10.0

3.42 The shares purchased by KP entities as mentioned above were part of the shares allotted during the preferential allotment of Padmini. All the entities (except Churuwala Exports) were Delhi based preferential allottees. Apparently M/s VB Impex P Ltd., M/s JP Promoters P Ltd. and M/s Churuwala Exports P Ltd. were part of same group. It can also be seen that the said purchase of shares of Padmini were made before the said entities made the payment in respect of the said allotment. The said purchase was also made before the listing of the said shares. The other entities namely, M/s Cama Enterprises P Ltd., M/s Cherry Marketing P Ltd. and M/s Hermonite Consultants P Ltd. were part of Goenka Group. The acquisition of the shares from the above entities by KP entities on the same date i.e. October 12, 1999 indicate that both VB Impex Group (including M/s VB Impex P Ltd., M/s JP Promoters P Ltd. and M/s Churuwala Exports P Ltd., DKG Buildcon P Ltd., Iris Infrastructurals P Ltd. & Mikona Impex & Traders P Ltd.) and Goenka Group of allottees (including Cherry Marketing P Ltd., Hermonite Surgicals P Ltd., Zinga Chemicals P Ltd., Hermonite Consultants P Ltd., HT Ferro P Ltd. & Cama Enterprises P Ltd.) were apparently acting in concert in channelising the shares to KP entities. It will also establish that shares of Padmini (which were allotted on preferential basis) were sold to third parties without the actual receipt of money. It is worth mentioning here that most of the cheques given by the said allottees were revalidated to December 1999. It appears that Padmini did not take any precaution against such transfer to third party without the receipt of application / allotment money and such a conduct is clearly demonstrative of the true purport of preferential allotment which was masterminded by Padmini. Further, it is corroborated by bank statements of allottees that they did not have requisite funds at the time of issue of cheques for purchase of shares. As such the said entities had served as a temporary parking point and later as a conduit for channelising the shares of Padmini to KP entities.

3.42 I also note that none of VB Impex Group entity had any office infrastructure at the given addresses i.e. at (i) D-322-323, Nawada Housing Complex, Vipin Garden, New Delhi (ii) D-2, Bal Udyan Road, Uttam Nagar, New Delhi (iii) L-53, Bal Udyan Road, Uttam Nagar, New Delhi (iv) C-438, East Babbarpur, Chajjupur, Shahdara, Delhi (v) C-10, Vipin Garden, Kakroda Mod, Uttam Nagar, New Delhi (vi) 1/7184, Shivaji Market, Shahdara, Delhi besides the tell – tale concomitant that none of the directors or employees were available at these addresses. These entities/ their directors failed to appear before SEBI in response to summons for personal appearance.

3.43 From the above, it can be seen that all the allottees (who appear to be name lenders) were used by Padmini for the ultimate purpose of manipulating the market by allotting shares without the receipt of application / allotment money and by giving false certificate to the said effect. The period 1999-2000 was rife with dubious preferential allotments designed to manipulate the market. The one, the subject matter of the order, was no exception and the attendant trappings with all tell – tale suspicious features as detailed supra do not leave any room for doubt that it was a fraud on the market in collusion with the name lenders and KP entities in creating artificial volume/price for luring the unsuspecting investors. In terms of Regulation 6(a) of the FUTP Regulations no person shall knowingly engage in any act or practice which would operate as a fraud upon any person in connection with the purchase or sale of, or any other dealing in any securities. In this context, I note that the preferential shares of Padmini which were allotted to Kolkata and Delhi based allottees were subsequently transferred to the KP entities and were used for manipulating the market by KP entities by artificially creating volumes and price in the said shares. Further Regulation 6(d) of the FUTP Regulations prohibits a person from indulging in falsification of books, accounts and records. In the present matter, it is fairly established that Padmini had issued false certificates and thereby DSE had given its approval for the listing of the shares allotted by Padmini on preferential basis, inter alia on the basis of the said certificates. It was also found that the said shares were subsequently used for manipulating the securities market to the detriment of genuine investors. In the process genuine investors were defrauded.

3.44 In the above context, I note the observation of the SAT in the matter of Ketan Parekh Vs SEBI that

"When a person takes part in or enters into transactions in securities with the intention to artificially raise or depress the price he thereby automatically induces the innocent investors in the market to buy / sell their stocks. The buyer or the seller is invariably influenced by the price of the stocks and if that is being manipulated the person doing so is necessarily influencing the decision of the buyer / seller thereby inducing him to buy or sell depending upon how the market has been manipulated. We are therefore of the view that inducement to any person to buy or sell securities is the necessary consequence of manipulation and flows therefrom. In other words, if the factum of manipulation is established it will

necessarily follow that the investors in the market had been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so wide spread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and law can never impose on the Board a burden which is impossible to be discharged. This, in our view, clearly flows from the plain language of Regulation 4(a) of the Regulations.

3.45 I also note that there were media reports and investor complaints that conversion of physical stocks to Demat stocks had been delayed. I note that the dematerialisation of shares had deliberately not been done by Padmini promptly or in a sequential manner. The trading in the scrip of Padmini was shifted to the compulsory demat form w.e.f. August 28, 2000 in terms of SEBI circular dated May 29, 2000. There were various complaints and market reports of delay in transfer of shares and conversion of physical shares into demat form. It had been observed that most of the complainants lodged their shares with Padmini during the year 2000 (when the scrip went into compulsory demat). Instances of complaints where the shares were not transferred for a long time are given below:-

Name of Complainant	Number of shares	Date of lodgment	Date of Complaint
Montona Securities Ltd.	2,000	8.7.2000	19.2.2002
LC Tadarwal & Co.	100	10.5.2000	19.9.2000
DV Jaithalia & Co.	1,000	7.7.2000	21.2.2001
Ram Shankar Pandaya	400	16.7.2000	24.3.2001
Arundhati Deb	300	8.12.1998	29.3.2001
Naresh D. Jain	5,000	25.5.2000	15.5.2001
Vandarkulali Muthiah	200	5.5.2000	15.6.2001
Bharat Hari Singhania	100	6.7.2000	28.6.2001
Amit M Shah	100	12.8.2000	28.7.2001

3.46 In terms of Section 113 of the Companies Act, 1956, the transfer of shares have to be effected within two months of the said request. I also note that in order to examine the impact of delay in transfer/ demat on the trading, details of transfers effected and physical shares dematerialized during the period May 1, 2000 to September 27, 2000 were also sought by SEBI for analysis and that an inspection of transfer/ demat records of Padmini was also undertaken by SEBI on August 2, 2001. During the inspection, Padmini avoided submission of share transfer records on the plea that its computer server was down. The findings relating to share transfer/ demat are discussed below: -

- a. It was observed from certain information furnished by Padmini that a large number of shares were shown as lodged for transfer on July 26, 2000 and transferred on the very next day i.e. July 27, 2000 and dispatched on September 5, 2000.

Having transferred the shares, there is no justification for retaining the shares for such a long time other than to reduce floating stock in the market. Incidentally this period of withholding shares for transfer coincides with the upward price movement in the scrip, which had obviously been accentuated by this act. I also note that Shri V. S. Gupta, Director (Finance) of Padmini in his statement recorded on February 9, 2002 stated that the company received unusually large volume of shares for transfer on July 26, 2000. The said transfers were approved by the transfer committee on July 27, 2000 and dispatched on September 5, 2000.

- b. During the inspection, it was observed that no physical records were maintained by Padmini evidencing the date of lodgment or date of dispatch in respect of shares received for transfer or dematerialization. The explanation of Padmini that its computer records had been afflicted by virus does not appear to be plausible since it is inconceivable that Padmini would not have back up of such a critical share transfer/ demat records affecting investors interest.
- c. Approximately 80 lacs shares constituting a significant quantum of the floating stock, were withheld by Padmini during August 2000 which impacted the scrip price and jeopardised the interests of investors. The first lot of shares lodged for dematerialization was received by the company on March 30, 2000 and dematerialised after almost 5 months on 26.8.2000. As on 28.8.2000, merely 7,53,700 shares were dematerialised i.e. 1.52% of capital. As per the data obtained from NSDL, merely 15,03,954 shares of Padmini for 65 shareholders were dematerialised as on September 1, 2000. It was explained by Shri V. S. Gupta that due to book closure and compulsory demat trading in the scrip, there was sudden spurt in requests for transfer. It was contended that Padmini had been regularly informing SEBI about progress of the Dematerialisation while attending to all investor grievances. However, the periodical reports on status of Dematerialisation submitted by Padmini to SEBI and DSE were found to be factually incorrect.

- d. Transfer of shares and conversion of physical to Demat shares was not done in a sequential manner. There are several instances of transfers and Demat having been done out of turn. Instances were observed when shares were dematerialized within one day of lodgment. Some instances of out of turn dematerialisation to the detriment of other investors are shown below:-

Instances of delay in demat

Name of Share holders	No. of Shares	Date of lodgment	Date of demat
Adani Finance Ltd.	14,00,000	24.8.2000	4.9.2000
Reliance Petroleum Ltd.	18,17,900	31.8.2000	21.9.2000
Panther Fincap	10,00,000	4.9.2000	5.9.2000
A. Jain & Co. P Ltd.	6,33,600	31.8.2000	21.9.2000
Luxor(India) P Ltd.	5,00,000	4.9.2000	22.9.2000
Classic Credits Ltd.	2,88,000	6.9.2000	15.9.2000
Reena Jain	1,42,100	4.9.2000	15.9.2000
Sushma Jain	74,400	4.9.2000	15.9.2000

Some of the above entities had also actively traded in the shares of Padmini and possibly benefited from the out of turn dematerialisation. When confronted with these figures, Shri V. S. Gupta, whole time director of Padmini stated that after the scrip went into compulsory demat mode, there was an acute shortage of deliveries and the shares attracted Ulta Badla at DSE. With a view to avoid payment crisis at the DSE, they were asked by DSE to effect out of turn/ expedite demat of certain large quantities of shares offered in Badla at DSE. However, the same does not satisfactorily explain the position. Information obtained from NSDL also shows that certain entities were favoured by out of turn dematerialisation, as shown below:-

Instances of out of turn demat

Name of entity	As on 1.9.2000	As on 15.9.2000	As on 29.9.2000
Ketan Parekh Group			
Panther Fincap	600	10,85,800	50,800
Classic Credits	1,25,800	3,14,000	16,500
R P & C International (FII)	-	1,45,000	-
Promoter			
Vivek Nagpal	-	1,26,300	22,634
Anand Jain Group (of Reliance)			
Silvasa Fibres P Ltd.	69,200	20,000	20,000
Ashok Agarwal Group			
SMC Share Brokers Ltd.	2,00,000	1,99,052	-
Others			
Bee Bee Polymers Ltd.	1,40,000	-	-
Richi Rich Overseas P Ltd.	2,00,250	2,26,735	-
Adani Finance Ltd.	-	8,83,000	3,51,708

- e. As per the share transfer records furnished by Padmini, around 40-50 cases involving approx. 15,000 shares were delayed. In several cases, dispatches were made after six months of transfer. Some of these cases are mentioned below: -

Name of Share holders	No. of shares	Time taken for transfer
Babulal Agarwal	100	158 days
Baby Rani Indugala	100	195 days
Ram Kumar Kamma	200	215 days

No satisfactory response was given by Padmini in respect of such delayed transfers.

- f. Physical share certificates had been retained without cancellation even after underlying securities had been dematerialised.

3.47 The findings of investigations indicate that Padmini facilitated price manipulation of its shares by delay in transfer/ demat of shares and out of turn dematerialisation of shares to the benefit of certain entities. Such a large scale intentional delay in transfer & demat is a unfair trade practice relating to securities and is in violation of Regulation 6(c) of the FUTP Regulations which states that " No person shall intentionally and in contravention of any law for the time being in force delays the transfer of securities in the name of the transferee or the dispatch of securities or connected documents to any transferee."

The above acts will undoubtedly establish that Padmini had violated the provisions of Regulations 6 (C) of the FUTP Regulations read with section 103 of the Companies Act, 1956. I note that the role of Padmini had become the party to the market manipulation made by KP entities.

3.48 Admittedly, Padmini made a presentation at Kolkata to the Kolkata based allottees before the preferential allotment and that it has also been admitted by Shri Vivek Nagpal that Padmini came to know that the Kolkata based allottees were persons acting in concert before the allotment of preferential shares. Further the shares to Kolkata based allottees were allotted without the actual receipt of the application money/ allotment money. The consideration from the said allottees were received by Padmini only after they had sold the shares to KP entities. KP entities had subsequently manipulated the market by using the said shares. In the facts and circumstances, where collusion is fairly established in the concatenation of events with all their suspicious undertones, Padmini cannot now take plea that it was not a party to the contract. There may not be any written agreement. I note that Punjab National Bank had sanctioned loans/limits to Padmini initially in 1990 which were enhanced from time to time. I also note that Padmini had pledged 14.10 lac shares registered in the name of directors/guarantors (Mr. Vivek Nagpal, Ms. Aarti Nagpal and Ms. Padma Nagpal) in March 2000 with Punjab National Bank as collateral security with an offer for compromise with the bank. As per the market rates prevailing at that time, the said shares were valued at around Rs. 200/- per share (aggregating Rs. 28 cr. Approx.).

3.49 I note that Padmini and its promoters were benefited by massive increase in the share price which enabled them to pledge 14.10 lacs shares @ Rs.200/- per share approx. as collateral security with Punjab National Bank for a compromise settlement. Therefore the acts of Padmini will establish that it had committed fraud on the general investors.

3.50 I also quote regulation 6 of FUTP Regulation for the sake of reference.

Prohibition on unfair trade practice relating to securities

"6. No person shall -

(a) in the course of his business, knowingly engage in any act, or practice which would operate as a fraud upon any person in connection with the purchase or sale of, or any other dealing in, any securities;

(b) on his own behalf or on behalf of any person, knowingly buy, sell or otherwise deal in securities, pending the execution of any order of his client relating to the same security for purchase, sale or other dealings in respect of securities.

Nothing contained in this clause shall apply where according to the clients instruction, the transaction for the client is to be effected only under specified conditions or in specified circumstances;

(c) intentionally and in contravention of any law for the time being in force delays the transfer of securities in the name of the transferee or the despatch of securities or connected documents to any transferee;

(d) indulge in falsification of the books, accounts and records (whether maintained manually or in computer or in any other form);

(e) when acting as an agent, execute a transaction with a client at a price other than the price at which the transaction was executed by him, whether on a stock exchange or otherwise, or at a price other than the price at which it was offset against the transaction of another client."

3.51 In view of the above findings, it is fairly established that Padmini and its whole directors had violated Regulation 3, 6 (a), (c), (d) of FUTP Regulations and Section 113 of the Companies Act, 1956 which calls for a penalty under Section 11B of the Act.

4.0 ORDER

4.1 In view of the foregoing, I in exercise of the powers conferred upon me by virtue of section 19 read with section 11B of Securities and Exchange Board of India Act, 1992 read with regulation 10 of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulation, 2003 hereby prohibit Padmini Technologies Ltd. and its whole time directors viz. Shri Vivek Nagpal, Shri Vishnu Sarup Gupta and Shri Praveen Kumar Jain from associating with the capital market related activities including buying and selling and dealing in securities directly or indirectly and also from accessing the capital market in any capacity whatsoever and associating with any of the intermediary in the capital market for a period of five years.

4.2 This order will come into force with immediate effect.

G. ANANTHARAMAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

PLACE: Mumbai

DATE: January 31, 2007